

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: Terry Lovett d/b/a The Kwiki Car Wash and Avenue Car Wash Ida County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2017-WW-12
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TO: Terry Lovett
d/b/a Kwiki Car Wash
913 Valley View Drive
Ida Grove, IA
51445

I. SUMMARY

This administrative consent order (order) is entered into between Terry Lovett d/b/a The Kwiki Car Wash and Avenue Car Wash (collectively referred to as Car Wash) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to an illegal discharge of wastewater to a water of the state. Mr. Lovett agrees to pay an administrative penalty of \$5,000.00. In the interest of avoiding litigation, the parties have agreed to resolve the violations alleged herein through entry of this order.

Any questions or responses regarding this order should be directed to:

Relating to technical requirements:

Bryon Whiting
IDNR Field Office No. 3
1900 N Grand
Spencer, IA 51301
712-262-4177

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515-725-8244

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Payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 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 and the rules promulgated or permits issued pursuant thereto; 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. Terry Lovett operates the Car Wash located at 117 Hwy 175 East Ida Grove, Iowa.¹

Past Violations

2. On October 8, 2007, the Department received a complaint alleging that illegal open dumping of car wash pit waste was occurring near the Car Wash. On November 5, 2007, Bryon Whiting, a Senior Environmental Specialist with the Department, went to the site to investigate. Once on site, Mr. Whiting observed car wash pit waste deposited to the north of the side of storage units located adjacent and north of the above referenced property. On November 15, 2007, the Department sent Mr. Lovett a Notice of Violation (NOV) for illegally dumping solid waste in violation of Iowa law.
3. On February 20, 2015, the Department received a complaint alleging that Mr. Lovett was discharging car wash pit sludge (sludge) to a drainage ditch between the Culligan Water building, which is located at 5971 Highway 175 and the Car Wash.
4. On March 12, 2015, Mr. Whiting went to the site to investigate. Once on site, Mr. Whiting observed car wash pit sludge in the channel of a drainage ditch which flows to Odebolt Creek and is located between the Culligan Water building and the Car Wash. Mr. Whiting took pictures documenting his observations.

¹ The deed holders of this property are listed as Roma and Robert Lovett who are the parents of Terry Lovett. They are also the deed holders of the Culligan Water building which is located at 5971 Hwy 117 Ida Grove, Iowa.

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5. On March 17, 2015, the Department sent Mr. Lovett a NOV for the above discussed violation. This NOV summarized the relevant law and recommended that Mr. Lovett remove sludge from the drainage ditch.

6. On April 6, 2015, Mr. Whiting conducted a follow-up investigation. He observed that the sludge had been adequately removed from the drainage ditch.

Current Violations

7. On December 16, 2016, the Department received a complaint alleging that Mr. Lovett was discharging waste from his car wash storage pits to the same drainage ditch identified above.

8. On December 21, 2016, Mr. Whiting went to the site to investigate. Once on site, Mr. Whiting observed that sludge had been discharged to the drainage ditch. Mr. Whiting observed that sludge was located in the channel of the drainage ditch and on the bank. Mr. Whiting took photographs which document his observations.

9. On January 5, 2017, the Department sent Mr. Lovett an NOV for the above discussed violations. This NOV summarized the relevant law and recommended removal of the sludge from the drainage ditch.

IV. CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. The above stated facts demonstrate non-compliance with this provision.

2. Department subrule 567 IAC 64.3(1) provides that 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. The above stated facts demonstrate non-compliance with this provision.

3. 567 IAC 61.3(2) "b" states that "[s]uch waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance." The above stated facts demonstrate non-compliance with this provision.

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V. ORDER

THEREFORE, the Department orders, and Mr. Lovett consents to do, the following:

1. Cease all illegal discharges to waters of the State; and
2. Pay an administrative penalty of \$5,000.00 within 30 days of the date the Director signs this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00 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 this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:

a. **Economic Benefit.** 567 IAC chapter 10 requires that the Department consider the costs saved or 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.” An economic benefit was obtained through avoiding the cost of properly disposing of the sludge. For these reasons, is reasonable to estimate that approximately \$1,500.00 was saved. For that reason, \$1,500.00 is assessed for this factor.

b. **Gravity of the Violation.** One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Unauthorized discharges degrade water quality. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. Therefore, the amount of \$1,500.00 is assessed for this factor.

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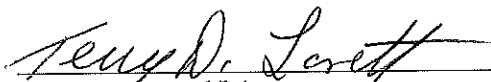
c. **Culpability.** Mr. Lovett is engaged in the business of car washing. Therefore Mr. Lovett has an obligation to be aware of the applicable regulations and comply with those regulations. Moreover, on numerous occasions the Department has informed Mr. Lovett that the disposal of sludge in the drainage ditch violates state law. Therefore, the amount of \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.4(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 Mr. Lovett. By signature to this order, all rights to appeal this order are waived by Mr. Lovett.

VIII. NONCOMPLIANCE

Failure to comply with this order 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.191. Compliance with Section V. of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.



Terry Lovett, d/b/a
The Kwiki Car Wash and Avenue Car Wash

Dated this 10 day of
August, 2017



Chuck Gipp, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 22nd day of
August, 2017

Terry Lovett (Copy of Order to Central Office Records File), Bryon Whiting- FO 3, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.