

IN THE IOWA DISTRICT COURT FOR LEE COUNTY
AT FORT MADISON

STATE OF IOWA, ex rel., IOWA)
DEPARTMENT OF NATURAL)
RESOURCES (99AG23542),)
)
Plaintiff,)
)
vs.)
)
FEINBERG RECYCLING LLC, and)
MARTY FEINBERG,)
)
Defendants.)

NO. CVEQ006511

PETITION IN EQUITY

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (hereafter IDNR), and for its claim against Defendants Feinberg Metals Recycling Corp. and Marty Feinberg (hereafter “Feinberg”) states as follows:

INTRODUCTION

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendants Feinberg Metals Recycling Corp. and Marty Feinberg arising from violations of Iowa air quality, water quality, and solid waste laws on property located within the City of Fort Madison in Lee County, Iowa. The violations involve open burning; failure to obtain an air quality construction permit; failure to comply with emissions standards and other requirements for hazardous air pollutants for secondary aluminum production; failure to comply with the facility’s storm water discharge permit; and failure to comply with waste tire storage limits.

PARTIES

2. The State of Iowa is a sovereign state of the United States of America.

3. The IDNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

4. Defendant Feinberg Metals Recycling Corp. was an Iowa corporation located at 1510 18th Street, Fort Madison, Lee County, Iowa. Defendant Feinberg Metals Recycling Corp. was administratively dissolved by the Secretary of State on August 11, 2014.

5. Defendant Marty Feinberg is a resident of Lee County, Iowa, and was the owner and operator of Defendant Feinberg Metals Recycling Corp.

DEFINITIONS

6. “Aluminum scrap” includes “waste and discarded material made of aluminum.” 40 C.F.R. § 63.1503.

7. “Area source” means “any stationary source of hazardous air pollutants that is not a major source as defined in this part.” 40 C.F.R. § 63.2.

8. “Emission” means “a release of one or more air contaminants into the outside atmosphere.” Iowa Code § 455B.131(6).

9. “Emission limitation” and “emission standard” mean “a requirement established by a state, local government, or the administrator which limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to ensure continuous emission reduction.” 567 Iowa Admin. Code 20.2.

10. “Equipment” means “equipment capable of emitting air contaminants to produce air pollution such as fuel burning, combustion, or process devices or apparatus including but not limited to fuel-burning equipment, refuse burning equipment used for the burning of fuel or other

combustible material from which the products of combustion are emitted; and including but not limited to apparatus, equipment or process devices which generate heat and may emit products of combustion, and manufacturing, chemical, metallurgical or mechanical apparatus or process devices which may emit smoke, particulate matter or other air contaminants.” 567 Iowa Admin. Code 20.2.

11. “Hazardous air pollutant” means “any of the following air pollutants listed in Section 112 of the [Clean Air] Act [42 U.S.C.7412(b)].” 567 Iowa Admin. Code 22.100.

12. “Major source” means “any stationary source . . . that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.” 567 Iowa Admin. Code 23.1(4). “Area source” means “any stationary source of hazardous air pollutants that is not a major source.” *Id.*

13. “Open burning” means “any burning of combustible materials where the products of combustion are emitted into the open air without passing through a chimney or stack.” 567 Iowa Admin. Code 20.2.

14. “Secondary aluminum production facility” means “any establishment using . . . aluminum scrap . . . as the raw material and performing . . . furnace operations (i.e., melting, holding, sweating, refining, fluxing, or alloying).” 40 C.F.R. § 63.1503.

15. “Source operation” means “the last operation preceding the emission of an air contaminant, and which results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, but is not an air pollution control operation.” 567 Iowa Admin. Code 20.2.

16. “Stationary source” means “any building, structure, facility, or installation which emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act [42 U.S.C. 7412(b)].” 567 Iowa Admin. Code 22.100.

17. “Storm water discharge associated with industrial activity” means “the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.” 567 Iowa Admin. Code 60.2. Facilities considered to be engaging in “industrial activity” include “facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards.” *Id.*

18. “Sweat furnace” means “a furnace used exclusively to reclaim aluminum from scrap that contains substantial quantities of iron by using heat to separate the low-melting point aluminum from the scrap while the higher melting-point iron remains in solid form.” 40 C.F.R. § 63.1503.

