

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

IN THE MATTER OF: SUNNYBROOK LE, LLC Polk County, Iowa NPDES Permit #7714601	ADMINISTRATIVE CONSENT ORDER NO. 2023-WW- 25
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TO: Sunnybrook LE, LLC
404 Edgewood Ave.
Clearwater, Florida 33755-5705

CC: Registered Agents, Inc.
Iowa Registered Agent of Record for Sunnybrook LE, LLC
315 E. 5th St.
Suite 202
Waterloo, Iowa 50703

I. SUMMARY

This administrative consent order (Order) is entered into between the Sunnybrook LE, LLC (Sunnybrook), and the Iowa Department of Natural Resources (DNR) for the purpose of resolving violations related to Sunnybrook’s violations of wastewater law. The Order requires Sunnybrook to comply with the construction schedule in this Order to promptly bring the Facility into compliance with the 2022 Permit, to comply with the monitoring requirements of that permit, to apply to amend that permit to reflect the current ownership of the Facility, and to pay an administrative penalty of \$5,000. 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:
Janet Gastineau
Iowa Department of Natural Resources
DNR Field Office 5
502 E 9th St.
Des Moines, Iowa 50319
515-725-0268

Relating to legal requirements:
Bradley Adams
Iowa Department of Natural Resources
Legal Services Bureau
502 E. 9th Street
Des Moines, IA 50319
515-664-8894

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East 9th Street

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Des Moines, IA 50319-0034

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. Sunnybrook owns and operates a wastewater treatment plant located at or about 5975 NE Berwick Drive in Berwick, Iowa (Facility).

2. The Facility treats wastewater produced by the residences at the mobile home park located at the same address.

3. The Facility discharges wastewater from a three-cell aerated lagoon to Muchikinock Creek (Creek).

4. On April 1, 2017, the DNR issued National Pollutant Discharge Permit (NPDES) number 7714601 (Original Permit) to Quincy Cass Associates, Inc (Quincy Cass). The terms of the Original Permit are incorporated by reference into this Order.

5. In particular, and for ease of reference, Page 14 of the Original Permit details the “Ammonia Nitrogen and *E. coli* Compliance Schedule” (Compliance Schedule) required as a condition of the Original Permit.

6. On or about October 18, 2019, Quincy Cass sold the Facility to Sunnybrook MHC LLC dba Havenpark Management (Havenpark).

7. On December 1, 2020, the DNR amended the Original Permit solely to change the facility’s name, owner, and point of contact. No other terms of the Original Permit were changed, and the Compliance Schedule remained in effect.

8. On April 1, 2022, the DNR issued a new NPDES permit to Havenpark (2022 Permit). The terms of the 2022 Permit are incorporated into this Order by reference. Notably, the 2022 permit did not extend or amend the Compliance Schedule. All limits in the NPDES permit were final as of April 1, 2022.

9. On or about November 16, 2022, DNR Field Office 5 staff met virtually with Havenpark, Sunnybrook, the certified operator in charge of the Facility, and an engineering firm. These parties discussed options for bringing the Facility into compliance with the 2022 Permit. Additionally, the Field Office noted the DNR would

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take enforcement action against an owner of the Facility for failure to bring the Facility into compliance.

10. On or about November 23, 2022, Havenpark sold the Facility to Sunnybrook.

11. As of the date this Order is signed, Sunnybrook has failed to request an amendment to the 2022 Permit to update the ownership.

12. Sunnybrook failed to collect BOD5 samples from the Facility's raw waste for the first quarter of 2023 as required by the 2022 Permit.

13. Sunnybrook failed to collect total suspended solids (TSS) samples from the Facility's raw waste for the first quarter of 2023 as required by the 2022 Permit.

14. Sunnybrook failed to collect *E. coli* samples in accordance with the 2022 Permit for the months of September through November 2022.

15. As of the date this Order was signed, the Facility is not in compliance with the final ammonia nitrogen, TSS, DO, and *E. coli* limits in the 2022 Permit.

16. Between December 1, 2022, and August 31, 2023, the operator for the Facility reported 20 distinct violations of the 2022 Permit for violations of ammonia and TSS limits. Specifically, these violations include:

- a. A daily average of 19.5 mg/L of ammonia in January 2023.
- b. A daily average of 22.6 mg/L of ammonia in February 2023.
- c. A daily maximum of 22.6 mg/L of ammonia in February 2023.
- d. A daily average of 19.9 mg/L of ammonia in March 2023.
- e. A daily maximum of 19.9 mg/L of ammonia in March 2023.
- f. A daily average of 23.2 mg/L of ammonia in April 2023.
- g. A daily maximum of 23.2 mg/L of ammonia in April 2023.
- h. An average of 1.14 lbs./day of ammonia in April 2023.
- i. A daily average of 20.1 mg/L of ammonia in May 2023.
- j. A daily maximum of 20.1 mg/L of ammonia in May 2023.
- k. An average of 1.21 lbs./day of ammonia in May 2023.
- l. A maximum of 1.24 lbs./day of ammonia in May 2023.
- m. A 7-day average of 129 mg/L of TSS in May 2023.
- n. A daily average of 105 mg/L of TSS in May 2023.
- o. A dissolved oxygen level of 4.2 mg/L in August 2023.
- p. A daily maximum of 2.7 mg/L of ammonia in August 2023.
- q. A 30-day average of 0.3 lbs./day of ammonia in August 2023.
- r. A 30-day average of 1 mg/L of ammonia in August 2023.
- s. A *E. coli* population of 7,283 per 100 ml, in May 2023
- t. A *E. coli* population of 6,130 per 100 ml, in August 2023

