

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE ORDER

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**IN THE MATTER OF:**

**J & V Rentals, LLC, dba Winding  
Brook Mobile Home Park**

**Clinton County  
Wastewater Facility No. 6-23-00-6-02**

**ADMINISTRATIVE ORDER  
NO. 2016-WW- 11**

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**TO: Jeffrey K. Walker and Virginia A.  
Walker, Managers and Members  
J & V Rentals, LLC  
719 Lake Street  
DeWitt, Iowa 52742**

**Jeffrey K. Walker, Registered Agent  
J & V Rentals, LLC  
719 Lake Street  
DeWitt, Iowa 52742**

### I. SUMMARY

This unilateral administrative order (order) is issued to J & V Rentals, LLC dba Winding Brook Mobile Home Park (Winding Brook). The Iowa Department of Natural Resources (Department) issues this order due to violations for failure to properly maintain the wastewater treatment facility (WWTF) serving Winding Brook, failure to timely submit wastewater monthly operation reports (MORs), and failure to measure and report all required parameters on the MORs. The order requires rehabilitation of the WWTF and maintenance of the WWTF in order to meet NPDES permit and rule requirements. The order requires the timely submittal of MORs with all required information to Department Field Office No. 6 (FO 6) and assesses a penalty of \$5,000.00.

Any questions or response regarding this order should be directed to:

**Relating to technical requirements:**

Jim Kacer, Environmental Specialist  
IDNR Field Office No. 6  
1023 West Madison  
Washington, Iowa 52353  
Phone: (319) 653-2135

**Relating to legal requirements:**

Diana Hansen, Attorney at Law  
Legal Services Bureau  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Phone: (515) 725-8248

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**Remit Payment of Penalty to:**

Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034

**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, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Winding Brook is located at 2210 260<sup>th</sup> Avenue, DeWitt, Iowa 52742. The legal description for this facility is Section 3, T 81N, R 03E, Clinton County, Iowa. Jeffrey K. Walker (also known as Jeff Walker) and Virginia A. Walker, DeWitt, Iowa 52742 purchased this mobile home property in June 2007 and deeded it to J & V Rentals, LLC. The WWTF serving this mobile home park consists of a three cell waste stabilization lagoon. Wastewater is pumped to the lagoon system by means of two submersible pumps. The facility is considered a controlled discharge facility by the Department. The WWTF has not discharged in at least 20 years, according to MORs submitted for the facility to the Department.

2. Treated wastewater from the WWTF for this mobile home park is discharged to an unnamed tributary to Rock Creek, pursuant to Iowa NPDES Permit No. 6-23-00-6-02. The current NPDES permit for this WWTF was issued on October 1, 2010 and will expire on September 30, 2015. The permit contains effluent limitations for the discharge of pollutants, including but not limited to carbonaceous biochemical oxygen demand (CBOD5), total suspended solids (TSS), and pH.

3. On November 30, 2010, FO 6 inspected the Winding Brook WWTF. The inspection report noted that MOR's had not been submitted for the months of October 2009 through February 2010. Prior to March 2010, cell depths were not consistently recorded on the MORs and average daily flows were not being recorded on the MORs. Maintenance issues included evidence of excess seepage from the lagoons based on the fact that the facility had not discharged for many years despite the average flow for the review period exceeding the design flow. There was evidence that the discharge line had not been maintained and may have collapsed. The berms of the first and third cells showed damage from burrowing animals. The inspection report also noted cracking of the liner to the third cell.

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4. As a result of the inspection, a Notice of Violation (NOV) letter was issued to Winding Brook on December 13, 2010. The NOV required Winding Brook to respond by February 1, 2011 with the name of the engineer hired to evaluate the seepage from the lagoon system. The NOV required that the engineer determine the seepage rate and if the seepage rate exceeded the Department design standard, to develop a plan to construct a liner for the lagoon system meeting current Department design standards.

