IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:	
JAMES D. OLCHEFSKI and ROBERT A. NICHOLSON d/b/a HIDDEN VALLEY MOBILE HOME PARK	ADMINISTRATIVE ORDER NO. 2016-AQ- 20 NO. 2016-SW- 14
Wapello County, Iowa	

TO: James D. Olchefski
631 Galahad Road N.
Hudson, WI 54016

Robert A. Nicholson
177 Riverview Acres Road
Hudson, WI 54016

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 division; 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 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. James Olchefski and Robert Nicholson own the Hidden Valley Mobile Home Park (Hidden Valley) located at 16440 US Hwy 34, Ottumwa, Iowa. The mobile home park has an estimated 100 lots with approximately 68 mobile homes located on the lots. Many of the homes are abandoned, with some partially demolished.

2. In 2010, DNR Field Office 6 investigated a complaint at Hidden Valley concerning the demolition of a mobile home. Kurt Levetzow, DNR Field Office 6 environmental specialist senior, and Jim Kacer, DNR Field Office 6 environmental specialist, visited Hidden Valley and observed a mobile home that had been recently demolished as well as evidence that some of the material had been burned. DNR Field Office 6 sent a letter to Hidden Valley detailing the asbestos regulations for demolitions and the open burning regulations.

3. In 2011, the manager at Hidden Valley contacted Mr. Levetzow for clarification on the asbestos regulations. Mr. Levetzow explained that if more than one mobile home was being demolished as part of a project that the asbestos regulations would need to be followed, but if it were one mobile home being demolished by the owner of the mobile home then the demolition would be exempt from the asbestos regulations.

4. In April 2014, Mr. Kacer was visiting Hidden Valley to investigate a complaint. As part of the investigation, Mr. Kacer spoke to Mr. Nicholson about several mobile homes in the process of being demolished. Mr. Nicholson stated he was aware of the asbestos regulations and was complying with the regulations for the mobile homes that Hidden Valley was demolishing, but not for the mobile homes being demolished by their owners. DNR had no record of any notifications being submitted for demolitions being conducted at Hidden Valley during this period.

5. In June 2014, DNR Field Office 6 received a complaint from the Wapello County Engineer regarding the partial dismantling of ten mobile homes at Hidden Valley. The complaint stated that the mobile homes had been abandoned by the owners and were now vacant. The complaint stated that there was a concern about asbestos in the mobile homes. The complaint stated the managers for Hidden Valley were responsible for the dismantling.

6. In July 2014, Mr. Levetzow, investigated the complaint. During the investigation he did not observe any active demolition taking place; however, once he returned to his office he noted that demolition notifications had not been submitted to the DNR. In July 2014, DNR issued a Notice of Violation letter to Mr. Olchefski for failing to submit demolition notifications prior to the start of the demolition of the mobile homes. In August 2014, Hidden Valley's attorney contacted Mr. Levetzow and explained that Hidden Valley was researching the cost of obtaining a qualified asbestos inspector. The attorney stated the mobile homes are not owned by Hidden Valley, but have been abandoned on the property. The attorney stated the mobile homes were not part of a demolition project but rather scrappers were dismantling the mobile homes and some were just falling apart. In September 2014, the attorney indicated that Hidden Valley had obtained quotes from two asbestos inspectors.

7. On April 9, 2015, Mr. Levetzow and Brian Lee, DNR Field Office 6 environmental specialist, drove through Hidden Valley to determine if demolition had continued. The field office personnel observed two large roll off dumpsters near the mobile homes that had been partially or completely demolished. Mr. Levetzow noted that at least one mobile home had been demolished since the last visit in July 2014. A demolition notification had not been submitted for the demolition. Mr. Levetzow attempted to contact Hidden Valley's attorney, but the attorney did not respond to the field office inquiry.

8. On April 23, 2015, Mr. Levetzow, Mr. Kacer, the Wapello County Engineer and Tom Wuehr, DNR asbestos coordinator, visited Hidden Valley to collect samples of suspect asbestos containing debris from the dismantled mobile homes. Mr. Wuehr collected samples of the partially demolished mobile homes and from the debris piles. The laboratory sample of caulk from the partially demolished trailer on Lot 31 contained 3% chrysotile asbestos. During the inspection, the group observed that debris from the mobile homes had been burned at the site. Mr. Levetzow contacted the waste hauling company whose dumpster was on site during the investigation. The company representative stated that Mr. Olchefski had contacted the company to secure the dumpsters and since October 2014, 28 roll off dumpsters had been used at the site with 18 of them containing general trash and 10 of them containing construction and demolition waste. The construction and demolition waste dumpsters had an average weight of 2-3 tons each. On May 15, 2015, DNR issued a Notice of Violation letter to Mr. Olchefski for failing to submit demolition notifications, failing to conduct thorough asbestos inspections prior to the demolitions, and open burning.

