

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

IN THE MATTER OF:

CITY OF CONESVILLE

Muscatine County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2022-WW- 01

To: City of Conesville
102 3rd Street
Conesville, Iowa 52739

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the City of Conesville (City) for the purpose of resolving the violations of NPDES Permit No. 7016001 (Permit). This administrative consent order (Order) requires the City to comply with the requirements of Section V of this Order and to pay an administrative penalty of \$2,484.00.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Terry Jones, DNR Field Office 6
Iowa Department of Natural Resources
1023 W Madison
Washington, Iowa 52353
319-653-2135

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 City owns and operates a three-cell controlled discharge lagoon (Facility) for the purposes of treating the City's municipal wastewater.
2. The Facility is authorized to discharge wastewater pursuant to the terms of the Permit. The Permit was issued November 11, 1995. For purposes of this Order, discussion of the Permit is limited to the terms of the Permit as it was renewed on June 1, 2011 and August 1, 2017. The terms of the Permit are incorporated by reference into this Order. See in particular Page 4 (Monitoring and Reporting Requirements), Page 5 (Sample Frequency), and Page 9 (Controlled Discharge Lagoon Operation and Sampling Procedures) of the Permit.
3. On or about January 20, 2015, DNR environmental specialist Brian Lee conducted an inspection of the Facility. Mr. Lee noted numerous monitoring and reporting deficiencies, including but not limited to missing results and the late submittal of Discharge Monitoring Reports (DMR).
4. On or about February 3, 2015, the DNR issued the City a Letter of Noncompliance for the violations noted during the January 20, 2015 inspection.
5. On or about February 27, 2017, DNR environmental specialist Josh Sobaski conducted an inspection of the Facility. Mr. Sobaski again noted numerous monitoring and reporting deficiencies, including but not limited to missing results, the late submittal of DMRs, and a failure to submit DMRs.
6. On or about March 9, 2017, the DNR issued a Notice of Violation (NOV) for the violations noted during the February 27, 2017 inspection.
7. On or about December 27, 2019, Mr. Sobaski conducted an inspection of the Facility. Mr. Sobaski again noted numerous monitoring and reporting deficiencies, including but not limited to missing results and the City's failure to report discharges in May 2018, November 2018, April 2019, and June 2019. As a result of this inspection, the DNR determined Conesville as in significant non-compliance.
8. On or about January 6, 2020, the DNR issued a NOV for the violations noted during the December 27, 2019, inspection.
9. On or about June 14, 2021, DNR environmental specialist Caroline Davis conducted an inspection of the Facility. Ms. Davis again noted numerous monitoring and reporting deficiencies, including but not limited to missing results, the late submittal of DMRs, and a failure to submit DMRs.
10. On or about July 15, 2021, the City contacted the DNR to request permission to discharge effluent immediately. Such a discharge would be in violation of the "Operation

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Requirements” section on Page 9 of the permit. The City noted during the request that the City had failed to conduct a drawdown of the Facility in April, May, or June of 2021, as required by the “Operation Requirements” section of the Permit. A drawdown every 180 days is efficient operation of the Facility and is standard for facilities of its type.

11. On or about July 17, 2021, the DNR issued the NOV for the violations noted during the June 14, 2021, inspection.

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. The City has on repeated occasion discharged effluent from the Facility without first complying with the monitoring and reporting requirements of the Permit. The City additionally discharged effluent without complying with the “Operation Requirements” section of the Permit. The City is in violation of these laws.

3. 567 IAC 63.7 requires the submittal of all records of operation within 15 days of the close of the reporting period as specified in an NPDES permit. The City failed to timely submit DMRs in 2015, 2017, and 2021, as required by the Permit and is in violation of this law.

4. 567 IAC 63.9 requires the submittal of complete monitoring results required by law. The City failed to submit complete DMRs in 2015, 2017, 2019, and 2021. The City is in violation of this law.

5. 567 IAC 64.7(7)“f” requires permittees at all times to operate as efficiently as possible any facilities or systems used by the permittee to achieve compliance with the terms and conditions of the permit. The City failed to provide approximately 180-days of storage and failed to discharge as required by the “Operation Requirements” section of the Permit during the spring of 2021, leading to a request for a non-permitted discharge in July of 2021. The City is in violation of this law.

V. ORDER

Due to the chronic, repeated, and on-going monitoring and recording requirements, in spite of repeated notices to the City, and additionally due to the failure to efficiently operate

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the Facility, the DNR concludes that this Order is necessary to ensure future compliance. THEREFORE, the DNR orders and the City agrees to the following:

1. The City shall immediately begin operating the Facility in compliance with the Permit, including but not limited to:
 - a. Monitoring all parameters required at the necessary frequency;
 - b. Properly and accurately recording all monitoring results;
 - c. Properly sampling and reporting prior to and during drawdowns; and
 - d. At all times, maintain in good working order and operate as efficiently as possible any facilities or systems of treatment and control which have been installed or are used by the City to achieve and maintain compliance with the terms and conditions of the Permit, including but not limited to providing approximately 180 days of storage between discharge periods and discharging only during acceptable discharge periods.
2. If a certified wastewater operator is not already retained by the City, the City shall immediately retain a certified wastewater operator and shall provide DNR Field Office 6 with the operator's name and contact information.
3. Within 30 days of the Director signing this Order, the City shall pay an administrative penalty of \$2,484.00.

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 \$2,484.00. 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 City avoided costs by failing to monitor for required parameters. Using a reasonable estimate for these costs, \$484.00 is assessed for this factor.

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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. Proper monitoring and reporting is an essential component of the NPDES permitting program. By failing to adequately monitor and report, a facility masks the it's compliance with its NPDES permit. The City has repeatedly failed to monitor and report various parameters in compliance with the Permit, despite numerous attempts by the DNR to rectify these deficiencies through measures other than this Order. Additionally, failing to drawdown the Facility at regular intervals can cause great harm to the Facility and to the environment. \$1,000.00 is assessed for this factor.

Culpability – The City has a duty to comply with the Permit. Despite numerous notices from the Department, the City has repeatedly failed to comply with the terms of the Permit. \$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 City. For that reason, the City 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~~.
2022


CITY OF CONESVILLE

Dated this 24 day of Jan, ~~2021~~.
2022

Noah Poppelreiter, DNR Field Office 6, EPA, VIII.D.1.b