IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: JIYA FOODMART INC.	ADMINISTRATIVE CONSENT ORDER NO. 2020-WW-04

To: Jiya Foodmart Inc.
dba Cody Mart Liquor and Gas Station
1220 North Cody Road
Le Claire, Iowa 52753

To: Saraswatiben Patel
Registered Agent, Jiya Foodmart Inc.
4307 West Locust Street
Davenport, Iowa 52804

I. SUMMARY

This administrative consent order (Order) is entered into between Jiya Foodmart Inc. dba Cody Mart Liquor and Gas Station (Cody Mart) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving violations related to the improper discharge of wastewater and failing to report a hazardous condition. The Order requires Cody Mart to pay an administrative penalty of $4,000.00 pursuant to a payment plan, and to comply with all laws and rules related to wastewater and hazardous conditions. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Terry Jones
Iowa Department of Natural Resources
Field Office 6
1023 W Madison
Washington, Iowa 52353
319-653-2135

Relating to legal requirements:
Noah Poppelreiter
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, IA 50319-0034
Ph. 515-725-8248

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East 9th Street
Des Moines, IA 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), 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 III, Part 1 and the rules adopted 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. Cody Mart is a gas station located at 1220 North Cody Road, Le Claire, Iowa. Cody Mart stores petroleum in three underground storage tanks (UST) registered with the DNR (tank numbers 26909, 26910, 26911). To the east of Cody Mart is a ditch with drains to McCarty Creek, a tributary of the Mississippi River (Waterway).

2. Cody Mart employs Chisagkumar Patel as a manager. On November 4, 2018, Mr. Patel became certified as UST operator. UST certification includes training on how to properly handle hazardous conditions, including petroleum spills.

3. On or about 11:30 p.m. on May 13, 2019, the Le Claire Police Department (LCPD) received a complaint of petroleum odors coming from the Waterway. LCPD personnel responded to Cody Mart and observed Mr. Patel pumping liquid from Cody Mart's USTs to the ground. LCPD told Mr. Patel to cease pumping.

4. Also on or about 11:30 p.m. on May 13, 2019, Le Claire Fire Department (LCFD) received a complaint of petroleum odors coming from the Waterway. Sara Garvert from the LCFD responded to the area to investigate. Approximately a block from Cody Mart, Ms. Garvert smelled a strong odor of petroleum. Upon arrival at Cody Mart, LCFD personnel observed Mr. Patel pumping liquid from the Cody Mart UST to the Waterway. Mr. Patel told Ms. Garvert he was pumping water from the Cody Mart USTs. He stated he could pay a professional to handle the pumping, but was doing it himself to save Cody Mart the expense.

5. On May 14, 2019, the DNR received notification from the National Response Center that petroleum was present in the Waterway. DNR Field Office 6 environmental specialist senior Terry Jones and environmental specialist Jake Forgie (jointly, FO6 Staff) responded to Cody Mart to investigate.

6. At or about 12 p.m. on May 14, FO6 Staff contacted Mr. Patel at Cody Mart. Mr. Patel had not made contact with the DNR prior to this time. Mr. Patel stated that he had pumped water from the sump basins around Cody Mart's USTs the evening of May 13. FO6 Staff observed a mixture of petroleum and water on the gravel parking lot of Cody Mart. This mixture appeared to be where Mr. Patel pumped liquid on May 13. FO6 Staff observed a significant amount of free-floating petroleum in the Waterway.

Mr. Jones placed a fuel-absorbing pad in the Waterway; the pad was near-instantaneously filled with petroleum. FO6 Staff requested LCPD and LCFD respond to the scene to assist with mitigating the impact of the fuel. LCFD placed fuel-absorbing booms across the Waterway to prevent the fuel from reaching McCarty Creek.

7. Mr. Jones informed Mr. Patel that the fuel needed to be cleaned up immediately to avoid environmental harm. Mr. Patel began to make calls to various cleanup contractors, but did not secure a contractor.

8. After Mr. Patel's attempts, Nate Mandersheid, an area supervisor with the Iowa DOT, responded to Cody Mart due to the potential for impact to Iowa DOT property. Mr. Mandersheid consulted with Iowa DOT environmental specialist Mary Kay Solberg regarding the situation. Due to Mr. Patel's failure to promptly mitigate the harm, Iowa DOT personnel made the decision to contract with the corporation Environmark to begin the cleanup of the petroleum.

9. On May 20, 2019, FO6 Staff revisited the Cody Mart to observe the cleanup efforts and to investigate the matter further. FO6 Staff made contact with Mr. Patel. During this conversation, Mr. Patel stated that on the evening of May 13 he was removing water from pits containing the USTs submersible turbine pump (STP). Mr. Jones placed a fuel-absorbing pad in the STP pit; the pad absorbed fuel, indicating the presence of fuel in the STP pit.

