

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

IN THE MATTER OF:

City of Armstrong

**NPDES Permit #3203001
Emmet County, Iowa**

**ADMINISTRATIVE CONSENT
ORDER**

NO. 2021-WW- 01

TO: Honorable Mayor and City Council
City of Armstrong
City Hall, P.O. Box 229
Armstrong, IA 50514

I. SUMMARY

This administrative consent order (Order) is entered into between the City of Armstrong (City) and the Iowa Department of Natural Resources (Department) for the purpose of establishing a schedule for necessary upgrades to the wastewater treatment facility (WWTF) and to eliminate the discharge of wastewater in violation of its National Pollution Discharge Elimination System (NPDES) permit.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Tom Roos, Environmental Specialist Sr.

DNR Field Office #3

1900 N. Grand

Gateway North, Suite E17

Spencer, IA 51301-2200

Phone: 712-262-4177

Relating to legal requirements:

Carrie Schoenebaum, Attorney for the
DNR

Iowa Department of Natural Resources

502 E. 9th Street

Des Moines, Iowa 50319

Phone: 515-444-8165

II. JURISDICTION

This Order is issued pursuant to the provisions of 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 (wastewater) and the rules adopted or permits issued pursuant to that part, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

The Department and the City agree to the following statement of facts:

1. The City operates a WWTF located at Section 14, T99N, R31W in Emmet County, Iowa. This WWTF is operated pursuant to NPDES permit No. 3203001, which was issued on June 1, 2017. Pursuant to this permit, the City discharges wastewater to the east fork of the Des Moines River. This NPDES permit had a compliance schedule for E. coli and ammonia nitrogen, and final limits were to be met beginning June 1, 2020. This NPDES permit also contains a compliance schedule for metals with final limits to be effective beginning May 1, 2022, for various metals.
2. On July 7, 2018, the Department conducted a WWTF inspection of the City. During this inspection it was documented that progress reports for ammonia nitrogen and E. coli compliance schedule, due to the Department on June 1, 2018, had not been submitted.
3. On August 21, 2018, a Notice of Violation (NOV) was sent to the City for the above discussed violations. This NOV contained a summary of the law, a copy of the inspection report, and the recommended corrective actions.
4. On August 27, 2018, the City's engineering firm (Veenstra and Kimm, Inc.) submitted the above discussed compliance report. In this report the City stated that it was still on schedule to comply with final effluent limits.
5. On August 13, 2019, a NOV was sent to the City for failure to submit plans and specifications to the Department by June 1, 2019, as required in the City's NPDES permit.
6. On October 24, 2019, the City's engineering firm submitted a progress report to the Department. This progress report indicated that the City was behind schedule and would submit a request for a schedule amendment.
7. On February 14, 2020, the City's engineering firm contacted the Department and stated that the project is behind and that the compliance schedule has not been met.
8. On February 25, 2020, the Department sent the City an NOV and notice of referral for failure to comply with the compliance schedule contained in its NPDES permit. This NOV contained a summary of the law and the recommend corrective action.
9. Between August 2017-August 2020 the NPDES permit effluent limits contained in the below table were self-reported by the City via monthly operation reports (MORs)¹:

¹ Dissolved oxygen (DO), nitrogen (NH₃-N), carbonaceous biochemical oxygen demand (CBOD₅), potential hydrogen (PH).

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ARMSTRONG EPA #:IA0028517		7DAY - LBS/DAY		AVERAGE - LBS/DAY		DAILY MAXIMUM - LBS/DAY		AVERAGE - MG/L		DAILY MAXIMUM - MG/L		DAILY MINIMUM - MG/L		DAILY MAXIMUM -	
		Limit	DMR	Limit	DMR	Limit	DMR	Limit	DMR	Limit	DMR	Limit	DMR	Limit	DMR
Outfall: 001															
8/2017	DO											4.2	2		
9/2017	DO											4.2	3.2		
10/2017	DO											4.2	2.5		
11/2017	DO											4.2	3.7		
12/2017	NH3-N							9.5	10.3						
2/2018	CBOD5							25	28.5						
	DO											4.2	2.5		
3/2018	NH3-N			26	29.111871			9.5	20	16	24				
	CBOD5							25	37.5						
	DO											4.2	0.5		
4/2018	NH3-N			26	33.587891	43	45.6991801	9.5	11.15						
6/2018	NH3-N			26	32.579564	43	61.0261218								
	DO											4.2	3.8		
7/2018	DO											4.2	2.6		
8/2018	DO											4.2	2.6		
9/2018	DO											4.2	2.6		
3/2019	NH3-N			26	39.35901	43	76.995347	9.5	9.725						
	CBOD5	108	115.5												
6/2019	DO											4.2	4		
7/2019	DO											4.2	2.5		
9/2019	DO											4.2	2		
10/2019	PH													9	12.1
3/2020	NH3-N							9.5	11.32						
6/2020	NH3-N			7.7	8.9355036	13.4	18.283415	2.8	5.32	5	11				
7/2020	NH3-N							3	3.3						
8/2020	DO											4.2	3.2		

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IV. CONCLUSIONS OF LAW

The Department and City agree that the following conclusions of law are applicable in this case:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. The above stated facts demonstrate noncompliance with this provision of law.
2. 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. 567 IAC 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. 567 IAC 64.6 specifies the conditions that are to be included in a permit, including applicable effluent limitations as established in chapters 61 and 62 of the rules. The above stated facts demonstrate noncompliance with these provisions.
3. 567 IAC 64.7(4)(e) states that if a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit such noncompliance shall constitute a violation. The above stated facts demonstrate noncompliance with this provision of law.

V. ORDER

By the execution of this Order, the Department orders and the City agrees to do the following:

1. No later than December 31, 2021 submit a facility plan to the Department;
2. No later than April 30, 2022, submit final plans and specifications to the Department;
and
3. Complete construction of the above WWTF improvements by November 30, 2023;
and
4. Pay a penalty in the amount of \$2,000.00 30 days after the Director of the Department signs this order.

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.

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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. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:

a. Economic Benefit. 567 IAC chapter 10 requires that the Department 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." An economic benefit was obtained by City by delaying the cost of upgrading its WWTF. For these reasons, it is reasonable to estimate that \$1,000.00 was saved. Therefore, \$1,000.00 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Failure to comply with an NPDES permit degrades water quality. Degradation of Iowa's waterways is a serious problem. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. Further, noncompliance with and NPDES permit thwarts the integrity of the NPDES permit and water quality program. Therefore, the amount of \$500.00 is assessed for this factor.

c. Culpability. The City operates a WWTF. This is a highly regulated activities and therefore the City has an obligation to be aware of the applicable regulations and comply with those regulations. The City was issued an NPDES permit and on multiple occasions the Department communicated the need to comply with that permit. Nevertheless, the permit was not complied with and illegal discharges have occurred. Therefore, the amount of \$500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly by and with the consent of the City. For that reason, it waives its right to appeal this Order or any part thereof.

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 section 455B.191.

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Kayla Lyon
Kayla Lyon, DIRECTOR
Iowa Department of Natural Resources

Dated this 15th day of
January, 2021

Gregory W. Buem, Mayor
On behalf of the City of Armstrong

Dated this 14th day of
January, 2021

NPDES #2900103; Field Office #5; Carrie Schoenebaum; EPA: Water Quality Bureau; I.B.2.C.1