

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

<p>IN THE MATTER OF:</p> <p>JAMES JOHNSON and JIM'S SEWER SERVICE, L.L.C.</p>	<p style="text-align: center;">ADMINISTRATIVE CONSENT ORDER</p> <p>No. 2024-WW- 22</p>
-------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------

To: James Johnson
PO Box 255
1757 Linden Street
Cherokee, IA 51012

Re: Violations of Iowa Septic Pumper Laws

I. SUMMARY

This Administrative Consent Order (“Order”) is entered into between the Iowa Department of Natural Resources (“the DNR”), and James Johnson and Jim’s Sewer Service L.L.C. (“Jim’s Sewer Service”) to resolve violations of Iowa’s commercial septic pumping laws. As detailed below, Mr. Johnson and Jim’s Sewer Service agree to obtain a septic pumping license by May 31st of each year and to pay an administrative penalty of \$1,250.00.

Relating to technical requirements:

Tim Grotheer, Env. Specialist
Iowa Department of Natural Resources
6200 Park Ave., Ste. 200
Des Moines, IA 50321
Phone: (515) 452-7646

Relating to legal requirements:

Bradley Adams
Attorney for the DNR
6200 Park Ave., Ste. 200
Des Moines, IA 50321
Phone: (515) 664-8894

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
6200 Park Ave., Ste. 200
Des Moines, Iowa 50321

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. On April 13, 2016, Mr. Johnson first obtained his Iowa septic pumper license.
2. On June 16, 2016, the DNR received Mr. Johnson's septic pumper renewal application over one month late.
3. In November of 2017, the DNR received Mr. Johnson's septic pumper renewal application approximately five months late.
4. In June of 2018, the DNR received Mr. Johnson's septic pumper renewal application approximately one month late. The attendant fee was not paid until October 25th of that year.
5. In October of 2019, the DNR received Mr. Johnson's septic pumper renewal application approximately four months late.
6. In June of 2021, the DNR received Mr. Johnson's septic pumper renewal application approximately one month late.
7. On June 15, 2022, the DNR sent Mr. Johnson a letter informing him that the DNR has not received his septic pumper renewal application.
8. On July 18, 2022, the DNR sent Mr. Johnson another letter informing him that the DNR has not received his septic pumper renewal application.
9. On September 1, 2022, the DNR received Mr. Johnson's septic pumper renewal application four months late. The attendant fee was not paid until January 12, 2023.
10. On June 19, 2023, the DNR again sent Mr. Johnson a letter informing him that the DNR has not received his septic pumper renewal application.
11. On July 19, 2023, for the fourth time, the DNR sent Mr. Johnson another letter informing him that the DNR has not received his septic pumper renewal application.

12. On December 13, 2023 Mr. Johnson represented that his company, Jim's Sewer Service, LLC, pumped a septic tank for a time of transfer inspection at 4687 L Ave., Meriden, IA.
13. During March and April of 2024, the DNR engaged in email correspondence with Justin Pritts, Environmental Health Coordinator for Cherokee County, and confirmed the details regarding Mr. Johnson's license status and Jim's Sewer Service's role in the septic tank pumping at 4687 L Ave., Meriden, IA.
14. On April 1, 2024, Mr. Johnson submitted his septic pumper renewal application eleven months late.
15. On April 5, 2024, Mr. Johnson paid his license fee and the DNR issued Mr. Johnson a septic pumper license.
16. On April 10, 2024, the DNR issued Mr. Johnson a Notice of Violation for engaging in the practice of septic pumping without a valid license.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.172(5)(b) establishes the DNR as the entity of the state to regulate the commercial cleaning of private sewage disposal facilities, including septic tanks.
2. Iowa Code section 455A.105(3) gives the Environmental Protection Commission (Commission) authority to promulgate rules necessary to implement Chapter 455B and it has done so specifically for septic tanks in 567 Iowa Administrative Code (IAC) chapter 68.
3. 567 IAC 68.4(4) states that "in order to remain valid, a commercial septic tank cleaner license must be renewed by June 30 of each year. Renewal application must be made on a form provided by the department and must be received by the department or postmarked at least 30 days prior to the expiration date."
4. 567 IAC 68.5(1)(b-c) establishes that a septic pumper's license may be suspended, modified or revoked when the pumper fails to provide either of the pumper's license fee or an approved waste management plan.
5. 567 IAC 68.5(2) establishes that the DNR may fine septic pumpers \$250 for violations of the rules listed in 567 IAC 68.5. Each day that such a violation occurs constitutes a separate offense.

V. ORDER

Therefore, the DNR orders, and James Johnson and Jim's Sewer Service agree, that:

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JAMES JOHNSON and JIM'S SEWER SERVICE, L.L.C.

1. Jim's Sewer Service shall maintain a current septic pumper license during all instances when pumping a private sewage disposal system.
2. Mr. Johnson shall submit applications to renew his septic pumper license on or before May 31 each year.
3. James Johnson and Jim's Sewer Service shall jointly and severally pay an administrative penalty of \$1,250.00.

VI. PENALTY

1. Iowa Code § 455B.109 authorizes the Commission to establish by rule a schedule of penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures authorizing the Director to assess administrative penalties at 567 IAC 10.
2. Iowa Code § 455B.172(5)(b) establishes that persons violating that section or rules adopted pursuant thereto are subject to a penalty of \$250 for each day that such a violation occurs.
3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the penalty should be. The general categories for consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. Pursuant to this chapter, 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 a \$1,250 penalty. Mr. Johnson and Jim's Sewer Service are jointly and severally liable for the payment of this payment. The administrative penalty assessed by this Order is determined as follows:
 - a. Economic Benefit: 567 IAC chapter 10 requires that the DNR consider the costs saved or that were likely to be saved by noncompliance. 567 IAC 10.30(1) states that "where a violator realizes an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties to offset the economic benefit." 567 IAC 10.30(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available."

Although chronically late, Mr. Johnson eventually paid the required licensing fees for each year that he operated JSS. Any economic benefit from delayed costs are minimal in this case. Therefore, no penalty for economic benefit is recommended at this time.

- 1250
- b. Gravity of the Violations: Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or public health and safety, and whether the violation threatens the integrity of the regulatory program.

Johnson was repeatedly late in renewing his pumper license, and likely committed the violation of pumping septic tanks with an expired pumper license many times over the years. This chronic noncompliance threatens the integrity of the licensing requirements under the commercial septic tank program.

As such, \$625.00 is recommended for this factor.

- c. Culpability: The factors to be considered in determining the culpability of the violator include the degree of intent or negligence of the violator, whether the case involves false reporting of required information and whether the violator has taken remedial measures to address the harm caused by the violations.

Mr. Johnson has a duty to understand and comply with the commercial septic licensing requirements in the state of Iowa. He has failed to comply with the timely renewal requirements since his initial renewal in 2016.

As such, \$625.00 is recommended for this factor.


VII. APPEAL RIGHTS

As this Order is entered by consent of the parties, there is no right of appeal.

VIII. NONCOMPLIANCE WITH THIS ORDER

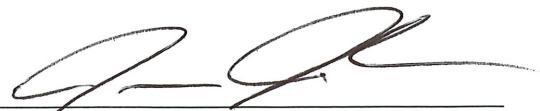
Failure to comply with any requirement of this Order may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and/or civil penalties.

Kayla Lyon, Director
Iowa Department of Natural Resources



James Johnson

11 / 13, 2024.
Month Day



James Johnson, Owner of Jim's Sewer Services

11 / 13, 2024.
Month Day