

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

<p>IN THE MATTER OF:</p> <p>Frank's Auto & Truck Salvage, LLC</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2020-SW 2021-SW-05 NO. 2020-WQ 2021-WW-08</p>
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To: Brendon Nicholas, Manager and Registered Agent
Frank's Auto & Truck Salvage, LLC
3304 Gypsum Hollow Road
Fort Dodge, Iowa 50501

Mr. Dennis Frank, Owner
Frank's Auto & Truck Salvage, LLC
3304 Gypsum Hollow Road
Fort Dodge, Iowa 50501

Re: Illegal Appliance De-manufacturing, Failure to renew facility storm water permit.

I. SUMMARY

This administrative consent order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Frank's Auto & Truck Salvage, LLC, (Frank's) for the purpose of resolving certain solid waste and storm water violations that have occurred on its property in Fort Dodge, Iowa.

As detailed below, Frank's shall cease any and all illegal appliance de-manufacturing in the state of Iowa, shall obtain a valid appliance de-manufacturing and storm water permit, and shall pay an administrative penalty of \$6,625.00. The basis for this penalty is explained below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Rachel Glaza, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 2
2300 15th St. SW
Mason City, Iowa 50401
Phone: 641-424-4073

Relating to legal requirements:
David Scott, Attorney
Iowa Department of Natural Resources
Legal Services Bureau
1023 W. Madison Street
Washington, Iowa 52353
Phone: 319-321-8504

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Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
[Include Order Number with Payment]

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.175(1) which authorizes the Director to issue any Order necessary to secure compliance with Iowa Code chapter 455B, Division III (water quality), and any rule or standard established or permit 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 March 1, 2011, mishandled appliances were noted during a routine DNR solid waste inspection on Frank's property. A Notice of Violation (NOV) was issued on March 2, 2011.

2. On April 9, 2012, DNR staff conducted a storm water inspection of Frank's property that resulted in an NOV being issued for failure to conduct the required storm water sampling, failure to conduct the required annual storm water inspections, and failure to conduct annual Storm Water Pollution Prevention Plan training.

3. On June 12, 2013, DNR staff noted that minor appliance mishandling was noted during a solid waste inspection; the facility was warned of the violations.

4. On March 2, 2015, a Letter of Non-Compliance (LNC) was issued to Frank's for conducting an industrial activity—gypsum crushing—on an adjacent parcel without obtaining a Storm Water Permit (General Permit #1) and for failing to conduct the annual storm water inspections required by Iowa law.

5. On May 19, 2016, an NOV was issued via certified mail to Frank's for its failure to renew or discontinue its Storm Water permit. The facility's permit had expired on March 2, 2016.

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6. On June 9, 2016, the certified mail NOV from May 19, 2016, was returned as undeliverable.

7. On June 14, 2016, DNR submitted the May 19 NOV to Frank's via email at *franksaandtsalvage@hotmail.com*. The facility's Storm Water permit was not renewed.

8. On June 2, 2017, DNR staff noted numerous mishandled appliances during a routine solid waste inspection. An NOV was issued on June 8, 2017.

9. On May 5, 2018, DNR issued a letter to Frank's notifying the facility that its financial assurance had lapsed and warning the facility that its appliance de-manufacturing permit (ADP) would be rescinded if not renewed in a timely manner. No response was received.

10. On August 8, 2018, Frank's ADP permit was rescinded.

11. On September 17, 2018, staff from DNR Field Office (FO) 2 visited the facility to learn why they had not responded to several letters from DNR Office regarding the financial assurance and permit rescission. Mr. Nicholas stated that he was not aware of this situation and that Dennis Frank, the owner, receives all the mail and is not very good about reading it or sharing it with him. Mr. Nicholas was warned not to de-manufacture appliances until such time that the permit was reissued.

12. On July 23, 2019, DNR FO2 staff conducted a site visit. It was determined the facility was continuing to operate the salvage yard without a Storm Water permit.

