

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:

**Jeffrey Turkle and Turkle's Tree
Service, Inc.**

Muscatine County, Iowa

ADMINISTRATIVE ORDER

NO. 2016-AQ- 14

NO. 2016-SW- 10

TO: Jeffrey Turkle
3601 135th Street
Stockton, Iowa 52769

Turkle's Tree Service, Inc.
Stanley, Lande & Hunter, Registered Agent
301 Iowa Ave., Suite 400
Muscatine, Iowa 52761

I. SUMMARY

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Jim Kacer, Field Office 6
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353
Phone: 319/653-2135

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

Appeal, if any, addressed to:

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

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 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

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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 Order.

III. STATEMENT OF FACTS

1. Jeffrey Turkle operates Turkle's Tree Service, Inc. (Turkle's Tree Service) located at 3601 135th Street, Stockton, Iowa. Turkle's Tree Service is a tree service company that cuts down trees, trims trees, cuts trees into lumber and performs other tree related services.

Open Burning and Improper Solid Waste Disposal:

2. In August 2012, DNR Field Office 6 investigated a complaint of open burning at Turkle's Tree Service's facility. The field office did not identify any open burning violations during the investigation. On August 28, 2012, DNR sent Mr. Turkle a letter explaining the open burning regulations and stated that it was illegal to burn or dump solid waste unless there was an exemption for the activity.

3. On November 8, 2013, DNR Field Office 6 received a complaint alleging that Turkle's Tree Service was burning tree debris from its tree service business at its facility. On December 24, 2013, Jeff Thomann, DNR Field Office 6 environmental specialist, investigated the complaint. Mr. Thomann observed tree trunks and limbs that had not originated on site had been burned. On December 31, 2013, DNR issued a Letter of Noncompliance to Mr. Turkle. The letter documented the open burning and solid waste disposal violations that Mr. Thomann observed during his investigation. Mr. Turkle was informed that the facility would be watched and if there were further open burning violations the matter would be referred for further enforcement.

4. On June 6, 2016, DNR Field Office 6 received two complaints stating that Turkle's Tree Service was burning logs at its facility. The first complainant stated the sheriff was called to the facility the previous weekend, but could not get within 30 feet of the fire because of the size of the fire. The complainant stated that red embers were dropping on neighboring property. The second complainant stated the burning had been going on for years and Mr. Turkle claimed the fires to be recreational fires. The complainant stated this particular fire had been burning for two days. Eric Furnas with Muscatine County Environmental and Zoning investigated the complaints on June 6, 2016. Mr. Furnas documented a large log pile on fire with no one near the fire. Mr. Furnas spoke to employees at the facility who informed him the facility burns odds and ends that cannot be used for sawing into lumber. Mr. Furnas provided his investigation findings to the DNR Field Office 6 on June 7, 2016. On June 9, 2016, the County issued a letter to Mr. Turkle informing

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him that he was in violation of the County ordinances and was required to cease the burning of logs, tree trunks, and limbs at the property.

5. Mr. Turkle contacted DNR Field Office 6 and indicated that he was trying to use the recreational fire exemption to dispose of wood generated at his facility that had little to no value. The field office personnel explained that the fires were not characteristic of a recreational fire in that there were no individuals around the fire, the burning had been occurring for several days and the logs being burned were rather large. The field office personnel informed Mr. Turkle that DNR would be issuing a Notice of Violation letter for the violations. On June 20, 2016, DNR issued a Notice of Violation to Mr. Turkle for the open burning and improper solid waste violations observed by Mr. Furnas. The letter required that Mr. Turkle submit a written plan of action on how solid waste (tree debris) generated by the business would be disposed of in the future. The plan of action was to be submitted by July 20, 2016. On June 24, 2016, Mr. Turkle submitted a letter stating that tree debris would no longer be burned at the Turkle's Tree Service facility.

Asbestos:

6. In April 2014, DNR Field Office 6 received a complaint that Jeff Turkle was demolishing an old building in Stockton, Iowa. The building was located west of Iowa Street and south of the Iowa Interstate Railroad right-of-way in Stockton, Iowa. The complainant alleged that the demolition took place without the required asbestos inspection and notification. Prior to the inspection, DNR Field Office 6 determined that the building was owned by Jeffrey and Pamela Turkle. On April 24, 2014, Jim Kacer, DNR Field Office 6 environmental specialist, investigated the complaint and observed that a portion of the building had been demolished. Mr. Kacer collected a sample of the debris that was on the ground outside of the building. The laboratory analysis of the sample indicated that it contained 35% Chrysotile asbestos.

7. On April 28, 2014, DNR issued a Notice of Violation letter to Mr. Turkle for the asbestos violations discovered during the field office inspection. The violations included: failure to notify of the demolition and failure to remove all regulated asbestos prior to the demolition activities. The letter required that Mr. Turkle stop the demolition project immediately and have the regulated asbestos containing material removed from the building by a licensed asbestos abatement contractor prior to beginning demolition activities.

