# IOWA DEPARTMENT OF NATURAL RESOURCES
# ADMINISTRATIVE CONSENT ORDER

| IN THE MATTER OF:<br><br>CITY OF ALEXANDER | ADMINISTRATIVE CONSENT ORDER<br>NO. 2016-WW-09 |
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**TO:** City of Alexander
P.O. Box 1
Alexander, IA 50420

## I. SUMMARY

This administrative consent order (Order) is entered into between the City of Alexander (Alexander) 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, Alexander shall comply with the schedule contained herein.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**
Jeremy Klatt
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. Alexander is an incorporated city in Franklin County, Iowa. Approximately 70 septic tanks located within the city are connected to a tile line which conveys untreated or partially treated effluent to a water of the state.

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2. On June 23, 2008, DNR issued a Notice of Violation to Alexander for violations of Iowa Code 455B.186 (discharge of a pollutant to a water of the state) and 567 Iowa Administrative Code (IAC) 62.1(1) (discharge of a pollutant without a permit).

3. On March 23, 2016, DNR designated Alexander as a Disadvantaged Unsewered Community.

## IV. CONCLUSIONS OF LAW

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

1. Iowa Code 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 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 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 enter into a compliance agreement with the community 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 entered into 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

Alexander is hereby ordered, and consents, to establish a strategy to cease unlawful sewage discharges to waters of the state, according to the following schedule and requirements:

1. By March 23, 2018, Alexander shall submit an alternatives report to DNR.

The alternatives report shall detail the alternative pollution control measures that Alexander 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 September 23, 2020, Alexander shall submit an Alternatives Implementation Compliance Plan (AICP) to DNR.

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 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 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. Alexander has realized minimal economic benefit and has been designated as a Disadvantaged Unsewered Community. 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.

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## VII. WAIVER OF APPEAL RIGHTS

Iowa Code 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 Alexander. 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 18th day of May, 2016

Daniel D. Boyle

CITY OF ALEXANDER

Dated this 11 day of May, 2016

Field Office #2; John Crotty; EPA; I.C.1.