

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: GEORGIA-PACIFIC GYPSUM LLC Water Supply Facility No. 9433188	ADMINISTRATIVE CONSENT ORDER NO. 2010-WS-04
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TO: CT Corporation System, Registered Agent
500 East Court Avenue
Des Moines, Iowa 50312

Doug Bahr
Environmental Coordinator
Georgia-Pacific Gypsum LLC
2374 Mill Road
Fort Dodge, Iowa 50501

I. SUMMARY

This administrative consent order (order) is entered into between the Georgia-Pacific Gypsum LLC (Georgia-Pacific) and the Iowa Department of Natural Resources (Department). Georgia Pacific agrees to pay a penalty of \$7,000.00. In the interest of avoiding litigation, the parties have agreed to the following provisions.

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

Relating to technical requirements:

Roy Ney, P.E.
Environmental Engineer Senior
Water Supply Engineering Section
Iowa Department of Natural Resources
401 S.W. 7th Street, Suite M
Des Moines, Iowa 50309
Ph: 515/725-0360

Relating to legal requirements:

Diana Hansen
Attorney at Law
Legal Services Bureau
Iowa Department of Natural Resources
502 East 9th St.
Des Moines, Iowa 50319-0034
Ph: 515/281-6267

Payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

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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

1. Georgia-Pacific is a company that manufactures wallboard at its facility in Fort Dodge, Iowa. The facility is classified as a non-transient non-community public water supply system. The system serves approximately 110 employees.

2. On July 10, 2008 the well serving the Georgia-Pacific plant plugged, which did not allow enough water from the well to run the plant. On July 11, 2008 Doug Bahr from Georgia-Pacific contacted Roy Ney, a senior engineer with the Department, and Glenn Carper, Department Field Office No. 2 (FO 2) to inform the Department of the serious nature of the problem. The Department staff was advised that Georgia Pacific was investigating the drilling of a replacement well on an emergency basis. On July 14, 2008 FO 2 Environmental Specialist David Hopper conducted a site survey for an emergency well at Georgia-Pacific. He recommended that the site be approved for construction of a public water supply well.

3. By a letter dated July 23, 2008 Georgia-Pacific requested emergency approval to construct a well without first obtaining a construction permit. The letter stated that Grosch Drilling Company would provide an engineer on site during drilling operations to oversee drilling operations.

4. On July 25, 2008 the Department approved the site for the proposed well. By a letter dated July 25, 2008, the Department authorized the emergency construction of the proposed well. Comment No. 3 of the approval letter stated that "A professional engineer must oversee the well construction. The engineer will be responsible for ensuring that the well is built according to current design standards." Comment 5 of the letter provided "As-built plans and specifications along with the permit application schedules and construction fee must be submitted to the Department by the engineer that oversees the construction within 30 days of the project completion. The as-built plans and specifications must meet Department requirements."

5. On or about August 20, 2008 Roy Ney contacted Doug Bahr at Georgia-Pacific concerning the status of well construction. Mr. Bahr was advised that as-built plans and specifications must be submitted within 30 days of completion of the well. Mr. Bahr stated that the well was under construction and would not be completed until late

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September with final water testing to occur after well completion. Mr. Bahr stated that the required plans and specifications would be submitted shortly after completion of the well and associated testing.

6. On October 8, 2008 Georgia-Pacific determined that Grosch Drilling Company did not provide a professional engineer to oversee the well construction nor did Grosch Drilling Company have an engineer on staff to provide the as-built plans and specifications upon completion of the well construction and water testing. Upon making this determination, Jim Dozier from Georgia-Pacific contacted Roy Ney on October 8, 2008 to inform him that the well driller Grosch Drilling from Silver Creek, NE was supposed to have provided an engineer to oversee the construction and provide the as-built plans and specifications. Mr. Dozier stated that the company had been in contact with the well driller and had been informed that an engineer was not present to oversee the well construction or to provide the necessary as-built plans and specifications. Mr. Dozier stated that Georgia-Pacific would attempt to obtain the services of an engineer to provide the necessary as-built plans and specifications.

7. Georgia-Pacific obtained the services of an engineer on October 10, 2008 to provide review of the well construction and to provide the professional engineer certification of the as-built plans and specifications. Georgia-Pacific considered the construction complete as of December 23, 2008 when the final water test results were received from the laboratory. On January 23, 2009 Georgia-Pacific hand delivered the as-built plans and specifications signed by the professional engineer as required by the Department's July 25, 2008 letter. The Department's Water Supply Engineering section has sent its as-built approval letter.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.183(1) provides as follows:

"It is unlawful to carry on any of the following activities without first securing a written permit from the director, or from a city or county public works department if the public works department reviews the activity under this section, as required by the department.

