

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

IN THE MATTER OF: Craig Burns	ADMINISTRATIVE CONSENT ORDER NO. 2007-WW-04
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TO: Craig Burns,
520 Walnut Dr.,
PO Box 1266
Postville, IA
52162

I. SUMMARY

This administrative consent order (order) is entered into between Craig Burns and the Iowa Department of Natural Resources (Department). Mr. Burns hereby agrees to have a structural inspection performed on the wastewater holding tank, cease operation of the wastewater holding tank, until the tank is certified as structurally sound (and water tight), obtain an Iowa operation permit and pay a penalty of \$4,000.00. Further, if Mr. Burns does not obtain a variance from the Department, he agrees to plug the private drinking water well (well) which is located within 400 feet of a wastewater disposal system holding tank. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions regarding this order should be directed to:

Relating to technical requirements:
Susan Miller, Field Office #1
Iowa Department of Natural Resources
990 W Main St. Ste 4
Manchester, Iowa 52057
Phone: 563/927-2640

Relating to legal requirements:
Carrie Schornbaum, Attorney
Iowa Department of Natural Resources
Wallace State Office Building
Des Moines, Iowa 50309
Phone: 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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**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Craig Burns**

II. JURISDICTION

The parties hereby agree that 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

The Department and Mr. Burns hereby agree to the following statement of facts:

1. Mr. Burns owns and operates a wastewater disposal system (disposal system) located at Lot A of SW NW (.74 A.) and part of SW NW (South of Lot A) (11A.) and part of East Part of West ½ NW (.95) of 7-95-5 1.80 A, in Clayton County, Iowa. This disposal system consists of a wastewater holding tank that is not permitted to discharge. This property is locally known as 16241 115th Street, Monona, Iowa (115 St.).

2. On March 4, 2002, Mr. Burns and Kevin Kerr filed, with the Iowa Secretary of State, Articles of Incorporation for Midwest Haulers, Inc. (Midwest Haulers). Midwest Haulers was a truck washing business located at 109 Bronson St. Luana, Iowa. On December 7, 2004, the Department received a complaint stating that Midwest Haulers' wastewater holding tank had overflowed into a nearby creek due to rain. On December 16, 2004, Joe Sanfilippo and Tom McCarthy of the Department went to Midwest Haulers. While onsite, he observed that a concrete basin was partly filled with manure and liquids, he also sensed a manure odor coming from the basin. However, at this time no run off was observed coming from the basin.

3. On February 4, 2005, Mr. McCarthy phoned Kevin Kerr and informed him of the complaint regarding runoff from Midwest Haulers' truck wash. Further, Mr. Kerr was informed that the truck wash required a construction permit from the Department and that he would be sent a certified letter that detailed the requirements.

4. On February 14, 2005, Kevin Kerr was sent a Notice of Violation (NOV) for failure to obtain a wastewater construction permit. This NOV demanded that within 60 days, Midwest Haulers submit as-built plans and specification to the Department so that it may obtain a construction permit and that within 60 days, Midwest Haulers have a licensed engineer make an operational and management evaluation of the existing facility.¹ To date Midwest Haulers has not complied with this request.

¹ Neither Mr. Burns nor Mr. McCarthy constructed the wastewater holding tank at 109 Bronson St., Luana, Iowa. This wastewater holding tank was in existence at the time they purchased the property.

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

5. On August 29, 2005, the Department received a citizen complaint concerning the operation of a manure pit by Mr. Burns at 109 Bronson Street. Following receipt of this complaint, Mr. McCarthy went to Midwest Haulers. While there, he observed a concrete basin that was partly filled with liquids. He also sensed a manure odor coming from the basin. Mr. McCarthy did not observe any runoff. Subsequent to the investigation, Mr. McCarthy called Midwest Haulers to inform it of the complaint. Mr. McCarthy also informed Mr. Burns that the facility needed a construction permit. On October 17, 2005, the Department received a complaint stating that trucks were being washed out into the wastewater basin. Attached to this letter were several photographs of a truck being washed into the wastewater holding tank. Following this, in a phone conversation between Mr. Burns and Mr. McCarthy, Mr. Burns, admitted to knowledge that the wastewater holding tank should not be used until the Department issued it a permit.

