

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

IN THE MATTER OF: IOWA CITY COMMUNITY SCHOOL DISTRICT HSI #072909-TJJ-1648	ADMINISTRATIVE CONSENT ORDER 2010-WW-05
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**TO: Iowa City Community School District
Attn. Lane Plugge, Superintendent
509 S. Dubuque
Iowa City, IA 52240**

I. SUMMARY

The Iowa Department of Natural Resources (Department) and the Iowa City Community School District (ICSD) enter into this Consent Order (Order) for the purpose of resolving regulatory violations and administrative penalties associated with the illegal discharge of pollutants to a water of the state arising from the improper disposal of floor stripper waste water. The Order requires ICSD to pay an administrative penalty of \$2,000.

For further details, see Division V below.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Terry Jones
Iowa Department of Natural Resources
Field Office #6
1004 West Madison,
Washington, Iowa
Ph: 563/927-2640

Relating to legal requirements:

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

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 1, and the rules promulgated or permits issued pursuant thereto. Iowa

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Code section 455B.109 and agency rules in chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

1. ICSD is a legal entity organized pursuant to Iowa law.
2. On July 29, 2009, Dan Keating, an Iowa City wastewater treatment plant employee, contacted the Department field office and reported that custodians at Lucas Elementary School had been dumping floor stripper wash water onto the school parking lot since the previous Friday July 24, 2009. He reported the material had run to the storm sewer which discharges to Ralston Creek. Keating reported that Iowa City wastewater personnel had instructed school staff to cease dumping and to clean up the material. The incident was assigned a Department file number, HSI #072909-IJJ-1648.
3. On July 30, 2009, Terry Jones in the Department's field office visited the school site to investigate the report of illegal disposal and view impacted portions of Ralston Creek. The school parking lot was heavily stained and Ralston Creek had a whitish tint below the storm sewer discharge point. No dead fish were noted.
4. On July 30, 2009, Terry Jones contacted Carol Sweeting with the Iowa City Public Works Department. Ms. Sweeting spoke with Paul Schultz, Director of Physical Plant for the ICSD, and requested Mr. Schultz to clean up the remaining residue on the lot and in the storm sewer and to contact the Department.
5. On July 30, 2009, Mr. Schultz contacted Terry Jones to discuss events and clean up options which included blocking off the storm sewer and pressure washing the impacted areas of the parking lot. Water would be recovered at the storm sewer intake. They would check with the city of Iowa City to determine if the material could be sent to the wastewater treatment plant for final disposal. Mr. Schultz contacted Terry Jones later in the day to verify Action Sewer had been selected to assist them with their efforts. The city gave permission to dispose of material in the sanitary sewer.
6. On July 31, 2009, Mr. Jones met with Mr. Schultz at the site. School staff was pressure washing the parking lot and Action Sewer was collecting wash water from the plugged portion of the storm sewer. The plan was to keep washing the lot until it was clean and then clean the affected sections of the storm sewer. A written report was to be submitted to the department no later than August 29, 2009.
7. On July 31, 2009, Mr. Jones visually inspected Ralston Creek. The whitish tint seen previously was gone and a number of minnows and crayfish were observed in the creek. A pH of 9.5 was recorded with field equipment at both above and below the storm sewer discharge point. Since readings were the same above and below, the readings were not attributed to dumping of the floor stripper compound.

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8. ICSD submitted a written report of the incident on August 4, 2009. The report states that approximately 10 gallons of floor stripper waste was dumped onto the parking lot on four separate days, July 24th, 27th, 28th, and the 29th. Each time the material was washed down with an unknown quantity of water.

9. The Department sent ICSD a notice of violation dated September 9, 2009 stating that these actions constituted an illegal discharge of a pollutant notified the ICSD the matter would be referred to the Department's legal services bureau for review and appropriate enforcement action

10. ICSD has since conducted updated training of its custodial and maintenance staff regarding the proper disposal of materials. This training will be part of ICSD's hazard communication program. Further, the custodian manual has been amended to include prohibitions on disposal into the City's storm sewer system.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.175 authorizes the Director of the Department to issue an order to any "person" determined to be in violation of that part.

2. Iowa Code section 455B.186 prohibits the discharge of a pollutant into water of the state unless the discharge is pursuant to a permit issued by the Director of the Department. The floor stripper waste which washed into the storm sewer which discharged to Ralston Creek constitutes a "pollutant" as defined in Iowa Code section 455B.171(18). The stream is a "water of the state" as defined in Iowa Code section 455B.171(37).

3. ICSD is a "person" as defined in Iowa Code section 455B.171(16) who has violated an authorized Commission rule and is responsible for an unpermitted discharge of pollutants to water of the state

V. ORDER

THEREFORE, the Department orders and ICSD agrees to the following:

1. Pay an administrative penalty of \$2,000 by check payable to the "Iowa Department of Natural Resources" no later than 30 days from execution of this order. Payment shall include a reference to this Order by number or a copy of the front page of the Order.

VI. PENALTY

1. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule for assessment of administrative penalties up to \$10,000. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See chapter 567 IAC 10. Pursuant to this chapter, the Department has determined that the most effective and efficient

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means of addressing the above-cited violations is through a negotiated administrative consent order with a penalty. The penalty assessment rationale is as follows:

ECONOMIC BENEFIT: The economic benefit to the ICSD for avoiding the costs of proper disposal of the waste stripper is uncertain. The Department agrees as part of this Order to make no assessment for this factor.

GRAVITY: Although the Department did not observe any evidence of a fish kill from the waster disposal, there was observable evidence the material had entered the stream. The improper disposal of the water wash water continued for four days. Applying an assessment of up to \$3,000, \$1,000 is assessed for this factor.

CULPABILITY: The improper disposal of waste to a parking lot was a deliberate and continuing act. The ICSD and its employees knew or should have known that washing this material to a storm sewer would result in an illegal discharge. The ICSD is responsible for providing proper planning and employee training as well as management oversight. For this factor, \$1,000 is assessed.

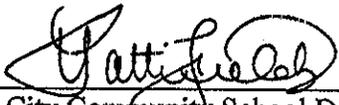
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.5(1), as adopted by reference by chapter 567 IAC 7, authorize a written notice of appeal to the Commission. ICSD enters into this consent order knowingly and consents to the waiver of all rights to appeal.

VIII. NONCOMPLIANCE

Failure to comply with this consent order may result in the imposition of further administrative enforcement and assessment of penalties or referral to the Attorney General to obtain appropriate relief in Iowa District Court pursuant to Iowa Code sections 455B.191 and 455B.391. 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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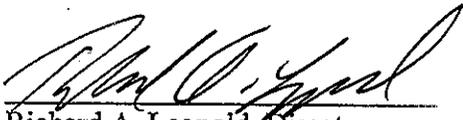

Iowa City Community School District
By Its Board President

Dated this 15 day of April, 2010

Attest:

Board Secretary

Dated this 15 day of April, 2010


Richard A. Leopold, Director
Iowa Department of Natural Resources

Dated this 21 day of April, 2010

Iowa City School District, David Wornson, Terry Jones, FO 1, I.C(1),