

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p><b>S.E. Iowa Metals Recycling, Inc. and Mr. Phil Feinberg</b></p>	<p style="text-align:center">ADMINISTRATIVE ORDER</p> <p>NO. 2022-SW- <u>12</u> NO. 2022-WW- <u>12</u> NO. 2022-AQ- <u>10</u></p>
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To: Steven C. Kaiser, Registered Agent  
502 S. Main Street  
PO Box 207  
Woodward, Iowa 50276

Phil Feinberg  
SE Iowa Metals Recycling  
2140 Vetch Blvd.  
Lockridge, Iowa 52635

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

**I. SUMMARY**

This administrative order (Order) is issued by the Iowa Department of Natural Resources (DNR) to S.E. Iowa Metal Recycling, Inc. (SEIMR), and Mr. Phil Feinberg (collectively, "Feinberg"), to address violations of Iowa law governing the illegal disposal and open-burning of solid waste, appliance disposal, and water quality protection, among other violations.

Previous efforts to reach a settlement agreement proved unsuccessful.

As such, due to ongoing violations of Iowa law, Feinberg shall comply with all requirements enumerated in Section V (Order) below and pay an administrative penalty of \$10,000.00. The basis for this penalty is explained below. This Order is subject to appeal in which case a contested case will be scheduled before an Administrative Law Judge in Des Moines, Iowa.

Any questions regarding this Order should be directed to:

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**Relating to technical requirements:**

Ryan Stouder, Env. Specialist Sr.  
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

**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(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I (water quality) and the rules promulgated or permits issued pursuant thereto; Iowa Code § 455B.307(2), which authorizes the Director 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. By way of background, Mr. Phil Feinberg is the President, Secretary, and Treasurer of S.E. Iowa Metals Recycling, Inc. (SEIMR) and owns the property where the business has been located since 2014 at 2140 Vetch Boulevard, in Lockridge, Iowa (the Property). SEIMR is a metal recycling and metal salvaging operation and may also operate under the fictitious name of Complete Recycling.
2. On May 19, 2014, DNR Field Office 6 (FO6) staff conducted a complaint investigation at the Property alleging that the open burning of solid waste had occurred on the Property. No active burning was documented; however, Mr. Feinberg indicated that pallets had been burned for heat.

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3. On June 25, 2014, DNR issued a National Pollution Discharge Elimination System (NPDES) General Permit #1 to the apparent corporate predecessor of SEIMR.

4. On June 4, 2015 DNR FO6 received an anonymous complaint of open burning of waste on the Feinberg property.

5. On July 20, 2015, DNR issued a letter to Mr. Feinberg instructing him that open burning is a violation of Iowa law and that he must cease any open burning in the future.

6. On March 28, 2016, DNR FO6 received an anonymous complaint alleging the illegal disposal of construction and demolition (C&D) waste at the Property.

7. On April 4, 2016, DNR FO6 staff investigated the complaint and observed a pile of C&D waste on the Property. The following day, DNR FO6 staff discussed the illegal disposal with Mr. Feinberg and reviewed the applicable rules restricting open dumping of solid waste and open burning of such waste.

8. On May 7, 2018, DNR staff documented that the C&D pile remained on the Property.

9. On May 11, 2018, DNR issued a Notice of Violation (NOV) to Mr. Feinberg addressing the illegal disposal of material on the Property.

10. On May 9, 2019, DNR FO6 received an anonymous complaint that the facility was not draining fluids from vehicles prior to crushing the vehicles.

11. On May 22, 2019 DNR FO6 staff investigated the complaint. No evidence of spilled fluids from vehicles were observed. Staff discussed stormwater best management practices with Mr. Feinberg and discussed the requirement that he drain fluids from vehicles prior to crushing the vehicles.

12. On September 27, 2019, DNR received an anonymous complaint alleging the dumping of approximately 20,000 waste tires on the Property.

