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1	Date:	Iowa Department of Natur August 18, 2014	14a.	Decision: Denied
1. 2.	Reviewer/Engr.:	Marty Jacobs	14a.	Date: 8-19-14 Expiration Date
3.	Date Received:	June 4, 2014	14b.	(if any): N/A
4.	Facility Name:	City of Coggon		
5.	Facility Number:	6-57-22-0-01		
6.	County Number:	57 (Linn)	15.	Appealed:
7.	Program Area:	CP (Wastewater)		Date:
8.	Facility Type:	C05 (Biological Treatment)		
9.	Subject Area:	308 (Site Separation)		
10.	Rule Reference:	567-64.2(9)a		
11.	Design Std. Ref.:	14.2.3		
12.	Consulting Engr.:	Nilles Associates		
13.	Variance Rule:	567-64.2(9)c		
-	Description of Varian			
				Facilities Design Standards Chapter 14
	astewater Treatmen	t Works – 14.2.3 (Separation Require	ments)	from the requirement for a 1000-foot ant to fourteen inhabitable residences.
		ng Engineer's Justification:	nem pie	ant to fourteen innabitable residences.
			uction of	a new Wastewater Treatment Facility
to re	place its existing fac	cility that was originally constructed ir	the 192	20's and rebuilt in 1960. The existing
plan	t site is within the flo	od plain of Buffalo Creek. The City r	eviewed	several potential site alternatives and
				o the existing plant. This site is above
				electrical utility service area, and is the
				cost \$500,000 to \$1,000,000 more to
		.23/month/per customer if an alternat		costs. It is estimated that the sewer
		d that required waivers. The City has		
		nable to obtain waivers from the rem		
			Ū	

18. <u>Department's Justification:</u> Recommend variance denial.

The variance request was evaluated to determine whether unique circumstances provide for substantially equivalent effectiveness in comparison to the design standards.

A site investigation that was conducted on October 5, 2012 for this project by Sue Miller from Field Office #1. On October 10, 2012 we sent a Preliminary Site Investigation letter stating that the site could not be approved because properties were identified that are within the 1000-foot setback and at a distance of less than 90% of the existing separation distance on the site of the proposed wastewater treatment plant. The status of the proposed site remains unapproved; which also means that we couldn't approve the facility plan. We informed the City that the site could not be approved unless signed waivers were obtained from the effected landowners that are filed and recorded with the County Recorder. The City's engineer, Nilles Associates, made adjustments to the location of the plant within the proposed site to increase the distance to the affected houses. After these changes, 14 missing waivers remained.

The original variance request was received in January of this year on an incorrect form. It was resubmitted but still incomplete in March. We requested additional information which was received as follows:

Information on contact attempts by City - 3/25/14Address and contact information for houses with unsigned waivers - 3/26/14Chronology of contact attempts by City - 5/8/14Distance summary for houses with unsigned waivers - 5/15/14 The City didn't retain copies of the individual letters sent to the homeowners and was unable to provide an attendee list for the public meetings.

As part of our review of the variance request, we sent letters to the affected landowners requesting their comments and concerns on the proposed project and site. The response was very limited. To date we have received two responses to these letters and no additional waivers. One of the criterion for review of a variance request is that the variance would not prejudice the substantial legal rights of any person. Pursuant to Iowa Administrative Code Subrule 561 IAC 10.4(2), this variance would prejudice the substantial legal rights of the substantial legal rights of the affected homeowners and it is recommended that the variance be denied.

19. <u>Precedents Used:</u> N/A

20.	Staff	Reviewer:

21. Supervisor:

22. Authorized by:

Date: Date: Date:



TERRY E. BRANSTAD, GOVERNOR KIM REYNOLDS, LT. GOVERNOR

STATE OF IOWA

DEPARTMENT OF NATURAL RESOURCES CHUCK GIPP, DIRECTOR

August 19, 2014

Mayor Jim Ellis City of Coggon P.O. Box 79 Coggon, Iowa 52218

> RE: City of Coggon Wastewater Treatment Facility IDNR Project No. S2011-0152 CWSRF Project No. 1920658 01

Subject: Variance Request from 567 IAC 64.2(3) a and Design Standards Section 14.2.3

Honorable Mayor Ellis:

After careful and thorough consideration, the Department has <u>denied</u> your February 28, 2014 request for a variance from Iowa Administrative Code Subrule 567 IAC 64.2(3) and the Iowa Wastewater Facilities Design Standards Chapter 14, Section 14.2.3, which require that new wastewater treatment facilities have a 1000-foot separation distance from the nearest inhabitable residence, commercial building, or other inhabitable structure. Based on the documentation presented by your Consulting Engineer, it is the determination of this Department that the justification submitted does not warrant the granting of a variance for the separation distance requirement from the proposed wastewater treatment plant.

