

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF: June Oyer, Parsons Diehll, LLC dba Plantation Village Mobile Home Park Des Moines County Wastewater Facility No. 6-29-00-6-00	ADMINISTRATIVE ORDER NO. 2011-WW-03
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TO: June Oyer, Organizer & President
Parsons Diehll, LLC dba
Plantation Village Mobile Home Park
8018 Elizabeth Avenue
Kansas City, KS 66112

I. SUMMARY

This administrative consent order (order) is issued to June Oyer, President and Organizer, Parsons Diehll, LLC dba Plantation Village Mobile Home Park (Plantation Village). The order is issued due to failure to submit wastewater monthly operation reports (MORs) and failure to properly maintain the wastewater treatment facility serving Plantation Village. This order requires submittal of a preliminary engineering report for the wastewater treatment facility at the mobile home park and implementation of the recommendations made by the preliminary engineering report. This order requires the hiring of a certified wastewater operator to operate and maintain this wastewater treatment facility and to fulfill monitoring and reporting requirements. The order requires the timely submittal of MORs to Field Office No. 6 and assesses a penalty of \$2,500.00.

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

Relating to technical requirements:

Brian Lee, Environmental Specialist
IDNR Field Office No. 6
1023 West Madison
Washington, Iowa 52353-1623
Ph: 319/653-2135

Relating to legal requirements:

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

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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 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. Plantation Village is located at 4841 109th Avenue, Burlington, Iowa. The legal description for this facility is the NW ¼ of Section 30, Concordia Township, T 69N, R 02W, Des Moines County, Iowa. June Oyer, 8018 Elizabeth Avenue, Kansas City, KS 66112 is the President and Organizer of Parsons Diehl, LLC (LLC). This LLC currently owns lots in Plantation Village, including the lot on which the wastewater treatment facility (WWTF) is located. The WWTF serving this mobile home park consists of an activated sludge wastewater plant and a polishing pond. The WWTF serves approximately 30 residents with about 14 lots currently occupied. The LLC has owned unoccupied lots in Plantation Village since approximately 2005. Currently there is a homeowners association, Plantation Village Owners Association, Inc. (HOA), made up of owners of occupied lots. This HOA was formed on August 9, 2004.
2. Treated wastewater from the WWTF for this mobile home park is discharged to an unnamed tributary to Spring Creek, pursuant to Iowa NPDES Permit No. 6-29-00-6-00. The current NPDES permit for this WWTF expired on April 12, 2005. A permit renewal application has been received for this facility. The permit contains effluent limitations for the discharge of pollutants, including but not limited to biochemical oxygen demand (BOD5), total suspended solids (TSS), ammonia nitrogen (N) and pH.
3. Field Office No. 6 (FO 6) staff met with June Oyer on February 1, 2005 shortly after she acquired property there. FO 6 discussed the status of the mobile home park and the need for significant upgrades to the WWTF with Ms. Oyer.
4. FO 6 received a MOR for October 2005 on November 15, 2005. This was the last MOR that FO 6 received from Plantation Village until issuance of a Notice of Violation (NOV). FO 6 issued the NOV on July 14, 2006 concerning Plantation Village. The NOV was issued, in part, due to failure to submit MORs as required. On October 14, 2009 FO 6 issued another NOV concerning Plantation Village. The NOV was issued, in part, due to failure to submit MORs as required in a timely manner.
5. On June 14, 2006, FO 6 conducted a routine compliance inspection of the Plantation Village WWTF. The field office environmental specialist found deficiencies regarding the mechanical operation of the facility. On July 14, 2006 the field office issued an NOV concerning Plantation Village regarding exceedances of permit effluent limitations, not reporting all permit parameters on MORs, and failure to submit MORs as required.

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6. On May 28, 2008, FO 6 staff visited the WWTF at Plantation Village. The report of the site visit indicated that the mechanical portion of the WWTF was very old and in extreme disrepair. The environmental specialist observed that the aerator was not working at the time of his visit and that there was very little sludge on any of the water surfaces. Additionally, there were plants growing in the baffle ring in the final clarifier. There was duck weed on the surface of the pond, which was a typical greenish color. The specialist noted that effluent from the outfall was clear and there was no discoloration or unusual growth in the receiving ditch.

7. On September 21, 2009, FO 6 staff completed a routine inspection of the WWTF at Plantation Village. On October 14, 2009, FO 6 issued an NOV concerning Plantation Village for failure to submit MORs timely as required by Department rules and for failure to properly maintain the WWTF as required by Department rules and the NPDES permit for this WWTF.

The inspection report for the September 21, 2009 inspection noted that no inspection reports had been submitted for this facility since 2005. The report also noted that the NPDES permit for this facility had expired and that the facility was required to operate under the expired permit until a new permit could be issued.

The inspection report for the September 21, 2009 inspection stated that since MORs had not been submitted that effluent results and monitoring information could not be effectively evaluated. The environmental specialist collected grab samples from the polishing pond discharge point and submitted the samples to the University of Iowa Hygienics Lab for analysis. The sample result for TSS was 4 mg/L while the sample result for CBOD5 was 4 mg/L. The TSS sample result was well within the 30 day average permit and 7 day average permit limits for TSS of 30 mg/L and 45 mg/L. The CBOD5 sample test result was well under the 30 day average CBOD5 limit of 25 mg/L and the 7 day average CBOD5 limit of 40 mg/L.