JURISDICTION

Air Quality Regulations

19. The IDNR is the state agency with the duty to prevent, abate, or control air pollution. Iowa Code § 455B.132. The specific administrative and enforcement duties of the director of the IDNR relating to air quality are contained, in part, in Iowa Code section 455B.134.

20. The Environmental Protection Commission (EPC) has the authority to establish rules governing the quality of air and emission standards. Iowa Code § 455B.133. The EPC’s rules relating to air quality are contained in 567 Iowa Admin. Code 20-29 and 31-35.

21. 567 Iowa Admin. Code 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions).

22. 567 Iowa Admin. Code 22.1(1)(a) prohibits any person from constructing, installing, reconstructing, or altering any equipment or control equipment, built after September 23, 1970, that is not exempt without first obtaining an air quality construction permit from the IDNR.

23. The IDNR developed general emission standards for equipment or control equipment. The emission standards contained shall apply to each source operation unless a specific emission standard for the process involved is prescribed elsewhere by the IDNR, in which case the specific standard shall apply. 567 Iowa Admin. Code 23.3(1). The emission standards include standards for particulate matter, fugitive dust, and opacity. 567 Iowa Admin. Code 23.3(2)(a),(c) and (d).

24. The owner of new or existing equipment or the owner's authorized agent shall conduct emission tests to determine compliance with applicable rules in accordance with these requirements. 567 Iowa Admin. Code 25.1(7).

25. The federal Clean Air Act (CAA) requires the EPA to develop regulations that would reduce emissions of hazardous air pollutants (HAPs) from industries that emit these pollutants in significant quantities. 42 U.S.C. § 7412(d). The EPA promulgated regulations to reduce HAP emissions from secondary aluminum production facilities. 40 C.F.R. Part 63, Subpart RRR (National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production), adopted by reference in 567 Iowa Admin. Code 23.1(4)(br).

26. Requirements of Subpart RRR pertaining to dioxin and furan (D/F) emissions as well as associated operating, monitoring, reporting and recordkeeping requirements apply to each new and existing sweat furnace located at a secondary aluminum production facility that is an area source of HAPs. 40 C.F.R. § 63.1500(c)(3), adopted by reference in 567 Iowa Admin. Code 23.1(4)(br).

27. Dioxin and Furan emissions are highly toxic and can cause cancer, reproductive and developmental problems, damage to the immune system, and can interfere with hormones.

28. The owner or operator of an existing affected source must comply with the requirements of Subpart RRR by March 24, 2003. 40 C.F.R. § 63.1501(a), adopted by reference in 567 Iowa Admin. Code 23.1(4)(br). The owner/operator of a new affected source that commences construction or reconstruction after February 11, 1999 must comply with the requirements of Subpart RRR by March 24, 2000 or upon startup. 40 C.F.R. § 63.1501(b), adopted by reference in 567 Iowa Admin. Code 23.1(4)(br).

29. The owner or operator of a sweat furnace shall comply with the following emission standard:

- a. The owner or operator is not required to conduct a performance test to demonstrate compliance with the emission standard in the following paragraph, provided that, on and after the compliance date of this rule, the owner or operator operates and maintains an afterburner with a design residence time of 0.8 seconds or greater and an operating temperature of 1600 °F or greater. 40 C.F.R. § 63.1505(f)(1), adopted by reference in 567 Iowa Admin. Code 23.1(4)(br).
- b. On and after the compliance date established by §63.1501, the owner or operator of a sweat furnace at a secondary aluminum production facility that is a major or area source must not discharge or cause to be discharged to the atmosphere emissions in excess of 0.80 nanogram (ng) of D/F TEQ per dscm (3.5×10^{-10} gr per dscf) at 11 percent oxygen (O_2). 40 C.F.R. § 63.1505(f)(2), adopted by reference in 567 Iowa Admin. Code 23.1(4)(br).

40 C.F.R. §§ 63.1505(f)(1) and (2), adopted by reference in 567 Iowa Admin. Code 23.1(4)(br).

30. Except as provide in 40 C.F.R. § 63.1505(f)(1), the owner/operator of a secondary aluminum production facility must measure the emissions of D/F “from each sweat furnace at the outlet of the control device.” 40 C.F.R. § 63.1512(f), adopted by reference in 567 Iowa Admin. Code 23.1(4)(br).