A site investigation that was conducted on October 5, 2012 for this project by Sue Miller, Environmental Specialist from our Field Office in Manchester, Iowa. As described in our October 10, 2012 Preliminary Site Investigation letter, numerous properties were identified that are within the 1000-foot setback and at a distance of less than 90% of the existing separation distance on the site of the proposed wastewater treatment plant. The site could not be approved unless signed waivers are obtained from the effected landowners that are filed and recorded with the County Recorder. We understand that the City contacted the effected landowners and was unsuccessful in obtaining waivers from all affected landowners.

As part of our review of the variance request, we sent letters to the affected landowners requesting their comments and concerns on the proposed project and site. As of the date of this letter, we have received two responses to these letters and no additional waivers. It should be noted that one of the criterion for review of a variance request is that the variance would not prejudice the substantial legal rights of any person. Pursuant to Iowa Administrative Code Subrule 561 IAC 10.4(2), this variance would prejudice the substantial legal rights of the affected homeowners. The Department could not conclude that the requested variance is deemed necessary and appropriate pursuant to Iowa Code Section 455B.181.

Mayor Jim Ellis City of Coggon August 19, 2014 Page 2 of 2

Pursuant to Iowa Code Section 455B.181, and 561 Iowa Administrative Code (IAC) 7.4(1), as adopted by reference by 567 IAC Chapter 7, a written notice of appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this letter. The notice of appeal is required to be filed with the Director of the Department, and must identify the specific portion or portions of the variance denial that are 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, 561 IAC Chapter 7, and 567 IAC Chapter 7.

If you have any questions, please call Marty Jacobs at 515-242-6148.

Sincerely,

Shelli Grapp Water Quality Bureau Chief

cc: Ross A. Hillsman, P.E., Niles Associates, Inc. DNR FO #1 – Sue Miller
DNR NPDES Permits Section – Anne Hildebrand
DNR SRF – Jean Krewson
DNR Legal Services – Diana Hansen
IEDA – Joe Bohlke
DNR Sewage File 6-57-22-0-01
DNR SRF File CS192065801

52011-0152

	CONTACTINFO	RMATION	an saktas	
Petitioner Name City	of Coggon, C/O Brenda Quand	t City Clerk		
Address: 118 East Mai		it, City Clerk		
City: Coggon		IA	7in [.]	52218
			319-435-2122	
Telephone. <u>519-455-2</u>	314	Fax.	517-435-2122	
Facility Name: Cog	gon Wastewater Treatment Plan	nt NPDES Pe	rmit #57-22-0-01	
Address: 118 East Mai	n Street			
City: Coggon	State:	IA	Zip:	52218
Telephone: <u>319-435-2</u>	314	Fax:	319-435-2122	
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review process it was determined that the City would need to obtain waivers from the properties that are within 1,000 feet of the new site. This results in a total of 76 properties. Over the last four months the City has pursued signed waivers and has obtained 61 signed waivers. They were unable to obtain signed waivers from 15 property owners. All owners have been contacted with the reasons for not signing varying from reluctance to sign anything, to opposition to the project mainly due to the significant rate increase. The City strongly believes the revised site will not adversely impact any properties and will provide the best long term solution for wastewater treatment in Coggon. The City has proceeded with planning, surveying, design, and has invested significant time and money into this alternative.

4. The history of prior contacts between the Department and the petitioner for the past five years. The history must include a description of each affected permit held by the petitioner and any notices of violation, administrative orders, contested case proceedings, and lawsuits involving the Department or the petitioner.

Under administrative order to correct existing plant for flow, ammonia/nitrogen and disinfection.

5. Any information known to the petitioner regarding the Department's treatment of similar cases. Unknown

6. The name, address, and telephone number of any public agency or political subdivision of the state or federal government which also regulates the activity in question, or might be affected by the granting of a waiver or variance.

City of Coggon Iowa DNR

7. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of the petition.

Although we do not feel anyone will be adversely impacted by the granting of this petition, attached is a list of the waivers received and not received.

