

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE ORDER

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**IN THE MATTER OF:**

**LAKE TRIO HOMEOWNER'S  
IMPROVEMENT ASS'N, INC.  
Wastewater Facility No. 6-92-00-3-00**

**ADMINISTRATIVE ORDER  
NO. 2010-WW-08**

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**TO: Jerry Dunbar, President  
Lake Trio Homeowner's  
Improvement Ass'n, Inc.  
2725 Trio Court  
Washington, IA 52353**

**Mike Bohannon, Registered Agent  
Lake Trio Homeowner's  
Improvement Ass'n, Inc.  
2726 Trio Court  
Washington, IA 52353**

### I. SUMMARY

This administrative order (order) is issued to the Lake Trio Homeowner's Improvement Ass'n, Inc. (Lake Trio) due to effluent limit and NPDES permit violations. Lake Trio is required to comply with the construction schedule contained in this order for wastewater treatment facility (WWTF) improvements, to properly operate and maintain the existing wastewater collection and treatment facilities and to pay an administrative penalty of \$3,000.00.

Any questions regarding this order should be directed to:

**Relating to technical requirements:**

Terry Jones  
Environmental Specialist Senior  
IDNR Field Office No. 6  
1023 West Madison Street  
Washington, IA 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 I, and the rules promulgated or permits issued

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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**

1. Lake Trio is a group of single family dwellings located in Washington County, Iowa. There are approximately 30 homes that have been built on the east and west sides of a small man-made lake. The residents are served by Wapello Rural Water Association. Lake Trio owns and operates a WWTF located in Section 33, T 75 N, R7W, Washington County, Iowa. This facility consists of a single cell lagoon system. Wastewater flows by gravity from the houses to the lagoon facility, located south of 275<sup>th</sup> Street. Effluent is discharged to an unnamed tributary of Crooked Creek, pursuant to Iowa NPDES Permit No. 6-92-00-3-00.
2. The lagoon is required to be operated in a storage/drawdown manner, with discharges occurring every 180 days. The lagoon lacks the capacity for 180 days of storage. Discharges occur more frequently than 180 days resulting in inadequately treated sewage and frequent effluent violations. The Department sent Notice of Violation (NOV) letters for exceeding effluent flow on February 28, 2001 and again on November 15, 2002.
3. The July 16, 1999 cover letter to an inspection report and the inspection report required Lake Trio to submit a Plan of Action (POA) to the Department by January 1, 2000. Lake Trio submitted a POA to the Department on September 18, 2001 and it was rejected by the Department as inadequate. On November 15, 2002, pursuant to a Notice of Violation (NOV) letter, the Department ordered that Lake Trio submit a POA by December 1, 2002. Lake Trio submitted a POA on February 5, 2003. The POA was rejected by the Department because the proposed technology did not meet current design standards.
4. On April 29, 2005 the Department's Field Office No. 6 notified Lake Trio that it must conduct an evaluation of the adequacy of the WWTF for preventing effluent violations, prepare a preliminary engineering report and submit a POA which includes an implementation schedule by June 1, 2005. In a letter dated June 1, 2005, Lake Trio's engineer summarized plans to purchase adjacent land and to build a second cell for the lagoon system, which would provide the capacity to meet the 180 day discharge requirement.
5. On March 21, 2006 Lake Trio's engineer submitted a POA providing for a two cell lagoon to the Department for review. On April 3, 2006 the Department informed Lake Trio's engineer that review had been completed of the POA. The Department informed Lake Trio's engineer that a variance would be granted to allow the two cell lagoon system, that a pump station would be needed to pump all raw sewage to the primary cell,

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and that no aerator would be required in the second cell. Lake Trio's engineer submitted a schedule for the project in the POA. The project never proceeded to completion.

6. Lake Trio's engineer submitted an updated schedule for the upgrade of this WWTF facility. The Facility Plan was approved by the Department on April 10, 2009 and included a new schedule for lagoon construction. A site survey was conducted by the Department on May 14, 2009. The June 1, 2009 cover letter to the site survey indicated that a further detailed archaeological investigation needed to be conducted or the site needed to be moved.

