

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

IN THE MATTER OF:

CITY OF BLUE GRASS

Scott County, Iowa
NPDES Permit #8215001

**ADMINISTRATIVE CONSENT ORDER
NO. 2022-WW-21**

TO: City of Blue Grass
c/o Mayor Brad Schutte
114 N. Mississippi Street
Blue Grass, Iowa 52726

I. SUMMARY

This administrative consent order (Order) is entered into between the City of Blue Grass (City), and the Iowa Department of Natural Resources (DNR) for the purpose of resolving violations related to the City's violations of wastewater law. The Order requires the City to comply with the construction schedule in this Order to promptly bring the Facility into compliance with the Amended Permit and to notify any purchasers of the Facility of the terms of this Order. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

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

Relating to legal requirements:

Noah Poppelreiter
Iowa Department of Natural Resources
Legal Services Bureau
502 E. 9th Street
Des Moines, IA 50319-0034
515-669-8752

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East 9th Street
Des Moines, IA 50319-0034

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF BLUE GRASS CITY**

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director of the DNR to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and the rules adopted or permits issued pursuant thereto 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. The City owns and operates a wastewater treatment plant located at or about the east end of Lamphere Drive, Blue Grass, Iowa (Facility).
2. The Facility discharges wastewater to an unnamed tributary of the Mississippi River.
3. On February 1, 2017, the DNR issued National Pollutant Discharge Permit (NPDES) number 8215001 (Original Permit) to the City. The terms of the Original Permit are incorporated by reference into this Order.
4. In particular, and for ease of reference, Page 13 of the Original Permit details the "Ammonia Nitrogen and *E. coli* Compliance Schedule" (Original Schedule) required as a condition of the Original Permit. The Original Schedule requires the City to do the following to meet the ammonia nitrogen and *E. coli* limits imposed by the Original Permit:
 - a. Complete a Self-Assessment Matrix and submit a Work Record Request form to DNR's Wastewater Engineering Section by December 1, 2015.
 - b. Submit progress report by September 1, 2016.
 - c. Submit a Facility Plan by December 1, 2016.
 - d. Submit progress report by September 1, 2017.
 - e. Submit final plans and specifications by March 1, 2018.
 - f. Award contract for construction of wastewater treatment improvements by August 1, 2018.
 - g. Submit progress report by May 1, 2019.
 - h. Complete construction of wastewater treatment improvements by December 1, 2019.
 - i. Achieve compliance with all final ammonia nitrogen and *E. coli* limits by January 1, 2020.
5. The City failed to comply with the Original Schedule.
6. On November 1, 2019, the DNR issued an amendment to the Original Permit (Amended Permit). The terms of the Amended Permit are incorporated by reference into this Order.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF BLUE GRASS CITY**

7. In particular, and for ease of reference, Page 14 of the Amended Permit details an updated "Ammonia Nitrogen and *E. coli* Compliance Schedule" (Amended Schedule) required as a condition of the Amended Permit. The Amended Schedule requires the City to do the following to meet the ammonia nitrogen and *E. coli* limits imposed by the Amended Permit:

- a. Submit final plans and specifications by August 1, 2020.
- b. Award contract for construction of wastewater treatment improvements by January 1, 2021.
- c. Submit a progress report to the DNR by October 1, 2021.
- d. Complete construction of wastewater treatment improvements by May 1, 2022.
- e. Achieve compliance with all final ammonia nitrogen and *E. coli* limits by June 1, 2022.

8. As of the date this Order was signed, the City has failed to achieve compliance with the final ammonia nitrogen and *E. coli* limit in the Amended Permit and has discharged wastewater in violation of the ammonia nitrogen and *E. coli* limits in the Amended Permit.

9. The City and the DNR agree this Order is necessary to detail a construction schedule to promptly bring the wastewater discharged by the Facility into compliance with the Amended Permit.

IV. CONCLUSIONS OF LAW

The following Conclusions of Law are applicable to this matter:

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 through 64.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged in accordance with rules adopted by the Environmental Protection Commission. Additionally, 567 IAC 62.1(1) prohibits the discharge of wastewater into a navigable water unless authorized by an NPDES permit. The City discharged wastewater in violation of the effluent limits in the Original and Amended Permits. The facts show a violation of these provisions.

