

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

Jeff Grooms, d.b.a. Floris One Stop

UST NO. 198912037

ADMINISTRATIVE ORDER

NO. 2010-UT-06

**Mail To: Jeff Grooms
1504 Mowrey Avenue
Ottumwa, IA 52501**

I. SUMMARY

The administrative order (Order) requires Mr. Jeff Grooms, d.b.a. Floris One Stop to complete a third-party compliance inspection and provide proof of financial insurance on his underground storage tanks (USTs), or properly close the USTs in compliance with Department rules, pay overdue tank management fees, and pay a \$3,500 administrative penalty for his noncompliance. See Section IV and V for more information. Mr. Grooms has 30 days in which to appeal this Order.

For questions regarding this Order contact the following:

Relating to technical requirements: Relating to Legal Issues:

Paul Nelson
Iowa Department of Natural Resources
502 E 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-8779

Tamara Mullen, Attorney
Iowa Department of Natural Resources
502 E 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-8934

II. JURISDICTION

This Order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476 which authorize the Director to issue any order necessary to secure compliance with Iowa Code Chapter 455B, Division IV, Part 8 and Environmental Protection Commission (Commission) rules contained in 567 Iowa Administrative Code (I.A.C.) Chapter 135. Iowa Code section 455B.109 and Commission rules at 567 I.A.C. Chapter 10 authorize the Director to assess administrative penalties up to \$10,000. Iowa Code section 17A.10 authorizes the use of informal settlements.

III. STATEMENT OF FACTS AND CONCLUSIONS OF LAW

1. Iowa Code section 455B.474(1)(i) authorizes the Commission to adopt rules to establish an UST third-party certified compliance inspection program. Commission rule 567 I.A.C. 135.20 requires UST owners and operators to retain a compliance inspector certified by the Department under 567 I.A.C. Chapter 134, Part B, to complete a facility inspection and

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submit a report by December 31, 2007. Compliance inspections are subsequently required to be performed on a biennial basis.

2. Mr. Jeff Grooms is the registered owner and operator of four USTs (two 4,000-gallon tanks and two 500-gallon tanks) located at 104 E. Main, Floris, IA 52560. Mr. Grooms bought the site in November 2005.
3. On January 9, 2007, the Department mailed a letter informing Mr. Grooms of the December 31, 2007 deadline to complete a compliance inspection.
4. The Department mailed a second letter on October 17, 2007 reminding Mr. Grooms that he had not completed an inspection and that the inspection report was due no later than December 31, 2007.
5. On November 5, 2007, the Department posted a list of uninspected sites, including this site, on its webpage for compliance inspectors to contact.
6. On June 10, 2008 the Department mailed a "Notice of Violation" letter to Mr. Grooms for his failure to complete an inspection report. The notice required submittal of the report no later than July 11, 2008.
7. To date, Mr. Grooms has failed to complete a compliance inspection and submit a report for 2007.
8. A third-party compliance inspection must be completed every two years; thus another compliance inspection was due by December 31, 2009. To date, Mr. Grooms has not submitted the 2009 compliance inspection report.
9. Owners and operators of a tank over 1,100-gallon capacity must submit a tank management fee of \$65 per tank by January 15th of each year. See 567 I.A.C. 135.3(5)"b". Failure to pay on time triggers a mandatory \$250 per tank late fee. See IOWA CODE section 455B 473(8).
10. Mr. Grooms owns two 4,000-gallon tanks and failed to pay tank management fees in 2006, 2008, and 2009.
11. Pursuant to Iowa Code 455B.474(2) and 567 I.A.C. chapter 136, owners and operators of USTs must have financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by the release of a regulated substance from an UST. Financial responsibility must be maintained until permanent closure. See 567 I.A.C. 136.22.
12. Mr. Grooms has failed to provide the Department with proof of financial responsibility since he acquired ownership in 2005.

IV. ORDER

THEREFORE, the Department hereby orders Mr. Grooms to comply with the following:

1. Mr. Grooms shall retain a Department-certified compliance inspector no later than April 15, 2010 and complete an initial compliance inspection no later than May 15, 2010. Mr.

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Grooms shall correct any violations as a result of the inspection in accordance with Department rule 567 I.A.C. 135.20 and submit a final report to the Department no later than June 15, 2010.

2. Mr. Grooms shall pay \$1,890 in overdue tank management fees and late penalties to the order of the "Iowa Department of Natural Resources" within 30 days of receipt of this Order, calculated as follows: $3 \times ((\$65 \times 2) + (\$250 \times 2))$.
3. Mr. Grooms shall provide proof of financial responsibility to the Department **OR** permanently close the UST system in accordance with the standards in 567 I.A.C. 135.15(2) within 30 days of receipt of this Order.
4. Mr. Grooms shall pay a penalty of \$3,500 to the order of the "Iowa Department of Natural Resources" within 30 days of receipt of this Order.

V. PENALTY

Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 I.A.C. 10. Pursuant to this rule, 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.

ECONOMIC BENEFIT: Mr. Grooms has saved the cost of not paying for a third-party compliance inspection not paying tank management fees, or maintaining financial insurance. As such, \$2,000 is assessed for this factor.

GRAVITY: By failing to complete compliance inspections, maintain insurance or properly close the tanks, and by failing to pay tank management fees, Mr. Grooms is undermining the UST regulatory program and its important goal of protecting the environment and public health from the threat posed by the release of a regulated substance. As such, \$500 is assessed for this factor.

CULPABILITY: Mr. Grooms has been informed multiple times of the requirements to complete a third-party compliance inspection since the rule went into place in 2007. Additionally, by being an owner and operator of USTs, Mr. Grooms is obligated to comply with the laws and regulations of the state governing these systems; this knowledge is imputed to him, but his previous tank management fee payments and prior maintenance of financial responsibility shows his understanding of the law. Thus, his current noncompliance is knowing and willful. Therefore, \$1,000 is assessed for this factor.

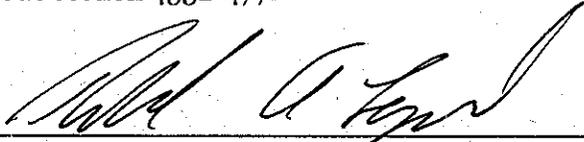
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VI. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 I.A.C. 7. You may contact Tamara Mullen, Attorney for the Department, at (515) 281-8934 for more information regarding appeal procedures and resolution of this Order.

VII. NONCOMPLIANCE

Compliance with Section V of this 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 administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.477.



Dated this 30 day of March, 2010.

**RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES**

Jeff Grooms, d.b.a. Floris One Stop: Field Office 5; Elaine Douskey, Paul Nelson; V.C. and I.