

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

**IN THE MATTER OF:**

**City of Varina, Iowa**

**NPDES Permit #7642000  
Pocahontas County, Iowa**

**ADMINISTRATIVE CONSENT  
ORDER**

**NO. 2023-WW-19**

TO: Honorable Mayor, Richard Farrell  
City of Varina  
107 Main Street,  
Varina, IA  
50593

**I. SUMMARY**

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

Jacob Simonsen, Environmental Specialist  
Senior  
DNR Field Office #3  
1900 Grand Ave. Ste E17  
Spencer, Iowa 51301  
Phone: 712-344-9172

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney for the DNR  
Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> 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

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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 operates a WWTF located at Section 1, T90N, R31W in Pocahontas County, Iowa. This location is locally known as 311 Main St, Fonda, IA. This WWTF is operated pursuant to NPDES permit No. 7642000, which was issued on May 1, 2017. Pursuant to this permit, the City discharges wastewater to the Little Cedar Creek. This NPDES permit contains a compliance schedule which required the following: (1) submission of a compliance strategy to the Department by November 1, 2017; (2) submission of progress reports every 12 months beginning November 1, 2018, until compliance with final effluent limits; and (3) compliance with final effluent limits no later than May 1, 2021. This NPDES permit also contains effluent limits for numerous parameters, which include the following: ammonia nitrogen (NH<sub>3</sub>-N), Total Residual Chlorine (TRC) and potential hydrogen (pH).
4. On December 20, 2018, the Department sent the City a Notice of Violation (NOV) for failure to submit the compliance strategy required in the above referenced permit. Included with this NOV was a summary of the relevant law and recommended corrective actions.
5. On February 5, 2020, the Department sent the City a NOV for failure to submit the progress report required in the above referenced permit. Included with this NOV was a summary of the relevant law and recommended corrective actions.
6. On December 11, 2020, the Department sent the City a NOV for failure to submit the progress report required in the above referenced permit. Included with this NOV was a summary of the relevant law and recommended corrective actions.
7. On January 29, 2021, the City submitted the final progress report that was due on November 1, 2018.
8. On August 13, 2021, November 10, 2021, February 2, 2022, September 6, 2022, and November 28, 2022, the Department sent the City a NOV for TRC and ammonia effluent violations. Included with each NOV was a summary of the relevant law and recommended corrective action. The below table contains all NPDES effluent violations to date:

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**VARINA, CITY OF WTP - 7642000**

FONDA  
EPA #:IA0051122

FONDA EPA #:IA0051122		AVERAGE - LBS/DAY		DAILY MAXIMUM - LBS/DAY		AVERAGE - MG/L		DAILY MAXIMUM - MG/L		Parameter Monthly Total
		Limit	DMR	Limit	DMR	Limit	DMR	Limit	DMR	
Outfall: 001										
5/2021	NH3-N					2.1	3.51			1
	TRC	0.004	0.0278347	0.008	0.028773	0.177	2.225	0.306	2.3	4
6/2021	NH3-N					1.6	2.68			1
	TRC	0.004	0.027105	0.008	0.027522	0.177	2.175	0.306	2.2	4
7/2021	NH3-N	0.03	0.0452862			1.3	3.62			2
	TRC	0.004	0.0272092	0.008	0.028773	0.177	2.175	0.306	2.3	4
8/2021	NH3-N	0.03	0.0740592			1.2	5.92			2
	TRC	0.004	0.0265837	0.008	0.027522	0.177	2.125	0.306	2.2	4
9/2021	NH3-N	0.04	0.0456615			1.8	3.65			2
	TRC	0.004	0.0259582	0.008	0.027522	0.177	2.1	0.306	2.2	4
10/2021	NH3-N					3.2	4.33			1
	TRC	0.004	0.0268965	0.008	0.027522	0.177	2.15	0.306	2.2	4
11/2021	NH3-N					3.8	3.92			1
	TRC	0.004	0.027105	0.008	0.027522	0.177	2.2	0.306	2.3	4
12/2021	TRC	0.004	0.0270216	0.008	0.027522	0.177	2.16	0.306	2.2	4
1/2022	TRC	0.004	0.026271	0.008	0.026271	0.177	2.1	0.306	2.1	4
2/2022	TRC	0.004	0.0259582	0.008	0.027522	0.177	2.075	0.306	2.2	4
3/2022	TRC	0.004	0.0267714	0.008	0.027522	0.177	2.14	0.306	2.2	4
4/2022	NH3-N					2.3	3.17			1
	TRC	0.004	0.026271	0.008	0.026271	0.177	2.1	0.306	2.1	4
5/2022	NH3-N					2.1	2.61			1
	TRC	0.004	0.0272092	0.008	0.027522	0.177	2.175	0.306	2.2	4
6/2022	NH3-N					1.6	2.03			1
	TRC	0.004	0.026271	0.008	0.027522	0.177	2.1	0.306	2.2	4
7/2022	NH3-N	0.03	0.0460368			1.3	3.68			2
	TRC	0.004	0.0255204	0.008	0.026271	0.177	2.04	0.306	2.1	4
8/2022	NH3-N	0.03	0.041283			1.2	3.3			2
	TRC	0.004	0.0268965	0.008	0.027522	0.177	2.12	0.306	2.2	4

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9/2022	NH3-N					1.8	3.17			1
	TRC	0.004	0.026271	0.008	0.027522	0.177	2.1	0.306	2.2	4
10/2022	TRC	0.004	0.0268965	0.008	0.027522	0.177	2.15	0.306	2.2	4
11/2022	TRC	0.004	0.0253327	0.008	0.027522	0.177	2.025	0.306	2.2	4
12/2022	TRC	0.004	0.0272718	0.008	0.027522	0.177	2.18	0.306	2.2	4
1/2023	TRC	0.004	0.025854	0.008	0.026271	0.177	2.075	0.306	2.1	4
2/2023	TRC	0.004	0.0281475	0.008	0.030024	0.177	2.25	0.306	2.4	4
3/2023	TRC	0.004	0.027522	0.008	0.027522	0.177	2.2	0.306	2.2	4
4/2023	NH3-N					2.3	4.21			1
	TRC	0.004	0.0253327	0.008	0.027522	0.177	2.025	0.306	2.2	4

9. On February 27, 2023, the Department met with the City's WWTF operator and conducted a TRC field sample of the effluent discharge. This sample result indicated a much higher reading than was possible to detect with the City's equipment.

#### 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. 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 provide progress reports to the Department once every three months beginning 30 days of the date the Director signs this Order;



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2. The City shall purchase new equipment that can more accurately measure TRC and pH in the final effluent; and
3. The City shall pay a penalty in the amount of \$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 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 delaying necessary upgrades to the WWTF. Therefore, \$300.00 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 an NPDES permit thwarts the integrity of the NPDES permit and water quality program. Therefore, the amount of \$100.00 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 \$100.00 is assessed for this factor.

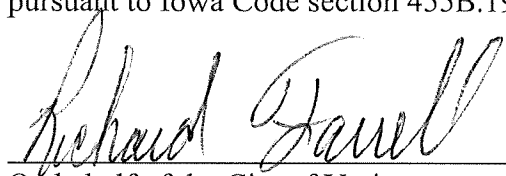
**VII. WAIVER OF APPEAL RIGHTS**

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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 Varina

Dated this 5<sup>th</sup> day of  
September, 2023

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Kayla Lyon, DIRECTOR  
Iowa Department of Natural Resources

NPDES #7642000; Field Office #3; Carrie Schoenebaum; EPA; Water Quality Bureau; I.B.2.c.C.1