3. 567 IAC 64.3(1) prohibits the operation of any wastewater disposal system in violation of a permit issued to that system. The City failed to comply with the Original Schedule issued in the Original Permit, failed to comply with the Amended Schedule issued in the Amended Permit, and is operating the Facility in violation of the effluent limits in the Amended Permit. The facts show a violation of this provision.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF BLUE GRASS CITY**

V. ORDER

Therefore, DNR orders and the City agrees to the following:

1. The City shall comply with the following construction schedule to ensure the Facility's compliance with the terms of the Amended Permit or any future NPDES permit issued to the Facility:

- a. By January 1, 2024, the City shall submit to the DNR final facilities plans and specifications and construction permit application for upgrades to the Facility that will bring the Facility into compliance with the terms of the Amended Permit or future NPDES permits.
- b. Within 90 days of the issuance of the construction permit for the Facility, the City shall award the construction contract for the upgrade project.
- c. The City shall submit a progress report to the DNR by January 1, 2025.
- d. The City shall complete construction on the Facility by November 1, 2025.
- e. The Facility shall be in compliance with the Amended Permit or with future NPDES permits by December 31, 2025.

2. If the City sells or transfers the Facility, then the City shall do the following:

- a. The City shall advise the proposed purchaser or successor-in-interest in writing of the existence of this Order.
- b. The City shall send a copy of such written notification to DNR by certified mail, return receipt requested, before such sale or transfer, if possible, but in any event no later than the closing date of such sale or transfer.
- c. The City shall provide a copy of this Order, the Amended Permit, and any future NPDES permits issued for the Facility to the proposed purchaser or successor-in-interest prior to the sale or transfer of the Facility.
- d. In the event the City sells or otherwise assigns any of its right, title, or interest in this facility prior to fulfilling all requirements of this Order, the conveyance shall not release the City from any obligation imposed by this Order, unless the party to whom the right, title, or interest has been transferred agrees in writing to:
 - i. Fulfill all the unfulfilled obligations of the Order, and
 - ii. Waive any and all rights to any appeal of those obligations, and to waive any and all rights to appeal this Order.

If the party to whom the right, title, or interest has been transferred so agrees, City shall be released of all liability and obligations which the purchaser or successor-in-interest agrees to fulfill.

- e. In the event the City reaches a written agreement per Subparagraphs V.2.d.i and V.2.d.ii of this Order, the City shall within three (3) days of the signing of such agreement send a copy of the written agreement to the DNR by certified mail, return receipt requested. Upon the DNR's receipt of the written agreement, the construction schedule in Paragraph V.1 of this Order shall be binding on the purchaser or successor-in-interest, and the DNR may take action against the purchaser or successor-in-interest as

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF BLUE GRASS CITY**

detailed in section VIII of this Order for noncompliance with the construction schedule.

3. Within 30 days of the date the Director signs this Order, the City shall pay an administrative penalty of \$1,500.00.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the violations involved in this matter. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. DNR is assessing a penalty of \$1,500.00 for the violations described above. 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 gained an avoided cost benefit by failing to comply with the compliance schedules in the NPDES permits issued to the City and by failing to adequately treat the wastewater discharging from the Facility. Using a reasonable estimate for these costs, and in order to promptly settle this matter and ensure immediate compliance with the terms of this Order, \$1,500.00 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 City’s failure to comply with the compliance schedules in the NPDES permits issued to the City caused both programmatic and environmental harm. However, to ensure these harms are promptly eliminated through the issuance of this Order, no penalty is assessed for this factor.

Culpability – The City has a duty to maintain and operate the Facility in a manner that does not cause violations of the NPDES permits issued the City or other wastewater law. The City is well aware of the requirements of the Original and Amended Permits, including but not limited to the compliance schedules in those permits. Despite this, the City has failed to comply with those compliance schedules and is currently discharging wastewater in violation of the limits in Amended Permit. However, to ensure the environmental harm caused by the discharge of improperly treated wastewater is

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF BLUE GRASS CITY**

promptly eliminated through the issuance of this Order, no penalty 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 of Blue Grass. Further, this administrative consent order was shared with the purchaser or successor-in-interest prior to the purchase or transfer of the Facility. For that reason, the City and any purchaser or successor-in-interest of the Facility 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 Order, and constitutes a permanent remedy of the conditions which caused the violations. 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.

KAYLA LYON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Brad Schutte

CITY OF BLUE GRASS

Field Office #6; EPA; I.B.2.b.; I.C.1

Dated this 6 day of

September, 2022