13. On October 4, 2019, DNR FO6 staff investigated the complaint and observed a large pile of tires on site. A plan was requested to begin to depopulate the tire pile to below 500 passenger tire equivalents (PTE). No plan was submitted by Feinberg and the tires were not properly disposed of.

14. On December 2, 2020, DNR FO6 received an anonymous complaint alleging the dumping of waste tires and vehicle fluids on the Property.

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15. On December 7, 2020, DNR FO6 staff investigated the complaint and discussed it with Mr. Feinberg. He indicated that he was adding a few tires to every vehicle that was crushed by his business and shipped off site. He also indicated that he was looking into getting a vehicle rack for fluid removal, but did not have one onsite at that time. He noted that it was the responsibility of the party dropping off the vehicle to ensure it had been drained, and that he did not check this prior to crushing the vehicles.

16. On January 12, 2021, DNR FO6 staff conducted a visit to the Property. Staff met with Mr. Fienberg to discuss compliance progress. He indicated that he had removed a few tires. A pile of construction and demolition waste and improper solid waste was noted on the property. At that time, there remained between 10,000 and 20,000 waste tires on the property.

17. On January 25, 2021, an NOV was issued to Mr. Feinberg addressing the illegal disposal of C&D material, the illegal disposal of tires, and the improper storage and handling of appliances.

18. On February 22, 2021, DNR staff conducted a follow up visit to the Property and met with Mr. Feinberg. Staff noted no progress on solid waste or appliance removal, and also reminded Mr. Feinberg of his obligation to address vehicle fluid removal to prevent runoff in stormwater.

19. On March 24, 2021, DNR staff conducted a Property visit to verify compliance with tire removal. At that point, the company had obtained a tire shearing tool that could cut tires prior to disposal at the SEMCO Landfill in Keokuk County, Iowa.

20. On April 27, 2021, DNR FO6 staff visited the Property and met with Mr. Feinberg to discuss compliance progress. Staff noted a number of appliances remained on the property. Additionally, while a few tires were cut into a pile, most of the tires were whole. Approximately 200 tires had been taken off-site for landfill disposal.

21. On June 1, 2021, DNR FO6 staff again visited the Property to determine compliance status. Staff observed water flow from the Property to a culvert that conveyed storm water runoff to the south end of the Property. Many of the tire piles remained at the same level as in April. Numerous appliances remained on the Property. Additionally, a new pile of burned tire remnants were observed. Mr. Feinberg stated that he was working on tire removal, but it did not appear much had been removed from the property.

22. On June 25, 2021, staff visited the Property following a significant rain event and collected water samples from locations near the Property. The samples showed evidence of hazardous metals, oils, and grease. Mr. Fienberg indicated that all vehicles were to be drained before coming on the Property, but it

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appeared based on the runoff that this had not occurred. The facility's NPDES Permit was set to expire on July 1, 2021. Staff noted little, if any, improvement as to tire and appliance disposal.

23. On July 26, 2021, an NOV was issued to Mr. Feinberg regarding the ongoing violations resulting from illegal C&D material disposal, tire disposal, improper appliance storage and handling and stormwater regulations.

24. On August 6, 2021, FO6 staff conducted a follow-up visit to the Property. Staff observed that drier conditions had not changed the tire removal efforts. An onsite burner was observed. Mr. Feinberg stated he planned to install a vehicle fluid removal system on the south side of the property next to the old feed mill structure. Numerous appliances were littered about the metal piles.

25. On August 30, 2021, staff again visited the Property. Staff documented that the burner had been utilized to burn waste material including wires to obtain the copper. Additionally, oil spots indicated material was dumped onto the ground for final disposal. The tire piles had not been touched.

26. On September 14, 2021, an NOV was issued to Mr. Feinberg due to ongoing violations related to illegal C&D material and tire disposal, improper appliance storage & handling, the open burning of waste material and stormwater runoff.

