To: Richard and Dorothy Tompkins  
18024 Highway 70  
Conesville, Iowa  52739

Sasha Monthei, Attorney  
Smith, Mills & Schrock Law  
118 3rd Ave, SE, Suite 200  
Cedar Rapids, Iowa  52401

Re: Illegal open burning of combustible material/ Illegal disposal of solid waste/ Asbestos demolition violations; 18046 Highway 70, Conesville, Iowa.

I. SUMMARY

This administrative order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Richard and Dorothy Tompkins, (the Tompkins) owners of the above-referenced property in Conesville, Iowa, for the purpose of resolving illegal open burning, illegal solid waste disposal, and asbestos violations at the property.

As detailed below, the Tompkins shall properly dispose of all remaining solid waste located on the property, shall cease any and all illegal open burning of combustible material in the state of Iowa, shall comply with all asbestos regulations in the future, and shall pay an administrative penalty of $10,000.00. The basis for this penalty is further explained herein.

Any questions regarding this Order should be directed to:
II. JURISDICTION

This Order is issued pursuant to Iowa Code § 455B.307(2) which authorizes the Director of the DNR 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 and regulations adopted pursuant to that part; Iowa Code §§ 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; and, Iowa Code § 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The following facts are presented in chronological order:

1. On June 28, 2019, staff from DNR Field Office (FO) 6 received a complaint concerning demolition and potential burning of mobile homes at the Tompkins’ property in Conesville, Iowa. Staff from DNR FO 6 investigated the same day and witnessed one of two large piles of demolition waste on fire. The waste appeared to be a demolished structure or structures. Photos taken show shingles, wood waste, and other materials consistent with the demolition of a structure being burned.

2. DNR staff spoke on-site with an individual who stated he was the son of the property owners. Copies of applicable regulations concerning open burning, solid waste and asbestos regulation were offered to the individual, but
he refused to accept them and stated they needed to be sent to his father, one of the property owners.

3. On July 3, 2019, DNR issued a Notice of Violation (NOV) to the property owners, and noted that the matter was being forwarded to DNR’s Legal Services Bureau for further enforcement. The applicable rules were referenced and summarized in the NOV.

4. On July 24, 2019, DNR sent via certified mail a proposed administrative consent order to the property owners. An attorney representing the property owners responded substantively on August 19 requesting that, among other things, the penalty be waived and noting that the estimate for removal and proper disposal of remaining solid waste on the property was $2,500.00.

5. DNR determined that, given the violations and the lack of adequate explanation for the violations, rescinding the penalty was not warranted. DNR provided the property owners’ attorney notice that a unilateral order would be issued if an agreement on the consent order could not be reached.

IV. CONCLUSIONS OF LAW

1. Iowa Code § 455B.301(23) defines solid waste as garbage, refuse, rubbish, and other similar discarded solid or semi-solid materials including but not limited to materials resulting from industrial and commercial activities such as construction and demolition debris.

2. Iowa Code § 455B.307(1) prohibits a person from dumping or depositing, or permitting the dumping or depositing, of any solid waste at any place other than a sanitary disposal project approved by the Director of the DNR. Demolishing structures into piles for burning and leaving burned material on the property after burning establish violations of this statutory prohibition.

3. Iowa Code § 455B.304 provides that the Environmental Protection Commission (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. The Commission has adopted 567 IAC 100.4 for the regulation of open dumping in Iowa. The provision prohibits a person from dumping or depositing, or permitting the dumping or depositing, of any solid waste at any place other than a sanitary disposal project approved by the Director and pursuant to the terms of a permit granted by the agency authorizing the disposal of solid waste. Demolishing structures into piles for burning and leaving burned material on the property after burning establish violations of this regulatory prohibition.
5. Iowa Code § 455B.133 authorizes the Commission to establish rules governing air quality and emission standards. The Commission has adopted 567 IAC 23.2 which regulates open burning of combustible materials in Iowa. The regulation specifically prohibits individuals from allowing, causing or permitting open burning of combustible materials in Iowa, except in certain situations that are not applicable to this matter. The above stated facts establish violations of this provision.

