

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

IN THE MATTER OF: HENRY LARSEN; Harrison County, Iowa	CONSENT AMENDMENT TO ADMINISTRATIVE ORDER NO. 2009-SW-15-A1
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TO: Henry Larsen
P. O. Box 223
Modale, IA 51556

I. SUMMARY

This Consent Amendment to Administrative Order (Order) is intended to, and does, replace and supercede the previously issued Administrative Order No. 2009-SW-15 in its entirety.

This Order is entered into between the Iowa Department of Natural Resources (DNR) and Henry Larsen for the purpose of resolving an issue pertaining to the improper solid waste disposal and failure to demanufacture discarded appliances. In the interest of avoiding further litigation, the parties have agreed to the provisions below.

Questions regarding this administrative Order should be directed to:

Relating to technical requirements:

Kirk Mathis, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, IA 50022
Phone: (712) 243-1934

Payment of penalty to:

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

Relating to legal requirements:

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

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

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

III. STATEMENT OF FACTS

1. Henry Larsen operates a metal recycling facility at a property located at Section 29, T79N, R44W, Harrison County, Iowa (the site) under the name "Metalz" and an auto sales business at the site under the name Topless Motor Cars. The site is subject to storm water permit coverage under DNR NPDES General Permit No. 1.
2. From April 22, 2004 to July 27, 2004, the DNR and Henry Larsen interacted through correspondence and verbal communications in regard to alleged violations related to improper solid waste disposal and the regulations related to the demanufacturing of appliances. Ultimately Mr. Larsen obtained training and applied for a mobile demanufacturing permit.
3. On July 27, 2004, the DNR's solid waste section sent a letter to Henry Larsen noting the violations observed on July 20, 2004 and informed Henry Larsen that no permit would be issued until the violations were corrected and the facility met all permit requirements. The letter instructed Henry Larson that "until the permit is issued no appliance demanufacturing may take place."
4. On October 25, 2007, the DNR conducted an investigation at the Henry Larsen site. DNR staff observed violations of the state's solid waste and appliance demanufacturing regulations and informed Henry Larsen that all appliances must be taken to a licensed appliance demanufacturer for proper disposal.
5. On October 26, 2007, the DNR received a fax from Henry Larsen providing invoices for 86 appliances sent to the Harrison County Landfill, which is authorized to accept these appliances.
6. On October 29, 2007, DNR staff sent Henry Larsen an NOV for violations of the DNR's solid waste and appliance demanufacturing regulations.
7. On December 10, 2008, the Department contacted Henry Larsen who indicated that all compliance issues are his responsibility and not the responsibility of Ray Larsen. The DNR accepts that all compliance issues are the responsibility of Henry Larsen and not Ray Larsen

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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. Rule 118.2(2) provides that a person must obtain an appliance demanufacturing permit from the DNR before conducting any demanufacturing activities.
3. 567 IAC 118.2(1) prohibits any person from conducting de-manufacturing of appliances until an appliance demanufacturing permit (ADP) has been obtained from the DNR, subject to the exceptions of 567 IAC 118.2(2). The above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, the DNR orders and Henry Larsen agrees to the following:

1. Henry Larsen shall pay a penalty of \$3,500 pursuant to the following payment schedule:
 - a. \$500 by no later than December 1, 2009
 - b. \$500 by no later than February 1, 2010
 - c. \$500 by no later than March 1, 2010
 - d. \$500 by no later than April 1, 2010
 - e. \$500 by no later than May 1, 2010
 - f. \$500 by no later than June 1, 2010
 - g. \$500 by no later than July 1, 2010
2. Henry Larsen shall not engage any appliance demanufacturing unless authorized by a permit issued pursuant to 567 IAC Chapter 118.
3. This Order resolves all past violations of appliance demanufacturing requirements in regard to the actions of Henry Larsen.
4. The parties hereby acknowledge that the allegations contained in this Order are not allegations against Ray Larsen and Ray Larsen is not a party to this Order and is not alleged to be responsible for any violations documented herein.

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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 is the issuance of an administrative consent order with an administrative penalty of \$6,000. The administrative penalty is determined as follows:

I. Economic Benefit. Henry Larsen has achieved an economic benefit from noncompliance with the regulations set forth above. Costs avoided include hazardous waste disposal costs and labor costs. Economic benefits were achieved through the sale of discarded appliances for scrap metal. Based upon these considerations, \$500 is assessed for this factor.

II. Gravity of the Violations. Failure to properly dispose of solid waste threatens the integrity of the solid waste program. Tax dollars were expended to investigate, document and respond to this violation. Improper solid waste disposal can degrade property and contaminate land, water and air resources. Discarded appliances contain hazardous wastes including PCBs, mercury, and refrigerants. The improper handling, storage, and disposal of discarded appliances threaten the release of hazardous wastes into the atmosphere. The DNR has documented that improper disposal of solid waste material had been taking place for many years. Therefore, a penalty of \$2,000 is assessed.

III. Culpability. Due to a previous complaint investigation, Henry Larsen have been informed of solid waste disposal, appliance demanufacturing and other regulations. Henry Larsen's application for an appliance demanufacturing permit was returned for substantial non-compliance with the requirements of Iowa's solid waste and appliance demanufacturing regulations, which put Henry Larsen on notice of specific areas of non-compliance. Therefore, a penalty of \$1,000 is assessed.

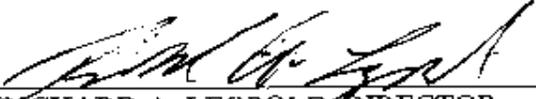
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.308 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Henry Larsen. By signature to this order, all rights to appeal this order are waived.

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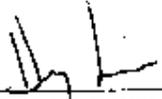
VIII. NONCOMPLIANCE

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 order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 12 day of
Nov., 2009.



HENRY LARSEN

Dated this 20 day of
October, 2009

Field Office 4; Susan Johnson; V.I.C