27. On October 21, 2021, DNR FO6 received an anonymous complaint alleging the disposal of additional waste tires on the Property, as well as the smashing of appliances and discharge of vehicle fluids.

28. On October 25, 2021, DNR FO6 staff again visited the Property. Staff observed appliances being improperly handled and stored, waste tires piles, evidence of open burning is still occurring, and stormwater runoff controls not in place. Additionally, car batteries appeared to be smashed.

29. On October 28, 2021, DNR staff conducted a follow-up visit to the Property and observed stormwater runoff leaving the property. Staff again collected water samples that indicated contamination from hazardous metals, oils and grease.

30. On December 3, 2021, staff again conducted a visit to the Property. No improvement had occurred.

31. On December 20, 2021, DNR again issued an NOV to Mr. Feinberg for multiple repeat and on-going violations.

32. The DNR provided a settlement agreement to Mr. Feinberg on multiple occasions in early 2022. Efforts to reach settlement were unsuccessful.

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**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 62.1(1) which prohibits the discharge of a pollutant to any water of the state without a permit and requires the permit holder to comply with the terms of that Permit. Additionally, the Commission adopted 567 IAC 61.3 which establishes general water quality criteria for state waters. The above-stated facts establish violations of these provisions.

5. 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.

6. The Commission has adopted 567 IAC 117.4(1) to prevent accumulation of waste tires on a property. The provision states that no business or individual shall store more than 500 passenger tire equivalents without obtaining a permit for a waste tire stockpile pursuant to 117.4(2). The above-stated facts establish a violation of this regulation over multiple years.

7. 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.

8. 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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9. 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 the following:

1. Within 90 days of this Order being signed by the Director, all waste tires on the property above the regulatory limit will be removed and properly disposed of. Receipts for disposal will be provided to DNR FO6 within ten days of disposal.
2. Feinberg will cease improper handling and storage of appliances and Cathode Ray Tubes (CRTs) and will comply with all applicable regulations in the future. All appliances and CRTs located on the Property will be removed and properly disposed of within 60 days of this Order being signed by the Director. Receipts
3. Feinberg will cease and prevent the illegal open burning of combustible material on the Property at any time in the future and will comply with all applicable Iowa regulations.
4. Feinberg will comply with all requirements of the facility's NPDES Permit and Storm Water Pollution Prevention Plan (SWPPP) at all times in the future.
5. Feinberg will ensure that any vehicle delivered to the property in the future, and all vehicles currently on the property that are intended for scrap, have all fluids removed and properly disposed of.
6. Finally, Feinberg will pay an administrative penalty of \$10,000.00 within 60 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.

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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 \$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 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.”

Fienberg has avoided multiple expenses by illegally disposing of material on his property, including tires, appliances, and C&D wastes. All of these materials should have been disposed of at a landfill. Additionally, he has failed to ensure that fluids from scrapped vehicles are properly removed and disposed of, resulting in apparent contamination of nearby waters of the state.

In the interest of settlement, DNR is assessing \$4,000.00 for this element.

- 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 and other solid waste results in highly toxic emissions impacting both public health and the environment. Major byproducts and heavy metals from burning tires and other solid waste may 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 or 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.

As such, \$3,000.00 is assessed for this factor.

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- 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 has received numerous NOVs and on-site visits from DNR staff. Mr. Feinberg has repeatedly been notified of his obligations and has failed to comply with Iowa law for multiple years resulting in impacts to human health and the environment.

As such, \$3,000.00 is assessed for this factor.

### **VII. APPEAL RIGHTS**

This Order is subject to appeal pursuant to Iowa Code § 455B.110 and the contested case rules promulgated pursuant to that section. An appeal must be received by the DNR within 60 days of the date this Order issued, at which time a contested case hearing will be scheduled before an Administrative Law Judge. Failure to appeal will result in this Order being considered final agency action.

### **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.

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Kayla Lyon, Director  
Iowa Department of Natural Resources

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