

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>JAYMAHARAJ, L.L.C.; and MONAJ DESAI, in his personal capacity</p>	<p style="text-align: center;">ADMINISTRATIVE ORDER</p> <p style="text-align: center;">NO. 2020-HC- <i>01</i></p>
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To: Manoj Desai, Registered Agent
JAYMAHARAJ, L.L.C.
502 Boyer Valley Road
Denison, Iowa 51442

Manoj Desai, Managing Member
JAYMAHARAJ, L.L.C.
400 Dakota Avenue
South Sioux City, Nebraska 68776

Re: Failure to prevent, report, and address hazardous conditions resulting from overflowing semipublic sewage disposal system lift station at the Denison, Iowa Travelodge.

I. SUMMARY

This administrative order (Order) is issued by the Iowa Department of Natural Resources (DNR) to JAYMAHARAJ, L.L.C. (the company) to address violations of Iowa law resulting from the company's failure to properly operate and maintain a semipublic sewage disposal system at the above-referenced property.

As detailed below, the company shall conduct a site assessment to determine the scope of contamination in soil and groundwater around the lift station area, shall implement preventative measures to ensure no additional spills occur including the repair and proper operation of the lift station at all times, and shall pay an administrative penalty of \$7,000.00. The basis for this penalty is further explained herein.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Alison Manz, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 4
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712-243-1934

Relating to legal requirements:

David Scott, Attorney
Iowa Department of Natural Resources
1023 W. Madison Street
Washington, Iowa 52353
Phone: 319-653-2135

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Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
[Include Order Number with Payment]

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 I (water quality) and the rules promulgated or permits issued pursuant thereto; Iowa Code § 455B.382, which authorizes DNR to prevent, abate and control exposure of citizens to hazardous conditions; Iowa Code § 455B.386, which authorizes penalties for failure to properly notify DNR in the event of spills of hazardous substances; Iowa Code § 455E.8, which authorizes the Director to initiate enforcement action to protect groundwater, and the rules promulgated pursuant to that authority; and, Iowa Code § 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The following facts are relevant to this matter:

1. On May 19, 2017, Denison Municipal Utilities (DMU) contacted DNR Field Office (FO) 4 to report a failure at the Travelodge lift station. DNR FO 4 staff conducted an investigation. They verified that the lift station had failed to operate correctly resulting in sewage flowing onto the surface of the ground and into a drainage ditch that ultimately drains into the Boyer River.

2. On June 12, 2017, DNR FO 4 staff sent the Travelodge a Notice of Violation (NOV) for failure to report the discharge. The NOV also required the contaminated soil to be properly excavated.

3. On February 2, 2018, Kevin Georgious, DMU's waste water operator, called FO 4 and stated that the lift station at the Travelodge was again overflowing. Mr. Georgious went to the hotel and was told by the manager and owner that a pumping service was notified and would be bringing out pumps. Mr. Georgious contacted the pumping service who stated that, in fact, they had not yet been contacted by the hotel. DNR FO 4 staff conducted an investigation and found the lift station to be overflowing resulting in sewage spilling on the ground.

4. On Monday, February 5, 2018, FO 4 staff contacted Mr. Georgious, notifying him that the hotel owner had informed DNR that pumps were fixed in the lift station and were working properly at that point. DNR FO 4 staff asked Mr.

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Georgious to confirm by inspecting the lift station. Mr. Georgious inspected the lift station and verified that it was still overflowing.

5. On February 6, 2018, Mr. Georgious sent DNR FO 4 a copy of the 'Managers Daily Log' outlining his steps with the Travelodge following the most recent discharge. According to the log, the owner of the Travelodge was notified by the electrician, Mr. Jim Beymer, that one pump did not work at all and needed to be replaced and the second pump only operated for a limited time before tripping the electrical breaker and ceasing to operate.

6. On March 6, 2018, DNR FO 4 staff was conducting a site survey for the DMU and observed that the lift station was again overflowing.

7. On July 16, 2018, DNR sent an NOV to the Travelodge for failure to notify the DNR of the February 2, 2018, discharge. The NOV also required that the contaminated soil be excavated.

8. On August 21, 2018, DNR FO 4 staff conducted a routine inspection at the DMU. During the inspection, staff also inspected the Travelodge lift station. According to Mr. Georgious, an electrician installed a new panel and new pumps and a visual alarm. However, during this inspection, it appeared to staff as if the pumps were cycling on and off about every 30 seconds. Mr. Georgious contacted the Travelodge to report the problem.

