

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

IN THE MATTER OF: MARK WITT dba WITT AUTO SALVAGE; Monroe County, Iowa.	ADMINISTRATIVE CONSENT ORDER NO. 2007-SW- 17 NO. 2007-WW- 23
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**TO: Mark Witt
Witt Auto Salvage
1178 Hwy 137
Eddyville, IA 52553**

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Mark Witt, doing business as Witt Auto Salvage, (Witt) and the Iowa Department of Natural Resources (Department) in order to resolve continuing violations at a salvage yard in Monroe County, Iowa.

The parties hereby agree that Witt shall:

- By January 1, 2008, remove and properly dispose of all waste tires currently stored at the subject property;
- By December 1, 2007, prepare and implement a Pollution Prevention Plan designed to ensure proper management of waste fluids, batteries, and other wastes related to the storage, maintenance, and repair of automobiles on the subject property; and
- An administrative penalty of \$8,000 is assessed, effective January 15, 2008. However, the penalty may be reduced to the sum of \$2,500 pursuant to the terms set forth herein.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Bill Gross
IDNR Field Office #5
401 SW 7th Street, Stc. 1
Des Moines, IA 50309
Ph: 515-725-0268

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

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

Mark Witt

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any Order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; 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 (water quality), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Mark Witt operates an automobile salvage yard in Monroc County using the name Witt Auto Salvage. The business is located on over 40 acres in Section 10 and Section 15, comprised of three separate parcels. This site is referred to herein as the subject property.

2. On December 18, 1995, the Department received a complaint alleging improper handling of used oil at the subject property. A site visit was conducted on July 11, 1996. Violations were not discovered. A stormwater permit application was left at the site on this date.

3. On July 17, 1996, the Department sent a letter to Witt requiring the submission of a storm water permit application within sixty days. A storm water permit was obtained in 1996.

4. On June 31, 2001, the Department received a complaint alleging the improper handling of discarded appliances at the subject property.

5. On November 4, 2001, the Department inspected the subject property. The inspection disclosed the illegal processing of discarded appliances. Pools of waste oil were observed at the site and discarded batteries were observed scattered on the property. Witt was observed to have more than 3500 waste tires stored at the site. A storm water permit had been obtained previously, but a Pollution Prevention Plan had not been prepared as required and the permit had expired. A Notice of Violation was issued on November 13, 2001, which established a compliance deadline of January 15, 2003.

6. On November 7, 2002, the Department inspected the subject property. It was determined that a storm water permit application had not been submitted by that date. Violations continued in regard to battery and waste tire storage. A Notice of Violation was issued on November 7, 2002. The Notice established a deadline of January 15, 2002 to submit a storm water permit application, prepare a Pollution Prevention Plan, and

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

Mark Witt

properly store all batteries. In December of 2002, a storm water permit application was submitted to the Department.

7. On May 12, 2006, the Department inspected the subject property. All appliances had been removed from the subject property by that date. It was determined that the last storm water permit had expired in December 2003 and had not been renewed. The Department estimates that over 14,000 waste tires were located on the site on the date of inspection. A Notice of Violation was issued on May 24, 2006.

8. On February 27, 2007, Witt applied for storm water general permit coverage and paid all current and back permit fees.

9. On May 24, 2007, Witt reported that the removal of all solid waste, including waste tires, was underway and that a concrete pad and catch basin were being installed for storm water runoff control.

10. On August 31, 2007, the Department inspected the subject property. No appliances were observed. Some soil contamination was observed, but Mr. Witt indicated a procedure was in place for regular removal of the contaminated soil. It appeared that few, if any, waste tires had been removed as of this date.

IV. CONCLUSIONS OF LAW

The Department and Witt agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC Chapters 100-121.

2. Iowa Code section 455B.307(1) and 567 IAC 100.4 prohibit dumping or depositing or permitting dumping or depositing of any solid waste at any place other than a facility permitted by the Department, unless otherwise provided by rule. The above facts disclose violations of these provisions.

3. Iowa Code section 455D.11(1)"d" and 567 IAC 117.2 define "tire collector" as, in part, a person who owns or operates a site used for the storage, collection, or deposit of more than five hundred waste tires or an authorized vehicle recycler who is licensed by the state department of transportation pursuant to 321H.4 and who owns or operates a site used for the storage, collection or deposit of more than three thousand five hundred waste tires.

4. Iowa Code section 455D.11B and 567 IAC 117.4(2) require a tire collector to

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

Mark Witt

obtain a permit from the Department. The above-stated facts disclose a violation of these provisions.