5. On October 6, 2011, Winding Brook's engineer sent FO 6 the results from the seepage test. The engineer's report indicated that cells 1 and 2 definitely would need to be rehabilitated or replaced and that the third cell possibly needed rehabilitation. The report also stated that the flow into the lagoon system needed to be more accurately determined. The report included a schedule for rehabilitation of cell 1 by April 2013, cell 2 by April 2015 and cell no. 3 by August 2017. By a letter dated October 11, 2011, FO 6 approved the engineer's October 6, 2011 schedule. The FO 6 letter required a progress report by June 30, 2012. The Department does not have a record of having received such a progress report.

6. On December 11, 2012, FO 6 received an email note from the Winding Brook engineer. The email note discussed the storage capacity of the lagoon system and a proposed plan for rehabilitation of the existing lagoon system to address the seepage problems and to replace lagoon piping and valves. A Department engineer reviewed the information submitted and responded back concerning the proposed plan to correct the lagoon system seepage on August 28, 2013. The Department engineer stated that in addition to the seepage problem, storage was also a concern. The Department engineer indicated that based on the influent flow rates, the lagoon system did not have enough volume to provide 180 days storage if seepage was the only issue addressed. On September 13, 2013, FO 6 sent an email to the Winding Brook engineer advising the engineer to update the prior schedule submitted to the Department taking into account the Department engineer's comments concerning lack of 180 days storage.

7. On October 8, 2013, a Department engineer (Project Manager) led a project meeting attended by the facility owners, the facility owners' engineers, and an environmental specialist from FO 6. Topics discussed at the meeting included the lagoon system seepage issue and the accuracy of flow information for the lagoon system. It was agreed that the facility's engineer would submit a schedule for gathering flow information. The Project Manager indicated that if the determination was made that the lagoons needed to be expanded, a new NPDES permit would need to be submitted and an antidegradation analysis would be required. A second project initiation meeting could then be held after completion of the flow monitoring study to discuss project details.

8. On January 3, 2014, the facility's engineer responded to FO 6 by an email note stating that Winding Brook needed to consider its options for flow metering. She also indicated that she would be sending FO 6 a schedule for the influent flow study. FO 6 responded in a January 13, 2014 email note that requested that the flow study include the

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higher flows the facility would experience in the spring. By a January 22, 2014 letter, the facility's engineer sent a response to the October 8, 2013 project meeting to FO 6. The letter discussed alternatives for installation of the influent flow meter needed to provide an accurate estimate of the hydraulic loading to the lagoon system. The letter stated that an area-velocity meter in the influent structure was selected as the best option. A schedule for completion of the flow study by July 1, 2014 was included in the letter.

9. On March 19, 2014, FO 6 conducted an inspection of the Winding Brook WWTF. The inspection report noted the lack of rip-rap on the inner berms of the lagoon, the presence of animal burrows in the berms, and the fact that several control valves were not operable. On March 21, 2014, FO 6 sent an NOV letter to Winding Brook for failure to maintain the facility. The NOV required Winding Brook to submit an updated schedule for completing facility improvements to FO 6 by June 1, 2014.

10. On May 30, 2014, Winding Brook's engineer emailed a response to FO 6 concerning the NOV. The email note requested an extension to August 1, 2014 for submittal of the flow data study. On June 11, 2014, FO 6 emailed a response to the Winding Brook engineer approving the extension request. On August 1, 2014, the Winding Brook engineer emailed a letter to FO 6 in response to the March 21, 2014 NOV letter. The engineer's response summarized the flow data collected from April 14, 2014 to July 14, 2014 and included a schedule for completion of improvements. The proposed schedule had not been approved by Winding Brook at the time that it was sent to FO 6.

11. On March 4, 2016, FO 6 sent Winding Brook a letter stating that there had been no discernable progress on Winding Brook's part toward compliance with the construction schedule proposed on August 1, 2014 for this facility. FO 6 included an updated schedule in its March 4, 2016 letter and indicated to Winding Brook that the updated schedule would be included in a unilateral administrative order. This order includes a construction schedule based on the schedule stated in the Department's March 4, 2016 letter.