6. On November 15, 2005, an NOV was sent to Mr. Burns for failure to obtain a wastewater construction permit for the disposal system operated by Midwest Haulers at 109 Bronson Street. This NOV required that within 30 days Midwest Haulers submit as-built plans and specifications to obtain a construction permit and an operation permit. It also required that within 30 days a licensed engineer make an operational and management evaluation of the existing facility. To date Midwest Haulers has not complied with these requirements. However, on December 19, 2006, Mr. McCarthy inspected this site; he observed that the wastewater tank had been completely filled in with soil.

7. On July 3, 2006, Mr. Burns submitted an application for a construction permit for a disposal system to be located at 115 St.

8. On August 17, 2006, Bob Palla an Environmental Engineer Senior with the Department requested that Department Field Office 1 conduct a site survey of 115 St. The purpose of the site survey was to determine if the proposed location for the wastewater disposal system met the separation requirements of 567 IAC Chapter 64.

9. On September 7, 2006, Sue Miller an Environmental Specialist with the Department went to the 115 St. location to conduct a site survey. While at the site, she discovered that the wastewater holding tank had already been constructed. Mr. Burns reported that he constructed it "a couple of months ago." Mr. Burns acknowledged that he had already begun using the disposal system. Ms. Miller also discovered that the well was 200 feet from the wastewater holding tank rather than the mandatory 400 ft required by Iowa law. This well was installed on August 15, 2006, by B&B Drilling and it was permitted by Clayton County Iowa.

The inspection report required Mr. Burns to take the following actions:

- (1) Cease the trailer wash operation immediately and do not resume until all the Department's rules and regulation have been met;
- (2) Abandon and relocate the well so that the separation distance requirements of 567 IAC 64.2(3) are met;

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

- (3) Within 30 days submit as-built plans to Mr. Palla of the Department;
- (4) Within 30 days apply for an Iowa Operation permit;
- (5) Ensure that only livestock trailers use this facility; and
- (6) Plug the floor drains with concrete to prevent a prohibited discharge.

10. On September 22, 2006, an NOV was sent to Mr. Burns for operation of a disposal system without a construction permit and without an operation permit. This letter required Mr. Burns to immediately cease operation and not resume until the Department's requirements are met. Attached to this NOV was the September 7, 2006, inspection report.

11. On October 25, 2006, Mr. Burns submitted as-built plans to the Department.

12. On November 27, 2006, Mr. Burns reported to the Department an unauthorized discharge from the disposal system. Mike Wade an Environmental Specialist Senior with the Department and Ms. Miller went to the site to investigate. Once there, Mr. Burns told them that he discovered the disposal system was leaking on Friday, November 24, 2006. Mr. Burns said the tank was built with footing drains that outlet in a nearby drainage ditch. Mr. Burns said that the flow had been more substantial on Friday and that he had since pumped the tank down several feet and the flow had stopped. When Ms. Miller and Mr. Wade arrived on site they observed a small amount of liquid discharging and ammonia was detected in the tile outlet by a field test kit. Mr. Burns showed Ms. Miller and Mr. Wade where the flow had gone through a culvert, under the railroad tracks, and into a neighboring field.

13. On November 28, 2006, Mr. Burns was sent an NOV for discharging without an NPDES permit and for failure to report such discharge to the Department within 12 hours. This NOV reminded Mr. Burns that the facility should not be operated until the Department's rules and regulations are met.

