

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p><b>Recycling Services, L.L.C.</b></p>	<p style="text-align: center;">ADMINISTRATIVE ORDER</p> <p>NO. 2017- SW- <u>11</u> NO. 2017- WW- <u>09</u> NO. 2017- HC- <u>01</u></p>
-------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------

To: Recycling Services, L.L.C.  
Jason Wright, Registered Agent  
PO Box 454  
Atlantic, IA 50022

CC: 101 Main Street  
Atlantic, IA 50022

Re: Illegal disposal of solid waste; non-compliance with National Pollutant Discharge Elimination System (NPDES) permit; non-compliance with Iowa hazardous condition reporting requirements.

**I. SUMMARY**

This administrative order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Recycling Services, L.L.C. (RS), due to the disposal of trade wastes including, but not limited to, waste oil, fuel, antifreeze and miscellaneous solid waste resulting in, at a minimum, the contamination of soil on the company's property. This Order addresses RS' noncompliance with its National Pollutant Discharge Elimination System (NPDES) permit, the company's failure to comply with certain hazardous condition notification requirements, and the company's failure to remediate contamination at its facility within the timeline provided by DNR. The Order requires RS to pay an administrative penalty of \$7,000.00, assess contamination at the facility, conduct certain removal actions, and ensure that sufficient notice is attached to the title of the property so future owners will be aware of the potential contamination at the site.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**  
Thad Nanfito, Environmental Specialist  
Iowa Department of Natural Resources  
Field Office No. 4  
1401 Sunnyside Ln.  
Atlantic, Iowa 50022  
Phone: 712-243-1934

**Relating to legal requirements:**  
David Scott, Attorney  
Iowa Department of Natural Resources  
1023 W. Madison St.  
Washington, IA 52353  
Phone: 515-725-8239

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: RECYCLING SERVICES, L.L.C.

**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 Order is issued pursuant to Iowa Code § 455B.175 which authorizes the Director of the DNR to issue orders to secure compliance with or prevent violation of Iowa Code chapter 455B, Division III, Part 1 (water quality) and the rules and regulations adopted pursuant to that part; 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; 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. Recycling Services L.L.C. is a waste services and recycling operation located at 101 State St., Atlantic, Iowa. The company's operations are covered by NPDES General Permit No. 1 for storm water discharges associated with industrial activity.

2. On June 16, 2015 DNR Field Office (FO) 4 received a complaint alleging that contaminated storm water run-off was leaving the RS facility property.

3. On June 28, 2015, FO 4 staff investigated the complaint and conducted an NPDES General Permit No. 1 inspection. Violations of storm water regulations and potential discharge issues were observed and subsequently described to Jason Wright of RS, including evidence of significant amounts of spilled fluids and large volumes of improperly-stored fluids without proper containment. A copy of the facility's Storm Water Pollution Prevention Plan (SWPPP) was required to be on-site, but was not available during the inspection.

4. On June 29, 2015, a follow-up email was sent to Jason Wright summarizing issues that required immediate response. Reference material (web links) related to auto salvagers was also provided.

5. On July 30, 2015, the facility's SWPPP was received at FO4 via email. Upon review of the SWPPP, it became clear that RS had failed to update the SWPPP since the initial draft was created for RS by the Iowa Waste

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: RECYCLING SERVICES, L.L.C.

Reduction Center in 2005. This failure is a violation of NPDES requirements. Additionally, basic inspection record-keeping was found to be inadequate, among other permit violations.

6. On August 11, 2015, RS principal Dave Wright was unwilling to provide a walk-through of the facility during a follow-up visit by FO4 staff. This occurred despite DNR providing notice of the inspection via a phone message and email prior to the inspection.

7. On August 17, 2015, Jason Wright allowed DNR to walk through the facility.

8. On October 2, 2015, DNR issued a Notice of Violation (NOV) and provided an NPDES General Permit No.1 Inspection Report to RS via U.S. mail. The documents described deficiencies and enumerated certain requirements including that spilled material and contaminated soil must be addressed immediately and that stockpiled solid waste soil/debris must be removed and properly disposed of by October 1, 2016.

9. On January 14, 2016, a meeting was requested by David Wright to discuss prospective purchase of the facility by Mr. Duane Murphy. During the meeting, DNR discussed certain requirements and options for managing the facility moving forward. Both parties were notified that if known contaminated soil was not removed from the facility property, additional sampling of soil would be required throughout the facility property to determine the extent of petroleum-contaminated soil (PCS).