9. On December 13, 2018, Mr. Georgious reported another failure resulting in a discharge of contamination at the Travelodge lift station.

10. On December 27, 2018, DNR FO 4 staff visited the Travelodge and verified that the lift station's "wet well" was completely full. As a result, every time pressure was put on the lid to the "wet well," wastewater seeped onto the surface of the ground.

11. On January 4, 2019, DNR issued the Travelodge an NOV for failing to operate the lift station properly. The NOV also required that the contaminated soil be excavated.

12. In response to this NOV, DNR received an email from Manoj Desai, owner of the Travelodge. The email stated that Mr. Desai had arranged for a certified plumber to fully evaluate the cause of the chronic spills at the lift station and to fix the problem. DNR notified Mr. Desai that the evaluation needed to be conducted by an engineer, not a plumber. DNR required the company to provide a written report of what the engineer found upon completion of repair work.

13. On March 12, 2019, DNR FO 4 received an email from Joe Rueschenberg of Sundquist Engineering. Staff advised Mr. Rueschenberg that the engineering evaluation of the lift station must verify that the lift station met Iowa

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wastewater design standards so as to prevent any future discharges of hazardous substances. If it did not, it must be upgraded to be in compliance.

14. On April 19, 2019, Mr. Georgious contacted FO 4 to report another discharge at the Travelodge. According to Mr. Georgious, the owner told him that the DNR was already notified. In fact, DNR was not notified.

15. On April 23, 2019, DNR FO 4 staff conducted an investigation and verified the discharge.

16. On May 8, 2019, DNR FO 4 issued an NOV to the Travelodge for failing to report discharges, among other violations. The NOV stated that the completed engineering evaluation was required by May 1, 2019 and had not been received. The NOV noted that due to the repeated violations, referral to DNR's Legal Services Bureau for further enforcement would likely occur.

17. On June 20, 2019, DNR FO 4 staff was contacted by Mr. Rueschenberg and notified that the Travelodge was overflowing again. Mr. Rueschenberg contacted Mr. Desai and they had a meeting planned for the afternoon to stop the discharge. Roger Blum with Klaver Pumping were hired to pump the "wet well" of the lift station. The lift station pumps started operating as designed that afternoon after the "wet well" was pumped out.

18. On June 22, 2019, DNR FO 4 staff was notified by Mr. Rueschenberg that the Travelodge lift station began overflowing sewage again on June 21, 2019. According to Mr. Rueschenberg, he contacted Mr. Desai who stated that he would have the "wet well" pumped out that afternoon. As of the next morning, it was still overflowing.

19. On June 24, 2019, DNR issued the Travelodge an NOV for failing to report the discharges, and for failing to properly operate the sewage disposal system.

20. On November 19, 2019, DNR issued an administrative consent order to the company to settle alleged non-compliance with Iowa law.

21. On December 2, 2019, Mr. Desai notified DNR via email that he had received the consent order. He stated he was out of the country until mid-December and would respond upon his return.

22. On January 29, 2020, DNR sent a follow-up note to Mr. Desai to determine the status of work on the property.

23. On January 31, 2020, Mr. Desai left a voice message stating he had completed all work "in 2019." No additional information was provided.

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24. On February 4, 2020, DNR followed up with Mr. Desai by email requiring information on the work completed, the name and contact information for the engineering company that completed the work, and noting that the consent order presented to Mr. Desai had not been returned. DNR requested that all information be supplied in writing and that a signed consent order be returned.

25. As of March 10, 2020, DNR had received no additional information or a signed consent order. DNR notified Mr. Desai that a unilateral order would be issued and that the matter may be referred to the Attorney General's office.

IV. CONCLUSIONS OF LAW

The following conclusions of law are applicable to this matter.

1. Iowa Code § 455B.381 defines a "hazardous substance" as any substance that presents a danger to the public health or safety and includes any substance that is toxic, corrosive, flammable, or that is an irritant. Untreated sewage is a hazardous substance.

2. Iowa Code § 455B.381 further defines a "hazardous condition" as any situation involving the actual, imminent, or probable spillage, leakage or release of a hazardous substance onto the land, into a water of the state, or into the atmosphere, which creates and immediate or potential danger to the public health or safety or to the environment. Spilling sewage onto the land creates an immediate danger to public health, in part because the sewage may seep into surface or ground water.

