

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: CITY OF GARNER Wastewater Facility No. 06-41-30-0-02	ADMINISTRATIVE CONSENT ORDER NO. 2009-WW-19
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TO: City of Garner
c/o Honorable Mayor and Council
City Hall, 135 W. 5th Street
Garner, IA 50438

Wally Taylor, Legal Chair
Sierra Club, Iowa Chapter
118 3rd Ave. SE Suite 326
Cedar Rapids, Iowa 52401

Marian Riggs Gelb
Executive Director
Iowa Environmental Council
521 East Locust Street, Suite 220
Des Moines, Iowa 50309-1939

I. SUMMARY

This administrative consent order (order) is entered into between the City of Garner (City); the Iowa Department of Natural Resources (Department); the Sierra Club, Iowa Chapter (Sierra Club); and the Iowa Environmental Council (Council). The City and the Department consent to intervention in this matter by the Sierra Club and the Council. The parties hereby agree to the issuance of this order for the purpose of resolving ammonia nitrogen effluent limit violations by the City's wastewater treatment facility. The City hereby agrees to comply with the schedule contained in this order and to pay penalties as indicated in this order. In the interest of avoiding litigation, the parties have agreed to the following provisions.

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

Relating to Technical Requirements:
Curt Krieger, Environmental Specialist Senior
IDNR Field Office No. 2
2300 15th Street SW
Mason City, Iowa 50401
Ph: 641/424-4073

Relating to Legal Matters
Diana L. Hansen, Attorney at Law
Iowa Department of Natural Resources
502 East 9th 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 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 the City agree to the addition of the Sierra Club, Iowa Chapter (Sierra Club) and the Iowa Environmental Council (Council) as Intervenors in this administrative consent order. The Department and the City hereby agree to the following statement of facts:

1. The City owns and operates a wastewater treatment facility (WWTF) located in Section 31, Township 96N, Range 23W in Hancock County, Iowa. This facility consists of a three cell aerated lagoon treatment plant. Treatment units include the following: a primary cell of 9.7 million gallons capacity aerated by 52 submerged diffusers, a secondary cell of 9.24 million gallons capacity aerated by 58 aerators and a quiescent zone of 1.26 million gallon capacity created by a curtain wall across one corner of the west cell. Flow measurement is accomplished by calculating pump hours and pump capacity at the treatment plant.

2. The City operates its WWTF pursuant to Iowa NPDES Permit No. 06-41-30-0-02, issued by the Department. Treated wastewater is discharged pursuant to this facility's permit. The permit contains effluent limitations for the discharge of pollutants, including but not limited to carbonaceous biochemical oxygen demand (CBOD5), total suspended solids (TSS), and pH. The permit includes ammonia nitrogen effluent limits and monitoring requirements. The City is not meeting the ammonia nitrogen limits in its permit and has experienced thirty day average and daily maximum ammonia nitrogen violations from 2005 to date.

The Department has revised water quality standards rules and stream segment use designation rules based on use attainability analyses. The revised rules impact the calculation of the ammonia nitrogen effluent limits in the City's permit. In view of the rulemaking, the Department is issuing this order with a compliance schedule.

3. The City submitted a preliminary facility plan to upgrade its WWTF to the Department's Field Office No. 2 (FO 2) on September 5, 2007. This preliminary report did not include schedules A, F and G and has been supplemented or revised to provide the schedules and other required information. The Department and the City have agreed to the implementation schedule included in this order in Section V.

4. Department staff met with the City Administrator, City officials, and the City's engineering consultant on January 8, 2008. This project initiation meeting was conducted by the Department project manager assigned to the case.

IV. CONCLUSIONS OF LAW

The parties agree that the following conclusions of law are applicable in 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. Iowa Code section 455B.183 prohibits the operation of a wastewater disposal system without a permit from the Department.

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. Subrule 64.7 specifies the conditions that are to be included in a permit, including applicable effluent limitations in chapters 61 and 62 of the rules. The City has been in violation of the ammonia nitrogen limits contained in its NPDES permit. The ammonia nitrogen effluent limitations in the current NPDES permit are in effect until modified or revised by the reissuance of an NPDES permit for the City's WWTF.

3. This facility's NPDES permit requires these facilities to be adequately operated and maintained. Standard Condition 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 or systems of control to achieve compliance with the terms and conditions of the permit."

