

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

**IN THE MATTER OF:**

**SIMON FITZPATRICK;**

**Harrison County, Iowa**

**ADMINISTRATIVE CONSENT ORDER**

**NO. 2011-SW-17-A1**

TO: Simon Fitzpatrick  
201 S. 6<sup>th</sup> Street  
Dunlap IA 51529

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Simon Fitzpatrick for the purpose of resolving violations related to the storage and handling of discarded appliances. In the interest of avoiding litigation, the parties have agreed to the provisions below. This Administrative Consent Order replaces and supercedes Administrative Order No. 2011-SW-17, issued on May 23, 2011.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Alison Manz, Field Office 4  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic IA 50022  
Phone: 712-243-1934

**Relating to legal requirements:**

Jon Tack, Attorney for the DNR  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> St  
Des Moines, IA 50319  
Phone: 515-281-8889

**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 administrative consent order is issued pursuant to the provisions of Iowa Code section 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

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the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Simon Fitzpatrick does business as Fitzpatrick Custom Sales and Towing in Dunlap, Iowa. Mr. Fitzpatrick has engaged in the business of collecting discarded appliances, demanufacturing those appliances, and delivering the appliances to metal recycling facilities.
2. On September 15, 2010, the DNR received a complaint alleging that Simon Fitzpatrick offers free curbside appliance pickup and also provides appliance disposal services for a television and appliance retailer in Dunlap. Mr. Fitzpatrick does not have a required permit to engage in appliance demanufacturing.
3. On September 15, 2010, the DNR investigated the complaint against Simon Fitzpatrick and spoke to Mr. Fitzpatrick. At that time, Mr. Fitzpatrick acknowledged that he accepts appliances but denied engaging in demanufacturing. Mr. Fitzpatrick further acknowledged that the appliances are hauled to Alter Metal Recycling in Council Bluffs, Iowa.
4. On October 12, 2010, DNR personnel visited Alter Metal Recycling to further investigate the complaint against Simon Fitzpatrick. Alter Metal Recycling provided copies of invoices from metal purchases from Simon Fitzpatrick between the dates of April 5, 2010 and September 27, 2010. The invoices documented payments totaling \$9,491.85 to Simon Fitzpatrick during this approximately six-month period. Photos were later provided by Alter Metal Recycling documenting the delivery of appliances by Mr. Fitzpatrick during the period for which the invoices were provided.
5. On October 19, 2010, the DNR again visited the Fitzpatrick residence. On that date, Simon Fitzpatrick admitted demanufacturing discarded appliances without a required permit. A trailer full of discarded appliances was observed on the site on this date. Also on this date, the DNR obtained from the City of Dunlap a letter that Simon Fitzpatrick had provided to the City of Dunlap indicating an intent to engage in appliance demanufacturing. The letter acknowledges the need to acquire a permit from the DNR.
6. On October 27, 2010, the DNR issued a Notice of Violation to Simon Fitzpatrick.
7. On May 23, 2011, the Department issued Administrative Order No. 2011-SW-17 to Simon Fitzpatrick. This order required Simon Fitzpatrick to remove and properly dispose of all appliances on his property, to provide proof of proper disposal, and to pay a penalty of \$10,000.

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8. On October 11, 2011, Simon Fitzpatrick contacted the DNR and indicated that all of the appliances had been removed and properly disposed of. Mr. Fitzpatrick also informed the DNR of financial difficulties and a lack of knowledge of the applicable regulations.

9. On October 17, 2011, the DNR received a letter from Simon Fitzpatrick indicating that the discarded appliances had been properly disposed of at the Crawford County Landfill and detailing the financial and other hardships currently faced by Mr. Fitzpatrick. Mr. Fitzpatrick further restated his lack of knowledge of the applicable regulations and his willingness to assist the DNR in preventing or abating violations by others.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. Iowa Code section 455D.6(6) requires the Director of the DNR to develop a strategy and recommend to the Commission the adoption of rules necessary to implement strategy for white goods.

2. In order to carry out the purposes of Iowa Code sections 455B.304 and 455D.6(6), the Commission has adopted IAC Chapter 567-118 "Discarded Appliance Demanufacturing". The requirements applicable to a permit holder are set forth in IAC Chapter 567-118.

3. Rule 118.2(2) provides that a person must obtain an appliance demanufacturing permit from the DNR before conducting any demanufacturing activities. The above facts demonstrate non-compliance with this provision.

4. 567 IAC 118.2(3) requires that any person engaged in demanufacturing appliances must be in compliance with all federal and state laws relating to the management and disposition of all hazardous wastes, hazardous materials and refrigerants.

5. Pursuant to 567 IAC 118.4(1), any person collecting and storing discarded appliances must store the appliances so as to prevent electrical capacitors, refrigerant lines and compressors, and mercury-containing components from being damaged and allowing a release into the environment.

6. Pursuant to 567 IAC 118.4(2), no method of handling discarded appliances may be used which in any way damages, cuts or breaks refrigerant lines or crushes compressors, capacitors, or mercury-containing components that may cause a release of refrigerant, PCBs or mercury into the environment.

7. 40 CFR 82.162 adopted by reference by DNR at 567 IAC 118.9, requires that all persons disposing of appliances must certify to the EPA that they have acquired certified recovery or recycling equipment and are complying with applicable operating requirements.

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**V. ORDER**

· THEREFORE, the DNR orders and Simon Fitzpatrick agrees to do the following:

1. Simon Fitzpatrick shall provide the DNR with proof of delivery of the discarded appliances on his property to the Crawford County Landfill or another authorized site of acceptance. Adequate proof shall include either receipts or such other independently verifiable proof of the proper disposal of the appliances. Such proof shall be provided by November 18, 2011.

2. Upon execution of this consent order, Simon Fitzpatrick shall provide location and personal identification information related to other persons engaged in the illegal handling or processing of discarded appliances to the best of Mr. Fitzpatrick's ability. This provision shall be deemed satisfied by the provision of sufficient information for the DNR to identify and investigate at least one individual or business that is engaging or has recently engaged in the illegal handling or processing of discarded appliances.

**VI. PENALTY**

1. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations and advancing the purposes of this regulatory program is the entry of this administrative consent order without a penalty.

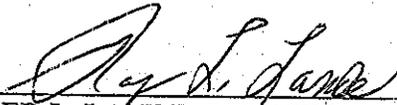
**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly by and with the consent of Simon Fitzpatrick. By signature to this administrative consent order, all rights to appeal this administrative consent order are waived.

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VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

  
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ROGER L. LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 31<sup>st</sup> day of  
October, 2011.

  
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SIMON FITZPATRICK

Dated this MON day of  
Oct 24, 2011.

Field Office 4; Alison Manz; VI C