1. The construction, installation, or modification of any disposal system or public water supply system or part thereof or any extension or addition thereto. ..."

2. Department subrule 567 IAC 43.3(3) requires written construction permits. "No person shall construct, install, or modify any project without first obtaining, or contrary to any condition of, a construction permit issued by the director. ..."

3. Department subrule 567 IAC 43.3(3)"b" pertains to construction permit applications.

b. Construction permit application. Application for any project shall be submitted to the department at least 30 days prior to the proposed date for commencing construction or

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awarding of contracts. This requirement may be waived when it is determined by the department that an imminent health hazard exists to the consumers of a public water supply. Under this waiver, construction, installation, or modification may be allowed by the department prior to review and issuance of a permit if all the following conditions are met:

- (1) The construction, installation or modification will alleviate the health hazard;
 - (2) The construction is done in accordance with the standards for construction pursuant to 43.3(2);
 - (3) Plans and specifications are submitted within 30 days after construction;
 - (4) A professional engineer, licensed in the state of Iowa, supervises the construction;
- and
- (5) The supplier of water receives approval of this waiver prior to any construction, installation, or modification.

Georgia-Pacific and the well driller hired by Georgia-Pacific did not hire an engineer to oversee construction of the well and to complete and submit as-built plans and specifications after completion of construction. The well driller hired by Georgia-Pacific did not provide a professional engineer to oversee the well construction and to complete as-built plans and specifications after completion of construction. Upon determining that the well driller did not provide a professional engineer, Georgia-Pacific informed the Department and hired a professional engineer to review the well construction and complete as-built plans and specifications, which were submitted to the Department on January 23, 2009. Georgia-Pacific violated subrule 43.3(3)“b” due to failure to retain an engineer to oversee construction and to complete and submit as-built plans and specifications after completion of construction.

V. ORDER

THEREFORE, the Department orders and Georgia-Pacific agrees to the following:

Georgia-Pacific agrees to pay an administrative penalty of \$7,000.00. Payment of the penalty is due within 60 days after signature by the Director 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.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. The maximum amount that can be assessed per order is \$10,000.00.

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Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violation is the issuance of an order with an administrative penalty. The administrative penalty assessed by this order is determined as follows:

a. Economic Benefit. Georgia-Pacific maintained that the contract with its well driller provided for the well driller to hire an engineer to oversee the construction project and to provide the as-built plans and specifications. As a result of the well driller not hiring an engineer for the new well drilling project, Georgia-Pacific needed to spend a considerable amount to hire its own engineer to provide the as-built plans and specifications to the Department. Due to this, no amount 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. Construction contrary to Department rule requirements threatens the integrity of the permit and water supply programs. The public water supply program is based on sound construction. On-site supervision by an engineer of emergency well construction is required to ensure such construction. Failure to hire an engineer to supervise the on-site construction and to complete plans and specifications and to submit an as-built permit application contradicts the basis of the program. For these reasons, the amount of \$3,500.00 is assessed for this factor.

c. Culpability. Georgia-Pacific staff was aware of the fact that the Department required an engineer to oversee construction and to complete as-built plans and specifications. The requirement for an engineer to oversee construction was placed in the contract with the well driller, Grosch Drilling Company. The well driller should have been on notice due to this contract provision and hired an engineer to oversee construction and to complete as-built plans and specifications and the construction permit application required by the Department. The amount of \$3,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

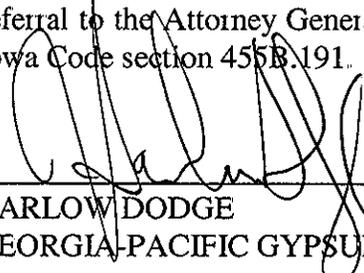
Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Georgia-Pacific. By signature to this order, all rights to appeal this order are waived.

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

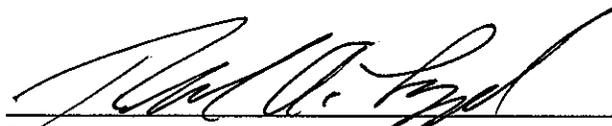
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referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



HARLOW DODGE
GEORGIA-PACIFIC GYPSUM LLC

Dated this 23 day of
Feb, 2010



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 10 day of
March, 2010

Georgia-Pacific Gypsum LLC- Water Supply Facility No. 9433188; Roy Ney P.E.- Engineer Senior- Water Supply Engineering Section, David Hopper- Field Office No. 2, Marie Leat- Water Supply Operations Section, Diana Hansen- Legal Services Bureau, EPA, IIA.1

Copy to: Debbie Cline
Senior Counsel- Environmental
Georgia Pacific LLC
133 Peachtree Street, NE
Atlanta, Georgia 30303