31. The owner or operator of a sweat furnace must prepare and implement for each new or existing affected source and emission unit, a written operation, maintenance, and monitoring (“OM&M”). The plan needs to be approved by the IDNR before operation of the unit. The plan must reflect all of the necessary procedures and parameters needed to ensure the continuous compliance of the sweat furnace with the emission limitation. 40 C.F.R. §§ 63.1510(b), adopted by reference in 567 Iowa Admin. Code 23.1(4)(br).

32. The owner or operator of a sweat furnace must operate in accordance with the OM&M plan. 40 C.F.R. § 63.1506(c), adopted by reference in 567 Iowa Admin. Code 23.1(4)(br). The owner or operator of a sweat furnace must operate in accordance with additional requirements if the sweat furnace’s emissions are controlled by an afterburner. *See* 40 C.F.R. § 63.1506(h), adopted by reference in 567 Iowa Admin. Code 23.1(4)(br).

33. The owner or operator must establish a minimum or maximum operating parameter value, or an operating parameter range for each parameter, to be monitored as required by 40 C.F.R. § 63.1510 that ensures compliance with the applicable emission limit. 40 C.F.R. § 63.1511(g), adopted by reference in 567 Iowa Admin. Code 23.1(4)(br).

34. The owner or operator of a sweat furnace shall comply with a number of notification, reporting, and record-keeping requirements in 40 C.F.R. Subpart RRR. *See* 40 C.F.R. §§ 63.1515-63.1517, adopted by reference in 567 Iowa Admin. Code 23.1(4)(br).

35. If any order, permit, or rule of the IDNR is being violated, the Attorney General shall, upon the request of the IDNR or the director, institute a civil action in any district court for injunctive relief to prevent any future violation of the order, permit, or rule, or for the assessment of a civil penalty as determined by the court, not to exceed Ten Thousand and no/100 Dollars (\$10,000.00) for each day such violation continues, or for both such injunctive relief and civil penalty. Iowa Code § 455B.146.

Storm Water Discharge Regulations

36. The dumping, depositing, or discharging of pollutants into any water of the state is prohibited, except adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the IDNR. Iowa Code § 455B.186(1).

37. The IDNR is authorized to issue, modify, deny, or revoke a general permit for storm water discharges required by Iowa Code chapters 455B, 459, and 459A. Iowa Code § 455B.103A(1).

38. The IDNR is authorized to issue National Pollutant Discharge Elimination Systems (NPDES) permits including but not limited to storm water discharge permits issued pursuant to Iowa Code section 455B.103A. Iowa Code § 455B.197.

39. The EPC has authority to adopt procedures and forms necessary to implement the provisions of Iowa Code chapters 455B, 459, and 459A relating to permits and general permits. Iowa Code § 455B.105(11)(a). The EPC shall adopt rules for applications or permits related to the NPDES coverage as described in Iowa Code section 455B.197. Iowa Code § 455B.105(11)(c). The EPC's rules implementing these provisions are contained in 567 Iowa Admin. Code 60-69.

40. The director of the IDNR is authorized to issue a storm water discharge general permit for a facility that is representative of a class of facilities which could be described and conditioned by a single permit. Iowa Code § 455B.103A(1); 567 Iowa Admin. Code 64.4(2)(a)(1).

41. The IDNR has adopted a general permit for Storm Water Discharge Associated with Industrial Activity. 567 Iowa Admin. Code 64.15(1). Facilities considered to be engaging in “industrial activity” include salvage yards. NPDES General Permit No. 1, § VIII.

42. No person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director. 567 Iowa Admin. Code 64.3(1).

43. Any NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least one hundred and eighty (180) days prior to the expiration of the permit. 567 Iowa Admin. Code 64.8(1)(a).

44. A person who applies for a general NPDES permit to construct, install, modify or operate a disposal system shall submit along with the application an application fee or a permit fee or both as specified in 567 Iowa Admin. Code 64.16(3).

45. A storm water pollution prevention plan (SP3) shall be developed for each facility subject to NPDES General Permit No. 1, § III. C. The facility must implement the provisions of the SP3 as a condition of the permit. NPDES General Permit No. 1, § III. C.

