

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**YMCA of Cedar Rapids Metropolitan Area
Wastewater Facility No. 57-00-4-01**

**ADMINISTRATIVE
CONSENT ORDER
NO. 2009-WW- 22**

**TO: YMCA of Greater Cedar Rapids
Metropolitan Area
c/o Bob Carlson, President/CEO
207 7th Ave SE
Cedar Rapids, IA 52401**

I. SUMMARY

This administrative consent order (order) is entered into between the YMCA of Cedar Rapids Metropolitan Area (YMCA) and the Iowa Department of Natural Resources (Department). YMCA hereby agrees to comply with its National Pollution Discharge Elimination System (NPDES) permit by timely submitting its Monthly Operation Reports (MORs), collecting and recording effluent data, properly maintaining its wastewater treatment facility (WWTF), obtaining construction permits and paying a penalty of \$4,000.00. 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:

Sue Miller, Environmental Specialist

IDNR Field Office #1
900 W Main St Suite 4
Manchester IA, 52057
Ph: 563/927-2640

Relating to legal requirements:

Carrie Schoenebaum, Attorney

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

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,

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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 YMCA hereby agree to the following statement of facts:

1. YMCA owns and operates its WWTF pursuant to Iowa NPDES Permit No. 57-00-4-01 issued by the Department on August 14, 2001.¹ This wastewater treatment facility (WWTF) is located at Section 19, T 86 N, R 6 W, in Linn County, Iowa. YMCA operates a three cell aerated lagoon that discharges to an oxbow lake of the Wapsipinicon River. This WWTF is permitted as a continuous discharge.

2. On December 20, 2002, the Department sent YMCA a letter reminding it that a condition of its NPDES permit requires that MORs be submitted to the Department the fifteenth day following the close of the reporting period. YMCA failed to submit MORs for the entire year of 2002. This letter requested submittal of those MORs. To date, those documents have not been submitted to the Department.

3. On May 5, 2003, the Department sent a second letter to YMCA requesting submittal of the 2002, and January 2003 through April 2003 MORs. The Department requested that the documents be submitted by May 15, 2003. To date, these MORs have not been submitted to the Department.

4. On May 14, 2003, Sue Miller, an Environmental Specialist with the Department, conducted an NPDES permit compliance inspection. This inspection revealed the following deficiencies: (1) MORs had not been submitted to the Department since August 2000; (2) the wastewater testing required by the permit was not being consistently entered into the MORs; (3) flow into the lagoon was not recorded daily as required by the permit; (4) YMCA failed to obtain a construction permit for a lift station; (5) the aerators were not working properly; (6) lagoon banks were not mowed and tall, heavy vegetation was growing around the inner dikes of the lagoon cells; (7) lagoon dikes had evidence of erosion; and (8) two feet of freeboard was not maintained.

5. On December 26, 2003, a Notice of Violation (NOV) was sent to YMCA for failure to submit MORs for January 2000 through April of 2000 and for the entire year of 2002. The MORs for September and October 2003 were submitted on January 5, 2004. However, the next time an MOR was submitted was May of 2004. The submitted MORs did not contain any effluent data as required by YMCA's NPDES permit.

¹ This permit expired on August 13, 2006; however, a renewal application was received by the Department on February 3, 2006. Because the facility has not submitted sufficient information to show that the facility has substantially complied with all terms and conditions of the expired permit, as required by 567 IAC 64.8(1)"a"(1), the permit has not been renewed.

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6. YMCA failed to submit MORs for the following months in 2004: January, February, March, April, September, November, and December. The MORs submitted did not contain any effluent data as required by YMCA's NPDES permit.

7. YMCA failed to submit MORs for the following months in 2005: January, February, March, April, September, October, November, and December. The MORs submitted did not contain any effluent data as required by YMCA's NPDES permit.

8. YMCA failed to submit MORs for the following months in 2006: January, February, March, August, September, October, November, and December. The MORs submitted did not contain any effluent data as required by YMCA's NPDES permit.

9. YMCA failed to submit MORs for the following months in 2007: January, February, March, April, May, June, July, August, September, October, November, and December. The MORs submitted did not contain any effluent data as required by YMCA's NPDES permit.

10. On December 3, 2007, an NOV was sent to YMCA for failure to submit MORs from August 2006 through November 2007. On December 17, 2007, the MORs for August through September were submitted to the Department.

11. YMCA failed to timely submit MORs for the following months in 2008: March, April, May, June, July, August, September, October, November, and December. These MORs were submitted on June 8, 2009. The MORs submitted did not contain any effluent data as required by YMCA's NPDES permit.

12. YMCA failed to timely submit MORs for the following months in 2009, January, February, March, and April. The MORs were submitted to the Department on June 8, 2009. These MORs did not contain any effluent data as required by YMCA's NPDES permit.

13. On January 18, 2008, the Department sent YMCA a letter stating that the MORs submitted to the Department since 2000 did not indicate any effluent discharge by the WWTF. Because of this, the Department believes that the lagoon is not properly sealed and does not meet the Department's design standards. The Department asked YMCA to submit a facility plan to the Department addressing the deficiencies in the WWTF within 120 days of receipt of the letter. To date a facility plan has not been submitted to the Department.

