

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

**IN THE MATTER OF:**

**GOLDSMITH AND SON, INC.,  
JOHN E. GOLDSMITH AND  
PATTI R. GOLDSMITH,  
J & G PALLET, L.L.C.  
Sergeant Bluff, Iowa**

**ADMINISTRATIVE ORDER  
NO. 2007-WW-07**

**TO: John E. Goldsmith, President  
Goldsmith and Son, Inc.  
1470 210<sup>th</sup> Street  
Sergeant Bluff, IA 51054**

**Dianne P. Shay, Registered Agent  
J & G Pallet, L.L.C.  
1701 Glendale Blvd.  
Sioux City, Iowa 51105**

**John E. Goldsmith and  
Patti R. Goldsmith  
1470 210<sup>th</sup> Street  
Sergeant Bluff, Iowa 51054**

**I. SUMMARY**

This administrative order (order) is issued to Goldsmith and Son, Inc. (Goldsmith and Son), John E. Goldsmith and Patti R. Goldsmith (Goldsmiths), and J & G Pallet, L.L.C. (J & G). This order requires Goldsmith and Son, the Goldsmiths and J & G to cease the unauthorized discharge of truck wash wastewater to the current wastewater disposal system and to remove the current wastewater disposal system. This order assesses an administrative penalty of \$10,000.00.

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

**Relating to technical requirements:**  
Tom Roos, Environmental Specialist  
IDNR Field Office No. 3  
1900 North Grand, Gateway North Mall  
Spencer, Iowa 51301  
Ph: 712/262-4177

**Relating to legal matters:**  
Diana Hansen, Attorney at Law  
Iowa Department of Natural Resources  
Henry A. Wallace Building, 502 E. 9th  
Des Moines, Iowa 50319-0034  
Ph: 515/281-6267

**Payment of penalty to:**  
Iowa Department of Natural Resources  
Henry A. Wallace Building, 502 E. 9th  
Des Moines, Iowa 50319-0034

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**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 1, 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. Goldsmith and Son and the Goldsmiths owned and operated a truck washout facility from 1999 to early 2006 at 5400 Lewis Blvd. South, Sergeant Bluff, Iowa. Goldsmith and Son acquired title to this property on December 5, 2002. Prior to this time the Goldsmiths had been purchasing the property on contract. The date of the contract was September 1, 1998. This truck wash facility commercially inspected and washed out reefer semi trailers. During this time period the facility washed out approximately 30 trailers per day, 6 days per week. Wastewater was discharged to and handled by a 6,000 gallon fiberglass holding tank followed by a 12" drain tile in a 4' by 100' trench filled with gravel. No construction or operation permits were obtained for the construction or operation of this wastewater disposal system from the Department.

2. On March 26, 1999 the Department received an anonymous complaint (#99-100) concerning wastewater disposal from the Goldsmith and Son/ Goldsmiths' truck washout operation. On June 3, 1999 an onsite investigation by the Department concluded that the wastewater was from washout discharges to a holding tank and drain field that was installed many years ago. John E. Goldsmith, president and registered agent for Goldsmith and Son, indicated he would hook up to the city sewer, as it became available.

3. On May 23, 2000 the Department received an anonymous complaint (#00-159) inquiring about the legality of the truck washout's wastewater disposal method, and if the current disposal system was permitted. On June 7, 2000 a Notice of Violation letter was sent to John Goldsmith requiring the facility to hook up to a city sewer system or construct a permitted treatment facility. A response was required from John Goldsmith by July 15, 2000. The Department received no response.

4. On September 12, 2003 the Department received a complaint (#03-258) regarding standing water around the drain tile from the Goldsmith and Son/ Goldsmiths' truck washout. On October 15, 2003 the Department investigated the complaint. Pictures were taken by Department staff of water pooled in the drain tile area. On December 10, 2003 a Notice of Violation was sent to John Goldsmith requiring the facility to hook up to the

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City sewer or construct a treatment facility pursuant to an NPDES permit. A Plan of Action was required to be submitted to the Department by January 5, 2004. The Department received no response.

5. On May 17, 2004 a Notice of Violation was sent to John Goldsmith requiring the facility to submit a Plan of Action by June 1, 2004. The Department received no response.

6. On July 7, 2004 a Notice of Violation was sent to John Goldsmith requiring a written response by July 23, 2004, indicating what actions the facility would take to achieve compliance. On July 20, 2004 the Department received a fax from John Goldsmith indicating the facility intended to hook up to city sewer by September 20, 2004.