46. Any permit noncompliance is ground for an enforcement action. NPDES General Permit No. 1, § VI. A.

47. The enforcement provisions of Iowa Code chapter 455B, Division III, Part 1 apply to general permits for storm water discharge. Iowa Code § 455B.103A(5).

48. Any person who violates any provision of Iowa Code chapter 455 B, Division III, Part 1, or any permit, rule, standard, or order issued thereunder shall be subject to a civil penalty not to exceed Five Thousand and no/100 Dollars (\$5,000.00) for each day of such violation.

Iowa Code § 455B.191(2).

49. Upon request of the director of the IDNR with approval of the EPC, the Attorney General shall institute any legal proceedings necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division III, Part 1 or to obtain compliance with provisions of Iowa Code chapter 455B, Division III, Part 1 or any provision of any permit issued thereunder. Iowa Code § 455B.191(5).

Solid Waste Regulations: Waste Tires

50. The EPC is required to establish rules for the proper administration of Iowa Code chapter 455B, Division IV, Part 1, relative to the treatment and disposition of solid waste. Iowa Code § 455B.304. The EPC's rules implementing these provisions are contained in 567 Iowa Admin. Code 100-123.

51. 567 Iowa Admin Code 117.4(2) provides that an authorized vehicle recycler licensed by the Iowa Department of Transportation (IDOT) may store up to 3,500 passenger tire equivalents without a waste tire stockpile permit, but any storage beyond this amount requires the authorized vehicle recycler to obtain a permit from the IDOT or to remove the waste tires from the site and properly dispose of them within 30 days.

52. The director of the IDNR may issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1, or the rules adopted pursuant to that part. Iowa Code § 455B.307(2).

53. Upon the request of the IDNR, the Attorney General shall institute any legal proceedings necessary in obtaining compliance with an order of the director or prosecuting any person for a violation of the provisions of Iowa Code chapter 455B, Division IV, Part 1, or the rules adopted pursuant to that part. Iowa Code § 455B.307(2).

54. Any person who violates any provision of Iowa Code section 455B, Division IV, Part 1, or any order, permit, or rule issued pursuant to that part shall be subject to a civil penalty not to exceed Five Thousand and no/100 Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.307(3).

PAST ENFORCEMENT ACTIONS

55. On April 26, 1994, the IDNR issued Administrative Order No. 94-SW-04/94-HC-04, which required Feinberg to stop the practice of draining waste oils on the ground; remove all contaminated soil from the area in the vicinity of the American Crane by May 15, 1994; remove contaminated soil from the area alongside the alley south of the office by May 30, 1994; remove contaminated soil from the area around the storm sewer intake and just west of 18th Street and south of the alley by June 30, 1994; and remove contaminated soil from the area west of the scrap yard office by July 31, 1994. The order also prohibited the open pot smelting of aluminum and open burning of the insulation off copper wire.

56. On April 27, 1995, the IDNR issued Administrative Order No. 95-HC-02/95-WW-08, which required Feinberg to fully comply with the provisions of Administrative Order No. 94-SW-04/94-HC-04 issued on April 26, 1994; remove all contaminated soils by June 1, 1995 and conduct, document, and dispose of the soil in accordance with 40 C.F.R. 761.123 and 130 for polychlorinated biphenyl (PCB) contaminated waste; and file an application for a storm

water permit with the IDNR no later than May 15, 1995. Additionally, the order assessed an administrative penalty of \$10,000.00.

57. On June 8, 1999, the IDNR accepted \$1,000.00 in settlement of IDNR Administrative Order Nos. 94-SW-04/94-HC-04 and 95-HC-02/95-WW-08.

58. In 2010, the Iowa Attorney General's Office and Feinberg entered into a Consent Order, Judgment and Decree for violations regarding illegal demanufacturing of discarded appliances and the improper disposal of hazardous substances. Feinberg was enjoined from further violations of 567 Iowa Admin. Code 64.3(a), 118.4(1), 118.4(2), 122.8(4), and 122.8(5); NPDES General Permit No. 1; and any SP3 required by the permit. Feinberg was also enjoined from demanufacturing appliances without a permit and from using certain equipment (such as a metal shredder, hydraulic grapple or claw, hydraulic bucket grip, and hydraulic bailer) to handle or process appliances which have not been properly demanufactured. The order required Feinberg to maintain written records for the disposal of all appliances; complete, maintain, and implement an SP3 as required by NPDES General Permit No. 1; promptly remove spilled contaminants to avoid or minimize further contamination; and properly notify the local police department or the sheriff of the affected county of all hazardous conditions. Feinberg was required to pay a civil penalty of \$42,000.00. Feinberg finished paying the entire civil penalty amount on March 31, 2011.