14. On May 27, 2009, Ms. Miller conducted a NPDES permit compliance inspection. During this inspection Ms. Miller noted the following deficiencies: (1) MORs had not been submitted since February of 2008; (2) the wastewater testing required by the permit was not being consistently entered into the MORs; (3) flow into the lagoon was not recorded daily as required by the permit; (4) YMCA failed to obtain a construction permit for a lift station; (5) the aerators were not working properly; (6) lagoon banks were not

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mowed and tall, heavy vegetation was growing around the inner dikes of the lagoon cells; (7) there was evidence of erosion of the lagoon dikes (8) two feet of freeboard was not maintained; and (9) effluent was observed discharging through the weir.

15. On June 1, 2009, an NOV was sent to YMCA for the violations discovered during the May 27, 2009, inspection.

16. On July 13, 2009, the June 2009 MOR was received by the Department. The MOR indicated an effluent flow every day of 0.00001 MGD. Nevertheless, no effluent sample results were reported.

IV. CONCLUSIONS OF LAW

The Department and YMCA 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 (Commission) to promulgate rules relating to the operation of waste disposal systems, including rules relating to monitoring and reporting requirements. The Commission has done so at 567 IAC chapters 60-64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. The terms of YMCA's NPDES permit require submission of MORs to the Department by the fifteenth day following the close of the reporting period. YMCA's "reporting period is on a monthly basis." The above stated facts show noncompliance with this provision.
3. 567 IAC 63.7 requires that "Records of operation shall be submitted to the department within 15 days following the close of the reporting period specified in 63.8(455B) and in accordance with monitoring requirements derived from this chapter and incorporated in the operation permit." 567 IAC 63.8 requires that records of operation be submitted on monthly intervals. The above stated facts show noncompliance with these provisions.
4. Standard Condition 8 of YMCA's NPDES permit states that "all facilities and control systems shall be operated as efficiently as possible and maintained in good working order." The observations made by the Department on various NPDES permit compliance inspections reveal that the lagoon and weir were not maintained in good working order. Moreover, the Department observed effluent leaking through the weir gate. The above stated facts show noncompliance with this provision.

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5. 567 IAC 64.1 states that “[n]o person shall construct, install or modify any wastewater disposal system or part thereof or extension or addition thereto without, or contrary to any condition of a construction permit[.]” A lift station was installed without first obtaining a construction permit. Thus, the above stated facts show noncompliance with this provision.

V. ORDER

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

1. YMCA shall timely submit its MORs as required by its NPDES permit and the IAC;
2. YMCA shall collect and report the results of all effluent samples as required by its NPDES permit;
3. In the future YMCA shall obtain construction permits prior to any construction or modification of its WWTF;
4. By September 1, 2009, YMCA shall submit a plan to the Department, for its approval, which brings YMCA’s WWTF into compliance with the Department’s design standards; and
5. YMCA shall pay a penalty in the amount of \$4,000.00 within 30 days after 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 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 for current violations.

2. **Economic Benefit:** YMCA saved time and money by failing to comply with its NPDES permit. Significant costs were avoided by YMCA’s failure to collect effluent data. YMCA failed to collect such data for a majority of months since 2002. Once a reporting period is missed, such data can never be collected. Costs were avoided by failing to obtain a construction permit for the lift station. Costs were also delayed by

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failing to properly maintain the WWTF. Specifically, staff time was saved by failure to mow the lagoon banks and costs were delayed by failing to fix the leaking weir. Therefore, \$1,000.00 is assessed for this amount.

3. **Gravity of the Violation:** Monitoring and reporting are imperative to ensure that WWTFs are properly maintained. Self-monitoring is the backbone of the NPDES program. The repeat nature of these violations weakens the ability of the Department to ensure that the YMCA WWTF is being properly maintained. Further, the repeat nature of these violations indicates that the YMCA has failed significantly with respect to compliance with its NPDES permit requirements and the requirements of the IAC. Moreover, YMCA's WWTF discharges to an oxbow lake of the Wapsipinicon River; during the summer months this lake is used by the YMCA (Camp Wapsi) campers for recreation. The failure to monitor the discharge creates an immediate threat to the public health. Therefore, \$2,000.00 is assessed for this factor.

4. **Culpability:** YMCA has been informed by the Department on numerous occasions of the NPDES permit requirement to submit MORs to the Department within fifteen days of the close of the monitoring period, to collect effluent data and to maintain its WWTF in working order. YMCA is aware that its effluent discharges to a lake used for recreation by children; thus it is aware of the immediate public health risk imposed by failing to collect effluent data. Therefore, it is apparent that YMCA failed to apply the appropriate standard of care required by law when operating a WWTF. Therefore, \$1,000.00 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 Commission. This order is entered into knowingly by and with the consent of YMCA. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Compliance with sections 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.

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Bob Carlson
PRESIDENT/CEO YMCA of Greater Cedar Rapids

Dated this 12th day of
August, 2009.



RICHARD A. LEOPOLD DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 21 day of
August, 2009.

YMCA-Wastewater Facility No. 6-57-00-4-01, Field Office 1, Carrie Schoenebaum; Sue Miller, I.B.2.a. EPA