

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

IN THE MATTER OF:

CITY OF GILLETT GROVE

**ADMINISTRATIVE CONSENT
ORDER
NO. 2016-WW-20**

TO: City of Gillette Grove
P.O. Box 115
Gillette Grove, IA 51341

I. SUMMARY

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

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Tom Roos
Iowa DNR, Field Office 3
1900 N. Grand, Gateway North, Suite E17
Spencer, IA 51301
Ph. 712-262-4177

Relating to this legal requirements:

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 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 September 24, 2009, staff from DNR Field Office #3 conducted an evaluation of Gillett Grove’s sewage collection system. DNR determined that partially treated or untreated wastewater is being discharged to city tile lines which ultimately discharge to a water of the state. As a result of this evaluation, DNR issued Gillette Grove a Notice of Violation on October 19, 2009.

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2. On March 29, 2013, Gillette Grove submitted a Disadvantaged Unsewered Community Analysis (“DUCA”) to DNR.

3. On April 7, 2014, DNR designated Gillette Grove as a Disadvantaged Unsewered Community.

IV. CONCLUSIONS OF LAW

DNR and Gillette Grove 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 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 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 Gillette Grove hereby agree and Gillette Grove 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:

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1. By November 1, 2017, Gillette Grove shall submit an alternatives report to DNR.

The alternatives report shall detail the alternative pollution control measures that Gillette Grove 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 November 1, 2018, Gillette Grove shall submit an Alternatives Implementation Compliance Plan 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 DUCA.

VI. PENALTY

1. Iowa Code 455B.191 authorizes the assessment of civil penalties of up to \$5,000 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. Gillette Grove has been designated as a Disadvantaged Unsewered Community. Since being notified of the violations, Gillette Grove 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.

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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 7.1, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Gillette Grove. 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 455B.191.

Chuck Gipp
CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 14th day of
October, 2016

J. Bendlin JAMES BENDLIN,
MAYOR
CITY OF GILLETTE GROVE
PHONE: MAYOR JAMES BENDLIN
712-260-6575
NPDES #2127001; Field Office #3; John Crotty; EPA; I.C.1

Dated this 10 day of
OCTOBER, 2016

11-1-2016
COPY

Mailed TO:
JOHN CROTTY
ATTORNEY, IOWA DEPT OF NATURAL RESOURCES
502 E 9th STREET
DES MOINES, IA 50319

Judith A. Bevers, Clerk
Gillette Grove, Iowa