IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:
CITY OF OSCEOLA
Clarke County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2020-WW-01

To: City of Osceola
c/o Ty Wheeler, Administrator
115 N Fillmore Street
Osceola, Iowa 50213

I. SUMMARY

This Administrative Consent Order (Order) requires the City of Osceola (Osceola) to pay an administrative penalty in the amount of $3,000.00, pay restitution in the amount of $14,463.59, and operate the City of Osceola’s municipal wastewater treatment plant in a manner that is compliant with the laws of the State of Iowa.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Tom Atkinson
DNR Field Office 5
Iowa Department of Natural Resources
502 9th St., Wallace State Office Building
Des Moines, Iowa 50319
Ph. (515)725-0371

Relating to legal requirements:
Noah Poppelreiter
Attorney, DNR Legal Services
Iowa Department of Natural Resources
502 9th St., Wallace State Office Building
Des Moines, Iowa 50319
(515)725-8248

Send payment of penalty to:
Director of the Iowa DNR
Iowa Department of Natural Resources
502 9th St. Wallace State Office Building
Des Moines, Iowa 50319
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; Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties; and Iowa Code section 481A.151 which authorizes the assessment of restitution for injuries caused to wild animals by unlawful water pollution.

III. STATEMENT OF FACTS

1. Osceola owns and operates a wastewater treatment facility (Facility) located at 1986 Country Club Road, Osceola, Iowa. The Facility treats domestic, commercial, and industrial wastewater from its customers in Osceola. The Facility provides wastewater treatment using a two-stage trickling filter treatment system. Pursuant to National Pollutant Discharge Elimination System permit #2038002 (NPDES Permit #2038002), the Facility is authorized to discharge treated effluent to White Breast Creek (Creek), within limitations, but is not allowed to discharge sewage sludge under any circumstances.

2. At or about 8:00 a.m. on August 7, 2019, DNR Field Office 5 environmental specialist senior Tom Atkinson received a telephone call from Donnie McCuddin, Osceola’s wastewater treatment superintendent and operator-in-charge. Mr. McCuddin stated the Facility’s clarifier sludge pumps were left running overnight, causing an overflow from the primary digester and leading to a discharge of sludge to the Creek. Mr. McCuddin stated that Osceola staff discovered the discharge at approximately 7:30 a.m. on August 7. Mr. McCuddin informed Mr. Atkinson that the discharge was actively causing the death of fish in the Creek. Osceola staff shut down the Facility’s pumps while on the telephone with Mr. Atkinson; this stopped the overflow from the primary digester.

3. At or about 9:10 a.m. on August 7, Osceola constructed earthen berms to the stop the flow of the sludge to the Creek.

4. At or about 9:40 a.m. on August 7, Tom Werner, a member of Osceola’s laboratory staff at the Facility, and Mr. McCuddin collected water samples from the Creek for laboratory testing at the Facility and provided Mr. Atkinson with the following results:

<table>
<thead>
<tr>
<th>Location</th>
<th>Ammonia as Nitrogen (mg/L)</th>
<th>Dissolved Oxygen (mg/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upstream</td>
<td>0.053</td>
<td>5.65</td>
</tr>
<tr>
<td>Discharge Site</td>
<td>&gt;47.0</td>
<td>1.85</td>
</tr>
</tbody>
</table>
5. At or about 10:00 a.m. on August 7, Mr. Atkinson and DNR Field Office 5 environmental specialist Anthony Bigger responded to the Facility to investigate the discharge. The DNR staff observed multiple sludge flows, including flows both to southwest and to the south. DNR staff observed evidence that both flows discharged to the Creek but had since been stopped by the construction of the earthen berms. DNR staff observed Osceola staff conducting cleanup efforts of sludge behind the earthen berms and from the Creek.

6. DNR staff observed sludge in the Creek for approximately one and a half miles downstream from the discharge point. DNR staff observed numerous dead fish in the Creek.

7. Mr. Atkinson contacted DNR Fisheries biologist Andy Jansen and requested a fish kill investigation at the Facility. Due to the extensive amount of sludge in the Creek and due to the ongoing fish kill, DNR staff determined the investigation would be conducted on August 8, 2019.

8. On August 8, DNR’s Fisheries Bureau personnel conducted its fish kill assessment of the impacted areas of the Creek. The fish kill investigation was led by Mr. Jansen with assistance from DNR Fisheries Bureau staff Jon Christensen and Keagan Ivans. The Fisheries personnel determined the fish kill extended 1.53 miles in the Creek. The Fisheries Bureau personnel performed the count in accordance with the methods outlined in American Fisheries Society, Special Publication 30.

