

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:

Gaylord Construction, Inc.

Hardin County, Iowa

ADMINISTRATIVE ORDER
NO. 2011-WW-02

TO: Linda Thompson Registered Agent
2748 241st Street
Fort Madison, IA 52627

Samuel Gaylord
2750 241st Street
Fort Madison, IA 52627

I. SUMMARY

This administrative order (order) requires Gaylord Construction, Inc. (Gaylord Construction) to cease all illegal discharges to waters of the state and pay an administrative penalty.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Jeremy Klatt, Environmental Specialist

IDNR Field Office #2
2300 15th St SW P.O. Box 1443
Mason City, IA 50401
641/424-4073

Legal requirements/Appeal Rights:

Carrie Schoenebaum,
Attorney at Law
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
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 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. Gaylord Construction is a construction company with a corporate office located in Fort Madison, Iowa.

2. On April 9, 2010, Mr. Bruce Hatfield pulled over at the Logsdon Park rest area, which is south of Iowa Falls. While at the rest area he observed a man get out of his truck and walk to the river where he dumped dark liquid out of a catch pan used for changing oil. Mr. Hatfield recorded the license plate of the vehicle. Later, that same day, Mr. Hatfield returned to the area where he saw the man dump the dark liquid. On the ground he observed what he believed to be oil. He then called the Hardin County Sheriff.

3. On April 9, 2010, at 4:00 pm Jeremy Klatt, an environmental specialist with the Department, spoke with Doug Riggs, Emergency Management Coordinator for Hardin County. Mr. Riggs indicated that the Buckeye Fire Department was on-site and was digging the oil contaminated soil from the stream bank. He estimated that 6 quarts had been discarded and the majority of the oil was on the stream bank. Mr. Klatt asked Mr. Riggs to collect a sample that Mr. Klatt could have analyzed by the University of Iowa Hygienic Laboratory (UHL).

4. On April 14, 2010, Jeff Vansteenburgh, Environmental Program Supervisor of the Department's Field Office No. 2, and Mr. Klatt participated in a conference call with representatives of Gaylord Construction. Tom Schroeder, a mechanic for Gaylord Construction, was the driver of the vehicle observed by Mr. Hatfield and he participated in the call. Mr. Schroeder stated that he was at the park on April 9, 2010 and the truck he was driving was an oiler truck which has the capacity to store oil. He further stated that the spill had occurred while he was at the park. However, he claimed that the spill was properly cleaned up. Mr. Schroeder also indicated that he walked around the park and took a nap next to a tree but denied that he dumped anything into the river. Mr. Vansteenburgh informed him about the sample and said he was waiting for laboratory results before proceeding.

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5. Following the phone call Mr. Klatt met Mr. Riggs at Logsdon Park to observe the dump area and take photographs. Mr. Klatt observed a path of stained ground that started in grass, approximately 20 feet from the river's edge. It looked as though the container had begun spilling or leaking prior to the material being dumped into the river. Mr. Riggs indicated that he observed this trail of oil when he first arrived at the park on April 9, 2010, to investigate. Some oil residue was still apparent on the vegetation and dirt along the stream bank. Mr. Klatt took additional samples of the soil. While collecting a sample some of the dirt fell into the river and an oil sheen was immediately apparent.

6. On April 29, 2010, the Department received the sampling results from UHL for the sample taken on April 9, 2010. The results indicated petroleum based hydrocarbons were present in the soil as set out below:

Analyte	Concentration mg/kg	Quantitation Limit mg/kg
Gasoline	<13000	13000
Mineral Spirits	<13000	13000
Kerosene	<13000	13000
Diesel Fuel	<13000	13000
Motor Oil	77000	13000
Total Extractable Hydrocarbons	77000	13000

7. On April 29, 2010, the Department received the sampling results from UHL for the sample taken on April 14, 2010. The results indicated petroleum based hydrocarbons were present in the soil as set out below:

Analyte	Concentration mg/kg	Quantitation Limit mg/kg
Gasoline	<13000	13000
Mineral Spirits	<13000	13000
Kerosene	<13000	13000
Diesel Fuel	<13000	13000
Motor Oil	66000	13000
Total Extractable Hydrocarbons	66000	13000

IV. CONCLUSIONS OF LAW

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1. Iowa Code section 455B.186 and 567 IAC 62 1(1) prohibits the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. Because no such permit has been issued for the discharge referenced herein, the foregoing facts establish that this provision has been violated.

V. ORDER

THEREFORE, the Department orders Gaylord Construction to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Cease all illegal discharges to waters of the state; and
2. Pay a penalty of \$4,000.00 within 30 days of the date that the Director of the Department signs this order.

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. In addition, Iowa Code section 455B.109 authorizes the Environmental Protection Commission (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 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 the assessment of penalties.

2. **Economic Benefit:** Gaylord Construction saved time and money through the illegal disposal of motor oil. However, in an effort to settle this case the Department has decided not to assess a penalty for this factor.

3. **Gravity of the Violation:** Oil contains hazardous substances including benzene, toluene, xylene and ethylbenzene. Used oil may also contain heavy metals such as polychlorinated biphenyls (PCBs). The hazardous substances in oil are harmful to aquatic life and have the potential to accumulate in the ecosystem and concentrate in the food chain. In addition, significant costs were incurred by the government in detecting, documenting and responding to the incident. Such costs were incurred by the mobilization of the Buckeye Fire Department, Hardin County Sheriff's Department and the County Emergency Management Coordinator. Costs were also incurred to properly dispose of and analyze the contaminated soil. Therefore, \$2,500.00 is assessed for this factor.

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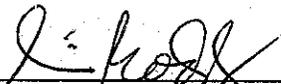
4. **Culpability:** It is common knowledge that oil causes environmental harm and that there are significant regulations which make such an action illegal. Moreover, this was an intentional dumping of oil into a water of the state which shows a complete disregard for environmental law. Therefore, \$1,500.00 is assessed for culpability.

VII. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director, at the address provided above, 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 IAC 7. You may contact Carrie Schoenebaum, attorney for the Department, at (515) 281-0824 for more information regarding appeal procedures and resolution of this order.

VIII. 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 additional administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



Patricia L. Boddy, Interim Director
Iowa Department of Natural Resources

Dated this 13 day of

January, 2011.

Gaylord Construction, Field Office 2, Carrie Schoenebaum; Jeremy Klatt, I.C. 1., & I.C. 6.a.