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17. On or about August 29, 2023, Sunnybrook began communications with the City of Altoona, Polk County, and the Des Moines Wastewater Reclamation Authority to seek a connection to the Muchikinock Trunk Sewer adjacent to the Sunnybrook lagoon system.

18. On or about September 13, 2023, BES Water Solutions began operation of a pilot treatment process to treat and recirculate the wastewater to improve effluent quality. Sunnybrook has asserted to the DNR prior to agreement to this Order that the BES system will remain in operation until modifications to the Facility are complete. This Order is entered into, in part, due to this assertion.

19. Sunnybrook 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 2022 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. Sunnybrook discharged wastewater in violation of the effluent limits in the 2022 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. Sunnybrook is operating the Facility in violation of the effluent limits in the 2022 Permit. The facts show a violation of this provision.

V. ORDER

Therefore, DNR orders and Sunnybrook agrees to the following:

1. Within 30 days of the date this order is signed, Sunnybrook shall apply for an amendment to the 2022 Permit to update that permit to accurately reflect the change in ownership.

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2. Sunnybrook shall comply with all monitoring requirements in the 2022 Permit or any future NPDES permit issued to the Facility.
3. By December 31, 2025, Sunnybrook shall make the necessary modifications to the Facility to comply with the final effluent limitations contained in the 2022 NPDES permit.
4. Sunnybrook shall submit semi-annual progress reports to the DNR on or before January 31, 2024, July 31, 2024, January 31, 2025, and July 31, 2025. The reports shall detail progress made towards connecting to the Muchikinock Trunk Sewer and/or achieving compliance with the 2022 NPDES Permit.
5. Within 90 days of the date this order is signed by the Director, Sunnybrook shall submit a pilot protocol to the DNR summarizing the goals of the BES system, how long the BES system will remain in operation, what monitoring will take place, operational procedures, the design layout of the system, and any other pertinent information.
6. Sunnybrook shall continue to communicate with and receive technical assistance from DNR Field Office 5 to mitigate the impact that discharges of *E. coli* populations in violation of the *E. coli* limits in the Permit will have on the receiving stream, notably the presumed recreational use of the stream by residents and visitors of the Facility.
7. If Sunnybrook sells or transfers the Facility, then Sunnybrook shall do the following:
 - a. Sunnybrook shall advise the proposed purchaser or successor-in-interest in writing of the existence of this Order.
 - b. Sunnybrook 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. Sunnybrook shall provide a copy of this Order, the 2022 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 Sunnybrook 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 Sunnybrook 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.
 - e. If the party to whom the right, title, or interest has been transferred so agrees, Sunnybrook shall be released of all liability and obligations which the purchaser or successor-in-interest agrees to fulfill.

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f. In the event Sunnybrook reaches a written agreement per Subparagraphs V.4.d.i and V.4.d.ii of this Order, Sunnybrook 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. of this Order shall be binding on the purchaser or successor-in-interest, and the DNR may act against the purchaser or successor-in-interest as detailed in section VIII of this Order for noncompliance with the construction schedule.

8. Within 30 days of the date the Director signs this Order, Sunnybrook shall pay an administrative penalty of \$5,000.00.

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 \$5,000.00 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.” Sunnybrook gained avoided and delayed benefits by failing to comply with the 2022 Permit, including by failing to properly monitor and treat the Facility's wastewater. 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, \$2,000.00 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. Sunnybrook's failure to monitor and treat the Facility's wastewater caused both programmatic and environmental harm. To ensure these harms are promptly eliminated through the issuance of this Order, a penalty of \$2,000 is assessed for this factor.

Culpability – Sunnybrook has a duty to maintain and operate the Facility in a manner that does not cause violations of the NPDES permits issued Sunnybrook or other

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wastewater law. To ensure the environmental harm caused by the discharge of improperly treated wastewater is promptly eliminated through the issuance of this Order, \$1,000 is assessed for this factor.

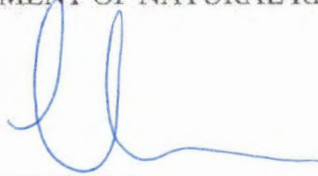
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Sunnybrook. For that reason, Sunnybrook waives the right to appeal this Order or any part thereof. Further, if a purchaser or successor-in-interest of the Facility agrees to assume liability for the construction schedule in section V.3 of this Order through the procedure in section V.4 of this order, such purchaser or successor-in-interest also 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



Dated this 8 day of

SUNNYBROOK LE, LLC

November, 2023

Field Office #5: EPA; 1.B.2.b.; 1.C.1