7. On October 25, 2004 the Department contacted John Goldsmith by telephone to check on the status of the project. At that time, Mr. Goldsmith indicated that he had one final meeting with the City of Sioux City, and would be hooked up to the city sewer within two weeks. Mr. Goldsmith indicated he had the piping on-site, and his staff would be installing the line. On November 18, 2004 the Department visited the facility to check on the status of the project. No work had been done at the site. Mr. Goldsmith's staff was not aware that any such project was scheduled to take place. The staff was not aware of any piping that was onsite for project use.

8. On November 23, 2004 a Notice of Violation and Referral was sent to John Goldsmith. The notice of violation informed the facility that it failed to bring the wastewater discharge from this truck wash business into compliance with Department rules.

9. On March 23, 2006 J & G Pallet, L.L.C. filed articles of incorporation with the Iowa Secretary of State. Dianne P. Shay was listed as the registered agent of J & G. At some point after this in early 2006 J & G began business operations at the site of this truck wash. The main business conducted at this site now is the construction of wood pallets for use in transporting goods in semi trailers. Truck washing has been reduced to approximately eight trailers per week. Wastewater from the truck washing is disposed of in the wastewater disposal system at issue in this referral.

10. An email note from the engineer for the City of Sergeant Bluff to the Department on April 24, 2007 stated that at this time the closest sewer hook up for the Goldsmith and Son property was located 1400 feet from the property. The note also stated that the City will be constructing a pavement and utility project south of this property. Included in the project will be a gravity sewer, service connections, and a force main that will connect into a lift station. The lift station will not be constructed for another year. The Goldsmith

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and Son/ Goldsmiths' property could connect to the gravity system once the force main is on line.

#### **IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.175(1) provides in part: If there is substantial evidence that any person has violated or is violating any provision of this division or chapter 459, subchapter III, or of any rule established or permit issued pursuant thereto; then:

1. The director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants to waters of the state contrary to a permit from this Department. Iowa Code section 455B.183 prohibits the operation of a waste disposal system without a permit from this Department. Goldsmith and Son, the Goldsmiths and J & G have violated these Code provisions.

3. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission to promulgate rules relating to the construction and operation of waste disposal systems and the discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60-69. Subrule 62.1(1) prohibits the discharge of a pollutant without an NPDES permit. Subrule 64.3(1) prohibits the operation of any waste disposal system without a permit. An exception to the requirement to obtain an operation permit is found in subrule 64.3(1)"b". Subrule 64.3(1)"b" does not require a semipublic sewage disposal system to obtain an operation permit if there is no discharge from the system and the Department has approved the construction of the system. Subrule 64.2(1) requires a facility to obtain a construction permit from the Department prior to construction, installation or modification of a wastewater disposal system. Goldsmith and Son, the Goldsmiths and J & G have violated Department rules due to the discharge of pollutants without obtaining a permit. Additionally, no construction permit was obtained for the construction of the waste disposal system at issue in this referral.

4. Iowa Code section 455B.171(20) defines private sewage disposal system as "a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of less than sixteen individuals on a continuing basis." Iowa Code section 455B.171(28) defines the term semipublic sewage disposal system as "a system for the treatment or disposal of domestic sewage which is not a private sewage disposal system and which is not owned by a city, a sanitary sewer district, or a designated and approved management agency under section 1288 of the federal Water Pollution Control Act (33 U.S.C. § 1288)."

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Chapter 69 establishes the construction and operational standards for on-site waste disposal systems. The phrase "onsite wastewater treatment and disposal system" is defined in subrule 69.1(2). "Onsite wastewater treatment and disposal system" means all equipment and devices necessary for proper conduction, collection, storage, treatment, and disposal of wastewater from four or fewer dwelling units or other facility serving the equivalent of 15 persons (1,500 gpd) or less. This includes domestic waste whether residential or nonresidential but does not include industrial waste of any flow rate. Included within the scope of this definition are building sewers, septic tanks, subsurface absorption systems, mound systems, sand filters, constructed wetlands, and individual mechanical/ aerobic wastewater treatment systems." The wastewater treatment system found at this facility would not qualify as an onsite waste disposal system since it handles industrial waste.

