

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

TYLER INVESTMENT CO., INC.

Polk County, Iowa

ADMINISTRATIVE ORDER

NO. 2021-WW - 03

To: Tyler Investment Co., Inc.
dba Oakwood Heights Mobile Home Park
7368 NE Berwick Drive
Ankeny, Iowa 50021

I. SUMMARY

This administrative order (Order) requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Anthony Bigger, DNR Field Office 5
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, Iowa 50319
515-725-0268

Relating to legal requirements:

Noah Poppelreiter, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-725-8248

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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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; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Tyler Investment Co., Inc., dba Oakwood Heights Mobile Home Park (Oakwood) owns and operates a wastewater treatment and collection system (System) at 7368 NE Berwick Drive, Ankeny, Iowa (Property).
2. Oakwood does not have a National Pollutant Discharge Elimination System (NPDES) permit to discharge wastewater from the Property.
3. The Property is located immediately adjacent to Four Mile Creek (Creek).
4. On January 22, 2018, DNR Field Office 5 Environmental Specialist Senior Anthony Bigger investigated a report of a wastewater discharge at the Property. Mr. Bigger observed wastewater flowing from a manhole in the System, travelling downhill through a ditch, and discharging to the Creek.
5. During this investigation, Mr. Bigger determined the discharge occurred due to a plug at the manhole, which was caused by improper maintenance and operation of the System.
6. Mr. Bigger discussed the discharge with Thomas Tyler, owner of Oakwood. Mr. Tyler agreed to fix the System and stop the discharge.
7. On January 26, 2018, the DNR issued Oakwood a Notice of Violation (NOV) for the January 2018 discharge.
8. On April 6, 2018, Mr. Bigger investigated a second report of a wastewater discharge at the Property. Mr. Bigger again observed wastewater flowing from the same manhole in the System, travelling downhill through a ditch, and discharging to the Creek.
9. During this investigation, Mr. Bigger again determined the discharge occurred due to a plug at the manhole, which was caused by improper maintenance and operation of the System.
10. Mr. Bigger again discussed the discharge with Mr. Tyler, who again agreed to fix the System and stop the discharge.

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11. April 9, 2018, the DNR issued Oakwood a second NOV for the April 2018 discharge.
12. On March 30, 2020, the DNR received a complaint from the Polk County Sanitarian stating that wastewater from the Property discharging to the Creek.
13. Mr. Bigger immediately investigated this complaint with the County Sanitary.
14. During this investigation, Mr. Bigger observed wastewater flowing from a different manhole, travelling downhill through the same ditch, and discharging to the Creek.
15. During this investigation, Mr. Bigger determined wastewater was discharging due to a plug at this second manhole, which was caused by improper maintenance and operation of the System.
16. On March 24, 2020, the DNR issued a third NOV to Oakwood for this discharge.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173 provides that the Environmental Protection Commission (Commission) shall adopt rules related to water quality standards, pretreatment standards, and effluent standards. The Commission has adopted such rules at 567 IAC chapters 61 and 62.
2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. On three documented occasions since 2018, Wastewater from the Property discharged to the Creek without a permit. The facts of this case indicate a violation of these provisions.

V. ORDER

THEREFORE, the DNR orders the following:

1. Oakwood shall maintain and operate all wastewater treatment and collection systems under its control in a manner that complies with all applicable laws and regulations and shall cease all non-permitted discharges; and
2. In order to prevent future non-permitted discharges from the Property, within three months of the date the Director signs this order, Oakwood shall obtain a professional

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evaluation of the integrity of the System and the System's ability to collect and treat all wastewater generated at the Property on a consistent basis; and

3. After conducting the evaluation, within twelve months of the date the Director signs this order, Oakwood shall complete any professionally recommended improvements to the System to ensure the System can collect and treat all wastewater generated at the Property on a consistent basis; and

4. Oakwood shall pay an administrative penalty in the amount of \$10,000.00 within 30 days from 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. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$10,000.00. 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.” Oakwood gained an avoided cost benefit by failing to implement, operate, and maintain the System in a manner that retained all wastewater. Using a reasonable estimate for these costs, \$5,000.00 is assessed for this factor.

Gravity – 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 that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The discharges in this case were direct discharges of wastewater from the System to the Creek. The repeated nature of these discharges harms the wastewater program. \$2,500.00 is assessed for this factor.

Culpability – Oakwood has a duty to maintain and operate the System in a manner that does not cause violations of wastewater law. The DNR provided Oakwood substantial

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time to fix and maintain the System, yet discharges repeatedly occurred. \$2,500.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1)(a) and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The Notice of Appeal must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code Chapter 17A and 561 IAC Chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent 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 sections 455B.175 and 455B.191.



KAYLA LYNN, DIRECTOR
Iowa Department of Natural Resources

Dated this 16th day of
February, 2021

Noah Poppelreiter, DNR Field Office 5, EPA, VIII.D.1.b