8. On April 30, 2014, Mr. Turkle contacted DNR Field Office 6 and confirmed that he had demolished a portion of the building but that he was not going to demolish any more of the building. The field office reminded Mr. Turkle that the remaining portion of the building must be properly disposed of.

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9. On June 20, 2016, DNR received a complaint that Mr. Turkle was demolishing a commercial building in Stockton, Iowa. The complainant alleged that the demolition was taking place without complying with the asbestos regulations. This was the same building subject to the 2014 complaint and investigation.

10. On June 21, 2016, Mr. Kacer and Brian Cox, DNR Field Office 6 environmental specialist, investigated the complaint. At the site, they noticed that more of the building had been demolished since 2014. The field office personnel spoke to Mr. Turkle's son, Zach. Zach stated that the building's cupola had been demolished on June 20, 2016 because it was in poor condition. Zach also informed the field office personnel that the interior walls of the building had been removed. The field office personnel observed that exterior walls that had been intact during the 2014 investigation had been removed. The field office personnel observed broken siding material in an open trailer near the building.

11. On June 23, 2016, DNR issued a Notice of Violation letter to Mr. Turkle for the violations discovered during the field office inspection. The letter required that Mr. Turkle stop all renovation and demolition activities and that all asbestos containing material be removed by a licensed asbestos abatement contractor. The letter also informed Mr. Turkle the matter was being referred for further enforcement.

12. On June 27, 2016, Mr. Kacer drove by the building site and observed work was continuing on the building and the siding on a portion of the building had been removed. On June 28, 2016, DNR issued a Notice of Violation letter for the continued asbestos violations at the facility. The letter required that Mr. Turkle stop all renovation and demolition activities; that all asbestos containing material be removed by a licensed asbestos abatement contractor; and that landfill receipts be submitted to the field office within one week of disposal.

13. On June 30, 2016, Mr. Kacer and Kurt Levetzow, DNR Field Office 6 environmental specialist senior, visited the building site. There were numerous small pieces of suspect building material scattered on the ground near the building. Mr. Kacer collected five samples of the suspect material. Four of the five samples were cement-asbestos material and the laboratory analysis of the samples indicated that each sampled contained 20% Chrysotile asbestos. The fifth sample was from shingle debris and the laboratory analysis did not detect the presence of any asbestos.

14. On July 5, 2016, DNR issued a Notice of Violation letter to Mr. Turkle for the ongoing asbestos violations discovered during the field office inspection on June 30, 2016.

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15. On August 13, 2016, DNR Field Office 6 received a letter from Morland Environmental Services, LLC who had been hired by Mr. Turkle to conduct a visual assessment for asbestos at the building location. Morland Environmental Services, LLC indicated that during the visual assessment no suspect asbestos containing debris was observed on the ground. The field office personnel contacted Tim Morland with Morland Environmental Services, LLC to discuss the assessment. Mr. Morland stated that Mr. Turkle informed him that he had picked up the debris around the property prior to the visual assessment. The Notice of Violation letter issued on July 5, 2016 had required Mr. Turkle to hire a licensed asbestos abatement contractor to properly remove all of the debris on the ground around the property. The renovation of the building has since been completed.

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). 567 IAC 23.2(3)"d" provides an exemption to the open burning prohibition for landscape waste. The disposal by open burning of landscape waste originating on the premises is allowed under the exemption. However in this situation, the tree debris being burned did not originate on the premises and Mr. Turkle stated it was wood from his business that he could not use. The open burning at the Turkle's Tree Service facility does not meet the landscape exemption provision. 567 IAC 23.2(3)"e" provides an exemption to the open burning prohibition for recreational fires. Open fires for cooking, heating, recreation and ceremonies are allowed. Although Mr. Turkle claimed he was attempting to use the recreational fire exemption to burn tree trunks having little or no value at his facility, the burning does not appear to be for recreational purposes. Large pieces of the trees were burning for several days and no people were around the fire. The complainants stated that this type of burning had been going on for a year at the facility. The open burning at the Turkle's Tree Service facility does not meet the recreational exemption provision. Therefore, the open burning at Turkle's Tree Service demonstrate noncompliance with 567 IAC 23.2(1).

3. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC section 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to

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implement and enforce the demolition and renovation portions of the federal asbestos NESHAP, found at 40 CFR part 61, subpart M.

4. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. An asbestos inspection was not conducted prior to the demolition and renovation work conducted in 2014 or 2016. The above facts indicate violations of this provision.

5. 40 CFR section 61.145(b)(1) requires written notification of demolition to be submitted to the DNR prior to beginning renovation. The specific requirements for this notification are contained in the subsection. The DNR has no evidence that a notification was ever submitted prior to the demolition and renovation of the building in either 2014 or 2016. The above facts indicate violations of this provision.