9. On May 29, 2015, Mr. Kacer and Mr. Levetzow returned to Hidden Valley to complete an inventory of the partially demolished mobile homes and the mobile homes that had been condemned by Wapello County. The field office

personnel observed several partially demolished mobile homes and piles of debris on several lots, similar to what was viewed in April 2015. There was no evidence that demolition notifications had been submitted for any of the demolitions at Hidden Valley since at least 2009. From the various field office visits over the course of the past years it was determined that at least eleven mobile homes had been demolished and at least six mobile homes had been partially demolished between 2012 and 2015.

10. On November 19, 2015, DNR Field Office 6 received a complaint regarding ongoing demolitions at Hidden Valley. Mr. Levetzow and Mr. Kacer investigated the complaint and spoke with Laverne Clingman, manager for Hidden Valley. Mr. Clingman began his duties on October 10, 2015 and he stated the owners assigned the duties of demolishing the mobile homes to him. He stated he had not received any instruction from the owners of the mobile home park as to the asbestos regulations or how to comply with the asbestos regulations. The field office personnel noted that the demolition on some of the mobile homes had continued since the April 2015 inspection. On December 10, 2015, DNR issued a Notice of Violation letter to Mr. Olchefski and Mr. Nicholson for the continued violations documented during the inspection.

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). During the various visits by DNR to Hidden Valley, evidence of open burning of solid waste and other construction and demolition waste was observed. The above facts indicate violations of this provision.

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 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. There is no evidence that asbestos inspections were conducted prior to the beginning of the demolition work at Hidden Valley. 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 notifications were ever submitted prior to the demolition of any of the mobile homes at Hidden Valley. The above facts indicate violations of this provision.

6. 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.

7. 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. Some of the construction and demolition waste and other solid waste was burned rather than disposed of at a permitted landfill. The above facts demonstrate noncompliance with this provision

V. ORDER

THEREFORE, the DNR orders James Olchefski and Robert Nicholson to do the following:

1. Cease all demolition activities at Hidden Valley until thorough asbestos inspections are conducted on the mobile homes that are in the process of being dismantled;

2. Comply with the asbestos NESHAP regulations for any future 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 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.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 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. James Olchefski and Robert Nicholson 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. Olchefski and Mr. Nicholson gained an economic benefit by failing to conduct thorough asbestos inspections prior to the demolition of the multiple mobile homes at Hidden Valley. At least 17 mobile homes were demolished or partially demolished without thorough inspections prior to the demolition activities. The cost of an asbestos inspection is estimated to be $500.00 per mobile home. Mr. Olchefski and Mr. Nicholson avoided inspection fees of at least $8,500.00. Mr. Olchefski and Mr. Nicholson also saved time and money by not submitted demolition notifications prior to the demolitions or partial demolitions of the mobile homes. At an estimated savings of $100.00 per mobile home, Mr. Olchefski and Mr. Nicholson avoided costs of at least $1,700.00 in notification expenses. Additionally, the field office found evidence of open burning at Hidden Valley, Mr. Olchefski and Mr. Nicholson saved landfill fees for burning some of the waste rather than disposing of it at a permitted landfill. A conservative estimate saved from the open burning is $3,000.00. Based on this information, it is estimated that Mr. Olchefski and Mr. Nicholson gained an economic benefit of at least $13,200.00. However, the Department has determined to handle this matter administratively and therefore an economic benefit of $6,000.00 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 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 inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolitions. 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, $2,000.00 is assessed for this factor.

Culpability – Mr. Olchefski and Mr. Nicholson 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. On numerous occasions DNR Field Office 6 notified Mr. Olchefski and Mr. Nicholson of the asbestos regulations, yet demolition activities continued to occur at Hidden Valley. Based on the above considerations, $2,000.00 is assessed for 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.

Chuck Gipp

CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 22nd day of November, 2016.

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