IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: **ADA Enterprises, Inc.** **Worth County, Iowa**	ADMINISTRATIVE CONSENT ORDER NO. 2014-WW-07

TO: Thomas A. Stensrud, President
ADA Enterprises, Inc.
305 Enterprize Drive
PO Box 77, Northwood, IA
50459

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (Department) and ADA Enterprises, Inc. (ADA) for the purpose of resolving violations resulting from failure to properly report its industrial discharge.

Questions regarding this Order should be directed to:

Relating to technical requirements:
Jeremy Klatt

Iowa Department of Natural Resources
909 West Street, Suite 4
Manchester, Iowa 52057
Phone: 563/927-2640

Relating to legal requirements:
Carrie Schoenebaum, Attorney for the DNR
Iowa Department of Natural Resources
502 E. 9th St Wallace State Office Bldg
Des Moines, Iowa 50319
Phone: 515/281-0824

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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. ADA Enterprises, Inc. (ADA) manufactures plastic coated animal flooring. The metal components of this flooring are acid cleaned and phosphatized prior to coating. The phosphatizing operation is one of six basic metal finishing operations. Thus, the facility is subject to the pretreatment standards for new sources for metal finishing operations.

2. On July 6, 2007 the Department issued the City of Northwood Iowa (Northwood) a National Pollution Discharge Elimination System (NPDES) permit. Pursuant to this NPDES permit Northwood and ADA entered into a pretreatment agreement which requires that ADA sample every batch discharge from its metal treatment tanks during discharge to Northwood's sewer.

3. On July 11, 2013, the Department conducted a pretreatment compliance inspection at ADA. During this inspection Kevin Stenzel, Draftsman at ADA, disclosed to Department staff that for approximately 18 months the rinse tank has been continuously discharged while the facility was operating and has been batch discharged once every 3-4 months. Moreover, Mr. Stenzel reported that the acid bath and phosphatizing etch tanks were batch discharged once every 3-5 weeks during this time. Prior to this schedule, Mr. Stenzel indicated that the tanks were not being regularly cleaned. Mr. Stenzel stated that he was aware that the tanks were being discharged to Northwood's sewers and that ADA was reporting that no batch discharge had occurred to Northwood pursuant to its pretreatment agreement.

While Department staff was on site a discharge did not occur. However, a sample was taken of the water sitting in the weir tank. The results of the sample indicated that the pollutant levels were below the limits in ADA's pretreatment agreement with Northwood.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems. The Commission has done so at 567 IAC chapters 60-64. Pursuant to 567 IAC 62.4(3) Iowa has adopted the federal pretreatment regulations found at 40 Code of Federal Regulations (CFR) 403.

2. 40 CFR 403 (12) (e) "Periodic reports on continued compliance" requires the following

(1) Any Industrial User subject to a categorical Pretreatment Standard (except a Non--Significant Categorical User as defined in § 403.3(v)(2)), after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge reported in paragraph (b)(4) of this section except that the Control Authority may require more detailed reporting of flows.

The reports required by the above provision were not submitted to the Control Authority which is the Department. Thus, the above stated facts show noncompliance with this provision.

V. ORDER

1. ADA shall comply with its pretreatment agreement with Northwood;

2. ADA shall comply with the Iowa Code and Iowa Administrative Code provisions which regulate the discharge of a pollutant; and

3. ADA shall pay a penalty in the amount of $10,000.00 to the Department in accordance with the below payment schedule:
   1. $2,500.00 shall be paid to the Department by July 15, 2014;
   2. $2,500.00 shall be paid to the Department by August 15, 2014;
   3. $2,500.00 shall be paid to the Department by May 15, 2015; and
   4. $2,500.00 shall be paid to the Department by June 15, 2015.

If any of the above payments are not received in accordance with the scheduled dates, the remainder of the penalty shall be due immediately. Failure to pay the penalty in full may result in referral to the Iowa Attorney General's Office or to the Iowa Department of Revenue and Finance.

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 water quality violation involved in this matter.

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 this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of this Order with an administrative penalty of $10,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." ADA received significant economic benefit by not completing the testing required by law. For such testing the University of Iowa State Hygienic Laboratory charges $20.00 per metal and $36.00 for cyanide. Thus one total analysis for each sample would cost $176.00. ADA admitted to discharging for 18 months. The acid bath and phosphatizing etch tanks were batch discharged once every 3-5 weeks. The rinse tank was continuously discharged during operation and batch discharged once every 3-5 weeks. Therefore, in the previous 18 months, there were approximately 40 batch discharges. The testing costs avoided during this time were approximately $7,040.00. There was also time saved in the handling of samples. It is estimated that handling of the samples (i.e., taking samples and shipping and processing results to be sent to Northwood) would take approximately one hour per sample. Assuming a wage of $20.00 per hour for this activity, this would be an additional $800.00 of economic benefit during the previous 18 months.

Prior to the previous eighteen months, ADA was in operation, but the tanks were not being regularly cleaned. The monitoring reports submitted by ADA shows that it only tested three discharge samples between January of 2000 and August 2013. It is unknown how frequently discharges occurred during that time period, but a conservative estimate of one batch discharge every two months yields an economic benefit of $1,176.00 ($196.00 per batch sample 6 batch samples a year). Therefore, the Department estimates that between 2000 and 2011 an economic benefit of $14,112.00 was achieved.

Gravity – 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 that type of violation. As indicated above, substantial civil penalties 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. Because the required monitoring has not occurred, it is unknown what quantities of pollutants were discharged. Moreover, the reports submitted by ADA were not accurate. ADA reported that it was not discharging when in fact it was. False reporting is a very serious violation which threatens the integrity of the regulatory program. Therefore, $4,000.00 is assessed for this factor.

Culpability –ADA entered into a pretreatment agreement with Northwood and was aware of the requirement to monitor its wastewater discharge. However, since January 2000 ADA only took three samples. Moreover, during that time ADA submitted inaccurate reports to Northwood stating that it had no discharge. According to Mr. Stenzel, during the last 18 months, ADA has been regularly discharging. The submission of false reports by ADA demonstrates substantial culpability on its part. Nevertheless, the Department has decided to handle this matter administratively. In light of the economic benefit and gravity factors above and the maximum penalty the Department can assess when handling the matter administratively $5,000.00 is assessed for this factor.

The economic benefit obtained by not conducting the testing required by law is estimated to be $21,952.00. The penalty amount for gravity and culpability combined is $9,000.00. In an effort to settle this case the Department has decided to handle this matter administratively via a consent order. The Department is limited when handling a case administratively to a $10,000.00 penalty. In light of the maximum penalty allowed to be collected administratively, the Department is assessing a $10,000.00 for the above discussed violations.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: ADA Enterprises, Inc.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly and with the consent of ADA. For that reason ADA waives it right to appeal this Order or any part thereof.

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

Chuck Gipp

CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 20th day of June, 2014.

Thomas A. Stensrud, President/CEO
ADA Enterprises, Inc.

Dated this 13 day of June, 2014

Carrie Schoenebaum, DNR Field Office 2, EPA, I. C. 6.