

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

<b>IN THE MATTER OF:</b>  <b>City of Wilton</b>  <b>Wastewater Facility No. 6-70-78-0-01</b>	<b>ADMINISTRATIVE CONSENT ORDER NO. 2014-WW- 11</b>
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**TO: Mayor and Council Members**  
**City of Wilton**  
**104 E. 4<sup>th</sup> Street, P.O. Box 27**  
**Wilton, Iowa 52778**

**I. SUMMARY**

This administrative consent order (order) is entered into between the City of Wilton (City) and the Department of Natural Resources (Department). The order is issued due to violations of NPDES permit effluent limits by the wastewater treatment facility (WWTF) serving the City. This order includes a construction schedule for an upgrade to the City's WWTF in order to meet the effluent limits that will be included in the City's reissued NPDES permit. This order assesses an administrative penalty of \$1,500.00.

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

**Relating to technical requirements:**

Terry Jones, Environmental Specialist  
IDNR Field Office No. 6  
1023 W. Madison  
Washington, Iowa 52353-1623  
Ph: 319/653-2135

**Relating to legal requirements:**

Diana Hansen, Attorney at Law  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Ph: 515/281-6267

**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.

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**III. STATEMENT OF FACTS**

1. The City's WWTF consists of an influent pump station, a spirogester (primary clarification), two trickling filters, two final clarifiers, an aerobic digester, a sludge storage tank, and two storm water retention tanks. Three lift stations serve the collection system.

2. Treated wastewater from the WWTF is discharged to Mud Creek pursuant to Iowa NPDES Permit No. 6-70-78-0-01. The current NPDES permit for this WWTF was issued on July 9, 1996 and expired on July 1, 2001. Since the City filed timely for renewal of the NPDES permit, the NPDES permit continues to be in effect until reissued by the Department. The NPDES permit contains effluent limitations for the discharge of pollutants, including but not limited to carbonaceous biochemical oxygen demand (CBOD5), total suspended solids (TSS), ammonia nitrogen (NH3-N), iron, and pH.

3. A compliance check by Field Office No. 6 (FO 6) on August 19, 2013 indicated that the City's WWTF was not in compliance with NPDES permit effluent limits for ammonia nitrogen and iron for 2012 and 2013. Renewal of the City's NPDES permit was not recommended due to the chronic ammonia nitrogen and iron exceedances. On September 12, 2013, FO 6 sent a letter to the City notifying the City of the chronic ammonia nitrogen and iron exceedances identified by the compliance check. The City was required to provide a written response concerning the specific action that the City would take to return the facility to compliance.

4. By a letter dated October 11, 2013, the City's engineer submitted a letter on behalf of the City. The letter stated that the current trickling filter system would not be able to comply with the more stringent ammonia nitrogen limits listed in the Wasteload Allocation (WLA) for the City. The engineer recommended that the trickling filter be replaced with a Sequencing Batch Reactor (SBR) system. The engineer indicated that the City would proceed with implementing improvements as soon as the Department issued a new NPDES permit or provided other direction for the City. The engineer also informed the Department that the WLA did not address the iron limits and requested that the need for iron limits be reviewed. The Department revised the WLA to include iron.

5. On January 24, 2014, City representatives and the City engineer met with Department NPDES Section staff. It was determined that the new NPDES permit would contain less stringent iron limits based on the revised WLA, which should allow the City to more consistently comply with NPDES permit limits. The City was informed that an anti-degradation analysis would need to be completed in order to receive the less stringent limits. The City was also informed that the anti-degradation analysis was required to be completed prior to reissuance of the NPDES permit.

6. It was agreed at the January 24, 2014 meeting that the City could not meet the more stringent ammonia nitrogen limits in the WLA without an upgrade to the WWTF.

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Issuance of an administrative order was discussed to address the current ammonia nitrogen limit violations. NPDES Section staff indicated that the order would include a construction schedule outlining steps the City would be required to take to comply with the NPDES final ammonia nitrogen limits. It was indicated that the order would also include a schedule for meeting the *E. coli* effluent limits established by the WLA. NPDES Permits staff informed the City and its engineer that the Department would be able to reissue the NPDES permit with the compliance schedule following issuance of this order.

7. Monthly Operation Report (MOR) compliance reviews conducted by FO 6 prior to wastewater inspections completed in February 2010 and in November 2012 did not identify significant permit exceedances for iron or ammonia-nitrogen although a few exceedances were noted in each report. It was not until an August 2013 compliance check was completed that FO 6 determined that iron and ammonia non-compliance had risen to the level of "significant non-compliance".

