

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

<b>IN THE MATTER OF:</b>  <b>CITY OF EMMETSBURG</b> <b>NPDES# 7428002</b>	<b>ADMINISTRATIVE CONSENT ORDER</b> <b>NO. 2016-WW- 18</b>
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**TO:** City of Emmetsburg  
John Bird, Administrator  
2021 Main Street  
Emmetsburg, IA 50536

**I. SUMMARY**

This administrative consent order (Order) is entered into between the City of Emmetsburg (Emmetsburg) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving violations of Emmetsburg's National Pollutant Discharge Elimination System (NPDES) permit. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Bryon Whiting  
Field Office 3  
Iowa Department of Natural Resources  
1900 N Grand Avenue  
Gateway North, Suite E17  
Spencer, Iowa 51301  
Ph. 712-262-4177

**Relating to legal requirements:**

John Crotty  
Legal Services Bureau  
Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
  
Ph. 515-725-8249

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East 9<sup>th</sup> Street  
Des Moines, IA 50319-0034

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**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 adopted 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. DNR issued a renewed NPDES permit to Emmetsburg on March 30, 2009. The permit included total dissolved solids limits of 1,403 milligrams per liter 30-day average and 2,498 milligrams per liter daily maximum. The permit also included copper limits of 0.0093 milligrams per liter 30-day average and 0.014 milligrams per liter daily maximum. The permit required compliance with these limits by March 30, 2012.

2. DNR amended Emmetsburg's NPDES permit on August 1, 2010 to incorporate new water quality criteria for copper and chloride. The amended permit included updated copper limits of 0.01687 milligrams per liter 30-day average and 0.0269 milligrams per liter daily maximum. The amended permit replaced the existing total dissolved solids limits with chloride limits of 389 milligrams per liter 30-day average and 629 milligrams per liter daily maximum.

3. DNR amended Emmetsburg's NPDES permit again on March 20, 2012 after Emmetsburg submitted site-specific monitoring data for the purpose of revising the daily maximum copper and chloride limits. The amended permit included copper limits of 0.017 milligrams per liter 30-day average and 0.074 milligrams per liter daily maximum. The amended permit included chloride limits of 389 milligrams per liter 30-day average and 703 milligrams per liter daily maximum. The amendment extended the date for achieving compliance with chloride limits to March 28, 2014.

4. On December 17, 2014, DNR and Emmetsburg had a conference call in which Emmetsburg advised it could not meet permit limits for copper and chloride and requested the compliance schedules be extended. DNR advised the copper limits had become final on April 1, 2012 and the chloride limits had become final on March 28, 2014. DNR advised that it could not extend the compliance dates for limits that had already become final.

5. On January 29, 2015, Emmetsburg's consultant, Bolten & Menk, Inc., submitted a letter to DNR suggesting an administrative consent order with a schedule for achieving compliance with copper and chloride limits.

6. On June 1, 2015, DNR renewed Emmetsburg's NPDES permit. The renewed permit included copper limits of 0.0167 milligrams per liter 30-day average and 0.074

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milligrams per liter daily maximum. Chloride limits were unchanged. On July 2, 2015, Emmetsburg appealed the renewed permit. Emmetsburg's appeal contended that the renewed permit should include a schedule for achieving compliance with copper and chloride limits. Emmetsburg requested an informal procedure to discuss settlement of the appeal without the need for a contested case hearing.

7. A meeting was held on December 17, 2015, between DNR and representatives of Emmetsburg to discuss settlement. DNR requested that Emmetsburg evaluate options for site specific copper water quality standards including the hardness dependent standards provision in the current rules and the copper biotic ligand model (BLM) concept.

8. On December 31, 2015, Emmetsburg submitted to DNR a formal request for site specific copper and chloride limits, including technical data in support of the request. Emmetsburg believes it will be able to comply with site-specific copper limits, but will be unable to comply with site-specific chloride limits.