8. The identity of those having knowledge of relevant facts concerning the variance.

Brenda Quandt, City of Coggon City Clerk Jon Bogert, P.E., Anderson Bogert Engineers and Surveyors, Inc. Ross Hillsman P.E., Nilles & Associates Don Hoskins, City Attorney

9. Signed releases authorizing persons with factual knowledge concerning the request to furnish the Department with information relevant to the waiver or variance. Variances must be signed by the petitioner or authorized representative and a professional engineer licensed in Iowa preparing the engineering and technical justification of the petition.

The above individuals are authorized to provide information as requested by IDNR.

PETITIONER CERTIFICATION

The Department shall grant or deny a petition for a waiver or variance with 120 days of the receipt of the petition. Failure of the Department to grant or deny a petition within the required time period shall be deemed a denial of that petition by the Department. A waiver or variance is void if the material facts are not true or if facts have been withheld. The Department reserves the right to cancel a waiver or variance at any time if the Department finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the waiver or variance.

By signing this petition, I certify that all information listed on this petition and any attached additional information is factual and accurate.

Signature:	an Pflelen
Name: Dan H	luber
Position: Mayo	۱ ۲
Date: _2/	18/14
DI BOGERT	I hereby certify that this Engineering document was prepared by me or under my direct personal supervision and that I am a duly Licensed Engineer under the lows of the State of Iowa, Jon M. Bogert Iowa Reg No. 11887 My License renewal date is December 31, 2015 Pages covered by this seal:

IOWA

567-64.2 (455B) Permit to construct.

64.2(1) No person shall construct, install or modify any wastewater disposal system or part thereof or extension or addition thereto without, or contrary to any condition of, a construction permit issued by the director or by a local public works department authorized to issue such permits under 567-Chapter 9, nor shall any connection to a sewer extension in violation of any special limitation specified in a construction permit pursuant to 64.2(10) be allowed by any person subject to the conditions of the permit.

64.2(2) The site for each new wastewater treatment plant or expansion or upgrading of existing facilities must be inspected and approved by the department prior to submission of plans and specifications. Applications must be submitted in accordance with 567-60.4(455B).

64.2(3) Site approval under 64.2(2) shall be based on the criteria contained in the Ten States Standards, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. To the extent that separation distances of this subrule conflict with the separation distances of Iowa Code section 455B.134(3) "f," the greater distance shall prevail. The following separation distances from a treatment works shall apply unless a separation distance exception is provided in the "lowa Wastewater Facilities Design Standards." The separation distance from lagoons shall be measured from the water surface.

a. 1000 feet from the nearest inhabitable residence, commercial building, or other inhabitable structure. If the inhabitable or commercial building is the property of the owner of the proposed treatment facility, or there is written agreement with the owner of the building, the separation criteria shall not apply. Any such written agreement shall be filed with the county recorder and recorded for abstract of title purposes, and a copy submitted to the department.

- b. 1000 feet from public shallow wells.
- c. 400 feet from public deep wells.
- d. 400 feet from private wells.
- e. 400 feet from lakes and public impoundments.
- 25 feet from property lines and rights-of-way. £

When the above separation distances cannot be maintained for the expansion, upgrading or replacement of existing facilities, the separation distances shall be maintained at no less than 90 percent of the existing separation distance on the site, providing no data is available indicating that a problem has existed or will be created.

64.2(4) Applications for a construction permit must be submitted to the director in accordance with 567-60.4(455B) at least 120 days in advance of the date of start of construction.

64.2(5) The director shall act upon the application within 60 days of receipt of a complete application by either issuing a construction permit or denying the construction permit in writing unless a longer review period is required and the applicant is so notified in writing. Notwithstanding the 120-day requirement in 64.2(4), construction of the approved system may commence immediately after the issuance of a construction permit.

64.2(6) The construction permit shall expire if construction thereunder is not commenced within one year of the date of issuance thereof. The director may grant an extension of time to commence construction if it is necessary or justified, upon showing of such necessity or justification to the director.

64.2(7) The director may modify or revoke a construction permit for cause which shall include but not be limited to the following:

a. Failure to construct said wastewater disposal system or part thereof in accordance with the approved plans and specifications.

b. Violation of any term or condition of the permit.

Obtaining a permit by misrepresentation of facts or failure to disclose fully all material facts. C.

d. Any change during construction that requires material changes in the approved plans and specifications.

64.2(8) A construction permit shall not be required for the following:

a. Storm sewers or storm water disposal systems that transport only storm water.

CONSENT AND WAIVER Revised tocation as approved by Council June 2013 HIGH UGHTEDHAVE SIGNED AS OF FEBRUARY, 2014

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