

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

<b>IN THE MATTER OF:</b>  <b>CITY OF LEDYARD</b>	<b>ADMINISTRATIVE CONSENT ORDER NO. 2016-WW-03</b>
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**TO:** City of Ledyard  
P.O. Box 23,  
Ledyard, IA 50556

**I. SUMMARY**

This administrative consent order (Order) is entered into between the City of Ledyard (City) and the Iowa Department of Natural Resources (Department) for the purpose of establishing a binding schedule to cease unlawful discharge of sewage to waters of the State. Pursuant to this Order, the City shall comply with the schedule contained herein.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Trent Lambert  
Iowa DNR, Field Office 2  
2300 15<sup>th</sup> Street SW  
Mason City, Iowa 50401  
Ph. 641-424-4073

**Relating to this Order:**

Carrie Schoenebaum  
Iowa DNR, Legal Services Bureau  
502 E. 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Ph. 515-725-8244

**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. On June 5, 1985, Glen Carper, of the Department, conducted an evaluation of the City's sanitary sewer system. This evaluation included sampling of wastewater of private tiles which drained part of the City. The Department determined that partially and or untreated wastewater was being discharged to the City's tile lines which ultimately discharged to at least two distinct surface waters. Based upon this determination, the

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Department investigation report and cover letter informed the City the current wastewater treatment system was not adequate according to federal and state standards.

2. On June 18, 2008, Eric Wiklund, of the Department, conducted an evaluation of the City's sanitary sewer system. Sample results taken during Mr. Wiklund's evaluation indicated high levels of bacteria consistent with discharge of untreated wastewater.
3. On June 20, 2008, the Department sent the City an NOV for the above discussed violations.
4. On July 7, 2008, the Department received a written response from the City regarding the NOV. The City stated that it hired a licensed, professional engineer to address the illegal discharges.
5. On November 6, 2008, the City contacted the Department to inform it that it was in the process of interviewing engineering firms and gathering cost estimates.
6. On June 16, 2009, the Department sent the City written notice that it had not received any information regarding the status of its wastewater project and that the City was to have submitted such information to the Department by July 1, 2009.
7. On December 2, 2009, the Department sent the City an e-mail informing it that the proposed alternatives for wastewater treatment are viable and can be approved if properly designed. However, the submitted facility plan could not be approved.
8. On January 13, 2012, the Department sent the City a letter encouraging residents and those who work in an unsewered community to attend an unsewered community open house.
9. On December 5, 2013, the Department sent the City a letter stating its concerns with the City's failure to contact or communicate with the Department. This letter informed the City of the new Disadvantaged Community law and its components. The letter also asked the City to submit a specific plan and schedule by January 31, 2014.
10. On January 9, 2014, the City sent the Department a letter stating that it had contacted its engineering firm and that a facility plan should be submitted to the Department as soon as possible.
11. On March 26, 2015, the Department sent the City a letter stating that there has been no further correspondence from the City. This letter stated that an updated progress report should be submitted by May 30, 2015. On this same date, Mr. Lambert, an Environmental Specialist Senior with the Department, had a telephone conversation with the City's engineering firm. During this conversation the engineering firm stated

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that the City will submit a Disadvantaged Unsewered Community Analysis (DUCA) to the City Council and if approved it will then be submitted to the Department.

12. On May 5, 2015, the City submitted a DUCA to the Department.

13. July 14, 2015, the Department notified the City that it did qualify as disadvantaged and advised that the City it would be referred to the Department's Legal Services Bureau for an administrative order establishing a schedule of compliance to meet Iowa's wastewater treatment requirements.

**IV. CONCLUSIONS OF LAW**

The Department and the City 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 disposal systems, the discharge of pollutants into waters of the state, and the issuance of permits to disposal systems. The Commission has done so at 567 Iowa Administrative Code (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 the Department 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. This agreement shall result in an improvement of water quality and reasonable progress toward complying with the applicable requirements, but 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).

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**V. ORDER**

The Department and the City hereby agree and the City 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 July 17, 2017, the City shall submit an alternatives report to the Department.

The alternatives report shall detail the alternative pollution control measures that the City 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.

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

2. By January 17, 2020, the City shall submit an Alternatives Implementation Compliance Plan to the Department.

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 DUCA.

**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. The Department has determined that a penalty is not appropriate at this time. The City has been designated as a Disadvantaged Unsewered Community. Since being notified of the violations, the City has cooperated with the Department in an expeditious manner. The Department finds no gravity or culpability basis for a penalty at this time.

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3. The Department 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 7.1, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of the City. 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.

  
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CHUCK GIPP, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 7<sup>th</sup> day of  
March, 2016

  
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City of Ledyard  
*BRD signature*  
NPDES #1722001; Field Office #2; Carrie Schoenebaum; EPA; I.C.3

Dated this 7 day of  
May 2016, 2016

