

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

IN THE MATTER OF:

CITY OF MCGREGOR

Clayton County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2020-WW- 13

To: City of McGregor  
c/o Lynette Sander, City Administrator  
416 Main Street  
McGregor, Iowa 52157

**I. SUMMARY**

This administrative consent order (Order) is entered into between the City of McGregor (McGregor) and the Iowa Department of Natural Resources (DNR) for the purpose of establishing a schedule for necessary upgrades to the wastewater treatment facility and system and to achieve compliance with applicable requirements and to eliminate the discharge of untreated wastewater.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Amber Sauser  
DNR Field Office 1  
Iowa Department of Natural Resources  
909 W Main St, Ste 4  
Manchester, Iowa 52057  
(563) 927-2640

**Relating to legal requirements:**

Noah Poppelreiter  
Attorney, DNR Legal Services  
Iowa Department of Natural Resources  
502 9<sup>th</sup> 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 9<sup>th</sup> St. Wallace State Office Building  
Des Moines, Iowa 50319

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: CITY OF MCGREGOR

**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. McGregor owns and operates a wastewater treatment facility (Facility) located at 147 River Road, McGregor, Iowa. The Facility treats domestic, commercial, and industrial wastewater from its customers in McGregor. Wastewater is transported to the Facility through a system of sewer pipelines (System).

2. Pursuant to National Pollutant Discharge Elimination System (NPDES) permit #2813001 (Permit), the Facility is authorized to discharge treated effluent to the Mississippi River (River), pursuant to treatment requirements and other limitations. The Permit prohibits the diversion of wastewater, or bypass, from the Facility or from the System. In the event of a bypass, the Permit requires McGregor to report the bypass pursuant to 567 IAC 63.6.

3. On July 7, 2018, DNR Field Office 1 received an anonymous complaint stating that the lift station on Main Street in McGregor was discharging sewage to the Mississippi River (River).

4. On July 23, 2018, DNR Field Office 1 environmental specialist Michele Smith investigated the complaint. In discussions with residents near the Main Street lift station, Ms. Smith learned the Main Street lift station discharged sewage whenever the lift station flooded. The residents reported that in 2018, the River had flooded the Main Street lift station twice prior to June 23, 2018, and that a discharge occurred after each flood event.

5. The DNR did not receive a bypass report for either discharge event.

6. On July 25, 2018, the DNR issued a Notice of Violation (NOV) to McGregor for failing to comply with the Permit. The NOV restated the requirement that McGregor report all bypasses to the DNR.

7. On March 14, 2019, DNR Field Office 1 received verbal notice from McGregor that the Main Street lift station and the Triangle Park lift station were bypassing due to excessive rainfall.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: CITY OF MCGREGOR

8. On March 28, 2019, DNR Field Office 1 received verbal notice from McGregor that the Main Street lift station and the Triangle Park lift station were bypassing due to excessive rainfall. DNR Field Office 1 staff notified McGregor of the requirement to submit written reports within five days of the bypass events.

9. The DNR did not receive a written bypass report for the March bypasses within five days of the events.

10. On May 3, 2019, McGregor provided verbal notification to DNR Field Office 1 that the bypass at the Main Street lift station and the Triangle Park lift station was ongoing.

11. On May 7, 2019, McGregor provided DNR Field Office 1 written reports, including testing for various pollutants, of bypass events on April 2, April 9, April 15, April 23, April 30, and May 7.

12. On May 20, 2019, McGregor provided verbal notification to DNR Field Office 1 that the bypass at the Main Street lift station and the Triangle Park lift station was ongoing. DNR Field Office 1 environmental specialist senior Amber Sauser requested weekly updates on the bypasses as long as they were ongoing. No weekly updates were received by DNR Field Office 1.

13. On June 28, 2019, Ms. Sauser received an anonymous complaint regarding an ongoing bypass at the Main Street lift station and the Triangle Park lift station. Ms. Sauser informed the caller that DNR Field Office 1 was unaware of an ongoing bypass and would investigate the situation.

14. On July 2, 2019, Ms. Sauser and DNR Field Office 1 environmental specialist Matt Calvert investigated the complaint. The Field office staff observed that McGregor was actively pumping sewage from the Main Street lift station directly to the River. The Field Office staff observed that McGregor was not actively pumping sewage from the Triangle Park lift station but had pumping equipment in place to do so.