Subrule 69.1(3)"b" pertains to discharge restrictions for onsite wastewater treatment systems. "It is prohibited to discharge any wastewater from onsite wastewater treatment and disposal systems (except under an NPDES permit) to any ditch, stream, pond, lake, natural or artificial waterway, county drain tile, surface water drain tile, land drain tile or to the surface of the ground. Under no conditions shall effluent from onsite wastewater treatment and disposal systems be discharged to any abandoned well, agricultural drainage well or sinkhole. Existing discharges to any of the above-listed locations or structures shall be eliminated by constructing a system which is in compliance with the requirements of these rules." Even if this wastewater treatment system were to be considered an onsite wastewater treatment system, it is prohibited to discharge to the surface of the ground from such a system without an NPDES permit.

**V. ORDER**

THEREFORE, the Department orders Goldsmith and Son, the Goldsmiths, and J & G to comply with the following provisions to cease, abate and redress violations:

1. Goldsmith and Son, the Goldsmiths, and J & G are required to cease truck washing activities at the J & G business site at 5400 Lewis Blvd. South, Sergeant Bluff, Iowa and to cease the unauthorized discharges of wastewater to the current wastewater disposal system at such site immediately.
2. By July 1, 2007, Goldsmith and Son, the Goldsmiths, and J & G are required to properly remove the existing wastewater disposal system for the truck washout facility at 5400 Lewis Blvd., Sergeant Bluff, Iowa and to notify Field Office No. 3 in writing when the removal has been completed.
3. Goldsmith and Son, the Goldsmiths and J & G are assessed an administrative penalty of \$10,000.00, payable as follows. The amount of \$5,000.00 is due by August 1,

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2007. The remainder of the penalty is waived if truck washing ceases on this property and the unauthorized waste disposal system is removed from this property by July 1, 2007. If truck washing does not cease and the unauthorized waste disposal system is not removed from this property as required by this order by July 1, 2007, the remaining penalty of \$5,000.00 is due by September 1, 2007. If you appeal this order as outlined in Section VII below, the penalty is not due until the appeal is resolved by a final administrative order, final court order or agreement of the parties.

**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. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Environmental Protection 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 these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a penalty. The administrative penalty assessed by this order is determined as follows:

**a. Economic Benefit** A considerable amount of money has been saved by the failure to properly dispose of the wastewater generated by the truck washout. The costs associated with removing the unauthorized waste disposal facility, connection to a City sewer system or constructing a permitted wastewater treatment facility have been avoided. The costs of washing trucks at another facility since J & G began renting the property have also been avoided by continued use of the unauthorized wastewater disposal system at issue in this referral. Therefore, \$5,000.00 is assessed for economic benefit.

**b. Gravity of the Violations** Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. The discharge of untreated or partially treated wastewater from the facility's current wastewater disposal system may potentially cause a threat to shallow groundwater used as a drinking water source. The surface discharge of untreated or partially treated wastewater may also pose a health risk to employees or visitors at the facility. Based on these considerations \$2,000.00 is assessed for gravity of the violation.

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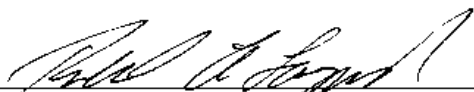
**c. Culpability** The Department made John Goldsmith aware on many occasions of the wastewater disposal regulations pertaining to this facility. John Goldsmith failed to connect to the City sewer system as he agreed to do and in the alternative failed to install a disposal system authorized and permitted by the Department. As a last alternative, this facility could have corrected the violations by ceasing the truck washout discharge and by removing the wastewater disposal system at issue in this referral. Since J & G began operating at this facility, truck washout has continued, although on a smaller scale. Wastewater from the truck washout continued to be discharged to the wastewater disposal system at issue in this order after J & G began operations at this site. Therefore, the amount of \$3,000.00 is assessed for culpability.

**VII. APPEAL RIGHTS**

Pursuant to Iowa Code section 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

**VIII. NONCOMPLIANCE**

Compliance with section "V. Order" constitutes full satisfaction of all requirements pertaining to the violations described in this order. 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 under Iowa Code section 455B.191.

  
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RICHARD E. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 4 day of  
May, 2007

Goldsmith and Son, Inc., John E. and Patti R. Goldsmith, J & G Pallet, L.L.C., Tom Roos- Field Office No. 3, Diana Hansen- Legal Services, U.S. EPA Region VII, I.C.1.