

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

IN THE MATTER OF: City of Eagle Grove, Iowa NPDES Permit #9926001 Wright County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2021-WW- 15
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TO: Honorable Mayor, Sandy McGrath
City of Eagle Grove
210 Eagle Broadway
Eagle Grove, IA
51054

I. SUMMARY

This administrative consent order (Order) is entered into between the City of Eagle Grove (City) and the Iowa Department of Natural Resources (Department) for the purpose of addressing discharges of wastewater in violation of its National Pollution Discharge Elimination System (NPDES) permit from its wastewater treatment facility (WWTF).

Any questions regarding this Order should be directed to:

Relating to technical requirements:

David Miller
DNR Field Office #2
2300 15th Street NW
Mason City, IA 50401
Phone: 641 424-8474

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

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567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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 34, T91N, R26W in Wright County, Iowa. This location is locally known as 1342 SW 9th Street Eagle Grove, Iowa. This WWTF is operated pursuant to NPDES permit No.9926001, which was issued on December 1, 2019, and amended on December 11, 2019, and again on March 1, 2021. Pursuant to this permit, the City discharges wastewater to various drainage ditches which ultimately flow to the Boone River. This NPDES permit contains effluent limits for numerous parameters, which include the following: Biochemical Oxygen Demand five day (BOD5) and ammonia nitrogen (NH-3), total suspended solids (TSS), ammonia nitrogen (N), nitrate nitrogen (N), acute toxicity ceriodaphnia and pimephales, dissolved oxygen, potential hydrogen (PH) and Escherichia Coli (E. coli).

2. On August 19, 2020, the Department conducted an inspection of the City’s WWTF. During this inspection the Department reviewed monthly operation reports (MORs), testing and operation records, treatment agreements of two significant industrial users (SIUs) and walked through the facility. During this inspection the Department documented that a SIU, Prestage Foods of Iowa, LLC, (Prestage) is in violation of its treatment agreement with the City and the City is in substantial noncompliance with its nitrate effluent limit. The effluent limitations are in the below table:

EAGLE GROVE, CITY OF STP - 9926001

EAGLE GROVE EPA #:IA0034380		AVERAGE - LBS/DAY		DAILY MAXIMUM - LBS/DAY		AVERAGE - MG/L	
		Limit	DMR	Limit	DMR	Limit	DMR
Outfall: 006							
1/2020	NO3-N	342	373.942665				
2/2020	NO3-N	342	463.918755	560	588.17016		
3/2020	NO3-N	342	507.412272	560	684.47214		
5/2020	NO3-N	342	512.18442				
6/2020	NO3-N	342	768.10566	560	829.81332		
7/2020	NO3-N	342	689.886885	560	898.4682		
8/2020	NH3-N					2.3	3.7682352
	NO3-N	342	764.51807	560	956.2644		
9/2020	NO3-N	342	559.924665	560	788.02992		
10/2020	NO3-N	342	519.71544	560	570.456		

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11/2020	NH3-N					3.1	3.744125
	NO3-N	342	420.336				
12/2020	NO3-N	342	642.1383	560	642.1383		
1/2021	NH3-N					3.7	4.0653888
	NO3-N	342	423.8388				
2/2021	NO3-N	342	513.90246				
3/2021	NO3-N	342	567.355188	560	567.355188		

3. On September 10, 2020, the Department sent the City a Notice of Violation (NOV) for the above discussed violations. Included with this NOV was a copy of the inspection report, a summary of the law and the recommended corrective action.

IV. CONCLUSIONS OF LAW

The Department and the 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.

V. ORDER

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

1. The City shall comply with its NPDES permit;
2. The City shall enforce its treatment agreement with Prestage;
3. The City shall revise its treatment agreement with Prestage and submit it to the Department by July 1, 2021. In addition to limits in the current treatment agreement, the new agreement shall include the following: 30-day average limits for flow, 30-day

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average mass limits for BOD5, TSS and total kjeldahl nitrogen, and 30-day average and daily maximum concentration limits for oil and grease;

4. The City shall revise its treatment agreement with Daybreak Foods and submit it to the Department by no later than 60 days of the date the Director signs this order. In addition to limits in the current treatment agreement, the new agreement shall include the following: 30-day average limits for flow, 30-day average mass limits for BOD5, TSS and total kjeldahl nitrogen, and 30-day average and daily maximum concentration limits for oil and grease;
5. The City shall complete the currently ongoing pilot study no later than November 1, 2021;
6. The City shall submit the data obtained from this pilot study to the Department no later than December 1, 2021;
7. The City shall submit the construction permit applications necessary to upgrade its WWTF to the Department no later than May 4, 2022;
8. The City shall complete construction of the necessary upgrades to its WWTF no later than January 3, 2023; and
9. Pay a penalty in the amount of \$5,000.00 within 30 days of the date the Director 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.

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 the City by delaying the cost of upgrading

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its WWTF. For these reasons, it is reasonable to estimate that \$6,000.00 was saved. Therefore, \$3,000.00 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 \$1,000.00 is assessed for this factor.

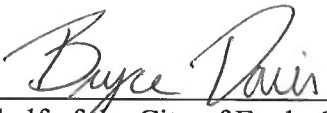
c. Culpability. The City operates a WWTF. This is a highly regulated activity and therefore the City has an obligation to be aware of the applicable regulations and comply with those regulations. The City was issued an NPDES permit and on multiple occasions the Department communicated the need to comply with that permit. Nevertheless, the permit was not complied with and illegal discharges have occurred. Therefore, the amount of \$1,000.00 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.

III. 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.



On behalf of the City of Eagle Grove

Dated this 8th day of
June, 2021

Kayla Lyon, DIRECTOR
Iowa Department of Natural Resources

Dated this _____ day of
_____, 2021

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NPDES #**9926001**; Field Office #2; Carrie Schoenebaum; EPA; Water Quality Bureau; I.B.2.c.C.1