During the September 21, 2009 inspection, the environmental specialist observed the operation and maintenance of the package activated sludge plant. The specialist noted in the inspection report that the aerator was not operating properly. Wastewater was observed flowing through the unit, but no active mechanical process was taking place. The specialist observed severe corrosion of the mechanical components. The inspection report noted that the package plant portion of the WWTF was in need of significant repair or an upgrade. The lagoon or polishing pond was observed during the inspection. The inspection report stated that the pond was a dark grey color with some floating solids. The lagoon was fenced but needed mending in spots. There was no rip rap on the inner berm. Weeds and tall grass were observed around the pond perimeter and within the pond.

The inspection report for the September 21, 2009 inspection listed three requirements for this facility. The facility was required to comply with all monitoring and reporting

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requirements in the NPDES permit and to submit MORs by the 15th of each month following the close of the reporting period. The facility was required to maintain the treatment plant in good working order at all times and to operate the treatment plant as efficiently as possible.

8. This facility submitted MORs to FO 6 for the months of February, April and May 2009. No MORs have been received by FO 6 during 2010.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.175(1) provides in part:

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; then:

1. 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 prohibits the discharge of pollutants to waters of the state contrary to a permit from this Department. Iowa Code section 455B.183 prohibits the operation of a waste disposal system without a permit from this Department.

3. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the construction and operation of wastewater treatment facilities and the discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60- 69. Subrule 62.1(1) prohibits the discharge of a pollutant without an NPDES permit. Subrule 64.3(1) prohibits the operation of any waste disposal system without a permit. Rule 64.6 specifies the conditions that are to be included in a permit, including applicable effluent limitations in chapters 61 and 62 of the rules and monitoring and reporting requirements in chapter 63. The WWTF for Plantation Village discharges to a water of the state and is required to have an NPDES permit with effluent limitations, monitoring requirements and reporting requirements. Effluent violations were noted in the July 14, 2006 inspection report based on monitoring that had been conducted.

4. Department rule 567 IAC 63.7 provides for the submission of records of operation for wastewater treatment facilities to the Department. Under this rule monthly operation reports are required to be submitted to the Department within fifteen days following the close of the reporting period and in accordance with monitoring requirements derived from chapter 63 and included in the operation permit for the facility. Rule 63.9 requires monthly operation reports to include the results of all monitoring specified in or authorized by chapter 63. NOV letters were issued on July 14, 2006, February 14, 2008

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and October 14, 2009 for failure to submit MORs timely and for failure to report concerning all required parameters.

5. The NPDES permit for Plantation Village requires that this wastewater treatment facility 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.” Based on the inspection and site visit reports for this facility, there has not been proper operation and maintenance of this facility.

6. Subrule 64.2(1) requires a facility to obtain a construction permit from the Department prior to construction, installation or modification of a wastewater disposal system. A wastewater construction permit must be applied for and received pursuant to 567 IAC chapter 64 of the Department’s rules prior to the upgrade to the wastewater disposal system at this mobile home park.

V. ORDER

THEREFORE, the Department orders Plantation Village to comply with the following provisions to cease, abate and redress violations:

1. You are required to submit a complete preliminary engineering report meeting Department requirements for the Plantation Village WWTF within ninety (90) days after the Director’s signature to the order. The report is required to be prepared by a professional engineer licensed in the state of Iowa, to evaluate WWTF improvement alternatives, and to state the selected alternative to bring this facility into compliance with NPDES permit requirements. The report is required to include an implementation schedule for completion of the upgrade to this WWTF or construction of a new WWTF. You are required to implement the recommendations contained in the preliminary engineering report.

2. You are required to comply with the effluent limits and the monitoring and reporting requirements of the NPDES permit for Plantation Village. This includes completion of all monitoring required by the NPDES permit and timely submittal of all MORs to FO 6.

3. You are required to hire a certified operator to operate the Plantation Village WWTF within thirty (30) days of receipt of this order.

4. An administrative penalty of \$2,500.00 is assessed. The penalty shall be paid to the Department within 60 days of your receipt of this order after signature by the Director.

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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, which 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 a penalty. The penalty assessed by this order is determined as follows:

a. **Economic Benefit** There has been an economic benefit due to failure to adequately maintain this facility and in not upgrading this facility as needed. Repairs and upgrades have not been made in order to properly maintain the WWTF and to keep it operating effectively. The costs for repairs and upgrades have been delayed. Funds will need to be expended to bring the facility into compliance. This facility has had additional cost savings due to avoided costs. This includes such items as not hiring a certified operator to operate and maintain this facility. There also have been additional avoided cost savings in not monitoring and in not submitting MORs as required by the NPDES permit. This order assesses the amount of \$500.00 for delayed costs and \$500.00 for avoided costs, for a total of \$1,000.00.

b. **Gravity of the violations** 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 in this order, substantial civil and criminal sanctions are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. Based on these considerations, the amount of \$500.00 is assessed for this factor, due to multiple violations.

c. **Culpability** The former operator who was hired was assumed to be effectively operating the facility and performing his job duties as required. The repairs and other issues such as MOR submittal that needed to be resolved regarding this facility were not adequately addressed by the previously hired operator or the owner of the WWTF. It does not appear that proper maintenance, operator competence or overall compliance with the NPDES permit have been addressed for this WWTF. In view of failure to properly operate, repair and upgrade this facility, the failure to maintain a certified operator who would operate this facility properly, and the failure to submit MORs despite NOV's, the Department assesses \$1,000.00 for this factor, based on multiple violations.

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VII. 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

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 Section V. of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in this order.



PATRICIA L. BOBBY, INTERIM DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 14 day of
Jan, 2011

Plantation Village Mobile Home Park- Wastewater Facility No. 6-29-00-6-00 (Copy to Central Office Wastewater File), Brian Lee- Field Office No. 6, Diana Hansen- Legal Services Bureau, US EPA Region VII, I.B.2.a, I.B.2.c, I.B.2.d, and I.B.2.e.