

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

IN THE MATTER OF:

SAVAGE SANITARY DISTRICT

Webster County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2021-WW-09

To: Savage Sanitary District
820 Central Ave
Fort Dodge, Iowa 50501

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Savage Sanitary District (District) for the purpose of resolving the violations of NPDES Permit No. 9400900 (Permit). This administrative consent order (Order) requires the District to comply with the construction deadlines of Section V of this Order and to pay an administrative penalty of \$5,500.00.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Carl Berg, DNR Field Office 2
Iowa Department of Natural Resources
2300 15th St. SW
Mason City, Iowa 50401
641-424-4073

Relating to legal requirements:

Noah Poppelreiter, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-669-8752

Payment of penalty to:

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

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.

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III. STATEMENT OF FACTS

1. The District owns and operates a three-cell aerated lagoon wastewater treatment facility, located approximately 1,200 feet west of the intersection of 225th Street and Old Hwy 169 in Fort Dodge, Iowa (Facility).
2. Wastewater from the Facility discharges to an unnamed tributary of the Des Moines River (Creek).
3. On August 1, 2015, the DNR issued the District the Permit. The terms of the Permit are incorporated into these Statement of Facts by reference.
4. The Permit contained an “Ammonia Nitrogen, Dissolved Oxygen (DO) and E. coli Compliance Schedule” (Schedule). See Permit, Page 13.
5. The Permit contained an expiration date of July 31, 2020. See Permit, page 1. The District was required to reapply by January 31, 2020.
6. On July 27, 2016, DNR Field Office 2 received notice from the District that MER Engineering was hired to evaluate alternatives and improvements and prepare a facility plan.
7. On February 17, 2017, the DNR issued the District a letter of noncompliance (LNC) for failing to submit a facility plan by November 1, 2016, as required by the Schedule.
8. On June 29, 2017, the DNR issued the District a notice of violation (NOV) for failing to submit a facility plan by November 1, 2016, as required by the Schedule.
9. On January 30, 2018, the DNR issued the District a LNC for failing to submit a facility plan by November 1, 2016, and for failing to submit a progress report by August 1, 2017, both as required by the Schedule.
10. On August 9, 2018, the DNR issued the District a NOV for violations of effluent limits established in the Permit and for failing to submit a progress report by April 1, 2019, as required by the Schedule.
11. On February 17, 2020, the DNR issued the District a NOV for failing to achieve final limits as required by the Schedule.
12. On May 11, 2020, the DNR issued the District a NOV for failing to submit a renewal application as required.
13. On July 10, 2020, the DNR issued the District a NOV for failing to submit a renewal application as required.

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14. On December 10, 2020, the DNR submitted a draft permit of the anticipated renewal of the Permit for review. As explained in the rationale for the draft permit, the DNR does not anticipate the Facility to be able to meet many effluent limits of the draft permit due to the District's failure to comply with the Schedule and upgrade the Facility.

15. As of the date of this Order, the District has not completed construction of wastewater treatment improvements to the Facility and has failed to achieve compliance with the final ammonia nitrogen, dissolved oxygen, and *E. coli* limits established in the Permit.

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. Wastewater from the Facility discharged to the Creek while the District was not in compliance with the terms of the Permit. In addition, wastewater from the Facility discharged to the Creek in violation of the effluent limits established in the Permit. The facts of this case indicate a violation of these provisions.

3. 567 IAC 64.7(4)"e" provides that noncompliance with an interim of final requirement of a NPDES permit is a violation of that permit subject to enforcement action. The District failed to comply with the Schedule, including but not limited to failing to achieve compliance with the final ammonia nitrogen, dissolved oxygen, and *E. coli* limits established in the Permit. The facts of this case indicate a violation of this rule.

V. ORDER

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

1. The District shall upgrade the Facility to promptly bring the Facility into compliance with the Permit or future NPDES permits issued to the District.
2. The District shall complete upgrades to the Facility in accordance with the following construction timeline:
 - a. The District shall complete all applicable DNR permitting processes, including but not limited to the submission of plans and specifications of the upgrades, by June 1, 2021.

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- b. The District shall bid all construction contracts for the the upgrades by August 1, 2021.
 - c. The District shall obtain funding for the upgrades by September 1, 2021.
 - d. The District shall complete construction on the upgrades by August 31, 2022.
3. Failure to comply with the deadlines in the approved construction timeline shall constitute a violation of this Order.
4. Within 30 days of the Director signing this Order, the District shall pay an administrative penalty of \$5,500.

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.” The District gained an avoided cost benefit by failing to implement, operate, and maintain the Facility in a manner that complied with the terms of the Permit. These avoided costs include failing to comply with the terms of the Schedule during the life of the Permit. Using a reasonable estimate for these costs, \$3,000.00 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 District discharged effluent in exceedance of the limits established in the Permit while failing to comply with the Schedule. This failure harms the environment and causes a degradation of the water quality permitting program. \$1,500.00 is assessed for this factor.

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Culpability – The District has a duty to comply with the Permit. Despite numerous notices from the Department, including the issuance of the Permit in 2015, the District failed to comply with the Schedule. \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of the District. For that reason, the District waives the 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 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 section 455B.191 or Iowa Code section 459A.501.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this _____ day of _____, 2021.



SAVAGE SANITARY DISTRICT

Dated this 31 day of MARCH, 2021.