8. Review of MOR data from January 1, 2012 through December 31, 2013 (24 months) shows the City exceeded its NPDES 30-day average ammonia nitrogen concentration limits five (5) times and the 30-day average ammonia nitrogen mass limitations one (1) time. The daily maximum ammonia nitrogen concentration limits were exceeded 16 times (192 total samples at 2 per week) and the daily maximum ammonia nitrogen mass limits were exceeded three (3) times. In that same time period, both the 30-day average concentration and 30-day average mass iron limits were exceeded seven (7) times, the daily maximum iron concentration limits were exceeded 24 times (96 total samples at 1 per week), and the daily maximum iron limits were exceeded 29 times. The total number of ammonia nitrogen and iron permit exceedances was 92; there were 25 exceedances for ammonia nitrogen and 67 exceedances for iron. None of the other NPDES effluent parameters were exceeded for this review period.

9. On December 21, 2012, FO 6 issued a Notice of Violation letter to the City for wastewater facility effluent limit violations for ammonia nitrogen. The violations were discussed in the inspection report. The inspection report also noted that the east filter was observed leaking at the bottom of the grout line and that the distributor arm bearing in the west tower was compromised. The inspection report required the City to meet all effluent limits in the NPDES permit and to maintain the WWTF in good working order at all times.

10. By a letter dated September 5, 2014, the City presented information to the Department summarizing the steps that the City has taken toward compliance since 2010. The City hired an engineering consultant to develop and submit a facility plan for the WWTF in November 2010. The City recognized that the filters at the existing trickling filter plant were not capable of meeting the proposed more stringent ammonia limits and that the WWTF did not have disinfection. The facility plan identified Priority A

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Improvements, including new screening facilities. These facilities were constructed and placed into operation in August 2013.

11. The City informed the Department in its September 5, 2014 letter that the City has addressed the leaking east filter and similar issues either through repairs made by plant staff or other improvements made as part of the Priority A Improvements described in the facility plan. The City maintains that there are no other lingering WWTF issues except for meeting the proposed new effluent limits for ammonia and disinfection requirements.

12. The September 5, 2014 letter from the City stated that the City proactively engaged an engineering consultant in March 2012 to develop recommendations on the water and sewer rates for the City. The consultant's recommendations concerning water and sewer rates were adopted by the City. The new sewer rates were established to prepare the City for the major expense of the construction of the SBR treatment unit to address ammonia and the disinfection construction project.

13. The City's position, as expressed in its September 5, 2014 letter, is that the City has been proactively preparing for improvements at the WWTF to enable the WWTF to comply with the anticipated NPDES permit discharge limits and disinfection requirements as demonstrated by submittal of the facility plan for improvements to the WWTF in 2010 and by adopting new sewer rates in 2012. The consultant indicated in the facility plan that projected construction costs would be \$3,945,000.00 for the SBR treatment unit and the disinfection unit. These costs were in addition to the costs of completing the Priority A Improvements.

14. This order is issued to establish a construction schedule for improvements to the City's WWTF to enable the WWTF to meet proposed NPDES permit limits for ammonia and disinfection requirements. Following issuance of the order, the Department can move forward with the NPDES permit renewal process.

#### **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.

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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.

3. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the construction and operation of WWTFs 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. Rule 64.6 specifies the conditions that are to be included in a permit, including applicable effluent limitations in chapters 61 and 62 of the rules and monitoring and reporting requirements in chapter 63. The City's WWTF discharges to a water of the state and is required to have an NPDES permit with effluent limitations, monitoring requirements and reporting requirements. Although this facility has operated under an expired NPDES permit, the NPDES permit has continued in effect since the City timely applied for renewal of this permit. There have been numerous violations of the permit effluent limitations for ammonia nitrogen and iron.

4. The NPDES permit for the City's WWTF requires that this WWTF be adequately operated and maintained. Standard condition No. 8 of the permit provides that all facilities and control systems shall be operated as efficiently as possible and maintained in good working order. This standard permit condition is based upon subrule 64.7(5)"f". This subrule states "the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities and systems of control to achieve compliance with the terms and conditions of the permit."

**V. ORDER**

THEREFORE, the Department orders and the City agrees to comply with the following provisions to cease, abate and redress violations:

1. The following construction schedule requires the City to make the improvements necessary to its WWTF to ensure compliance with the more stringent ammonia nitrogen limits and the *E. coli* limits that were developed by the WLA and which will be included in the reissued NPDES permit.

A. Complete a Self-Assessment Matrix and submit a Work Record Request form to DNR's Wastewater Engineering Section within 3 months from the issuance of the reissued NPDES permit.

