IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
BERNARD MICHELSON	NO. 2013-AQ- 13 NO. 2013-SW- 09

TO: Paul R. Doster
Re: Bernard Michelson
95 Main Avenue South
P.O. Box 7
Britt, Iowa
50424

Bernard Michelson
1395 Ford Avenue
Kanawha, Iowa 50447

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Bernard Michelson for the purpose of resolving violations pertaining to illegal open dumping and open burning. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Glenn Carper

Iowa Department of Natural Resources
Field Office No. 2
2300 15th Street S.W.
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to legal requirements:
Carrie Schoenebaum, Attorney for the DNR
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515/281-8024

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Bernard Michelson owns and operates a salvage yard in the NE 1/4, Section 14, Magor Township (T94N-R26W), Hancock County (the site). The address of the residence on the property is 1395 Ford Avenue, Kanawha, Hancock County, Iowa.

Present Violations

2. On October 13, 2010, DNR Field Office No. 2 received a complaint alleging that illegal open burning of tires was occurring at the above-described site. On October 19, 2010, Michelle Johnson of DNR Field Office No. 2 investigated the complaint, and observed four active burn piles in the central part of the property. The burn piles included tires, insulation, wood, and garbage. A burn pile no longer in use was located in the northwest corner of the property. It was overgrown with vegetation, and it contained the burned remnants of household garbage, including tin cans. Travis Michelson, Bernard Michelson's son, was present during the investigation, and he explained to Ms. Johnson that an old mobile home recently had been disassembled at the property, and some wood and insulation were burned. On October 21, 2010, a Notice of Violation letter was issued to Bernard Michelson, citing open burning violations.

3. On October 19, 2010, Ms. Johnson discussed her investigation with Bernard Michelson, and he stated that waste was being burned at the site to clean up the site.

4. On June 21, 2011, Mr. Michelson submitted receipts from Waste Management for the amount of $1,028.41, via his attorney Paul R. Doster, to the DNR. These receipts indicate that the material contained in the burn piles had been cleaned up and properly disposed of by Mr. Michelson.

5. On August 2, 2011, Ms. Johnson returned to the site to evaluate compliance. Ms. Johnson observed that the bulk of the burn piles had been cleaned up. Only one small pile remained. She also observed about a dozen appliances in a pile. Ms. Johnson told Mr. Michelson that if he wanted to store those appliances they must be stored upright to ensure no damage is done to cause a release of any hazardous components. Mr. Michelson said he had a son who was interested in getting a permit to demanufacutre appliances. Mr. Michelson showed Ms. Johnson a trailer that he would use in the future to haul his solid waste to the landfill and properly dispose of it.

Past Violations

6. Bernard Michelson has a past history of open burning. DNR has visited the site twelve times since 1997 to investigate open burning and open dumping. Mr. Michelson has been informed by DNR of the law regarding open burning on numerous occasions. This notification included two previous Notice of Violation letters, dated November 23, 2005; and November 23, 2005; and another certified letter dated December 9, 2007, detailing open dumping and open burning violations found in December 2007.

7. On December 2, 1997, Al Tompkins of DNR Field Office No. 2 investigated a complaint against Bernard Michelson alleging illegal open burning and improper handling of waste materials at this site. Mr. Tompkins found illegal solid waste dumped at the site and evidence of open burning of solid waste, including two burned-out cars and the remains of some burned tires. He observed at least six piles of solid waste, and three of the piles contained evidence of open burning. A certified letter dated December 9, 1997, was sent to Mr. Michelson, explaining the violations of open dumping and open burning, and requesting that the site be cleaned up by June 1, 1998. Mr. Tompkins re-visited the site on June 9, 1998, and found that the cleanup required by the December 9, 1997, letter had not been completed. On June 11, 1998, Mr. Tompkins sent a letter to Mr. Michelson requiring that all non salvageable waste be removed by July 15, 1998. Mr. Tompkins visited the site again on July 29, 1998, and found that the site had been cleaned up. He did not observe evidence of recent open burning on July 29, 1998.

