

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

<p>IN THE MATTER OF:</p> <p>Denver Larson d/b/a Larson Salvage</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2021-SW- <u>02</u> NO. 2021-AQ- <u>02</u></p>
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To: Denver Larson
PO Box 711
Nora Springs, Iowa 50458

Re: Non-compliance with appliance de-manufacturing and storage regulations; Illegal open burning.

I. SUMMARY

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR) and Mr. Denver Larson to resolve violations of Iowa law governing appliance de-manufacturing and storage.

As detailed below, Mr. Larson agrees to: 1) cease mishandling of appliances and comply with all applicable DNR regulations applicable to de-manufacturing and storage of appliances; 2) cease and prevent the illegal open burning of combustible material and comply with DNR open burning regulations at all times in the future; and, 3) pay an administrative penalty of \$2,500.00. A payment plan is available on request. The bases for these requirements are explained below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Jacob Donaghy, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 2
2300 15th Street, SW
Manchester, Iowa 50401
Phone: 641-424-4073

Relating to legal requirements:

David Scott, Attorney
Iowa Department of Natural Resources
1023 W. Madison Street
Washington, Iowa 52353
Phone: 319-321-8504

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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 promulgated or permits issued pursuant thereto; 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 relevant to this matter:

1. On July 15, 2011, staff from DNR Field Office (FO) 2 investigated a complaint that individuals from Nashua, Iowa, were sending appliances to Larson Salvage under the impression that the facility was a permitted appliance de-manufacturer, when in fact, it was not. Staff noted a large pile of mishandled and improperly stored appliances. Mr. Larson was contacted and he stated that he sends the appliances to Vinny's in Charles City, Iowa, for de-manufacturing. Mr. Larson was advised that the handling and storage of appliances in this matter was a violation of the Iowa Administrative Code. It was also determined by staff that Mr. Larson did not have a storm water discharge permit for this facility.

2. On July 18, 2011, DNR FO2 issued a Notice of Violation (NOV) for the improper handling and storage of discarded appliances and the operation of a salvage yard without a storm water discharge permit.

3. On October 3, 2011, DNR FO2 staff visited the facility and noted improved appliance handling. Staff also spoke with the operator of Vinny's in Charles City, Iowa, and he confirmed that they had received "a few" appliances from Mr. Larson. DNR staff previously observed a total of approximately 25 appliances at the Larson facility. The operator of Vinny's did not believe that he had taken that many. So, it was not apparent at the time to DNR staff where Mr. Larson was taking his appliances.

4. On October 5, 2011, DNR FO2 issued a second NOV to Mr. Larson for failing to obtain a storm water discharge permit. An additional NOV was issued on December 20, 2011 for the same violation.

5. On May 4, 2012, DNR FO2 staff conducted a follow up visit to Larson Salvage and observed no appliances on the property and two signs that said "NO APPLIANCES."

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6. On August 13, 2013, DNR FO2 staff visited the facility and noted approximately 15 appliances dumped haphazardly and in violation of Iowa Administrative Code. Mr. Larson stated that the appliances were dumped without his permission. DNR staff reminded Mr. Larson of the appliance handling requirements.

7. On November 18, 2014, DNR FO2 staff investigated a complaint that Mr. Larson had dumped sewage on a cornfield adjacent to his property. Mr. Larson stated that he had applied approximately 1,000 gallons of sewage from his own holding tank, and that no pretreatment of the sewage was done prior to land applying. DNR staff also observed two small piles of appliances near the front of the salvage yard that Mr. Larson claimed were dumped there despite the signs indicated no dumping was allowed. Mr. Larson said he planned on taking the appliances to a licensed appliance de-manufacturer. Staff directed Mr. Larson to remove the appliances and consider additional security measures.

8. On December 8, 2014, DNR issued a Letter of Non-compliance to Mr. Larson for Failure to pretreat private sewage before land application.

9. On September 26, 2016, DNR FO2 staff investigated a complaint that Mr. Larson was unlawfully de-manufacturing appliances. Staff noted a number of appliances at the facility that were being handled in general accordance with the Iowa Administrative Code. Mr. Larson stated that he sent the appliances to Denny's in Charles City, Iowa—a licensed de-manufacturer.

10. On October 3, 2017, DNR FO2 staff conducted a storm water compliance inspection of Mr. Larson's facility and found the facility to be in compliance with storm water regulations.