#### **IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.175(1) provides in part:

If there is substantial evidence that any person has violated or is violating any provision of this division or chapter 459, subchapter III, or of any rule established or permit issued pursuant thereto; then:

1. The director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease.

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2. Iowa Code section 455B.186 prohibits the discharge of pollutants to waters of the state contrary to a permit from this Department. Iowa Code section 455B.183 prohibits the operation of a waste disposal system without a permit from this Department.

3. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the construction and operation of WWTFs and the discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60- 69. Subrule 62.1(1) prohibits the discharge of a pollutant without an NPDES permit. Subrule 64.3(1) prohibits the operation of any waste disposal system without a permit. Rule 64.6 specifies the conditions that are to be included in a permit, including applicable effluent limitations in chapters 61 and 62 of the rules and monitoring and reporting requirements in chapter 63. The NPDES permit issued for the Winding Brook WWTF includes effluent limitations, monitoring requirements, and reporting requirements. The NPDES permit issued for the Winding Brook WWTF includes operational requirements including the authorization for this facility to operate as a continuous discharge facility and to discharge twice per year. The NPDES permit does not authorize a continuous discharge. The Department's design standards do not allow the seepage that has occurred and continues to occur from the Winding Brook lagoon system.

4. Department rule 567 IAC 63.7 provides for the submission of records of operation for WWTFs to the Department. Under this rule MORs are required to be submitted to the Department within fifteen days following the close of the reporting period and in accordance with monitoring requirements derived from chapter 63 and included in the operation permit for the facility. Rule 63.9 requires MORs to include the results of all monitoring specified in or authorized by chapter 63. NOV letters issued as a result of inspections and review of monitoring data for the Winding Brook WWTF state violations of the monitoring and reporting requirements for this facility.

5. The NPDES permit for the Winding Brook WWTF requires that this WWTF be adequately operated and maintained. Standard condition 8 of the permit provides that all facilities and control systems shall be operated as efficiently as possible and maintained in good working order. This standard permit condition is based upon subrule 64.7(7)"f". This subrule states "the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities and systems of control to achieve compliance with the terms and conditions of the permit." Based on the inspection reports for this facility, there has not been proper operation and maintenance of this facility.

6. Subrule 64.2(1) requires a facility to obtain a construction permit from the Department prior to construction, installation or modification of a wastewater disposal system. The owners of Winding Brook are required to apply for and receive a construction permit pursuant to 567 IAC chapter 64 of the Department's rules prior to any upgrade to the wastewater disposal system at this mobile home park.

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**V. ORDER**

THEREFORE, the Department orders Winding Brook to comply with the following provisions to cease, abate and redress violations:

1. Winding Brook is required to rehabilitate and maintain a WWTF for this mobile home park in a manner that allows Winding Brook to meet NPDES permit effluent limits and all other requirements of the NPDES permit for the operation and maintenance of this facility. Winding Brook is required to comply with the following construction schedule:

A. You are required to receive an engineering proposal from an engineering consultant for design services by October 1, 2016 and submit a copy of this engineering proposal for design services from the engineering consultant to FO 6 by October 1, 2016.

B. You are required to give written approval of the engineering proposal for design services and authorization to proceed to your engineering consultant by November 1, 2016. You are required to submit a copy of your written approval of the engineering proposal and authorization to proceed to FO 6 by November 1, 2016.

C. You are required to contact the Department's Wastewater Engineering Section and schedule a project initiation meeting by December 1, 2016.

D. You are required to submit an Antidegradation Analysis and a complete facility plan or preliminary engineering report (PER) meeting Department requirements for the Winding Brook WWTF by June 1, 2017. The PER is required to be prepared by a professional engineer licensed in the state of Iowa, to evaluate WWTF improvement alternatives, and to state the selected alternative to bring this facility into compliance with NPDES permit and Department rule requirements. The PER is required to include an implementation schedule for completion of the upgrade to this WWTF. You are required to submit the PER to the Wastewater Construction Engineering Section, Iowa Department of Natural Resources, 502 East 9<sup>th</sup> Street, Des Moines, Iowa 50319-0034 and a copy of the PER to FO 6, Iowa Department of Natural Resources, 1023 West Madison, Washington, Iowa 52353-2135.