3. Iowa Code § 455B.386 requires any person manufacturing, storing, handling, transporting, or disposing of a hazardous substance to notify the DNR of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. The facts above establish a violation of this requirement.

4. Iowa Code 455B.392 attributes liability to the person "having control over a hazardous substance" for assessment and remediation costs resulting from the failure of the person "to clean up a hazardous substance involved in a hazardous condition caused by that person." The facts above establish that the Company is the liable party for assessment, remediation, and prevention of the repeated hazardous condition resulting from raw sewage leaking from the lift station.

5. Iowa Code 455E.8 authorizes the Director of the DNR to initiate certain enforcement actions to, among other things, protect ground water from contamination.

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6. 567 IAC 131.2 reiterates the requirements of Iowa Code § 455B.386 and delineates reporting and follow-up obligations of the responsible party. The facts above establish that the Company is the responsible party that must comply with these requirements.

7. 567 IAC 133 sets out the rules for cleanup actions required to abate or remediate a hazardous condition or the discharge of a pollutant. The rules require the responsible party to, among other things, develop a Site Assessment Plan and to implement a Remedial Action Plan to address the discharge.

V. ORDER

THEREFORE, the DNR orders the following:

1. The Company shall conduct a complete site assessment under the supervision of a registered professional engineer, an expert in the field of hydrology, or another qualified professional. A site assessment plan must be submitted to the DNR FO 4 within 60 days of this order being signed by the Director, and must be approved by the DNR prior to implementation. The plan must assess the extent of contamination resulting from the multiple discharges referenced above.

2. Following completion of the site assessment, the Company shall develop and provide to the DNR FO 4 a remedial action plan to address the contamination found. This plan must be provided within 30 days of completion of the site assessment. DNR must approve the plan prior to its implementation.

3. Further, the Company shall implement preventative measures to minimize the risk of further contamination. This includes having a certified engineer assess the lift station to determine what must be done to insure it works properly. This assessment must be completed within 60 days of this Order being signed by the Director, and a copy must be provided to DNR FO4 immediately upon completion.

4. The Company shall complete all actions recommended in the lift station engineering report referenced in paragraph V.3 within 30 days of the report's completion.

5. Finally, the company shall pay an administrative penalty of \$7,000.00 within 60 days of this Order being signed by the Director.

VI. PENALTY

1. Iowa Code § 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed

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administratively. The Commission has adopted this schedule with procedures authorizing the Director to assess administrative penalties at 567 IAC 10.

2. Iowa Code § 455B.386 authorizes the DNR to impose penalties of up to \$1,000.00 for each failure to properly notify the DNR and other parties when hazardous substances are spilled.

3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the fine should be. The general categories for consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a \$7,000.00 penalty. The administrative penalty assessed by this Order is determined as follows:

- a) Economic Benefit: 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. While the Travelodge has avoided costs by failing to maintain the lift station in a proper working order, the applicable rules do not authorize DNR to issue a penalty to recover these costs. As such, no penalty is being assessed for this factor.
- b) Gravity of the Violations: Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or public health and safety, and whether the violation threatens the integrity of the regulatory program. Failing to provide proper notification of sewage spills, failure to properly excavate contaminated soil, and failure to prevent the ongoing spills, collectively represent a serious threat to public health and an ongoing risk to ground water in the state.

Therefore, \$3,000.00 is assessed for this factor.

- c) Culpability: The factors to be considered in determining the culpability of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations. The Company has been aware of the problems for a long period and has failed to take necessary steps to prevent on going spills.

Therefore, \$3,000.00 is assessed for this factor.

- d) Aggravating Factor: DNR has provided the Company sufficient time to address the violations referenced in this Order. The company has failed to come into compliance.

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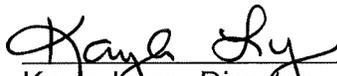
Therefore, \$1,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director within 60 days of your receipt of this Order. The Appeal should be sent to David Scott at the address above. A contested case hearing will then be commenced pursuant to Iowa Code § 17A and 561 IAC 7.

VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order, including failure to complete and implement that assessment and remediation plan, and to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and civil penalties. Compliance with Section V (Order) of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section IV (Conclusions of Law) of this Order.



Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this 12th day of
March, 2020.

CC: DNR Field Office 4; David Scott; IV.A