11. On April 28, 2020, DNR FO2 staff investigated a complaint about illegal open burning at Mr. Larson's facility. Staff noted the burned remnants of tires, mattresses, at least one Cathode Ray Tube (CRT), and flat screen televisions. Also noted at the facility were over a hundred appliances that had been mishandled and stored counter to Iowa Administrative Code. Mr. Larson stated that he thought he was handling the appliances appropriately, and he asserted that he was not the party that started the fire.

12. On May 7, 2020, DNR FO2 issued NOVs for illegal open burning and improper handling and storage of appliances.

13. On October 7, 2020, DNR Field and Legal staff met Mr. Larson at the facility to discuss the pending consent order, the removal of appliances, and the posting of signs to prevent individuals from dropping appliances at the facility. Mr. Larson agreed to have the appliances on the site removed in a manner consistent with Iowa law, and to post no-dumping signs, by November 1, 2020.

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14. In early November, DNR FO staff visited the site and noted a good-faith effort by Mr. Larson to address the violations in this consent order.

IV. CONCLUSIONS OF LAW

1. Iowa Code § 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste, including appliances. The Commission has adopted such rules at 567 IAC chapters 100-123.

2. The Commission has adopted 567 IAC 118.2(2), which requires a person to obtain an appliance de-manufacturing permit (ADP) from the DNR before conducting any de-manufacturing activities. The above-stated facts establish violations of this regulatory prohibition.

3. The Commission has also adopted 567 IAC 118.4 which, in part, requires the handling and storage of appliances in a manner that will prevent damage to hazardous components, and limits the storage of appliances for more than 270 days. The above-stated facts establish violations of these regulatory provisions.

4. Finally, the Commission has adopted 567 IAC 23.2 which prohibits the open burning of combustible materials, including tires, mattresses, flat screen televisions and other solid waste. The above-stated facts establish violations of this regulatory provision.

V. ORDER

THEREFORE, the DNR orders and Mr. Larson agrees to the following:

1. Mr. Larson will cease improper handling and storage of appliances and will comply with all applicable regulations in the future.

2. Mr. Larson will cease and prevent the illegal open burning of combustible material and will comply with all applicable Iowa regulations in the future.

3. Mr. Larson will pay an administrative penalty of \$2,500.00. Payments shall be made by the first of the month, starting on February 1, 2021. A minimum of \$50.00 shall be paid each month until the penalty amount is satisfied. Failure to pay on a timely basis will be considered a violation of this Order. Payment should be payable to "Director, Iowa DNR" and sent to:

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Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
**[Note the Order Numbers on
the check]**

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. Iowa Code § 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations. Iowa Code § 455B.146 authorizes civil penalties of up to \$10,000.00 per day for air quality violations.

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 penalty 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 \$2,500.00 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 that were 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. Larson realized a delayed cost benefit by using heavy equipment to move the appliances. Proper appliance handling generally requires two people, one to help position the appliance and another to operate machinery. DNR believes Mr. Larson used a large end loader, crane, or bulldozer to push and pile the appliances as if they were normal scrap. As such, \$1,000.00 is assessed for this factor.

- 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 public health and safety, and whether the violation threatens

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the integrity of the regulatory program.

DNR estimates that several hundred appliances have been mishandled and improperly stored at the facility. Mishandling of appliances can result in releases of mercury, freon, and PCBs to the environment. Such releases can adversely affect the environment and public health. Additionally, failure to comply with applicable regulations without repercussion would threaten the integrity of the program. Further, the open burning of combustible materials releases toxics into the environment. As such, \$1,000.00 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 of the violator, and whether the violator has taken remedial measures to address the harm caused by the violations.

Mr. Larson has taken the appliance de-manufacturing course in Iowa and is knowledgeable of proper appliance de-manufacturing regulations. As the facts above establish, DNR has discussed appliance handling requirements with Mr. Larson on multiple occasions over the years. Mr. Larson has elected to continue to mishandle appliances. Further, allowing the open burning of solid waste on his property, including tires and appliances, was a violation of Iowa open burning regulations that have been in effect for decades.

However, given Mr. Larson's efforts to bring the site into compliance and his commitment to future compliance, DNR has determined that a penalty of \$500.00 will be assessed for this factor.

VII. APPEAL RIGHTS

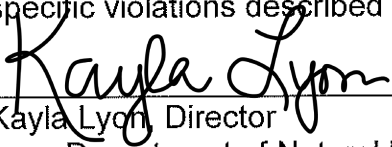
As this Order is entered by consent of the parties, there is no right of appeal.

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.146. Compliance with Section V (Order)


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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 15th day of
January, ~~2020~~ 2021



Mr. Denver Larson

Dated this 16th day of
Dec, 2020.

CC: DNR Field Office 2; David Scott; VI.C; VII.C.1.