E. Following receipt of Department approval of the Antidegradation Analysis and PER, Winding Brook is required to authorize its engineer to proceed with the preliminary design of the project and to submit preliminary plans and specifications to the Department by June 1, 2018.

F. You are required to submit complete final plans and specifications meeting Department design standards and rules, a complete construction permit application, and applicable fees to the Department's Project Manager by September 30, 2018.

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G. You are required to award the contract for construction of the Winding Brook WWTF upgrade by March 1, 2019 and to begin construction of this project by July 1, 2019. You are required to complete the construction project by July 1, 2020 with final inspection and acceptance of the construction project to be completed by August 1, 2020.

2. You are required to comply with the effluent limits and the monitoring and reporting requirements of the NPDES permit issued for the Winding Brook WWTF. This includes completion of all monitoring required by the NPDES permit and timely submittal of all MORs to FO 6.

3. You are required to properly operate and maintain the WWTF serving Winding Brook, in accordance with the NPDES permit for this facility.

4. You are required to pay an administrative penalty of \$5,000.00. The administrative penalty shall be paid to the Department within 30 days of your receipt of this order.

**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. More serious criminal sanctions are also available pursuant to that provision.

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 these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty. The administrative penalty assessed by this order is determined as follows:

**a. Economic Benefit** There has been an economic benefit to the owners of this mobile home park due to failure to adequately maintain this facility and in not upgrading this facility as needed. The owners have not paid for repairs to the facility to keep it operating effectively and in compliance with NPDES permit and rule requirements. There have been cost savings in not collecting samples during drawdown periods if this facility had discharged twice per year as authorized in its NPDES permit. It is estimated that cost savings in not maintaining this facility in full compliance with permit and rule requirements and not sampling are in excess of \$2,000.00. There also have been cost savings in not monitoring and reporting as required by the NPDES permit and rules. This order assesses the amount of \$2,000.00 for this factor.

**b. Gravity of the violations** 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 the type of violation. As indicated above substantial civil and criminal sanctions are authorized by

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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. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. Failure to maintain the WWTF resulted in seepage of partially treated wastewater to the shallow ground water. This is a threat to the environment and to public health. FO 6 has worked with this facility the past several years to return it to compliance but has been unable to do so despite the agency time and money expended to investigate, document and respond to this facility's noncompliance. This threatens the integrity of the regulatory program. Based on these considerations, the Department assesses the amount of \$1,000.00 for this factor.

**c. Culpability** FO 6 has attempted through inspections, inspection reports, and NOV letters since November 2010, to return this facility to compliance. By failing to timely repair the WWTF to mitigate the harm, Winding Brook was negligent in its duty to comply with NPDES permit and rule requirements. Although an engineering firm was hired to provide engineering advice, Winding Brook did not commit to the construction schedule submitted by its engineer to the Department on August 1, 2014. In view of the failure to timely repair this facility to meet NPDES permit and rule requirements and the continuing seepage from the lagoon system to the groundwater, the Department assesses \$2,000.00 for this factor.

## **VII. APPEAL RIGHTS**

Pursuant to Iowa Code section 455B.175, and subrule 561 IAC 7.4(1), as adopted by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portions of this order 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 and 561 IAC chapter 7.

## **VIII. NONCOMPLIANCE**

Compliance with Section V. constitutes full satisfaction of all requirements pertaining to the specific violations described in this order. Failure to comply with this order may result in 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 8<sup>th</sup> day of

June, 2016

J & V Rentals, LLC dba Winding Brook Mobile Home Park- Wastewater Facility No. 6-23-00-6-02 (Copy to Central Office Wastewater File), Jim Kacer- Field Office No. 6, Diana Hansen- Legal Services Bureau, US EPA Region VII, I.B.2.a, I.B.2.b, and I.B.2.d.