

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

IN THE MATTER OF:

**Reschly Metals, Inc. and Mr. Terry
Reschly**

ADMINISTRATIVE
CONSENT ORDER
NO. 2022-SW- 11
NO. 2022-AQ- 09

AND

NO. 2022-SW- 09
NO. 2022-AQ- 04
Amendment 1

To: William Simmons, Registered Agent
Reschly Metals, Inc.
1305 E. Washington Street
Washington, Iowa 52353

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

I. SUMMARY

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR), Reschly Metals, Inc., and Mr. Terry Reschly (collectively, "Reschly") to resolve violations of Iowa law governing the open-burning of solid waste and appliance de-manufacturing and storage.

As detailed below, Reschly agrees to cease the illegal burning of solid waste at the facility or anywhere in Iowa, to cease the collection and demanufacturing of discarded appliances unless and until an appliance demanufacturing permit is obtained from the state of Iowa, to comply with the requirements of the facility's stormwater pollution prevention plan, and to pay an administrative penalty of \$1,500.00 for prior non-compliance with Iowa law.

Additionally, by mutual agreement, this Order rescinds unilateral orders 2022-SW-09 and 2022-AQ-04 in their entirety.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Jon Ryk, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 6
1023 W. Madison Street
Washington, Iowa 52353
Phone: 319-653-2135

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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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.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. The Reschly facility consists of a scrap yard located at 2792 Palm Avenue in rural Washington Township, Washington County, Iowa. The facility operates under the name "Reschly Metals, Inc." and is registered with the Iowa Secretary of State under that same name. The registered agent is identified as William A. Simmons. The Washington County Assessor's Office indicates that the property itself is under the ownership of Terry Reschly.
2. On October 5, 2021, DNR Field Office (FO) 6 staff received a complaint alleging that burning had been occurring at 2792 Palm Avenue for the past couple of days, primarily in the morning. The complaint further alleged that the burning was creating thick, black smoke.
3. On Wednesday, October 6, 2021, DNR FO6 staff investigated the complaint and observed evidence of open burning, the illegal disposal of solid waste, and the illegal storage and demanufacturing of appliances.
4. A Notice of Violation (NOV) was issued to Reschly on October 8, 2021.
5. On October 25, 2021, Mr. Terry Reschly, the owner of the property, contacted DNR FO6 staff in response to the NOV. He stated that there was a storm water pollution prevention plan (SWPPP) for the site and that he would send it along with copies of the documentation for the proper disposal of the tires and the appliances.

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6. On October 27, 2021, cleanup documentation was received at FO6. The cleanup documentation included receipts for the proper disposal of the burned and unburned tires, appliances, and engine parts. Also included was a copy of the facility's SWPPP.

7. On November 17, 2021, FO6 staff conducted a follow-up visit to the facility to evaluate the cleanup. Based on observations made during the site visit, the items of concern appeared to have been cleaned up.

8. On March 11, 2022, the parties reached an agreement that will allow this matter to be settled administratively.

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. The above-stated facts establish a violation 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, including appliances. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. The Commission has adopted 567 IAC 100.4, which prohibits the illegal disposal of solid waste. The above-stated facts establish violations of this provision.

5. 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.

6. 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.

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

V. ORDER

THEREFORE, the DNR orders and Reschly agrees to the following:

1. Reschly will cease improper handling and storage of appliances and will comply with all applicable regulations in the future.
2. Reschly will cease and prevent the illegal open burning of combustible material and will comply with all applicable regulations in the future.
3. Reschly will comply with all requirements of the facility's SWPPP in the future.
4. Finally, Reschly will pay an administrative penalty of \$1,500.00 within 30 days of this Order being signed by the Director.

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 \$1,500.00 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,

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"reasonable estimates of economic benefit should be made where clear data are not available."

DNR staff estimate that at least 100 tires had been burned in a burn-pit at the facility. The average cost to properly dispose of tires is \$5.00 per tire resulting in an economic benefit of \$500.00.

Further, there was evidence that the facility was storing and demanufacturing appliances. Staff noted approximately 28 units at the facility. Estimated disposal costs saved at the time was \$350.00, plus approximately \$100.00 in transportation costs.

As such, \$950.00 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.

The open burning of tires results in highly toxic emissions impacting both public health and the environment. Major byproducts and heavy metals from burning tires include cadmium, chromium, nickel and zinc, Volatile Organic Compounds (VOCs), Semi-volatile Organic Compounds (SVOCs), Polynuclear Aromatic Hydrocarbons (PAHs), particulate matter, carbon monoxide, sulfur, nitrogen oxides, acid gasses, sulfates and many others.

The violations of air quality, solid waste, and appliance demanufacturing regulations, if not penalized, would encourage other individuals and facilities to follow suit, threatening the integrity of these regulatory programs.

In the interest of settlement, \$275.00 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.

This facility was instructed in a letter dated June 22, 2006, to not dispose any solid waste via burning or burying. Furthermore, the facility was also instructed in that same letter to remove discarded appliances, to properly dispose of PCB-containing capacitors, and to properly store items.

In the interest of settlement, \$275.00 is assessed for this factor.

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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) 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

Mr. Terry Reschly 

Dated this _____ day of _____, 2022.

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