

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

SCOTT OLSON;

Emmet County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2012-AQ- 31
NO. 2012-SW- 23

TO: Scott Olson
2031 430th Avenue
Estherville, IA 51334

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department) and Scott Olson for the purpose of resolving violations related to the illegal disposal of solid waste on his property in rural Emmet County. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Bryon Whiting, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand
Spencer IA 51301-2200
Phone: 712-262-4177

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515-281-8889

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 consent order is issued pursuant to the provisions of 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; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109

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and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Scott Olson owns a 4.81 acre farmstead located at 2031 430th Avenue in rural Emmet County.

2. On August 4, 2011, Department Field Office #3 received a complaint from Terry Reekers, Emmet County Emergency Management Coordinator. Mr. Reekers had been informed by Kenny Juhl of the Emmet County Board of Adjustment that Herum Excavation, L.L.C. was demolishing buildings and mobile homes from the Cozy Grove Motel in Estherville. Mr. Juhl indicated that the mobile homes were being dumped on a farm near Ryan Lake in rural Emmet County.

3. On August 5, 2011, Department Environmental Specialist Senior Bryon Whiting visited the property at 1704 Central Avenue, Estherville. On that date he observed that all buildings and mobile homes had been removed from the site and that the site had been graded down to bare dirt. The total area of the site is 1.52 acres. Photographs were taken. Mr. Whiting then proceeded to a farm at 2031 430th Avenue in rural Emmet County. Mr. Whiting observed at least three mobile homes and various scrap tin in a burn pile. The material appeared to have been generated during mobile home demolition. Photographs were taken. Records obtained from the Emmet County Assessor indicate that the property is owned by Scott Olson.

4. Also on August 5th, Bryon Whiting requested the assistance of Emmet County Chief Deputy Sheriff Kevin Olson to determine whether the mobile homes at the Scott Olson property had come from the Cozy Grove Motel site. Deputy Olson indicated that he observed Scott Herum moving mobile homes from the site on August 3rd.

5. On August 15, 2011, Bryon Whiting was informed by Deputy Kevin Olson that he had spoken with Scott Olson and Mr. Olson had informed him that he had initially agreed to take the mobile homes from Scott Herum for demolition and recovery of scrap metal. Scott Olson then changed his mind and decided not to take them. Scott Olson indicated to Deputy Kevin Olson that he changed his mind again after Scott Herum offered to pay him \$1,000 and deliver the mobile homes. Scott Olson agreed to this offer and accepted the mobile homes for salvage.

6. On August 19, 2011, Bryon Whiting received a fax from Tom Wuehr of the Department's Air Quality Bureau. The fax contained the Notification of Demolition and Renovation for the demolition and asbestos disposal from the Cozy Grove Motel. The document did not include the asbestos inspection or removal for any of the seven mobile homes.

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7. On August 29, 2011, Bryon Whiting reinspected the property of Scott Olson. On that date, the mobile homes and scrap metal previously observed had been removed. Do we know where the material went?

8. On August 26, 2011, a Notice of Violation letter was sent to Scott Olson for the illegal open dumping of solid waste at his property, illegal open burning of solid waste, failure to conduct asbestos inspections and failure to submit required asbestos notifications.

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. Pursuant to 567 IAC 23.1(3), the State of Iowa has adopted the federal asbestos standards as set forth at 40 CFR 61.145. The federal regulations require facilities to be inspected for the presence of asbestos prior to demolition or renovation and the submission of notification of demolition or renovation activities prior to such activities. The above-stated facts establish violations of these provisions.

3. 567 IAC 23.2 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567 IAC 23.2(3) (exemptions). The burning documented in this matter does not fall under any of the exemptions in 567 IAC 23.2(2) and is therefore prohibited. The above facts demonstrate a violation of this provision.

4. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from 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 Department has documented violations of these provisions by Scott Olson.

V. ORDER

THEREFORE, the Department orders Scott Olson, and Scott Olson agrees, to pay a penalty in the amount of \$2,600 within 30 days of the execution of this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for each of 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 per day of violation for the solid waste disposal violations involved in this

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matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$2,600. The administrative penalty is determined as follows:

Economic Benefit – Scott Olson has achieved an economic benefit from the violations documented herein. At a minimum, Scott Olson was paid \$1,000 for the receipt of the mobile homes. Scott Olson also received the value of the scrap metal recovered from the mobile homes and appliances at his farmstead. A ton of scrap steel currently has a value of \$200 and a ton of clean aluminum has a value of \$1,000. Based upon the 3 mobile homes and 4 appliances observed on site, Scott Olson should have received at least \$270 in payment for the scrap metal. Scott Olson also avoided approximately \$300 in asbestos regulation compliance costs and achieved additional savings by the burning of remaining solid wastes. Based upon these facts a penalty of \$1,600 is assessed for economic benefit.

Gravity –The violations documented herein cover multiple program areas and multiple potential environmental impacts. Failure to conduct asbestos inspection creates a serious risk of harm to human health during the demolition or disposal of the mobile homes. The open burning of solid wastes, including asbestos containing solid wastes, is a threat to human health and the environment. Therefore a penalty of \$1,000 is hereby assessed.

Culpability – Scott Olson has appeared to be forthright in his response to this investigation and responsive to the inquiries of Deputy Kevin Olson. The Department does not have a record of any past violations by Scott Olson. Therefore no penalty is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

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

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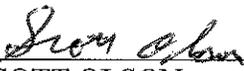
VIII. NONCOMPLIANCE

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. Total compliance with all provisions of 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.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources
Chuck Gipp

Dated this 6th day of
November, 2012.



SCOTT OLSON

Dated this 6th day of
November, 2012.

Field Office 3; VI.C; VII.C(4)