9. The fish kill assessment determined that 5,705 fish were killed, valued at $13,877.92. Investigative costs associated with the fish kill totaled $585.67. The total fish value and investigative costs totaled $14,463.59.

10. Also on August 8, Mr. Atkinson conducted interviews with Mr. McCuddin and Shane Selsor, the operator responsible for the pumps at the Facility on the afternoon of August 6, 2019. Mr. Selsor stated he turned on the primary sludge pumps for the Facility at or about 3:30 p.m. He was then distracted and failed to turn them off prior to leaving. Mr. McCuddin confirmed that the pumps ran for approximately sixteen hours overnight starting on August 6. Mr. McCuddin stated the pumps typically run for approximately twelve minutes overnight.

11. On September 6, 2019, the DNR issued the City of Osceola a Notice of Violation for the discharge.
IV. CONCLUSIONS OF LAW

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

1. Iowa Code section 455B.186 and 567 IAC 62.1 prohibit the discharge of pollutants from a point source into any water of the State without an applicable permit. Osceola allowed sludge from the Facility to discharge to the Creek. NPDES Permit #2038002 does not allow the discharge of sludge to the Creek. The facts of this case show Osceola is in violation of these sections.

2. 567 IAC 61.3(2) provides general water quality criteria and prohibits any discharge produce sludge deposits or are toxic to aquatic life. Osceola allowed sludge from the Facility to discharge to the Creek, causing a sludge deposit and a fish kill. The facts of this case show Osceola is in violation of this section.

3. Iowa Code section 481.151 authorizes the assessment and recovery of restitution for damages to natural resources, as well as for the administrative costs for investigating the incident. The DNR has adopted 571 IAC 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the discharge from the Facility.

V. ORDER

THEREFORE, the DNR orders and Osceola agrees to the following:

1. Osceola and/or its employees shall comply with all laws and regulations applicable to discharging pollutants into a water of the State.

2. Within 30 days of the date the Director signs this Order, Osceola shall develop a plan of action to prevent future unpermitted discharges to the Creek, such as installing alarm systems on the pumps, and shall submit the plan to DNR Field Office 5 for approval. Within 60 days of the date the Director signs this order, Osceola shall implement the plan of action.

3. Osceola shall pay restitution and investigative costs in the amount of $14,463.59 within 30 days of the date the Director signs this Order. This amount shall be payable within 30 days to the Director.

4. Osceola shall pay an administrative penalty of $3,000.00 within 30 days of the date the Director signs this Order.
VI. PENALTY

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. The DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order. Because the DNR determines this matter is best handled administratively, the DNR must follow the limits of Iowa Code section 455B.109 and 567 IAC chapter 10. Pursuant to those limits, a penalty of $3,000.00 is assessed. The administrative penalty is determined as follows:

**Economic Benefit:** 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Osceola avoided costs of properly treating and/or disposing of the discharged sludge. Additionally, Osceola avoided and delayed costs associated with ensuring the discharge did not occur, including training and facility upgrades. However, Osceola conducted a prompt and costly effort to remedy the discharge and to assist with the DNR’s investigation. In order to resolve this matter via consent order, $50.00 is assessed for this factor.

**Gravity of the Violation:** Osceola violated multiple Iowa laws and rules related to the discharge of pollutants to the Creek. The discharge in this matter was extensive. The sludge could be observed for over a mile and a half downstream of the discharge point. Though the actual amount of sludge discharged is unknown, the overflow was caused by the digester pumps running over fifteen hours longer than typical. The discharge resulted in a fish kill of over 5,000 fish. An administrative penalty of $2,900.00 is assessed for this factor.

**Culpability:** Osceola was negligent in its operation of the Facility. In particular as a public entity, Osceola has a duty to operate the Facility in a manner that is consistent with the law and that does not harm the public health and the environment. However, Osceola immediately began remediation and assisted the DNR in its investigation, going as far as to collect water samples for use in the enforcement action. An administrative penalty of $50.00 is assessed for this factor.

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 Osceola. 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 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 455B.191.

KAYLA LYON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 10th day of January, 2020

CITY OF OSCEOLA

Dated this 8th day of January, 2020

Field Office #5; Noah Poppelreiter; EPA; I.C.1