FACTS

59. The NPDES General Permit No. 1 that covers Feinberg Metals Recycling Corp. was originally issued on October 1, 1992 to a previous owner of the site. Ownership of the site was transferred a few times before being transferred to Feinberg in 2006. ND PES General

Permit No. 1 requires the facility to implement a SP3, as well as requiring inspections and recordkeeping.

60. On July 26, 2013, the IDNR visited the facility to conduct a NPDES General Permit No. 1 compliance inspection, but Feinberg was not available at the time of inspection. An employee of Feinberg did not know the location of the SP3.

61. On August 23, 2013, the IDNR returned to conduct the NPDES General Permit No. 1 compliance inspection, but Feinberg was not available at the time of the inspection.

62. On August 29, 2013, the IDNR contacted Feinberg about the facility's SP3, and Feinberg stated he would send the field office a copy of the SP3.

63. On October 2, 2013, the IDNR issued a Notice of Violation (NOV) to Feinberg for failing to submit a SP3. The letter required the SP3 to be submitted by November 4, 2013 and explained that if the plan was not received by that date, enforcement may follow. To date, the SP3 has not been submitted to the IDNR.

64. On March 6, 2014, the IDNR received a complaint regarding the facility, stating that discarded appliances and vehicles were not being properly demanufactured and processed on site. Before investigating the complaint, the IDNR checked the NPDES database and noted that the facility did not have a valid NPDES General Permit No. 1 to operate a scrap metal recycling facility because the permit was no longer valid due to unpaid permit fees.

65. On March 21, 2014, the IDNR met with Feinberg and conducted an investigation at the facility. The IDNR noted several areas of concern, including: 1) improper handling of non-demanufactured appliances; 2) storage of more than 3,500 waste tires, which was the limit imposed on IDOT authorized vehicle recyclers; 3) solid waste piles that needed to be disposed of; 4) oil-stained soil that needed to be removed, and 5) the lack of a valid NPDES General

Permit No. 1. The IDNR discussed their findings with Feinberg and explained they would return in a few weeks and Feinberg would need to improve the conditions of the facility or possible enforcement may be pursued.

66. On April 2, 2014, the IDNR returned to the facility and noted that Feinberg had made some progress in areas for noncompliance and had paid the storm water permit fees.

67. On April 2, 2014, a NPDES General Permit No. 1 was reissued by the IDNR, with the expiration date set for September 30, 2014. The IDNR reminded Feinberg that he needed to submit a SP3.

68. On May 30, 2014, the IDNR visited the facility again, noting that there was little scrap metal in the general scrap metal handling area and there were only two (2) discarded appliances onsite. However, the facility had done nothing with the waste tires.

69. On June 4, 2014, the IDNR sent Feinberg a letter detailing the areas of noncompliance noted during the May 30, 2014 inspection. The letter informed Feinberg that further violations would likely result in an enforcement action.

70. On July 3, 2014, the IDNR made a routine stop at the facility. The waste tire pile had not diminished in size, and some of the crushed appliances onsite did not appear to have been demanufactured. The IDNR observed a burn area with charred copper wire, as well as a warehouse stocked with scrap aluminum.

71. During the visit, the IDNR noticed aluminum being unloaded into a warehouse on the property. The IDNR discovered that the warehouse was stockpiled with scrap aluminum and contained what appeared to be a natural gas fired aluminum smelter. The smelter was vented directly outdoors through the wall through a discharge stack approximately 30 inches in diameter. There was no control equipment associated with the smelter. The IDNR later

determined that the smelter was likely a sweat furnace, a secondary aluminum production facility, and there was no air quality construction permit for the sweat furnace.

