

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

IN THE MATTER OF: CITY OF DONNELLSON Wastewater Facility NPDES Permit No. 65620001	ADMINISTRATIVE CONSENT ORDER NO. 2008-WW-26
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TO: City of Donnellson
c/o Bill Young, Mayor
PO Box 50
Donnellson, IA 52625

I. SUMMARY

This administrative consent order (order) is entered into between the Iowa Department of Natural Resources (Department) and the City of Donnellson, Iowa (City). The order is entered into for the purpose of resolving violations of Department rules and NPDES permit conditions related to waste water disposal system effluent limitations and failure to maintain treatment units. The order assesses an administrative penalty of \$2,000. 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:

Russell Royce, Environmental Specialist
Department Field Office #6
1023 W. Madison
Washington, IA 52353-1623
Ph: 319-653-2135

Relating to legal requirements:

David L. Wornson, Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/242-5817

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50310-0034

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

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

1. The City owns and operates a wastewater disposal system located in Donnellson, Iowa.
2. The City was issued NPDES permit, No. 65620001, which authorizes the discharge of treated effluent from the wastewater treatment plant with prescribed effluent limitations and operation and maintenance conditions.
3. On April 22, 2008, the Department field office staff conducted a routine wastewater facility inspection. The inspection resulted in issuance of a notice of violation (NOV) dated April 22, 2008 finding that;
 - (a) The facility had exceeded its permitted effluent limit for CBOD, ammonia-nitrogen and TSS on multiple occasions;
 - (b) The City failed to submit required monthly operation reports (MORS) for the months of June, July, October, and November of 2007 and January of 2008. Additionally, the MORS for October and November of 2006 and January through April 2007 were submitted late;
 - (c) The City failed to maintain the treatment units in that no aerators were operational in cell #2 and one aerator was operational in cell #1.
 - (d) The City no longer had a certified waste water operator in service at the facility.
4. The April 22, 2008 NOV required the City to submit all the missing MORS and a "compliance plan" specifying how and when the City intends to obtain a certified operator. These documents were to be submitted no later than May 15, 2008. The NOV also required the City to retain a certified operator and a temporary certified operator by affidavit. The City was required to obtain a certified operator October 15, 2008.
5. The City has a history of violations of its NPDES operation permit and Department rules including but not limited to:
 - (a) A site visit on June 25, 2007 found that several of the lagoon aerators were not functional.
 - (b) On September 30, 2006, Department staff investigated and confirmed that effluent from the wastewater facility had negatively impacted a receiving stream and the Department issued an NOV to the City for violation of general water quality standards.

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

(c). As part of a routine facility inspection on December 5, 2006, the Department issued an NOV to the City for effluent violations, late MORS and failure to adequately maintain the treatment units.

(d). As part of a routine facility inspection on October 26, 2005, the Department issued a NOV to the City for effluent violations and late MORS.

6. The City did not provide a compliance plan as required in the April 22, 2008 NOV. The City has not obtained a temporary certified operator by affidavit.

7. The Department issued a proposed Consent Order by letter dated October 24, 2008 the terms of which required the City to submit a maintenance and prevention plan and a compliance plan outlining a timetable to retain a certified operator. Since issuance of the proposed Consent Order, the City has submitted and the Department has approved their maintenance and prevention plan. The City did submit a compliance plan and has now retained a certified operator.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.175(1) provides in part that if there is substantial evidence that any person has violated or is violating any provision of this division or chapter 459, subchapter III, or of any rule established or permit issued pursuant thereto, the Director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease.

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 64.3(1) prohibits the operation of any waste disposal system contrary without or contrary to any condition of a permit. Subrule 64.1(4) states that any waste disposal system operation permit shall be issued as an NPDES permit under an EPA approved NPDES program if an NPDES permit is required for that disposal system. Rule 64.7 specifies the conditions that are to be included in an NPDES permit, including proper maintenance of the treatment facility (64.7(5)) and compliance with applicable effluent limitations as provided in chapters 567 IAC 61 and 62.

3. The City operates this facility pursuant to its NPDES permit, No. 5620001 and is responsible for compliance with the terms of the permit. The permit establishes effluent limitations. As stated in Division III above, the City has violated the effluent limitations established by the permit over an extended period of time.

4. The City's NPDES permit requires its 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

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

maintain in good working order and operate as efficiently as possible any facilities and systems of control to achieve compliance with the terms and conditions of the permit." The City has failed to adequately maintain its wastewater disposal and treatment system which has contributed to continuing violations of its effluent limits as stated in Division III above.

5. Waste water disposal systems are required to have a certified operator in charge at a grade level as specified in Department rules. See 567 IAC 81.2(3). The Director of the Department may allow a facility owner time to obtain a certified operator but only after approval of a "compliance plan" specifying the actions to be taken to obtain a certified operator. Owners may also satisfy the operator requirements by obtaining temporary services of a certified operator by affidavit. See 567 IAC 81.16. The City failed to timely submit a compliance plan or obtain the temporary services of an operator by affidavit.

V. ORDER

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

1. The City agrees to pay an administrative penalty of \$2,000.00 made payable to the "Iowa Department of Natural Resources" with reference to this consent order. The administrative penalty shall be paid to the Department no later than September 25, 2009.

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 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.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1), 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, the City waives all rights to appeal this order.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF DONNELLSON

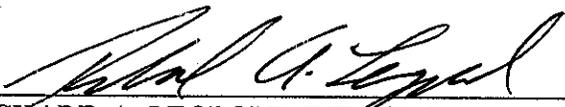
VIII. NONCOMPLIANCE

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



BILL YOUNG
MAYOR, CITY OF DONNELLSON

Dated this 10th day of
September, 2009



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 22 day of
Sept., 2009

City of Donnellson, NPDES Permit No. 562001, Field Office No. 6, David Wornson, I.B.2. c & d.