8. On November 10, 2004, Glenn Carper and Michelle Johnson of DNR Field Office No. 2 investigated a complaint about illegal open dumping at the site. The complaint was filed by the Hancock County Board of Supervisors. Mr. Carper and Ms. Johnson observed evidence of open dumping when an investigation occurred on November 10, 2004. A November 14, 2004, Notice of Violation letter citing illegal open dumping was sent to Bernard Michelson. Mr. Michelson was required to clean up the site by May 1, 2005.

9. On May 23, 2005, Mr. Carper conducted a follow-up inspection of the site and documented significant progress of waste removal. On November 22, 2005, Mr. Carper conducted another follow-up inspection of the site and documented some additional cleanup of solid waste. On this visit, he also documented additional open burning. On November 23, 2005, a Notice of Violation for illegal open burning was issued to Mr. Michelson.

10. On September 9, 2006, Mr. Carper conducted a follow-up inspection at the site and documented continued progress of waste removal. On November 22, 2006, Mr. Carper sent Mr. Michelson a letter requiring the remaining waste to be removed.

11. On December 13, 2006; and May 10, 2007, Mr. Carper conducted additional follow-up inspections of the site and documented continued progress of waste removal. On June 13, 2007, Mr. Carper conducted another follow-up inspection of the site and documented the completion of a fence and gate to control access. Finally, on September 19, 2008, Mr. Carper conducted another follow-up inspection of the property and found the site to be in compliance because the remaining solid waste had been cleaned up.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trade waste is specifically prohibited. The open burning of solid waste by the Bernard Michelson demonstrates violations of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The illegal open dumping of solid waste by Bernard Michelson demonstrates non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders and Bernard Michelson agrees to the following:

1. Bernard Michelson shall pay a penalty of $2,500.00 within 30 days of the date this order is signed by the Director;

2. Bernard Michelson shall immediately discontinue allowing, causing or permitting improper open dumping and improper open burning of solid waste at the site described in this order and at any other location in the State of Iowa; and Bernard Michelson shall comply in the future with all state and local requirements regarding the proper disposal of solid waste and the prohibition against illegal open burning.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of $2,500.00 is assessed by this administrative consent order. The penalty must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to $10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B. 146A. Iowa Code section 455B.307 (3) authorizes the assessment of civil penalties of up to $5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to $10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Bernard Michelson has achieved an economic benefit by failing to comply with the laws regarding open dumping and open burning. Bernard Michelson avoided having to pay the tipping fees at the landfill. Central Disposal Systems, Inc., currently charges $60 per ton, which includes DNR fees, sales tax, a

fuel surcharge, and an environmental fee. Bernard Michelson also was able to delay the costs of transportation, including fuel, and manual labor to clean up the property. Based on the presence of four burn areas on the property, it is evident that a significant amount of waste was disposed of by open burning. Following, an discovery of the violations by the DNR Mr. Michelson spent approximately $1000.00 to properly dispose of the remaining solid waste. Therefore, a penalty in the amount of $500.00 is assessed for this factor.

Gravity of the Violation --Open burning of waste including tires, insulation, and garbage releases toxins into the air. Mr. Michelson has continued to burn even after being informed of the rules on many occasions. Mr. Michelson's repeated disregard for the rules threatens the integrity of the air quality program. His property is highly visible to the public and his actions may give the public the image that open burning is an acceptable practice. DNR has visited Mr. Michelson's property a dozen times in an effort to reach compliance. For these reasons, $1,000.00 is assessed for gravity.

Culpability – Bernard Michelson owns and controls the property on which the dumping and burning took place. He has intentionally allowed the open dumping and open burning of prohibited wastes even after being educated on the rules. The DNR's consistent presence on his property over the past thirteen years has not resulted in compliance. For these reasons, $1,000.00 is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Bernard Michelson. For that reason, Bernard Michelson waives his rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

Chuck Gipp
Iowa Department of Natural Resources

Dated this 26th day of March, 2013.

Bernard Michelson

Dated this 21st day of March, 2013.

Hancock County Air Quality file; Carrie Schoenebaum; DNR Field Office 2; VII.C.2