72. On July 22, 2014, the IDNR received a complaint about the Feinberg facility burning insulation off of copper wires. The IDNR investigated the complaint and met with Feinberg about the aluminum sweat furnace on July 24, 2014. More aluminum was stockpiled in the warehouse, but Feinberg stated the aluminum sweat furnace had not been operated in four (4) or five (5) years. The IDNR also asked Feinberg to review the SP3 associated with the facility's NPDES General Permit No. 1. Feinberg stated that the SP3 was not at the facility and that it must have been submitted to the IDNR's Storm Water Permitting Section along with the permit fees. The IDNR reminded Feinberg that he is required to have the SP3 onsite and readily available for review. The IDNR observed an area with charred copper wire and an area adjacent to the burn location with sections of insulated wire. When leaving, the IDNR noted discarded appliances that did not appear to be properly demanufactured lying on their sides and strewn around in the general scrap metal pile.

73. On August 5, 2014, the IDNR issued a Notice of Violation letter to Feinberg for ongoing violations observed at the facility, including, but not limited to: open burning; air quality violations related to operating the aluminum sweat furnace; waste tire storage violations; and failure to have an SP3. The letter included an explanation of the violations and regulations and put Feinberg on notice that the violations were being forwarded for enforcement action.

74. On August 8, 2014, the IDNR used a FLIR infrared camera to observe the warehouse where the aluminum sweat furnace was located. The camera indicated an extreme temperature differential, suggesting the sweat furnace inside the building was operating. The

IDNR also noted a large LP tank outside of the building directly under the aluminum sweat furnace's emission point. The tank had not been onsite during the July 3rd visit.

75. On August 12, 2014, the IDNR spoke to Feinberg regarding the operation of the aluminum sweat furnace. Feinberg stated he had not operated the sweat furnace in years and did not plan to operate it in the future. Feinberg invited the IDNR to stop at the facility any time to verify his story, and when asked when would be a good time for a visit, Feinberg suggested a visit in three (3) weeks because he was busy.

76. On September 9, 2014, the IDNR received a complaint regarding the operation of the aluminum sweat furnace and the burning of insulation off copper wires. The complainant expressed concern with the ongoing burning and use of the aluminum sweat furnace.

77. On September 9, 2014, the EPA's Criminal Investigation Division contacted the IDNR regarding complaints received by the EPA regarding Feinberg's facility. The IDNR and EPA agreed to meet at the facility on September 10, 2014.

78. On September 10, 2014, the IDNR and EPA met at the Feinberg facility. They did not observe any evidence that the sweat furnace was being operated that day.

79. On September 11, 2014, the IDNR and EPA met again near the Feinberg facility. The EPA observed a forklift operator moving aluminum ingots from building to building. The IDNR and EPA observed and documented visible emissions venting from the sweat furnace building. They used the FLIR infrared camera to document the temperature difference between the emission point and the wall around the emission point.

80. The IDNR and EPA proceeded to the facility and met with Feinberg. When the EPA asked Feinberg if the sweat furnace had been operated, Feinberg stated it had not. The EPA and IDNR explained that they had observed smoke exiting the building vents earlier in the day.

The EPA also asked where the aluminum ingots were stored, and Feinberg stated he did not have many at the facility. The EPA informed Feinberg that they had observed the aluminum ingots being moved earlier in the day as well. Feinberg then admitted that the aluminum sweat furnace had been used a few times to clean up the aluminum stockpile.

81. Upon request, Feinberg showed the IDNR and EPA the sweat furnace and the warehouse where the aluminum ingots were stored. The IDNR and EPA observed a warehouse where a semi-trailer of aluminum ingots was stored. The semi-trailer held approximately 14-16 pallets of aluminum ingots, with each pallet stacked approximately 22 inches tall. Inside the building where the sweat furnace was housed, the sweat furnace was hot and the wall fans were still operating. The orange-red glow of hot metal remained inside the sweat furnace, and the large pile of scrap aluminum observed on July 3rd and July 24th was gone.

82. On September 22, 2014, the IDNR issued a NOV to Feinberg for the violations observed during the September inspection. The letter informed Feinberg that the violations were being referred for further enforcement.

83. On September 30, 2014, Feinberg's NPDES General Permit No. 1 expired. Feinberg submitted a renewal application for NPDES General Permit No. 1 on February 17, 2015.

84. On November 12, 2015, the DNR conducted a site visit to the Feinberg facility and discussed the air quality permitting requirements for the operation of sweat furnaces. During the discussion, Feinberg stated that he had installed the sweat furnace approximately six (6) years ago and that he has operated it approximately once a week since that time. Although Feinberg indicated that the sweat furnace was not operational during the visit since the breaker had been removed from the electrical panel servicing the blower fans on the back side of the

furnace, the furnace was still connected to a power source as the gas line was still hooked up to the furnace and the LP gas fuel tank was onsite in the same location where it had previously been observed.

