IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: CITY OF COLWELL NPDES Permit #3409001	ADMINISTRATIVE CONSENT ORDER NO. 2015-WW-08

TO: City of Colwell
3204 1st Street
Colwell, IA 50620

I. SUMMARY

This administrative consent order (Order) is entered into between the City of Colwell (Colwell) and the Iowa Department of Natural Resources (DNR) for the purpose of establishing a binding schedule for establishing a strategy to cease unlawful sewage discharges to a water of the state. Pursuant to this Order, Colwell shall comply with the schedule contained herein.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
David Miller
Iowa DNR, Field Office 2
2300 15th Street SW
Mason City, Iowa 50401
Ph. 641-424-4073

Relating to this Order:
John Crotty
Iowa DNR, Legal Services Bureau
502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph. 515-725-8249

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.

III. STATEMENT OF FACTS

1. Colwell operates a wastewater disposal system that consists of approximately 35 septic tanks, a number of which flow into a larger three compartment tank. This larger tank discharges to a tile which discharges to Beaver Creek.

2. An additional tile discharges to a road ditch south of Colwell. The discharge from this tile was tested by DNR staff on April 21, 2010. The results of the testing indicated that untreated sewage is being discharged from this tile. This tile is believed to be connected to five nearby septic systems.

3. Colwell has not been issued an NPDES permit for these discharges.

4. On May 5, 2010, DNR issued a Notice of Violation to Colwell for violations of Iowa Code section 455B.186 (wastewater discharge without a permit), 567 IAC 62.1(1) (wastewater discharge without an NPDES permit), and 567 IAC 69.1(3) "b" (unlawful discharge from an on-site wastewater treatment system). The Notice of Violation stipulated that Colwell must retain a licensed professional engineer to initiate planning for a remedy of the unlawful discharge.

5. On September 27, 2010, Colwell retained Yaggy Colby Associates as its engineer.

6. On May 16, 2012, Colwell submitted a Facility Plan to DNR for a low pressure sewage collection system and a three cell controlled discharge lagoon.

7. On December 5, 2013, DNR requested that Colwell provide a progress update by January 31, 2014. DNR also provided information about the voluntary Disadvantaged Community rules.

8. On January 10, 2014, DNR received an application from Colwell to be designated as a Disadvantaged Community.

9. On February 21, 2014, DNR replied to Colwell. DNR acknowledged receipt of the Disadvantaged Community application and requested additional information. There was additional correspondence between DNR and Colwell throughout the spring regarding attaining Disadvantaged Community status.

10. On May 21, 2014, DNR designated Colwell as a Disadvantaged Community.

IV. CONCLUSIONS OF LAW

DNR and Colwell agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged in accordance with rules adopted by the Environmental Protection Commission (Commission).

2. Iowa Code section 455B.173(3) authorizes and requires the Commission to promulgate rules relating to the operation of waste disposal systems, the discharge of pollutants into waters of the state, and the issuance of permits to waste disposal systems. The Commission has done so at 567 IAC chapters 60 through 69. Subrule 64.3(1) prohibits the operation of a wastewater disposal system without or contrary to the terms of a permit. Subrule 62.1(1) prohibits the discharge of any pollutant from a point source to a navigable water unless authorized by an NPDES permit.

3. Iowa Code section 455B.199B authorizes DNR to provide for a variance of regulations when it determines those regulations will affect a disadvantaged community.

4. If compliance with applicable federal regulations or requirements in 567 IAC chapters 60 through 64 would result in substantial and widespread economic and social impact (SWESI) to the ratepayers of an unsewered community, the Director is authorized by 567 IAC 64.7(6) to designate the community as a Disadvantaged Unsewered Community and to negotiate a compliance agreement which will result in an improvement of water quality and reasonable progress toward complying with the applicable requirements, but which will not result in SWESI.

5. A compliance agreement negotiated with a Disadvantaged Unsewered Community as a result of SWESI must require the unsewered community to submit an alternatives report and an alternatives implementation compliance plan (AICP). The required contents of an alternatives report and an AICP are described at 567 IAC 64.7(6) "g" (1) and (2).

V. ORDER

DNR and Colwell hereby agree and Colwell is hereby ordered to establish a strategy to cease unlawful sewage discharges to a water of the state, according to the following schedule and requirements:

1. By May 21, 2016, Colwell shall submit an alternatives report to DNR.

2. The alternatives report shall detail the alternative pollution control measures that Colwell will investigate. Alternative pollution control measures may include, but are not limited to, upgrades of existing infrastructure, construction of a new facility, relocation of the discharge points, regionalization, or outfall consolidation. The alternatives report shall also contain an examination of all other appropriate measures that may achieve compliance with water quality standards without creating SWESI. Other appropriate measures may include, but are not limited to, mixing zone studies, consideration of seasonal limitations or site-specific data, alteration of current facility operations, intermittent discharges, source reduction, effluent recycling or reuse, or renegotiation of treatment agreements. The alternatives report shall describe which measures will be evaluated for feasibility and affordability after the report is submitted.

3. The alternatives report shall include a plan for pursuing funding options, including grants and low interest loans.

4. By November 21, 2018, Colwell shall submit an Alternatives Implementation Compliance Plan (AICP) to DNR.

5. The AICP shall include the results of the investigation detailed in the alternatives report, a description of any feasible and affordable alternatives that will be implemented, a schedule of the time necessary to implement the alternatives, and an updated Disadvantaged Unsewered Community Analysis.

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.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to $10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. DNR has determined that a penalty is not appropriate at this time. Colwell has realized only minimal economic benefit and has been designated as a Disadvantaged Unsewered Community. Since being notified of the violations, Colwell has cooperated with DNR in an expeditious manner. DNR finds no gravity or culpability basis for a penalty at this time.

3. DNR is authorized to issue an administrative order with penalties for noncompliance with this Order or to seek referral to the Iowa Attorney General for the initiation of a District Court action seeking such penalties and injunctive relief.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.4(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 Colwell. By signing this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

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 25th day of April, 2015

Jeffrey Wright Mayor

CITY OF COLWELL

Dated this 7 day of April, 2015

NPDES #9433000; Field Office #2; John Crotty; EPA; I.C.3