9. DNR issued Notices of Violation to Emmetsburg for violations of the copper permit limits on November 7, 2012, August 5, 2014, October 31, 2014, August 18, 2015, December 4, 2015, February 16, 2016, and August 1, 2016. DNR issued Notices of Violation to Emmetsburg for violations of the chloride permit limits on August 5, 2014, October 31, 2014, August 18, 2015, December 4, 2015, February 16, 2016, and August 1, 2016. Emmetsburg responded to the Notices of Violation in letters dated August 22, 2014, September 22, 2015, February 23, 2016, and August 11, 2016.

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

DNR and Emmetsburg 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 waste disposal system without or contrary to the terms of a permit.

#### **V. ORDER**

Therefore, DNR orders and Emmetsburg agrees to do the following with respect to achieving compliance with copper and chloride limits:

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1. Within 90 days after the issuance of this Order, Emmetsburg shall submit to DNR an antidegradation alternatives analysis for site-specific copper and chloride limits. If the analysis is approved, DNR will initiate a permit amendment to replace the existing copper and chloride limits with site-specific limits.

2. Within 365 days after the issuance of this Order, Emmetsburg shall submit to DNR a progress report on chloride reduction.

3. Within 485 days after the issuance of this Order, Emmetsburg shall submit to DNR a comprehensive chloride source reduction study. The study shall include an evaluation of raw and finished municipal drinking water chloride and hardness sampling results, an inventory, obtained through a mail survey, of the number of residential ion exchange water softeners that discharge into Emmetsburg's wastewater collection system, and an inventory of the number of those softeners that regenerate based on flow versus regenerating based on a timer.

The study shall also examine the extent to which chloride source reduction, including hardness reduction at the city's drinking water treatment facility and subsequent reduced water customer use of ion exchange water softeners, is technically and economically feasible.

The study shall also evaluate industrial users that discharge ion exchange softener wastewater into Emmetsburg's wastewater collection system and examine the feasibility of reducing chloride contributions from these industrial users. DNR will issue comments to Emmetsburg on the study.

4. Within 90 days of receiving DNR's comments on the study, Emmetsburg shall submit to DNR a plan of action for complying with chloride permit limits. DNR is not obligated to accept the plan of action.

5. Within 30 days after the issuance of this Order, Emmetsburg shall pay an administrative penalty in the amount of \$4,750.

**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 is assessing a penalty of \$4,750 for the violations described above. The following factors were considered in the assessment of this penalty:

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a. Economic benefit: \$500.

Emmetsburg's copper and chloride permit limits became effective on April 1, 2012 and March 28, 2014, respectively. Emmetsburg has gained an economic benefit by delaying costs necessary to comply with these limits. \$500.00 is assessed for this factor.

b. Gravity of the violation: \$2,750.

The chloride limits in Emmetsburg's NPDES permit were developed to prevent instream violations of water quality standards that protect aquatic life. Exceedances of these limits put the integrity of Iowa's natural resources at risk. \$2,750 is assessed for this factor.

c. Culpability: \$1,500.

As an NPDES permit holder, Emmetsburg has a duty to be knowledgeable about the terms and conditions of its permit. Emmetsburg's copper and chloride permit limits became effective on April 1, 2012 and March 28, 2014, respectively. Emmetsburg had a duty to be aware of these dates and to take necessary action to avoid noncompliance.

## **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 Emmetsburg. By signing this Order, all rights to appeal this Order are waived.

## **VIII. NONCOMPLIANCE**

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the past violations described in this Order. 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  
CHUCK GIPP, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 4<sup>th</sup> day of

October, 2016

Paul A. Saylor  
CITY OF EMMETSBURG

Dated this 29 day of Sept.

September, 2016

Field Office #3; John Crotty; EPA; I.B.2.c; James L. Pray, 666 Grand Ave. Suite 2000, Des Moines, IA 50309