

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

**IN THE MATTER OF:**

**WATERS EDGE HOMEOWNERS  
ASSOCIATION, MARK GOODWIN,  
AND WATERS EDGE, LLC**

**ADMINISTRATIVE  
CONSENT ORDER**

**NO. 2009-WW-05**

**Wastewater Facility No. 06-92-00-3-02**

**TO: Randy Payne, President  
Waters Edge Homeowners  
Association  
2469 Tuttle Lane  
Washington, Iowa 52353**

**Mark Goodwin, Individually and as  
Organizer and Registered Agent for  
Waters Edge, LLC  
2460 220<sup>th</sup> Street  
Washington, Iowa 52353**

**I. SUMMARY**

This administrative consent order (order) is entered into between the Iowa Department of Natural Resources (Department), Waters Edge Homeowners Association, Mark Goodwin, Individually, and Waters Edge, LLC aka Water's Edge, LLC due to failure to timely apply to renew an NPDES permit and for operation without a permit. The order assesses a \$2,000.00 administrative penalty. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions regarding this order should be directed to:

**Relating to technical requirements:**

Karen Lodden  
Environmental Specialist, NPDES Section  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Ph: (515) 281-4067

**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

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**Mail payment of penalty to:**

Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50310-0034

**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 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.

**III. STATEMENT OF FACTS**

The parties agree to the following statement of facts.

1. The Waters Edge Subdivision is located near Washington, Iowa. Waters Edge, LLC, also known as Water's Edge, LLC, owns and operates the wastewater treatment facility serving this subdivision. Mark Goodwin is listed as the organizer and a member of the LLC according to information from the Secretary of State's Office. The LLC is listed as inactive and dissolved by the Secretary of State's Office.

2. The wastewater disposal system owned and operated by Waters Edge, LLC is described as located in the southeast quarter (SE 1/4) of the southeast quarter (SE ¼) of Section 33, Township 75 North, Range 7 West, Washington County, Iowa. The wastewater disposal system consists of a sand filter wastewater treatment system that filters effluent from numerous septic systems at housing units in the subdivision. The discharge from the sand filter enters the North Fork of Long Creek which empties into Long Creek and eventually the Iowa River. This wastewater disposal system is operated pursuant to NPDES Permit No. 06-92-00-3-02 (NPDES Permit), which expired on February 9, 2008. The NPDES Permit was issued to Water's Edge, LLC on February 10, 2003.

3. The Waters Edge Homeowners Association (HOA) was incorporated for the purpose of promoting the health, safety and welfare of the residents of Waters Edge Subdivision located in Washington County, Iowa. The HOA additionally was formed to fix and assess charges for the use and benefit of Waters Edge Subdivision's common property and facilities. Randy Payne, 2469 Tuttle Lane, Washington, Iowa is the current president of the HOA.

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4. During a February 8, 2007 inspection of the wastewater disposal system serving Waters Edge Subdivision, Fred LeFever, 2174 Stewart, Washington, Iowa 52353 indicated to the Department Environmental Specialist conducting the inspection that he was the contact person for the HOA and the subdivision. The inspection report issued April 12, 2007 listed Mr. LeFever as the facility operator.

5. The renewal application for the NPDES permit was required to be filed by 180 days prior to expiration of the NPDES permit or by August 13, 2007. This was a condition of the expired NPDES permit and a requirement under Department rules. The Department sent a renewal application form and cover letter to Fred LeFever, HOA, on May 16, 2007. No complete renewal application was submitted in response to this mailing. On July 16, 2008 a notice of violation letter was sent to Water's Edge, LLC at Mr. LeFever's address for failure to submit the completed renewal application timely.

6. On July 6, 2007 the Department sent an annual fee invoice and cover letter to Water's Edge, LLC at Mr. LeFever's address. The invoice form and fee payment were due by August 30, 2007. The form and fee payment were received by the Department on July 25, 2007. Jeff Hazlett signed the form as Secretary of the Board. A similar letter and annual fee invoice were sent to Mr. LeFever's address in 2008. The invoice form and annual fee were received by the Department on August 15, 2008 with Mr. Hazlett's signature on the invoice form as Treasurer.