85. Feinberg has taken no steps or made any attempt to bring the sweat furnace into compliance with 40 C.F.R. Subpart RRR or Iowa's air pollution laws concerning construction permits, emission limits, testing, monitoring, or reporting.

VIOLATIONS

Air Quality Violations

86. Defendants violated 567 Iowa Admin. Code 23.2(1) by allowing, causing, or permitting open burning of combustible materials on the property, including burning the insulation off copper wires, despite the fact that no variance has been granted under 567 Iowa Admin. Code 23.2(2), and none of the exemptions listed in 567 Iowa Admin. Code 23.2(3) applies.

87. Defendants failed to obtain a construction permit from the IDNR before constructing the aluminum sweat furnace in violation of 567 Iowa Admin. Code 22.1(1).

88. Defendants failed to conduct emission tests to determine compliance with Iowa emissions standards in violation of 567 Iowa Admin. Code 25.1(7).

89. Defendants failed to comply with any of the requirements of 40 C.F.R. Subpart RRR for sweat furnaces.

Storm Water Discharge Violations

90. Defendants operated an salvage yard without a NPDES General Permit No. 1 from September 30, 2014 to at least February 17, 2015, in violation of 567 Iowa Admin. Code 64.3(1).

91. Defendants failed to develop and implement a storm water pollution prevention plan (SP3) for the facility from November 4, 2013 to at least February 17, 2015, in violation of NPDES General Permit No. 1, § III. C.

Solid Waste Violations

92. Defendants failed to obtain a waste tire stockpile permit for the storage of more tires than the 3,500 passenger tires allowed for authorized vehicle recyclers from May 30, 2014 to the present, in violation of 567 Iowa Admin. Code 117.4(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of Iowa, ex. rel., Iowa Department of Natural Resources requests that the Court:

- a. assess a civil penalty against Defendants, pursuant to Iowa Code section 455B.146, for each day of violation of 567 Iowa Admin. Code 22.1(1), 23.2(1), and 25.1(7), and 40 C.F.R. sections 63.1505(f)(1) and (2), 63.1506, 63.1510-63.1512, and 63.1515-63.1517, as adopted by 567 Iowa Admin. Code 23.1(4)(br), not to exceed Ten Thousand Dollars (\$10,000.00) for each day of such violation;
- b. assess a civil penalty against Defendants, pursuant to Iowa Code section 455B.191(2), for each day of violation of 567 Iowa Admin. Code 64.3(1) and NPDES General Permit No. 1, not to exceed Five Thousand Dollars (\$5,000.00) for each such violation;
- c. assess a civil penalty against Defendants, pursuant to Iowa Code section 455B.307(3), for each day of violation of 567 Iowa Admin Code 117.4(2), not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation;
- d. issue a permanent injunction, pursuant to Iowa Code section 455B.146, enjoining Defendants from any violation of 567 Iowa Admin. Code 22.1(1), 23.2(1), and 25.1(7), and 40 C.F.R. sections 63.1505(f)(1) and (2), 63.1506, 63.1510-63.1512, and 63.1515-63.1517, as adopted by 567 Iowa Admin. Code 23.1(4)(br);
- e. issue a permanent injunction, pursuant to Iowa Code section 455B.191(5), enjoining Defendants from any violation of 567 Iowa Admin. Code 64.3(1) and NPDES General Permit No. 1;
- f. issue a permanent injunction, pursuant to Iowa Code section 455B.307(2), enjoining Defendants from any violation of 567 Iowa Admin. Code 117.4(2); and

- g. issue a permanent injunction requiring Feinberg to shut down the sweat furnace within thirty (30) days of issuance of this Court's ruling, such that the sweat furnace cannot physically or legally burn fossil fuels, and to comply with applicable state and federal requirements for permanently ceasing operation of the sweat furnace, including permanently disconnecting the electrical and gas lines to the sweat furnace, and removing the sweat furnace, capture hood, and exhaust stack from the property.

Plaintiff further requests that the Court tax the costs of this action to Defendants and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

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