

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

<p>IN THE MATTER OF:</p> <p>SELECT VIEW, L.L.C. and MICHAEL AND ANGELA TOMKA Carroll County, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2008-AQ- <u>26</u> NO. 2008-SW- <u>20</u></p>
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TO: Kevin Onken, Registered Agent
Select View, L.L.C.
306 N. Carroll Street
Carroll, Iowa 51401

Michael and Angela Tomka
16943 200th Street
Carroll, Iowa 51401

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Select View, L.L.C. (Select View) and Michael and Angela Tomka for the purpose of resolving the air quality and solid waste disposal violations which occurred during the disposal of materials from Motel 71-30 in Carroll, Iowa at Mr. and Mrs. Tomka's property. 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:

Keith Wilken, Field Office #4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

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

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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 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. On May 5, 2008, DNR Field Office 4 received an anonymous complaint. The complainant stated that Motel 71-30 in Carroll was being demolished and that the demolition debris was being taken to property owned by Michael Tomka located at 16943 200th Street in rural Carroll County.

2. On May 5, 2008, Field Office 4 personnel began the investigation of the complaint. Field Office 4 personnel went to the Motel 71-30 property located at 1406 N. Highway 71 in Carroll. Field Office 4 personnel noted that the carpeting and furniture had been removed and some windows had been broken out. Field Office 4 personnel proceeded to 16943 200th Street in rural Carroll County. No one was present at the residence located on the property, but Field Office 4 personnel observed a large excavation about 200 feet west of the house. Field Office 4 personnel observed remnants of numerous beds (bedsprings) and several tires (steel belts). The beds and tires had been burned. Following the inspection of the two properties, Field Office 4 personnel determined the motel property was owned by Select View and the property located at 16493 200th Street (Section 19, T85N, R35W, Maple River Township, Carroll County) was owned by Michael and Angela Tomka.

3. On May 6, 2008, Field Office 4 personnel spoke to Kevin Onken, registered agent for Select View. Mr. Onken was informed of the solid waste disposal and open burning regulations and that the open burning of the tires and beds violated the regulations. Field Office 4 personnel also informed Mr. Onken of the asbestos regulations and Mr. Onken agreed to cease all work until Marion Burnside, DNR asbestos coordinator, could visit the site. Mr. Burnside visited the site on May 8, 2008, and informed Mr. Onken of the notification, testing, and removal requirements.

4. On May 6, 2008, Mr. Tomka contacted Field Office 4 personnel and confirmed he owned the property. During the telephone conversation with Mr. Tomka, Field Office 4 personnel explained the solid waste disposal and open burning regulations and that the open burning of the tires and beds violated the regulations.

5. On June 3, 2008, Select View and Mr. Tomka were issued a Notice of Violation letters for the open burning and solid waste disposal violations discovered during Field Office 4's May investigation. The letters required that all solid waste, including the ash, at the Tomka's property be removed and disposed of properly at a permitted landfill by June 30, 2008 and that the landfill receipts be submitted to Field Office 4 by July 15, 2008. The letters informed Select View and Mr. Tomka the matter was being referred for further enforcement.

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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 20-34 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). Field Office 4 personnel observed numerous beds and tires had been burned at the Tomka's property. The above facts demonstrate noncompliance with 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 such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits 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 furniture from Motel 71-30 was taken to the Tomka's property and burned rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Select View and Michael and Angela Tomka agree to do the following:

1. Select View and Michael and Angela Tomka shall remove all solid waste, including the ash, located at 16943 200th Street, Carroll and dispose of it at a permitted landfill by July 30, 2008;
2. Select View and Michael and Angela Tomka shall submit a copy of the landfill receipts to Field Office 4 by August 15, 2008; and
3. Select View and Michael and Angela Tomka shall pay a penalty of \$1,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

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 Iowa Code section 455B.146A. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a

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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 these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order to Select View and Michael and Angela Tomka, jointly and severally liable, with an administrative penalty of \$1,000.00. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - Failure to follow the proper solid waste disposal regulations by the improper open burning and disposal of the buildings has allowed Select View and the Tomkas to save time and money. However, Select View and the Tomkas are being required to properly remove and dispose of the solid waste. Any economic benefit received would be minimal; therefore, no amount is being assessed for this factor.

Gravity of the Violation - One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Based on the above considerations, \$700.00 is being assessed for this factor.

Culpability - Select View and the Tomkas have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Based on the above considerations, \$300.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

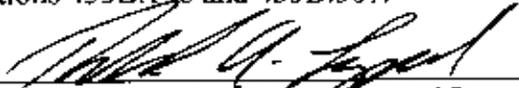
This administrative consent order is entered into knowingly and with the consent of Select View and Michael and Angela Tomka. For that reason, Select View and Michael and Angela Tomka waive the right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the

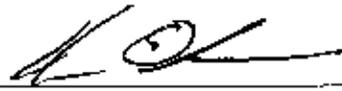
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Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 8 day of
Sept, 2008.



SELECT VIEW, L.L.C.

Dated this 22 day of
July, 2008.



MICHAEL TOMKA

Dated this 22 day of
July, 2008.



ANGELA TOMKA

Dated this 22 day of
July, 2008.

Barb Stock (Con 10-6 Carroll County); Kelli Book; Field Office 4; VI.C and VII.C.1.

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