10. On January 15, 2016, a summary of the 1/14/16 meeting was provided to Jason Wright by DNR via email.

11. On January 27, 2016, FO4 staff visited the facility and conducted soil sampling which confirmed petroleum contamination above statewide standard action levels. The sampling was limited to the stockpiled material on the north portion of the facility property. At that time, the facility was not in operation and it appeared all equipment and most salvageable materials had been removed.

12. The facility property contains pieces of plastics, rubber, glass, wood (all considered solid waste by definition) and some salvageable metal. The site appears to be covered with soil that is presumed to be contaminated based on initial sampling and evidence of spills. It is also presumed that given the normal course of the salvage business, many small spills occurred throughout the property. Evidence of contaminant spills were also visually observed during the initial investigation and documented via photographs. It appears that there are multiple PCS locations throughout the facility property.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: RECYCLING SERVICES, L.L.C.

13. On April 7, 2016, FO 4 staff again visited the facility in order to confirm the status of facility operation. As was observed on January 27, 2016, the facility was not in operation.

14. On April 18, 2016, DNR sent correspondence to RS providing an option for site remediation and disposal. DNR allowed RS until October 1, 2016, to mechanically sift through the soil on the property—both in the stockpiles and the top ten inches of the soil for the entire site—and to remove and properly dispose of any recovered solid waste at a sanitary landfill. The remedial activity would be required to occur as follows: (1) the working portion of the site being addressed first; (2) solid waste removal from the stockpiles; (3) solid waste removal from ten inches of subgrade; and, (4) even application of the stockpiles across the site.

15. If RS agreed to DNR's remediation plan, RS would also be required to furnish proof of an affidavit explanatory of title filed with the Cass County Recorder and on the property deed, which describes that PCS was found on the property and that future development of the property must consider appropriate installation of utilities. The affidavit must explain to prospective buyers that any activity that encounters contamination would require proper disposal by the current owner and could thereby trigger an environmental impact assessment. Further, if the City of Atlantic did not already restrict water wells on the facility property, then an environmental covenant prohibiting such installation would also be required.

16. On October 17, 2016, legal counsel for RS, Mr. David Wiederstein, contacted FO4 to clarify options for solid waste/ PCS disposal. A request for an extension was made for disposal until October 2018. Information was provided in successive emails and in a response letter dated November 10, 2016.

17. A letter was sent to Mr. David Wiederstein providing an extension for compliance until June 1, 2017.

18. As of the date of this Order, no remediation or removal or other action has been taken at the facility or on the site.

#### **IV. CONCLUSIONS OF LAW**

1. Iowa Code § 455B.197 authorizes the DNR to issue permits related to the administration of the federal NPDES permit program. 455B.103A authorizes the DNR to issue general permits addressing storm water discharge. Violation of the terms of a permit issued pursuant to these sections is a violation of Iowa law.

2. Iowa DNR issued NPDES General Permit No. 1, which applies to the discharge of storm water from industrial facilities. RS obtained coverage

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: RECYCLING SERVICES, L.L.C.

under this permit and was responsible for complying with the requirements of NPDES General Permit No. 1. Permit violations noted during site inspections included, among other violations: failure to amend the SWPPP (Part III.C.3); failure to accurately describe flow directions and likely discharge locations (Part III.C.4.A(1-3)); failure to provide accurate information as to the processes to be used on site and potential pollutants (id.); failure to provide accurate information as to the storm water controls and practices that are implemented on the site (Part III.C.4.B(2)); failure to provide details on, and comply with, spill prevention and response procedures (Part III.C.4.B(5)); and, failure to keep adequate records (Part III.C.4.B(9)). Each instance of non-compliance with an NPDES general permit is a violation of Iowa law and a violation of the federal Clean Water Act subject to enforcement by the Environmental Protection Agency.

3. 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.

4. 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. The above-stated facts establish a violation of this statutory prohibition.

5. 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.

6. The Commission has adopted 567 IAC 100.4 for the regulation of open dumping in Iowa. The provision prohibits a private entity 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. The above stated facts establish continued violations of this regulatory prohibition.

7. Iowa Code § 455B.386 requires any person manufacturing, storing, handling, transporting or disposing of a hazardous substance to notify the DNR and the local police department or the office of the sheriff of the affected county of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. The above-state facts establish a violation of this statutory obligation.

8. The Commission has adopted 567 IAC 131.2 which requires any person manufacturing, storing, handling, transporting or disposing of a hazardous

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: RECYCLING SERVICES, L.L.C.

substance to notify the DNR of the occurrence of a hazardous condition/spill. This must be done as soon as possible, but in no case later than six hours after its discovery. Based on site inspections and site sampling, RS violated this regulatory requirement as it failed to notify DNR of any hazardous conditions or spills on the site.

