

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

IN THE MATTER OF: City of Osceola, Iowa NPDES Permit #2038002 Clarke County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2021-WW- 21
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TO: Honorable Mayor, Thomas J. Kedley
City of Osceola
115 North Fillmore Street
Osceola, IA 50213

I. SUMMARY

This administrative consent order (Order) is entered into between the City of Osceola (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:

Tom Atkinson
DNR Field Office #5
502 E. 9th Street,
Des Moines, IA 50319
Phone: 515-725-0371

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

Payment of Penalty to:

Department of Natural Resources
ATTN: Director
Wallace State Office Building
502 E 9th Street
Des Moines, IA 50319
[include Order number with penalty]

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

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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.

III. STATEMENT OF FACTS

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

1. The City owns and operates a WWTF located at Section 21, T72N, R25W in Clarke County, Iowa. This location is locally known as 1986 Country Club Lane, Osceola, IA 50220. This WWTF is operated pursuant to NPDES permit No. 2038002, which was issued on February 1, 2016, and amended on April 1, 2016, April 1, 2017, and on December 1, 2017. The permit was renewed with similar conditions on April 1, 2021. Pursuant to this permit, the City discharges wastewater to White Breast Creek. This NPDES permit contains effluent limits for numerous parameters, which include, among others, the following: Carbonaceous Biochemical Oxygen Demand five day (CBOD₅) and ammonia nitrogen (NH₃), dissolved oxygen, potential hydrogen (PH) and Escherichia Coli (E. coli).
2. On November 2, 2017, a Facility Plan for WWTF upgrades was submitted to the Department. This plan had been due to the Department August 1, 2017.
3. On February 13, 2018, the Department issued a Letter of Non-Compliance to the City for non-compliance with CBOD₅ effluent limitations from July to December of 2017.
4. On March 14, 2018, the City responded to the Department with a letter stating that it had issued a Notice of Violation to a significant industrial user (SIU) and was working with Chem-Sult, a wastewater consulting company, to address the issues.
5. On September 18, 2018, the Department issued the City a Notice of Violation with an inspection report, citing CBOD₅ and ammonia nitrogen effluent limit violations and General Permit #1 violations.
6. On June 21, 2019, the Department received an amended Facility Plan for the WWTF. The amendments were intended to reduce costs and reflected negotiations with Osceola Foods, an existing SIU, to achieve needed treatment.
7. On October 4, 2019, the Department received the Final Plans and Specifications for the WWTF upgrade. These documents had been due February 1, 2019.
8. On April 14, 2020, the Department received a progress report that indicated that project bids from December 18, 2019 all exceeded \$49 million and were rejected. The project was redesigned to break it into five smaller contracts.

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9. On June 30, 2020, the Department received the Final Plans and Specifications for Contract 1 (New Plant Construction).

10. December 1, 2020 was the deadline for completing the WWTF's construction. To date the construction has not been completed.

11. On December 23, 2020, the Department received a progress report that indicated that the City issued a Notice to Proceed to Weiss Construction, the contractor awarded the contract for construction of the new WWTF. The project was now split into six contracts in total, five of which had been awarded.

12. January 1, 2021, was the date effluent limits became final. To date the City is noncompliant with these limits. The violations are detailed in the below chart:

OSCEOLA EPA #:IA0041815		AVERAGE - LBS/DAY		DAILY MAXIMUM - LBS/DAY		7DAY - MG/L		AVERAGE - MG/L		DAILY MAXIMUM - MG/L	
		Limit	DMR	Limit	DMR	Limit	DMR	Limit	DMR	Limit	DMR
Outfall: 001											
1/2021	NH3-N							5.2	12.95	15.2	16.1
	CBOD5					40	49	25	40.25		
2/2021	NH3-N							5.8	13.4925	14.2	17.1
	CBOD5					40	57	25	39.875		
	CHLORIDE							389	734.3333333	629	772
	CU							0.01687	0.0278857	0.0269	0.0403
3/2021	NH3-N	100.3	107.2242608					4.5	11.32	14	17.7
	CBOD5							25	30.1		
	CHLORIDE							389	418		
	CU							0.01687	0.0211266	0.0269	0.0337
4/2021	NH3-N	33.7	134.1135592					1.5	17.35625	9.7	23
	CBOD5							25	28		
	CHLORIDE							389	466.25		
	CU			0.594	0.6646037			0.01687	0.035825	0.0269	0.0973
5/2021	NH3-N	38.4	109.3746276					1.7	13.98875	6.9	17.7
	CBOD5							25	27.5		
	CHLORIDE							389	451.25		
	CU							0.01687	0.01876		

13. On February 3, 2021, the City received a draft of a NPDES permit renewal, which was placed on public notice.

14. On February 5, 2021, Field Office 5 met with Ty Wheeler, City Administrator, and Donnie McCuddin, Wastewater Superintendent, along with Mark Seip from Veenstra & Kimm Engineering to discuss non-compliance with the permit conditions and implications for the permit renewal.

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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 complete construction of the treatment facility upgrades necessary to comply with the limitations contained in its NPDES Permit no later than January 1, 2024;
3. The City shall submit an annual report by December 1st of each year until the WWTF upgrades are completed, detailing progress made towards complying with this Order; and
4. The City shall pay a penalty in the amount of \$2,500.00 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

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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.” The WWTF upgrade has been delayed due to the bids significantly exceeding the engineering estimates. The project was repackaged and rebid to reduce costs. The delay provided significant cost savings. 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. 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. Therefore, the amount of \$500.00 is assessed for this factor.

3. The Department has determined that a penalty of \$2,500.00 is warranted in order to settle this matter administratively.

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.

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On behalf of the City of Osceola

Dated this 21 day of
September, 2021

Kayla Lyon, DIRECTOR
Iowa Department of Natural Resources

NPDES #**2038002**; Field Office #5; Carrie Schoenebaum; EPA; Water Quality Bureau; I.B.2.C.