7. A Field Office No. 6 Environmental Specialist contacted the engineer for this facility on August 13, 2008 concerning the permit renewal application. The engineer claimed that the application had been sent in earlier and that he would send in another application within a week. The Department did not receive the application until November 2008 after contact with the facility owner.

**IV. CONCLUSIONS OF LAW**

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

1. Iowa Code section 455B.186 prohibits the discharge of pollutants to waters of the state without or contrary to a permit from the Department. Iowa Code section 455B.183 prohibits the construction or operation of waste disposal systems without or contrary to written permits from this Department. Iowa Code section 455B.174 authorizes the Director to issue permits for the operation of a disposal system.

Iowa Code section 455B.171(5) defines "disposal system". Disposal system is defined as "a system for disposing of sewage, industrial waste, or other wastes, or for the use or disposal of sewage sludge." The term "includes sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage

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sludge.” The sand filter is considered a disposal system under this definition of disposal system.

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 and 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 pollutants to waters of the state unless authorized by a permit from this Department. Subrule 64.3(1) prohibits the operation of a waste disposal system unless authorized by a permit from this Department and prohibits operation of any waste disposal system contrary to any condition of a permit.

3. Department subrule 567 IAC 64.8(1) states that “[a]ny state NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least 180 days prior to the expiration of the permit.” The facts stated above demonstrate noncompliance with this provision.

4. The terms of this facility’s NPDES permit and the Department subrule required submission of an application for NPDES permit renewal to the Department no later than August 13, 2007. The Department has not received a complete NPDES permit renewal application for this facility to date. The NPDES permit for this facility expired on February 9, 2008. Since that date this facility has been operating without an NPDES permit, in violation of the Iowa Code and Department rules. The Department s received a complete application for renewal of this facility’s NPDES permit in November 2008.

**V. ORDER**

THEREFORE, the Department orders and HOA, Mark Goodwin and Waters Edge, LLC agree to comply with the following provision in order to resolve this matter:

1. HOA, Mark Goodwin and Waters Edge, LLC agree to payment of an administrative penalty of \$2,000.00. This penalty is due within sixty (60) days after the Director’s signature to 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.

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

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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 of \$2,000.00.

**a. Economic Benefit.** The owner and operator of this facility maintain that the engineer for this facility was instructed to complete and submit the NPDES permit renewal application. Despite this the Department's NPDES section did not receive an application for permit renewal timely. No amount is assessed for this factor.

**b. Gravity of the Violation.** Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. Failure to timely submit a renewal application for an NPDES permit and operation of a wastewater treatment facility without an NPDES permit are serious violations. The amount of \$1,000.00 is assessed for this factor.

**c. Culpability.** The Department sent a renewal application and a notice of violation letter to this facility advising it of its duty to timely submit its renewal application. A follow-up call was made by the Department to the facility's engineer. The amount of \$1,000.00 is assessed for this factor.

## **VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.175(1), and 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 HOA, Mark Goodwin and Waters Edge, LLC. By signature to this order, all rights to appeal this order are waived by all parties.

## **VIII. NONCOMPLIANCE**

Failure to comply with this order may result in the imposition of 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. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.

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RANDY PAYNE, PRESIDENT  
WATERS EDGE HOMEOWNERS ASSOCIATION

Dated this 16<sup>th</sup> day of  
February, 2009

  
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MARK GOODWIN, INDIVIDUALLY

Dated this 2/16 day of  
February, 2009

  
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MARK GOODWIN, ORGANIZER AND MEMBER  
WATERS EDGE, LLC

Dated this 16<sup>th</sup> day of  
February, 2009

  
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RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23 day of  
Feb., 2009

Waters Edge Homeowners Association, Mark Goodwin and Waters Edge, LLC- NPDES Permit No. 06-92-00-3-02 (Central Office Records File), Karen Lodden- NPDES Section, Dennis Ostwinkle- Field Office No. 6, Diana Hansen-Legal Services, EPA Region VII, I.B.1, I.B.2.d.