7. On June 2, 2009 the State Historical Preservation Officer conducted a meeting to discuss archaeological concerns. The meeting was attended by Victor Marz, Jr., P.E., Lake Trio's consulting engineer; Jean Krewson, a Department SRF staff person; Emy Liu, P.E., the Department's project manager; and Kelly Lewiston, the CEO for RUSS. RUSS is a 28E entity that has been involved in attempting to arrange financing for the construction of the wastewater treatment project. RUSS has been working on the financing aspects of the wastewater construction project since 2006. It was explained during the meeting that evidence of significant historical importance concerning Native American activities had been found throughout the area of the existing and proposed wastewater lagoons. Due to these concerns a much more detailed archaeological survey would be needed in order to consider going forward with lagoon construction and that such a survey could cost around \$100,000 and could take approximately one year.

8. The information concerning the archaeological concerns was presented to the RUSS Board on June 3, 2009. It was decided that two options remained for the project. The first option was for an advanced treatment system at the lagoon site that would enable the system to meet very low NH<sub>3</sub>-N limits in the range of 1- 2 mg/L or pumping the wastewater to the City of Washington wastewater treatment facility.

9. On December 18, 2009 a project initiation meeting was conducted by Emy Liu, P.E., the Department's Project Manager. On December 22, 2009, a memorandum of the meeting was sent to Kelly Lewiston, CEO of RUSS. The letter discussed the newly proposed design alternative using Advantex fixed film treatment system (manufactured by Orenco System, Inc.). The memorandum stated that the new wastewater treatment system would be required to meet the end of pipe water quality limits developed by the wasteload allocation for this system. There would be ammonia nitrogen limits for the upgraded facility ranging from 1.0 mg/L in July to 5.8 mg/L in February. The facility would be required to meet bacteria limits with a geomean of 126 #/100 ml from March to November. The upgraded system would include UV disinfection. Kent Rice, P.E., the new consulting engineer for the project, provided a schedule for the project, which was included in the memorandum letter.

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10. This order is issued to establish an enforceable schedule for the upgrade of this WWTF.

**IV. CONCLUSIONS OF LAW**

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. Rule 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.

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."

4. Lake Trio's failure to comply with the compliance schedules included in its NPDES permit to upgrade its facilities to meet permit requirements and failure to meet permit requirements establishes violations of the above provisions.

**V. ORDER**

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

1. Submit complete final Plans and Specifications meeting Department rule and design standard requirements for the facility upgrade to the Lake Trio WWTF by December 31, 2010.
2. Begin construction of the facility upgrade to the Lake Trio WWTF by May 31, 2011.
3. Complete construction of the facility upgrade to the Lake Trio WWTF by September 30, 2011.

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4. Properly operate and maintain this facility's WWTF in accordance with NPDES permit requirements.
5. Pay an administrative penalty of \$3,000.00. Payment is due to the Department within 60 days of receipt of 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 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 an administrative penalty.

a. Economic Benefit. This facility saved money due to failure to upgrade and maintain an aging inadequate WWTF to meet water quality standards and Department rules. The amount of cost savings is estimated to exceed \$1,000.00. The amount of \$1,000.00 is assessed for this factor.

b. 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 of violation. As indicated above, substantial civil penalties are authorized by statute. Maintaining compliance with pollution control standards and the effluent limits and conditions in NPDES permits is a program priority in the water quality area for federal and state pollution control agencies. The existing one cell wastewater lagoon system was not designed to meet current water quality standards and Department rules. For these reasons, \$1,000.00 is assessed for this factor.

c. Culpability. This facility failed to upgrade its existing facility to comply with water quality standards and Department rules. Through the issuance and receipt of the permit and inspection reports and letters noting permit requirements and the condition of the WWTF, the facility was on notice concerning the permit terms and conditions that were required to be met and the condition of the WWTF. The amount of \$1,000.00 is assessed for this factor.

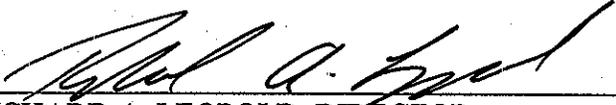
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**VI. APPEAL RIGHTS**

Pursuant to Iowa Code section 455B.175(1), and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

**VIII. NONCOMPLIANCE**

Compliance with Section V. constitutes full satisfaction of all requirements pertaining to the specific violations described in this order. Failure to comply with this order may result in referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
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RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 13 day of

June, 2010.

Lake Trio Homeowner's Improvement Ass'n, Inc - Wastewater Facility No. 6-92-00-3-00 (copy to Central Office Records Wastewater File), Terry Jones- Field Office No. 6, Steve Williams- NPDES Permits, Diana Hansen- Legal Services; USEPA- Region VII, I.B.2.b., I.B.2.c and I.B.2.d.