B. Submit a progress report within 12 months of the effective date of the reissued NPDES permit.

C. Submit a Facility Plan within 15 months of the effective date of the reissued NPDES permit.

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- D. Submit a progress report within 24 months of the effective date of the reissued NPDES permit.
- E. Submit final plans and specifications within 30 months of the effective date of the reissued NPDES permit.
- F. Award a contract for construction of wastewater treatment improvements within 35 months of the effective date of the reissued NPDES permit.
- G. Submit a progress report within 44 months of the effective date of the reissued NPDES permit.
- H. Complete construction of wastewater treatment improvements within 51 months of the effective date of the reissued NPDES permit.
- I. Achieve compliance with all final ammonia nitrogen and *E. coli* limits within 52 months of the effective date of the reissued NPDES permit.

Within 14 days following all dates of compliance, the City is required to provide the Department with written notice of compliance with the scheduled event.

2. The City agrees to comply with the effluent limits and the monitoring and reporting requirements of its NPDES permit. This includes completion of all monitoring required by the NPDES permit and timely submittal of all MORs to FO 6. The City agrees to comply with the NPDES permit requirement to properly operate and maintain the existing WWTF.

3. An administrative penalty of \$1,500.00 is assessed. The administrative penalty shall be paid to the Department within 30 days of your receipt of this order signed by both 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 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 an administrative penalty. The administrative penalty assessed by this order is determined as follows:

a. **Economic Benefit** The iron and ammonia nitrogen permit exceedences by the City's WWTF were not considered to be significant until the compliance review was conducted by FO 6 in August 2013. Once notified by the Department in September 2013, the City

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agreed to upgrade its facility in order to meet permit effluent limits for ammonia nitrogen. There have been delayed costs in not upgrading the facility previously. Costs of facility improvements will eventually be incurred as the upgrades are completed. The construction schedule included in this order provides for a construction time frame that is reasonable to complete the necessary facility improvements. The amount of \$500.00 is assessed for this factor.

**b. Gravity of the violations** 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. As indicated above substantial civil and criminal sanctions are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. Wastewater that was discharged from the facility exceeded, and continues to exceed, permit limitations for ammonia nitrogen and iron on multiple occasions.

If a \$100.00 dollar penalty were assessed for each NPDES permit effluent limit exceedance, a total penalty of at least \$9,200.00 dollars could be assessed. However, a recent WLA established that iron limits will be relaxed and be less stringent in the City's reissued NPDES permit. If the iron limits listed in the recent WLA were used for the last MOR compliance review, there would have been 10 iron exceedances, none of which would have exceeded technical review criteria. Due to this, the iron violations will be excluded from the penalty calculation for this factor. The amount of \$2,500.00 is assessed for this factor, based on the multiple ammonia nitrogen violations.

**c. Culpability** The City has attempted to address ammonia and iron limit violations under the current NPDES permit. Beginning late 2012 and continuing all through 2013, the exceedances reached the level of significant noncompliance (SNC). The iron limit calculated for the revised NPDES permit will be different from the iron limit in the current NPDES permit and should result in more consistent compliance. The City is aware of the need for an upgraded facility due to the more stringent ammonia nitrogen limits that will be included in the revised NPDES permit and is willing to move forward once a revised permit is issued and direction is provided by the Department. The Department recognizes the City's actions to move forward with construction of the necessary improvements to enable the WWTF to meet new permit limits and disinfection requirements. Such efforts began with the hiring of an engineering consultant and the facility plan submittal in 2010 and continued with the construction of Priority A Improvements in 2013. Due to the City's actions, no penalty is assessed for this factor.

**d. Mitigating Factors** The City has acknowledged the need and expressed a willingness to address its non-compliance and has initiated dialog with the Department's NPDES Section to determine what action was needed for reissuance of its NPDES permit which

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expired on July 9, 2001. The City's willingness to move forward in this process and the City's progress in doing so, as outlined in its September 5, 2014 letter, can be viewed as a mitigating factor. Due to this, the penalty is reduced by \$1,500.00.

e. **Final Penalty** The final penalty amount assessed is set at \$1,500.00.

**VII. WAIVER OF APPEAL RIGHTS**

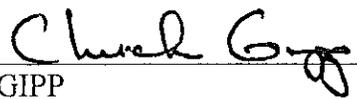
Iowa Code section 455B.175 and 561 IAC chapter 7, as adopted by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of the City. By signature to this order, the City waives all rights to appeal this order.

**VIII. NONCOMPLIANCE**

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

  
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IRA BOWMAN, MAYOR  
WILTON, IOWA

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014

  
\_\_\_\_\_  
CHUCK GIPP  
DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 13<sup>th</sup> day of October, 2014

City of Wilton- Wastewater Facility No. 6-70-78-0-01 (Copy to Central Office Wastewater File), Terry Jones and Deborah Quade- Field Office No. 6, Eric Wiklund and Ben Hucka- NPDES Section, Diana Hansen- Legal Services Bureau, US EPA Region VII, I.B.2.c.