10. Also at this time, FO6 Staff observed third-party professionals removing water from the Cody Mart USTs. The professionals stated they were not removing fuel but had removed approximately six inches of water from the Cody Mart USTs.

11. On May 24, 2019, the DNR issued Mr. Patel a Notice of Violation for the violations observed on May 13 and 14, 2019.

12. On or about November 18, 2019, Environmark completed cleanup of the Waterway. The total cost of the cleanup was $45,600.22 as reported by invoice to the Iowa DOT.

IV. CONCLUSIONS OF LAW

DNR and Cody Mart agree the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 and 657 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Petroleum from Cody Mart was discharged to the Waterway. The presence of petroleum was clearly noticeable, even at night, due to the strong odor of petroleum. The discharge was not allowed under any applicable permit. The Waterway is a water of the state. These facts indicate Cody Mart is in violation of these sections.

2. 567 IAC 61.3(2) establishes narrative water quality criteria. These criteria provide that all waters shall be free from materials attributable to wastewater discharges producing objectionable color, odor, or other aesthetically objectionable conditions. Petroleum was noticeable in the Waterway, as indicated by the free-floating petroleum in the water and the strong odor of petroleum. These facts indicate a violation of this section.

3. 567 IAC 131.2 requires that hazardous conditions, including a discharge of petroleum, must be reported to the DNR within six hours of the onset of the condition. Cody Mart did not report the discharge to the DNR within six hours. These facts indicate a violation of this section.

V. ORDER

Therefore, DNR orders and Cody Mart agree to the following:

1. Cody Mart and its employees shall follow all laws and regulations related to the discharge of pollutants to waters of the state;

2. Cody Mart shall pay an administrative penalty of $4,000.00 pursuant to the following payment plan:

$334.00 on April 1, 2020	$333.00 on May 1, 2020
$333.00 on June 1, 2020	$334.00 on July 1, 2020
$333.00 on August 1, 2020	$333.00 on September 1, 2020
$334.00 on October 1, 2020	$333.00 on November 1, 2020
$333.00 on December 1, 2020	$334.00 on January 1, 2021
$333.00 on February 1, 2021	$333.00 on March 1, 2021

If the DNR has not received a payment within ten (10) days of a deadline detailed in the payment schedule, the DNR will notify Mr. Behrens in writing of his failure to pay. Payment in full of the remaining amount of the penalty shall be due within 30 days of the date the DNR provides notice of a delinquent payment.

VI. PENALTY

1. Iowa Code 455B.191 authorizes the assessment of civil penalties of up to $5,000 per day per violation for the violations involved in this matter.

2. 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 and criteria for assessment of penalties at 567 IAC chapter 10. DNR is assessing a penalty of $4,000.00 for the

violations described above. The following factors were considered in the assessment of this penalty:

a. Economic Benefit. 567 IAC chapter 10 requires that the DNR 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." Cody Mart avoided the costs properly pumping and disposing of the petroleum. Additionally, Cody Mart avoided costs associated with the cleanup of the pollutants. However, due to Cody Mart's agreement with the Iowa DOT, the DNR agrees the economic benefit of the cleanup costs is appropriately offset. Using a reasonable estimate of the costs for properly pumping and disposing of petroleum, $500.00 is assessed for this factor.

b. Gravity. 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 that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Petroleum from Cody Mart was discharged to the Waterway. The discharge was significant enough to create large amounts of and to create an odor of petroleum up to a block away. There was no attempt to control the discharge and the petroleum was pumped directly to the ground. A discharge of petroleum in such an egregious manner creates substantial environmental harm as well as programmatic harm to the wastewater and underground storage tank programs. No one from Cody contacted the DNR or other appropriate authorities to report the discharge. Therefore, $3,000.00 is assessed for this factor.

c. Culpability. Cody Mart has a duty to operate act in accordance with the environmental laws of the state of Iowa. Petroleum from Cody Mart was intentionally released petroleum to the ground around the Cody Mart, causing a discharge. There was no attempt to contact the appropriate authorities, including the DNR. Had the DNR not been contacted by a third party, the petroleum would have entered the Mississippi River. Therefore, $500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC 7.1, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Cody Mart. By signing this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order, and constitutes a permanent remedy of the conditions which caused the violations. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code 455B.191.

KAYLA LYON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 5th day of March, 2020

SARASWATIBEN. V. Patel
JIYA FOODMART INC.

Dated this 25 day of Feb, 2020

Noah Poppelreiter; Field Office #6; EPA; I.C.1