

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>FELTZ, THOMAS</p>	<p>ADMINISTRATIVE ORDER</p> <p>NO. 2022-SW- <u>16</u></p>
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To: Thomas Feltz
9951 73rd Street
Ottumwa, Iowa 52501

Re: Illegal disposal solid waste.

I. SUMMARY

This administrative order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Mr. Thomas Feltz to resolve violations of Iowa law governing the disposal of solid waste.

As detailed below, Mr. Feltz shall cease the illegal disposal of solid waste and comply with applicable Iowa regulations in the future. Additionally, Mr. Feltz will pay an administrative penalty of \$7,000.00 within 60 days of the date this Order is signed by the Director.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Anthony Kerker, 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

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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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, 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 August 16, 2021, Iowa DNR Field Office (FO) 6 received an anonymous complaint alleging open dumping of solid waste at 9951 73rd Street in Ottumwa, Iowa. The complainant stated that several different types of solid waste has been disposed of on the property.

2. August 17, 2021, a letter was sent to Mr. Thomas Feltz, the owner of the Ottumwa property, reporting the filed complaint. The letter included information on applicable solid waste regulation and noted that any open burning or improper disposal of the solid waste on the property may result in referral of this matter to Iowa DNR Legal Services Bureau for enforcement action.

3. On September 29, 2021, DNR staff conducted a follow-up visit with Wapello County Engineer Jeff Skalberg. Staff spoke with Robin Davidson who is a resident at the property. Robin Davidson gave staff permission to investigate the property. Staff found a pile of plastic materials and old electronics.

4. On October 1, 2021, DNR sent a second letter to the property owner. The letter reiterated the applicable rules, and noted that failure to come into compliance would result in further enforcement.

5. November 16, 2021, a second follow-up visit occurred at the property. The waste pile was once again observed with no clean-up efforts occurring.

6. On November 19, 2021, DNR issued a Notice of Violation (NOV) to Thomas Feltz for the illegal disposal of solid waste on the property. DNR again noted that failure to comply with Iowa solid waste regulations would result in further enforcement.

7. January 12, 2022, DNR staff again visited the property. The solid waste pile was observed in the same location.

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8. On January 19, 2022, a second NOV was issued to Thomas Feltz for failing to comply with Iowa solid waste regulations.

9. On April 1, 2022, DNR staff conducted a fourth follow-up visit to the property. The solid waste pile was still located on the property.

10. Following the submittal of a settlement agreement to Mr. Feltz to address non-compliance, Mr. Feltz discussed the matter with DNR staff and DNR provided a list of contractors that may be available to remove the material. Mr. Feltz stated it was his intent to remove the material.

11. On June 13, 2022, DNR staff conducted a follow-up visit to the property and noted that the solid waste remained.

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 waste tires. 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.

V. ORDER

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

1. Mr. Feltz will cease and prevent the illegal disposal of solid waste and will comply with all applicable Iowa solid waste regulations in the future.

2. Mr. Feltz will pay an administrative penalty of \$7,000.00 within 60 days of this Order being signed by the Director.

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3. Mr. Feltz will be subject to additional administrative and civil penalties if the illegal disposal of solid waste continues and the material remains on the property.

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. 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.”

The property owner avoided paying disposal fees for house-hold trash and other solid waste. Due to unknown quantity of solid waste within the open dump pile, DNR assesses \$2,000.00 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.

Improper disposing of solid waste creates a nuisance condition. The decomposing of materials within the open dump pile could create a negative impact on the environment. Additionally, failure to comply with regulations governing proper disposal of solid waste threatens the integrity of the regulatory program.

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As such, \$3,000.00 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.

Regulations prohibiting the illegal disposal of solid waste have been in force in Iowa for decades. The property owner was notified on multiple occasions of the applicable law.

As such, \$2,000.00 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 is issued, at which time a contested case hearing will be scheduled before an Administrative Law Judge. All prior Orders remain in effect during the appeal period.

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

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