

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

IN THE MATTER OF:

CITY OF WAUKON

Allamakee County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. ~~2019-WW-~~ 2021-WW-02

To: City of Waukon
c/o Jim Cooper, operator in charge
740 Rossville Road
Waukon, Iowa 57172

I. SUMMARY

This Administrative Consent Order (Order) requires the City of Waukon (Waukon) to pay an administrative penalty in the amount of \$2,500.00, pay restitution in the amount of \$1,568.60, submit a plan of action to implement emergency procedures in the event of power outages, and operate Waukon'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:

Jessica Ragsdale
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 9th St., Wallace State Office Building
Des Moines, Iowa 50319
(515) 669-8752

Send payment of fish kill restitution and administrative penalty to:

Director of the Iowa DNR
Iowa Department of Natural Resources
502 9th St. Wallace State Office Building
Des Moines, Iowa 50319

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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. Waukon owns and operates a wastewater treatment facility located at 740 Rossville Road, Waukon, Iowa (Facility). The Facility treats domestic, commercial, and industrial wastewater from its customers in Waukon. Pursuant to National Pollutant Discharge Elimination System permit #0398001 (Permit), the Facility is authorized to discharge treated effluent to an unnamed tributary of Paint Creek (Tributary), within limitations, but is not allowed to discharge untreated sewage under any circumstances.

2. On July 20, 2020, at or before 10:58 a.m., the DNR fish hatchery in Decorah, Iowa, received a complaint from Valerie Gunhus stating the Tributary was white and that dead fish were present.

3. On July 20, 2020, at or about 10:58 a.m., DNR fish hatchery technician Mike Siepker contacted DNR Field Office 1 to report the complaint. DNR environmental specialist Jessica Ragsdale took the complaint and made immediate plans to investigate the Tributary with DNR fish hatchery technician Theresa Shay.

4. On July 20, 2020, DNR Field Office 1 environmental specialist senior Amber Sauser received a call from Jim Cooper, operator in charge at the Facility. Mr. Cooper informed Ms. Sauser that an industry in Waukon released excessive amounts of yeast into Waukon's sewer system; that the Mr. Cooper took action to divert the sewage stream to the equalization lagoon to avoid damage to the Facility; but when he diverted the sewage, the pump to the equalization lagoon lost power and approximately 20,000 to 40,000 gallons of untreated sewage discharged to the Tributary. Ms. Sauser relayed this information to Ms. Ragsdale.

5. In the early afternoon of July 20, 2020, DNR staff responded to the Facility to perform an investigation.

6. DNR staff observed that a manhole prior to the equalization lagoon was the point of discharge. Staff documented that the water of the Tributary was clear upstream of the discharge point; was very milky in color near the point of discharge; was milky in color prior to the confluence with Paint Creek, while Paint Creek was clear; and had observable evidence of effluent up to 2.4 miles from the point of discharge.

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7. Ms. Shay and other DNR fishery staff documented that the fish kill extended approximately one mile from the point of discharge. A total of 151 dead fish were counted, none of which were specifically listed in Iowa Code or rule.

8. At or about 2:30 p.m., Ms. Ragsdale and other DNR staff met with Ms. Cooper. Mr. Cooper admitted the discharge occurred as a result of a power outage at the Facility. Mr. Cooper believed the outage was caused by a power surge. Mr. Cooper stated that he had received a call from the Allamakee County Sheriff at 11:15 a.m., who informed Mr. Cooper that the Tributary was white in color due to a wastewater discharge. Mr. Cooper controlled the discharge approximately fifteen minutes later.

9. Ms. Ragsdale collected two water samples from the Tributary for laboratory testing. The results of this testing showed the following:

Location	Biological Oxygen Demand (mg/L)
Upstream of discharge point	<2 mg/L
Approx. 2.4 miles downstream of discharge	60 mg/L

These results indicate untreated sewage from the Facility entered the Tributary.

10. On October 6, 2020, the DNR issued Waukon a Notice of Violation for the discharge.

11. Paint Creek is designated as a high quality water of the state.

12. DNR staff conducted a fish kill calculation pursuant to rule and calculated a total cost of the fish kill at \$1,568.60.

IV. CONCLUSIONS OF LAW

DNR and Waukon 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. Waukon allowed sludge from the Facility to discharge to the Tributary. The Permit does not allow the discharge of untreated sewage to the Tributary. The facts of this case show Waukon is in violation of these sections.

2. 567 IAC 61.3(2) provides general water quality criteria and prohibits any discharge which is toxic to aquatic life. Waukon allowed effluent from the Facility to discharge to the Tributary, causing a fish kill. The facts of this case show Waukon is in violation of this section.

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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. Under these sections, Waukon is liable for damages and investigation costs incurred from the fish kill that resulted from the discharge.

V. ORDER

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

1. Waukon 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, Waukon 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 1 for approval. Within 60 days of the date the Director signs this order, Waukon shall implement the plan of action.
3. Waukon shall pay restitution and investigative costs in the amount of \$1,568.60 within 30 days of the date the Director signs this Order.
4. Waukon shall pay an administrative penalty of \$2,500.00 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 \$2,500.00 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." Waukon avoided costs of properly treating and/or disposing of the discharged effluent. Additionally, Waukon avoided and delayed costs associated with ensuring the discharge did not occur, including facility upgrades such as alarms. In order to resolve this matter via consent order, \$450.00 is assessed for this factor.

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Gravity of the Violation: Waukon violated multiple Iowa laws and rules related to the discharge of pollutants to the Tributary. The discharge in this matter was extensive, resulting in tens of thousands of gallons of untreated sewage entering the Tributary and causing a fish kill. The effluent could be observed for two miles downstream of the discharge point, including entering the high-quality water Paint Creek. The discharge resulted in a fish kill. An administrative penalty of \$2,000.00 is assessed for this factor.

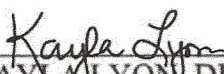
Culpability: The discharge to the Tributary was caused by a failure to properly operate the Facility. In particular, as a public entity, Waukon has a duty to operate the Facility in a manner that is consistent with the law and that does not harm the public health and the environment. However, law enforcement in Waukon promptly notified Mr. Cooper, who then took immediate steps to stop the discharge and promptly notify the DNR. These actions helped mitigate the harm to the environment. 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 Waukon. 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 3rd day of
February, 2021



CITY OF WAUKON

Dated this 21 day of
Jan., 2020