6. 40 CFR section 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The facts in this case indicate that Mr. Turkle was not in compliance with these provisions when the demolition and renovation occurred.

7. 40 CFR 61.145(c)(1) provides that all regulated asbestos containing material shall be removed from a regulated facility before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. No asbestos abatement occurred prior to the demolition project in 2014 or the renovation and demolition in 2016, even though a Notice of Violation letter was issued after the 2014 inspection requiring that all asbestos containing material be removed prior to any further activity at the building. During the field office's inspections in 2014 and 2016 dry asbestos containing material was discovered on the ground around the remains of the building. The facts in this case indicate violations of this provision.

8. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately wet and shall remain wet until collected and contained. Proper asbestos abatement did not occur prior to the demolition project in 2014 or the renovation and demolition in 2016, even though a Notice of Violation letter was issued after the 2014 inspection requiring that all asbestos containing material be removed prior to any further activity at the building. During the field office's inspections in 2014 and 2016 dry asbestos containing material was discovered on the ground around the remains of the building. The facts in this case indicate violations of this provision.

9. 40 CFR 61.145(c)(8) provides that effective one year after promulgation of this regulation, no regulated asbestos containing material shall be

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stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. The facts in this case indicate there was not a trained supervisor on site during the demolition or renovation of the building. The above facts indicate noncompliance with this provision.

10. 40 CFR 61.150 contains standards for asbestos waste disposal for demolition and renovation operations. Specifically, 40 CFR 61.150(a)(1)(iii) provides that all asbestos containing waste materials, while wet, shall be sealed in leak-tight containers or wrapping. During the field office's inspections in 2014 and 2016 dry asbestos containing material was discovered on the ground around the remains of the building. The facts in this case indicate violations of this provision.

11. 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.

12. 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 leftover tree debris at Turkle's Tree Service was burned as a means of disposal rather than disposed of at a regulated landfill or through other permitted disposal means. The above facts demonstrate noncompliance with this provision

V. ORDER

THEREFORE, the DNR orders Jeffrey Turkle and Turkle's Tree Service to do the following:

1. Operate the tree service in compliance with the open burning and solid waste disposal regulations in the future;
2. Comply with the asbestos NESHAP regulations for any future renovation or demolition projects; and
3. Pay an administrative penalty in the amount of \$10,000.00 within 60 days of receipt of this Order, subject to appeal rights stated in Section VII of this Order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up

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to \$10,000.00 per day of violation for the air quality violations involved in this matter. Iowa Code section 455B.146A provides for more serious criminal sanctions for the air quality violations.

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, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a \$10,000.00 penalty. Jeffrey Turkle and Turkle's Tree Service are jointly and severally liable for the penalty assessment. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Mr. Turkle and Turkle's Tree Service gained an economic benefit by burning the tree debris rather than disposing of the tree debris at a permitted landfill. Mr. Turkle and Turkle's Tree Service avoided the costs associated with transportation and landfill fees. It is estimated that Mr. Turkle and Turkle's Tree Service gained an economic benefit of at least \$500.00 by burning the tree debris rather than disposing of it at a permitted landfill. Mr. Turkle gained an economic benefit by beginning the demolition and renovation of his building without properly inspecting the building for asbestos and notifying the DNR of the demolition and renovation activities. It is estimated that Mr. Turkle gained an economic benefit of at least \$600.00 in avoided inspection and notification costs. Mr. Turkle also gained an economic benefit by failing to properly remove the asbestos containing material prior to the demolition and renovation projects at the building. The DNR estimates the cost of removing the regulated asbestos containing material prior to the demolition and renovation to be at least \$1,000.00. Based on this information, it is estimated that Mr. Turkle and Turkle's Tree Service gained an economic benefit of at least \$2,100.00 and that amount is assessed for this factor.

Gravity – 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

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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. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to comply with the proper asbestos removal and disposal procedures has likely caused asbestos fibers to be released into the air through the removal of the asbestos containing material. These violations threaten the integrity of the regulatory program because compliance with the asbestos regulations is required of all persons in this state. Based on the above considerations, \$2,200.00 is assessed for the open burning and solid waste disposal violations and \$2,400.00 is assessed for the asbestos violations for a total of \$4,600.00 assessed for this factor.

Culpability – Mr. Turkle and Turkle's Tree Service have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Mr. Turkle was made aware of the open burning and solid waste disposal regulations, yet continued to burn tree debris at the Turkle's Tree Service facility. Additionally, Mr. Turkle was made aware of the asbestos regulations in 2014 and continued the renovation and demolition of the building in 2016 without complying with the asbestos regulations. Based on the above considerations, \$1,500.00 is assessed for the open burning and solid waste disposal violations and \$1,800.00 is assessed for the asbestos violations for a total of \$3,300.00 assessed this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code sections 455B.138 and 455B.308, and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.

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CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 13th day of
October, 2016.

Kelli Book; DNR Field Office 6; EPA; VI.C, VII.C.1, VII.C.4