V. ORDER

THEREFORE, the Department hereby orders and the City consents to do the following:

1. The City agrees to comply with the following compliance schedule:

A. The City agrees to submit complete final plans and specifications meeting Department design standards and a construction permit application with all required wastewater construction permit application forms and fees for the WWTF upgrade to the Department by November 1, 2009.

B. The City agrees to begin construction of the WWTF upgrade by May 1, 2010.

C. The City agrees to submit a progress report on the WWTF upgrade project to FO 2 by November 1, 2010.

D. The City agrees to complete construction of the WWTF upgrade by June 1, 2011 and to comply with final effluent limits by July 1, 2011.

2. The City agrees to the payment of an administrative penalty in the amount of \$1,500.00. Payment is due to the Department within 60 days after the receipt of the signed order.

3. The City agrees to the payment of a stipulated penalty in the amount of \$200.00 per day that the construction deadlines in V.1.A (submittal of final plans and specifications with all required wastewater construction permit application forms and fees), V.1.B (beginning of construction) and V.1.D (final construction deadline) are not met. Payment is due to the Department within sixty days of receipt of a letter from the Department stating that the particular deadline was not met by the City.

4.A. If the performance of any part of this order by the City is prevented, hindered or delayed by reason of any cause or causes beyond the control of City, and which cannot be overcome by due diligence, the City shall be excused from such performance to the extent that it is necessarily prevented, hindered or delayed thereby, during the continuance of any such happening or event, and this order shall be deemed suspended so long as and to the extent that any such cause prevents or delays its performance.

B. The City shall give notice to the Department within 5 days after the discovery by the City of any condition referred to in paragraph 4.A. The Department shall make a determination as to the applicability of any such claim within 5 days after receiving notice.

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.

2. 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 an administrative penalty for past violations and stipulated penalties for future violations of the compliance schedule in this order. The administrative penalty is calculated as follows.

a. **Economic Benefit** Although there has been an economic benefit to the City in not upgrading previously to preclude effluent limit violations, the exact amount of economic benefit has not been calculated. The City will now need to spend a significant amount to upgrade its WWTF. Additionally, there has been the complicating factor of the Department's adoption of new rules for water quality standards and stream use designation rules based on use attainability analyses. No penalty will be 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. Based on these considerations, the amount of \$1,500.00 is assessed for this factor.

c. **Culpability** As mentioned previously in this order, a project to upgrade the City's WWTF has been delayed and complicated by the Department's attempts to adopt rules for water quality standards and stream use designations following use attainability analyses for the stream segments. The process is still ongoing. No amount is assessed for this factor.

The penalties stipulated to by the parties in this order are for future violations, if they occur. The stipulated penalties are designed to reflect the potential economic benefit to the City for failure to make the expenditures needed to stay on schedule. Such penalties are related to the probable severity of the violations in that not meeting the compliance schedule in this order is a fairly serious matter in view of past deficiencies. The penalties would also be related to future culpability in that the City has been put on notice by this order that stipulated penalties will result if the compliance schedule is not met.

The total penalties assessed pursuant to this order shall not exceed \$10,000.00. This would include the administrative penalty assessed pursuant to Section V.2 and any stipulated penalties accruing under Section V.3.

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 the City. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Compliance with Sections V.1.A-D and V.2. 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. The Department reserves the right to elect to issue an administrative order or to refer further violations of this order to the Attorney General in lieu of collecting the stipulated penalties set out in this order.

Ken Mick
KEN MICK, MAYOR
CITY OF GARNER

Dated this 30th day of
June, 2009

Attest:
Daisy Hill
City Clerk

Dated this 30th day of
June, 2009

Richard A. Leopold
RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 28 day of
July, 2009

Marian Riggs Geub
MARIAN RIGGS GEUB, EXECUTIVE DIRECTOR
IOWA ENVIRONMENTAL COUNCIL

Dated this 7 day of
July, 2009

Wally Taylor
WALLY TAYLOR, LEGAL CHAIR
SIERRA CLUB, IOWA CHAPTER

Dated this 21 day of
July, 2009

City of Garner- NPDES Permit No. 06-41-30-0-02- Copy to Central Office Records File, Field Office No.2- Curt Krieger & Jeff Vansteenburgh, Wastewater Construction Section- Emy Liu, P.E., Legal Services- Diana L. Hansen, I.B.2.c.