9. Iowa Code § 455B.392 holds a party strictly liable for site remediation costs for hazardous conditions caused by that party and authorizes the State of Iowa to collect triple damages from a party that refuses to remediate such hazardous conditions. RS is strictly liable for site remediation, and if DNR is forced to undertake site remediation it is authorized to compel RS to pay three times the remediation or removal costs incurred.

10. The Commission has adopted 567 IAC 133.3 which, in part, establishes that where a source or likely source of contamination is identified, the person or persons responsible for that source or sources shall conduct necessary preventative, investigatory, and remedial actions.

**V. ORDER**

**THEREFORE**, the Director of the DNR orders:

1. RS must conduct necessary preventative, investigatory, and remedial actions. The extent and levels of contamination must be determined through a further site assessment. This shall be conducted under the supervision of a registered professional engineer, an expert in the field of hydrogeology, or other qualified person, such as a certified groundwater professional. A Site Assessment Plan must be submitted to the DNR no later than October 1, 2017. The plan must be approved by the DNR prior to the initiation of the assessment.

2. RS must properly dispose of all solid waste and PCS located on the facility property by October 1, 2017.

3. RS must pay a penalty of \$7,000.00. Payment shall be due within sixty (60) days after the Director signs this Order.

4. RS shall complete remediation of its facility based on the results of the Site Assessment Plan and in accordance with 567 IAC 133. RS shall comply with all requirements enumerated by DNR following review of the Site Assessment Plan, and any requirements imposed shall be considered part of this Order including the date by which completion of remediation must occur following DNR's receipt of the Site Assessment Plan.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: RECYCLING SERVICES, L.L.C.

**VI. CIVIL 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. Additionally, Iowa Code § 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations and Iowa Code § 455B.191(2) provides for civil penalties of up to \$5,000.00 per day for water quality violations. Iowa Code § 455B.386 provides for a civil penalty of no more than \$1,000.00 for failure to report a hazardous condition. The DNR reserves the right to pursue additional penalties pursuant to this section if RS fails to comply with the terms of this Order.

3. Iowa Code § 455B.392 authorizes DNR to recover treble damages for remediation and removal costs it incurs at the facility site if RS fails to comply with this Order.

4. 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.

- a) Economic Benefit: The economic benefit element of a penalty is intended to recoup the economic benefit a party enjoyed as a result of non-compliance. Economic benefit would appear to be the motive for not properly disposing of the solid waste and PCS. RS received an economic benefit for its avoided and delayed costs of properly disposing of its solid waste. It also received a benefit for its avoided costs of complying with NPDES General Permit No. 1. A penalty of \$250.00 is assessed.
- b) Gravity of the Violations: Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or the public health and safety, and whether the violation threatens the integrity of the regulatory program. The improper disposal of petroleum products may pose a significant risk to human health and the environment. Further, failure to properly dispose of automotive liquids and solid waste materials threatens the integrity of the regulatory program if others determine that such action will not result in a penalty. As such, \$3,000.00 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: RECYCLING SERVICES, L.L.C.

- c) Culpability: The factors to be considered in determining the "culpability" of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations. This is not the first time DNR has responded to a complaint at the RS facility concerning spill reporting, during which RS was instructed to prevent and report any spills. RS has the duty to remain knowledgeable of the regulations with which it must comply. RS has refused to conduct any site remediation. \$2,750.00 is assessed for this factor.
- d) Aggravating factor - \$1,000.00 is assessed for RS' failure to meet the agreed-upon remediation deadline.

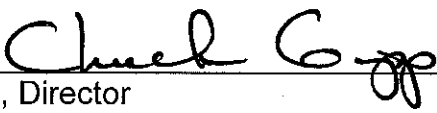
5. It remains the DNR's position that failure to assess an administrative penalty for these violations would threaten the integrity of the regulatory program by not providing a financial incentive for owners/operators to comply.

**VII. APPEAL RIGHTS**

A written Notice of Appeal may be filed with the Director within 30 days of this Order being signed by the Director. A contested case hearing will then be scheduled pursuant to Iowa Code § 17A and 561 IAC 7. Failure to file a Notice of Appeal within this time frame will result in the waiver of the right to appeal.

**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.191, 455B.307 and 455B.391. 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.

  
\_\_\_\_\_  
Chuck Gipp, Director  
Iowa Department of Natural Resources

Dated this 24<sup>th</sup> day of  
July, 2017.

CC: DNR Field Office 4; David Scott; I.B.2, IV.A, IV.B, VI.C.