6. The Commission has also adopted 567 IAC § 23.1(3), which adopts by reference the federal regulations regarding asbestos removal. 40 CFR § 61.145(a) requires a thorough building inspection prior to demolition. Based on the photos of the property prior to the investigation, it appears that structures on the property were demolished prior to burning. If so, the owners failed to have the building thoroughly inspected by a currently-licensed Iowa asbestos inspector. Additionally, 40 CFR § 61.145(b) outlines certain notification requirements. The parties failed to properly notify the DNR prior to demolishing and burning the structures. As explained to the property owners’ attorney, the residential exemption to the asbestos NESHAP is not applicable to this matter.

V. ORDER

THEREFORE, the DNR orders the following:

1. Any solid waste remaining on the property, including demolition waste and ash, must be properly disposed of at a permitted landfill within 60 days of this Order being signed by the Director. Copies of disposal receipts must be provided to DNR FO 6 within 30 days of proper disposal.

2. The Tompkins shall cease and prevent the illegal disposal of solid waste and the illegal open burning of combustible material on any property they own in Iowa and shall comply with all applicable Iowa regulations in the future.

3. The Tompkins shall comply with all Iowa regulations governing asbestos management in the future.

4. The Tompkins shall pay an administrative penalty of $10,000.00 within 60 days of the date this Order is signed by the Director.

VI. PENALTY

1. Iowa Code § 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 authorizing the Director to assess administrative penalties at 567 IAC 10.
2. Iowa Code § 455B.307(3) provides for civil penalties of up to $5,000.00 per day for solid waste violations. Additionally, Iowa Code § 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. The DNR reserves the right to pursue additional penalties pursuant to this section if the Tompkins fail to comply with the terms of this Order.

3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the fine should be. The general categories for consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. 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. The administrative penalty assessed by this Order is determined as follows:

   a) 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." The Tompkins appear to have saved time and money by failing to obtain approval for a demolition project, failing to hire a certified asbestos inspector and contractor to properly inspect for and abate asbestos containing material prior to burning. The Tompkins have avoided transportation and landfill expenses for the proper disposal of demolition waste and any other miscellaneous material. As such, $4,000.00 is assessed for this factor.

   b) Gravity of the Violations:

   Elements to consider when determining the gravity of a violation include, but are not limited to, the actual or threatened harm to the environment or public health and safety, whether the violation threatens the integrity of the regulatory program, and the penalty amount authorized. Improperly disposing of solid waste damages the environment, prevents proper management of the solid waste stream, and may encourage or inspire others to open dump. Open dumping also threatens the integrity of DNR's environmental regulatory program. Additionally, open burning damages air quality in Iowa and can cause significant acute and chronic health effects. The incidents of open burning referenced in this Order threaten the integrity of the regulatory program and DNR efforts to protect human health and natural resources in the state of Iowa. Asbestos is a known carcinogen. Failing to comply with DNR's asbestos regulations exposes
citizens to serious health risk, especially when asbestos is burned illegally. As such, $3,000.00 is assessed for this factor.

c) Culpability:

The factors to be considered in determining the "culpability" of the violator include the degree of intent or negligence, whether this is a repeat violation, and whether the violator has taken remedial measures to address the harm caused by the violations. Open dumping and open burning prohibitions have been in place in Iowa for more than 40 years. Therefore, a penalty of $3,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

A written Notice of Appeal may be filed within 60 days of the issuance of this Order. The notice may be sent via email to the attorney referenced in Section I of this Order. A contested case hearing will then be commenced pursuant to Iowa Code § 17A and 561 IAC 7. Please note that failure to file a timely appeal within 60 days will result in you forfeiting the right to appeal this Order.

VIII. NONCOMPLIANCE WITH THIS ORDER

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

Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this 14th day of September, 2019.

CC: DNR Field Office 6; David Scott; VI.C; VII.C.1; VII.C.4.