

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

<b>IN THE MATTER OF:</b>  CITY OF MINGO  Wastewater Facility NPDES Permit No. 65620001	<b>ADMINISTRATIVE CONSENT ORDER NO. 2010-WW-03</b>
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**TO:** City of Mingo  
c/o Gary Bartels, Mayor  
City Hall, 101 S. Station,  
Mingo, IA 50168

**I. SUMMARY**

The Iowa Department of Natural Resources (Department) and the City of Mingo, Iowa (City) enter into this Administrative Consent Order (Order) for the purpose of resolving violations of the City's NPDES permit and to remedy a history of sanitary sewer overflows. The order provides a schedule for completion of improvements to the wastewater disposal system to bring it into compliance with Department regulations. 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:**

Janet Gastineau, Environmental Specialist  
Department Field Office #5  
401 SW 7<sup>th</sup>, Suite I  
Des Moines, IA 50309  
Ph: 515-725-0268

**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

**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.

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**III. STATEMENT OF FACTS**

1. The City owns and operates a wastewater disposal system located in Mingo, Iowa.
2. The City operates the wastewater disposal system under the terms and conditions of NPDES permit, No. 50-52-0-01 which authorizes the discharge of treated effluent from the wastewater treatment plant with prescribed effluent limitations and operation and maintenance conditions.
3. The Department field office staff began meeting with the City in June 2007 to advise them that they were in violation of their NPDES permit and Department rules due to a history of sanitary sewer overflows (SSO) and basement backups.
4. By letter dated July 17, 2007, the Department required the City to submit a Plan of Action (POA) by January 2008. The POA would require submittal of an engineering assessment of the need to upgrade the disposal system's lift station and lagoon system and provide a proposal to remedy the SSOs and basement backups.
5. The Department field office conducted a facility inspection on August 14, 2007 and documented bypass events in May and June, 2007. The DEPARTMENT issued an inspection report on August 30, 2007 with a reminder of the need to submit the POA by January 2008.
6. The Department field office supervisor met with the Mingo City Council on February 26, 2008 to review the submitted POA. The Department field office issued a review letter dated February 27, 2008 with comments to the City's POA. The Department field office supervisor met with the Mingo City Council again on March 18, 2008 to discuss improvements and a schedule for implementation.
7. The City reported sanitary sewer bypasses for 24 days in April 2008 and 21 days in May 2008 in violation of its NPDES permit.
8. The City submitted a revised POA to the Department on November 11, 2008. The Department issued a construction permit on April 21, 2009 to the City for upgrades to the lift station. Final plans and specifications have not been submitted to the Department for upgrades to the collections system.
9. As of August 31, 2009, the City has obtained construction permits for installation of the lift station and approved upgrades to the collection system. The City also submitted in July 2009 a facility plan evaluating the adequacy of the waste water systems and proposing recommendations to upgrade the system to meet all regulatory requirements.

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**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.186(1) prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. This section provides as follows:

A pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the director. A pollutant whether treated or untreated shall not be discharged into any state owned natural or artificial lake.

3. 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.

4. The City operates this facility pursuant to its NPDES permit, No. 5052001 and is responsible for compliance with the terms of the permit. The City has violated its NPDES permit and Iowa Code section 455B.186 by discharging untreated wastewater to water of the state under conditions not authorized by a permit.

5. 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 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 sufficient to avoid SSO and basement backups.

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**V. ORDER**

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

1. The following paragraphs establish basic milestones that the City agrees to satisfy. There may be interim steps that must be satisfied in accordance with the Department permitting process in order to meet this schedule. The City agrees to substantially comply with those interim steps as necessary to meet the following milestones.
2. By May 14, 2010, complete construction of the lift station and collection system upgrades in accordance with Department rules and permit conditions.
3. After May 14, 2010, there shall be no bypassing or basement backup of raw or diluted wastewater from the collection system except as authorized by its NPDES permit.
4. By November 20, 2010, submit final plans and specifications to the Department construction permit section for treatment facility upgrades unless the Department prior to that date determines that upgrades are not necessary.
5. By March 1, 2011 award a contract for treatment facility upgrades in compliance with the Department's construction administrative rules and permitting process.
6. By December 1, 2011, complete construction of treatment facility improvements in compliance with the Department's construction permitting administrative rules and permitting process.

**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 this Consent Order without the assessment of penalties. The Department reserves all discretion to assess administrative and civil penalties for violation of the terms of this consent order or other applicable law.

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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.

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.

  
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GARY BARTEL  
MAYOR, CITY OF MINGO

Dated this 15<sup>th</sup> day of  
February, ~~2009~~ 2010

  
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RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 25 day of  
Feb, ~~2009~~ 2010

City of Mingo, Richard Phelps, Phelps Law Office, PO Box 1, 201 S. Station St., Mingo, IA 50168,  
NPDES Permit No. 562001, Field Office No. 5, David Wornson, I.B.2. d. & I.C.1.