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

14. On December 6, 2006, Mr. Burns was sent an NOV for violation of Iowa Code section 455B.186 and 567 IAC 63.6(2). Iowa Code section 455B.186 (2005) states: [a] pollutant shall not be disposed of by dumping, depositing or discharging such pollutant into any water of the state" 567 IAC 63.6(2) states "[i]n the event that bypassing of sewage or waste occurs as a result of mechanical failure or acts beyond the control of the owner ... owner shall notify the department by telephone of the bypassing within 12 hours of the time of discovery of the bypassing." This NOV required Mr. Burns to do the following:

- (1) Empty his wastewater holding tank of all its contents and land apply the material at a rate consistent with Iowa Wastewater Design Standards Chapter 21;
- (2) Have the wastewater holding tank inspected by a structural engineer for integrity and water tightness;
- (3) Obtain a structural engineer's certification of the wastewater holding tank so that the tank may be permitted; and
- (4) Cease using the wastewater holding tank until the Department issues a construction permit and an Iowa operation permit.

IV. CONCLUSIONS OF LAW

The Department and Mr. Burns hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. The above stated facts show noncompliance with this provision.

2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission to promulgate rules relating to the operation of waste disposal systems. The Commission has done so at 567 IAC 60 through 69. 567 IAC 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. 567 IAC 64.2(1) prohibits construction of a disposal system without a construction permit issued by the Director. 567 IAC 63.6(2) requires that in the event that a bypass of sewage or waste occurs the owner shall notify the Department by telephone of the bypass within 12 hours of the time of discovery of the bypass. The above stated facts show noncompliance with these provisions.

V. ORDER

THEREFORE, the Department orders and Mr. Burns hereby agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

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

1. Cease using the wastewater holding tank located at 115 St. immediately, do not resume using the wastewater holding tank until written as-built authorization is received from the Department and an Iowa Operation permit is obtained.
2. No later than April 30, 2007, perform a structural inspection of the wastewater tank located at 115 St. Compliance with this date may be waived if the Department receives satisfactory proof that due to the weather it was impossible to sufficiently inspect the wastewater tank. If such a waiver is made the Department will set a new date by which the structural inspection must be completed;
3. Subsequent to the structural inspection, Mr. Burns may apply to the Director of the Department for a variance of the mandatory 400ft separation distance, in accordance with Iowa Code sections 17A.9A and 455B.181. Such application must be submitted to the Department within 30 days of the completion of the structural inspection. If a variance is applied for and it is denied by the Department the well must be plugged within 60 days of that denial. Within 30 days of that denial Mr. Burns shall notify the Department regarding the contractor hired to plug the well;
4. Within 60 days after signing this order apply to the Department for an Iowa Operation permit pursuant to 567 IAC 64.3; and
5. Within 30 days after signing this order, pay to the Department a penalty of \$4,000.00.

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 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 Chapter 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 for current violations and stipulated penalties in the event of future violations.
2. **Economic Benefit:** Mr. Burns charges \$75.00 per wash and at a minimum one trailer is washed per week. Mr. Burns earned at a minimum \$600.00 in the two months that the disposal system was in operation.
3. **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

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

of violation. As indicated above, substantial civil penalties 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. The ongoing use of an unpermitted facility and the unauthorized discharge pose a threat to the environment. Therefore, \$1,400.00 is assessed for this factor.

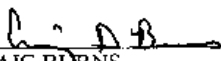
4. **Culpability:** Mr. Burns is aware of the requirement to obtain a construction permit prior to construction of a wastewater disposal system. In fact, Mr. Burns applied for a construction permit, but then decided to build the disposal system before receiving a permit from the Department. Moreover, this is the second disposal system that Mr. Burns has operated without a permit. Thus, Mr. Burns has shown disregard for Iowa's environmental statutes and rules. Therefore, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

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 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.191.



CRAIG BURNS

Dated this 2 day of
Feb, 2007.



DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 15 day of
March, 2007.

Field Office 1, Carrie Schoenebaum; Susan Miller, I.B.2.a.