

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF:**Keith Durand, d/b/a Durand Construction****ADMINISTRATIVE ORDER
NO. 2011-WW-01**

TO: Keith Durand
1601 E. State Highway 9 and 96
Dallas City, IL 62330

I. SUMMARY

This administrative order (order) is entered into between Keith Durand d/b/a Durand Construction and the Iowa Department of Natural Resources (Department). Mr. Durand is hereby ordered to comply with the Department's rules regarding commercial cleaning of private sewage disposal facilities and to pay a penalty of \$500.00.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Dan Olson, Senior Environmental
Specialist
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8263

Legal Issues/Appeal:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

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 December 7, 2009, the Department received a complaint from Diane Septer of the Lee County Health Department, stating that Mr. Durand was operating in Iowa as a

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commercial septic tank cleaner without a license. Ms. Septer indicated that she had discussed the licensing requirements with Mr. Durand and he did not express interest in obtaining the necessary license.

2. On December 14, 2009, the Department sent Mr. Durand a letter which stated that the Department had become aware that Mr. Durand was operating as a commercial septic tank cleaner in Lee County, Iowa, without a current Iowa Commercial Septic Tank Cleaner license. This letter informed Mr. Durand that 567 IAC 68.3 requires that commercial septic tank cleaners annually apply for and obtain a license from the Department before engaging in the commercial cleaning of and disposal of septage from any private sewage disposal system in Iowa and 567 IAC 68.5 allows for civil penalties to be assessed for violations of this rule.

3. On December 21, 2009, Mr. Durand called Dan Olson, Senior Environmental Specialist for the Department, to inform him that he had received the letter and he was upset because the Department copied the Illinois Department of Public Health.

4. During the week of May 24, 2010, Terry Krieger, a certified time of transfer inspector, contacted Dan Olson regarding two instances in which Mr. Durand had pumped septic tanks during transfer of ownership inspections pursuant to Iowa Code section 455B.172(11). Mr. Krieger was concerned because he had learned that Mr. Durand was not properly licensed in Iowa.

During that same week, Ms. Septer faxed a copy of a transfer of ownership inspection document which showed that Mr. Durand had completed the cleaning of the septic system at 2306 220th Street Donnellson, Iowa. On June 1, 2010, Mr. Olson received a second fax from Ms. Septer which showed that Mr. Durand had been the pumper for Mr. Krieger for an inspection done at 3454 175th Street Wever, Iowa.

5. On May 26, 2010, Mr. Durand called Mr. Olson and stated that he had spoken with Mr. Krieger. Mr. Durand said, "Terry Krieger tells me you're all upset about me pumping tanks in Iowa without a license." Mr. Olson replied "shouldn't I be? You did pump those tanks without a license, didn't you?" Mr. Durand replied, "yes, now we are even because you had no business contacting Illinois about this." Mr. Olson replied that the Department cooperates with surrounding states to assist in compliance. Mr. Olson asked Mr. Durand if he would get a license in Iowa and Mr. Durand stated no.

CONCLUSIONS OF LAW

The parties agree that the following conclusions of law are applicable to this matter.

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1. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems. The Commission has done so at 567 IAC chapters 68. Subrule 68.3 states "[c]ommercial septic tank cleaners must annually apply for and obtain a license from the department before engaging in the commercial cleaning of and disposal of septage from any private sewage disposal system in the state of Iowa." The above stated facts show non-compliance with this provision on at least 2 occasions

V. ORDER

THEREFORE, it is hereby ordered that Keith Durand do the following:

1. Mr. Durand shall obtain the necessary license before engaging in the commercial cleaning of and disposal of septage from any private sewage disposal system in the state of Iowa.
2. Mr. Durand shall pay a penalty of \$500.00 within 30 days of the Director of the Department signing this order.

VI. PENALTY

567 IAC 68.5 (2) authorizes the assessment of a civil penalty not to exceed \$250.00 for violations of the commercial septic tank cleaners rules. Each day a violation continues is a separate offence. Because the Department has evidence that Mr. Durand engaged in the commercial cleaning of and disposal of septage from two separate private sewage disposal systems in the state of Iowa on two separate occasions a penalty of \$500.00 is assessed.

VII. APPEAL RIGHTS

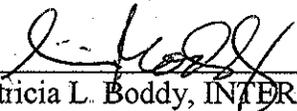
A written Notice of Appeal may be filed with the Director, at the address provided above, within 30 days of your receipt of this order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. You may contact Carrie Schoenebaum, attorney for the Department, at (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

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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.

Keith Durand; Dan Olson; Carrie Schoenebaum; I.B.2.c.