13. On August 20, 2019, an NOV was sent via mail and email to Frank's as a result of the July 23, 2019 site visit.

14. On April 22, 2020, a Letter of Inquiry (LOI) was sent via certified mail to Frank's requesting a response to the August 20, 2019 NOV.

15. On June 10, 2020, staff from DNR's FO2 visited the facility. Mr. Nicholas indicated that he was still de-manufacturing appliances and did not know the permit had been rescinded. Hundreds of mishandled appliances and storm water violations were noted.

16. On July 30, 2020, after ongoing communication between Frank's and DNR FO2, an NOV for continued solid waste and storm water violations was issued to Frank's. The NOV stated further enforcement action with a recommendation for financial penalty was being pursued.

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17. On September 30, 2020, DNR FO2 staff visited the location to check on the chronic issues. Mr. Brendon Nicholas (facility manager) stated that he had not taken any more appliances but a few had been dropped off without his permission. Mr. Nicholas said that he had applied online for the storm water permit renewal in late June but heard nothing back. DNR FO2 staff agreed to help with the application process. There was no record of an application having been filed.

18. On October 16, 2020, DNR FO staff confirmed that a storm water permit had not been applied for by, nor issued to, Frank's.

19. As of October 30, 2020, Frank's does not hold a de-manufacturing permit or a storm water permit.

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. Additionally, the Commission has adopted 567 IAC 64 which, in part, provides for the regulation of storm water discharges from industrial facilities and authorizes issuance of storm water general permits pursuant to the requirements of the federal Clean Water Act. The above-stated facts establish a violation of the requirement for Frank's to obtain and operate in compliance with a storm water permit.

V. ORDER

THEREFORE, the DNR orders and Frank's agree to the following:

1. Within 30 days of this Order being signed by the Director, Frank's will submit an application for a storm water permit. Proof of the application shall be submitted to DNR FO2 upon submission. The facility will not operate until a storm water permit is obtained.

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2. Within 30 days of this Order being signed by the Director, Frank's will submit an application for an ADP. Proof of the application shall be submitted to DNR FO2 upon submission. The facility will not accept or process any appliances until the permit is obtained.

3. Within 10 days of this Order being signed by the Director, Frank's will post signs on its property notifying the public that appliances cannot be dropped off at the facility. The signs will remain in place until the facility obtains an ADP.

4. Within 30 days of this Order being signed by the Director, Frank's shall pay an administrative penalty of \$6,625.00.

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. Similar penalties are authorized for the storm water permit violations referenced in this Order. The DNR reserves the right to pursue additional penalties pursuant to these sections if the company fails 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.

- 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. The annual fee for renewal of Storm Water General Permit #1 has not been paid since 2016. Additionally, the salvage yard has not sampled storm water during the same period. Further, appliances have been mishandled and the facility's ADP has not been renewed and proper de-manufacturing training for employees has not been conducted. As such, \$1,125.00 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 the integrity of the regulatory program. DNR

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estimates that several hundred appliances have been mishandled over multiple years. 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, the facility has failed to renew its storm water permit for over four years. Failure to renew the permit threatens the integrity of our environmental programs and DNR's efforts to protect valuable natural resources. As such, \$1,500.00 is assessed for this factor.

- c) Culpability: The factors to be considered in determining the "culpability" of the alleged violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations. DNR has notified the facility of its obligations related to storm water and appliance de-manufacturing on multiple occasions over multiple years. The operator of the facility has elected to continue to mishandle appliances, to ignore its permit obligations for many years. As such, \$3,000.00 is assessed for this factor.
- d) Aggravating factor: The operator has knowingly and intentionally violated Iowa law for years. As such, an additional \$1,000.00 is assessed for this factor.

4. A penalty of \$6,625.00 is warranted in order to settle this matter administratively.

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. Compliance with Section V (Order) of this Order constitutes full

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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 _____ day of
_____, ~~2020~~.2021



For Frank's Auto & Truck Salvage LLC

Dated this 18th day of
March, ~~2020~~.2021

CC: DNR Field Office 2; David Scott; VI.B.1, VI.D, 1.C.7.a.