15. After the field investigation, the field office staff discussed the situation with McGregor staff. The McGregor staff agreed to remove the pumping equipment from the Triangle Park lift station and to provide notice to the DNR as required in the event of future bypasses.

16. On July 6, 2019, Ms. Sauser investigated the Main Street lift station and the Triangle Park lift station. Ms. Sauser observed that the pumping equipment at the Triangle Park lift station had not been removed and that McGregor was actively pumping sewage from the lift station to the River.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: CITY OF MCGREGOR

17. McGregor did not report the July 6 discharge to the DNR.

18. On July 10, 2019, Ms. Sauser contacted McGregor staff to further investigate the July 6 discharge. McGregor staff stated that sewage was entering basements in the area and that the bypass was necessary as a result. McGregor staff did not provide an answer as to why no report of the basement backups or the bypass was filed with the DNR.

19. Throughout the month of July, 2019, Ms. Sauser continued to work with McGregor staff regarding bypasses from the Main Street lift station and the Triangle Park lift station. On multiple occasions, McGregor failed to provide adequate information on written bypass reports.

20. On July 25, 2019, the DNR issued McGregor a notice of violation regarding the discharge of sewage from the Main Street lift station and the Triangle Park lift station.

21. After further investigation, McGregor has determined a high level of infiltration and inflow into the System is causing the System to regularly bypass to the River.

22. McGregor continued to bypass wastewater to the River multiple times throughout 2019 and early 2020. McGregor provided proper notice to the DNR for each bypass. McGregor attempted several solutions to remedy the bypasses, including attempting to pump down the groundwater near an underground spring near the Main Street lift station. After these attempts, McGregor has concluded the only solution that will prevent future bypassing is constructing updates to the System.

23. The DNR agrees the bypasses to the River were unavoidable and that no feasible alternatives exist other than the construction of updates to the System that follow the construction timelines in Section V of this Order.

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

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

1. Iowa Code section 455B.173(3) authorizes and requires the Environmental Protection Commission (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 60 through 69.

2. 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. McGregor failed to comply with the terms of the Permit by bypassing wastewater to the River. These facts show a violation of these sections.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: CITY OF MCGREGOR

3. 567 IAC 63.6(1) prohibits the bypass of wastewater from a wastewater treatment system. However, the DNR may not assess a civil penalty if the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; if there were no feasible alternatives to the bypass; and if the permittee operating the wastewater treatment system provides notification to the appropriate field office in accordance with 567 IAC subrule 63.6(2), 63.6(3), or 63.6(5), as applicable. The facts of this case show McGregor bypassed wastewater to the River. These facts show a violation of this rule.

**V. ORDER**

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

1. McGregor and/or its employees shall comply with all laws and regulations applicable to discharging pollutants into a water of the State.
2. McGregor shall comply with all terms of the Permit, including the notification requirements in the event a bypass occurs in the future.
3. McGregor shall submit plans to update the Facility and/or the System, including detailed specifications, to the DNR for approval by August 1, 2021.
4. McGregor shall begin bidding on a construction project to implement the approved plans and specifications (Project) by January 2, 2022.
5. McGregor shall begin construction on the Project by May 1, 2022.
6. McGregor shall complete construction on the Project by May 31, 2023.

**VI. PENALTY**

The DNR has decided the most effective means of handling the violations in this case are through the issuance of two separate consent orders. The violations involving the McGregor's unreported bypasses of wastewater to the River, including penalties for those bypasses, are handled in another order. The violations of all McGregor's reported bypasses of wastewater to the River are resolved through this Order. The bypasses reported by McGregor were unavoidable to prevent loss of life, personal injury, or severe property damage and McGregor did not have a feasible alternative to bypassing other than the construction of the updates to the System required by this Order. Therefore, the DNR will not issue a civil penalty. This Order is enacted to put in place the construction timeline and other remedies detailed in Section V of this Order.

**VII. WAIVER OF APPEAL RIGHTS**

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: CITY OF MCGREGOR


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 McGregor. 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.

  
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KAYLA LYON, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 26th day of  
October, 2020

  
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CITY OF MCGREGOR

Dated this 21st day of  
October, 2020