5. Iowa Code section 455D.11A and 567 IAC 117.7 require a tire collector to post financial assurance to provide for the closure of the waste tire collection facility. The above-stated facts disclose a violation of these provisions.

6. Iowa Code section 455B.173(3) authorizes the Environmental Protection Commission to adopt rules relating to the operation of and issuance of permits to waste disposal systems. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Commission has adopted federal regulations pertaining to the issuance of National Pollutant Discharge Elimination System (NPDES) permits for storm water discharge, at 567 IAC 60.2 and 64.3 through 64.16. Pursuant to rule 60.2, "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. Number 6 under this definition includes "Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including, but not limited to, those classified as Standard Industrial Classifications 5015 and 5093."

7. Subrule 64.4(2) provides that the Director may issue general permits which are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(1) adopts Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 1. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the Department to the contrary. Subrule 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 disclose a violation of these provisions.

8. General Permit No. 1, Part IV, provides that the permittee must develop and implement a "pollution prevention plan" in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the plan. Plans must be updated to address changes in a facility's design and operation, and must be modified to address deficiencies noted by the Department. The above-stated facts disclose a violation of these provisions.

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

V. ORDER

The Department orders and Witt hereby agrees to:

1. By January 1, 2008, remove and properly dispose of all waste tires currently stored at the subject property:
2. By December 1, 2007, prepare and implement a Pollution Prevention Plan designed to ensure proper management of waste fluids, batteries, and other wastes related to the storage, maintenance, and repair of automobiles on the subject property; and
3. An administrative penalty of \$8,000 is hereby assessed, effective January 15, 2008. However, the penalty may be reduced to the sum of \$2,500 as follows: For each \$2 spent by Witt for the proper disposal of waste tires, the administrative penalty shall be reduced by \$1. The minimum administrative penalty assessed on January 15, 2008 shall be \$2,500. Receipts and other records verifying costs for proper disposal must be submitted no later than January 11, 2008 in order for Witt to receive the applicable reduction.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the stormwater violations involved in this matter. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 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 order with a penalty. The administrative penalty assessed by this Order is determined as follows:
 - a. Economic Benefit. Witt has achieved an economic benefit from the failure to maintain storm water permit coverage and to develop and implement a Pollution Prevention Plan. Costs saved include permit fees, preparation costs, costs to implement a Pollution Prevention Plan, and reporting costs. The avoided fees related to the subject property total \$1,050. Witt has also achieved an economic benefit from his failure to properly dispose of waste tires. Costs avoided include disposal fees, labor, and hauling costs. Tire disposal costs range from \$1.19 per tire to \$2.90, depending upon methods of collection, the difficulty of collection by a third party, and the transportation arrangements. Using the more conservative estimate, Witt has avoided \$16,660 in tire

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

disposal costs. The assessment of an administrative penalty with the potential for reduction is designed to minimize the economic benefit to Witt. \$2,500 of the initial penalty is attributable to 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. The illegal open dumping of waste tires poses a risk to human health and the environment. Waste tires stored outdoors provided breeding areas for mosquitoes and other pests. Failure to comply with the requirements for obtaining a storm water permit and developing and implementing the Pollution Prevention Plan undermines the effectiveness of all water quality regulations and endangers the water supply for surrounding rural residents. Without compliance with a Pollution Prevention Plan, there is an increased risk that contamination from appliances and vehicles on the property, including PCB's, mercury, waste oil, transmission fluid, antifreeze, and other chemicals will enter the surface waters of the state through storm water discharges. Based on the above considerations and the multiple days of violation, \$3,000 is assessed for this factor.

c. Culpability. Witt has been informed of the applicable regulations. Witt has previously obtained stormwater permit coverage but has failed to maintain such coverage. Witt has failed to complete the most important component of the stormwater permit program, the preparation of the Pollution Prevention Plan. The Pollution Prevention Plan is intended to determine and implement the management practices necessary to protect the waters of the state. The payment of a fee, without undertaking adequate prevention measures renders the permit meaningless. Witt has been given the opportunity to achieve compliance and has willfully failed to do so. Based upon these factors and the multiple days of violation, \$2,500 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

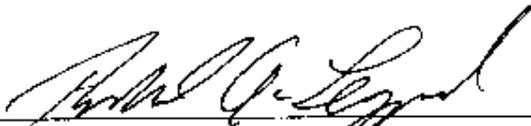
Iowa Code section 455B.175 and 455B.308 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Witt. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.175 and 455B.307. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Mark Witt

address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 10 day of
December, 2007



MARK WITT
WITT AUTO SALVAGE

Dated this 15th day of
Nov, 2007

Field Office #5; Jon Tack; I.C.(7)(a); V.I.C; EPA

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