

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

<p>IN THE MATTER OF:</p> <p>WATER'S EDGE, LLC</p> <p>NPDES Permit #9200302</p>	<p style="text-align: center;">ADMINISTRATIVE CONSENT ORDER</p> <p style="text-align: center;">No. 2024-WW- 06</p>
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To: Water's Edge, LLC/Waters Edge Homeowners Assn, Inc.
2149 Biddle Avenue
Washington, IA 52353

Re: Violations of Iowa Wastewater Law

I. SUMMARY

This consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Water's Edge, LLC (Water's Edge) to resolve violations of Iowa wastewater law. As detailed below, Water's Edge agrees to have a compliant wastewater system within five years of the effective date of this order, send the DNR biannual progress reports until all systems are installed and operational, and pay an administrative penalty of \$4,000.00.

Questions regarding this Order or the payment of penalties should be directed to:

Relating to technical requirements:

Brian Lee, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 6
1023 W. Madison
Washington, IA 52353
Phone: (319) 653-2135

Relating to legal requirements:

Bradley Adams
Attorney for the DNR
6200 Park Ave., Ste. 200
Des Moines, IA 50321
Phone: (515) 664-8894

Payment of penalty to:

Director of the Iowa DNR
6200 Park Ave., Ste. 200
Des Moines, Iowa 50321

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175, which authorizes the DNR Director 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 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

1. Water's Edge is semi-public homeowner's association consisting of approximately 32 residential lots with a population of approximately 100 people. The facility is located north of Washington, Iowa, between Water's Way and Biddle Blvd., north of 220th Street. Water's Edge currently owns and operates a septic tank/sand filter wastewater treatment plant. The HOA is permitted to discharge treated wastewater from their wastewater treatment plant (WWTP) under the terms and conditions of National Pollutant Discharge Elimination System (NPDES) Permit #9200302.
2. On July 1, 2015, the DNR issued an NPDES wastewater permit to Water's Edge containing a compliance schedule, requiring compliance with limits for ammonia, chloride, and E.coli by June 1, 2020.
3. On August 12, 2015, DNR Field Office 6 (FO6) conducted a wastewater inspection at Water's Edge.
4. On September 1, 2015, FO6 issued a Notice of Violation (NOV) to Water's Edge for a failure to meet permit limits for NH₃-N.
5. On January 4, 2018, FO6 performed a site inspection and issued an NOV to Water's Edge for exceeding ammonia levels.
6. On June 15, 2018, Warner Engineering, on behalf of Water's Edge, submitted an update to FO6 regarding system upgrades for the purpose of meeting its compliance schedule deadlines.
7. On September 12, 2018 FO6 issued an NOV to Water's Edge for its failure to comply with the compliance schedule as required by the facility's NPDES permit.
8. On September 13, 2019, FO6 received another update from Warner Engineering regarding system upgrades to Water's Edge's facility for the purpose of meeting its compliance schedule deadlines.
9. On May 2, 2019, FO6 issued an NOV to Water's Edge for a failure to submit the facility's required compliance schedule documentation to FO6.

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10. On June 2, 2020, the terms of the Water's Edge NPDES construction schedule permit condition for ammonia, chloride, and E.coli are violated.
11. On January 3, 2020, Matt Hartman, Water's Edge HOA President, submitted an email report to FO6 outlining the facility's current status and issues.
12. On February 3, 2020, Warner Engineering submitted a facility plan to DNR.
13. On July 7, 2020, FO6 issued an NOV to Water's Edge for its failure to comply with the compliance schedule as required by the facility's NPDES permit.
14. On September 10, 2020, FO6 completed a site survey at Water's Edge for a new treatment facility. FO6 staff prepared a memo outlining the survey's findings regarding siting of the wastewater system.
15. On November 19, 2020, Mr. Hartman submitted an email report to FO6 outlining the facility's current status and issues.
16. On January 1, 2021, the DNR issued Water's Edge a new NPDES permit with limits on ammonia, chloride, and E.coli.
17. On February 11, 2021, FO6 issued an NOV to Water's Edge for the facility's failure to meet permit limits for chloride and ammonia. The NOV requested a status update from the facility by April 1, 2021.
18. On April 16, 2021, FO6 received another update from Warner Engineering regarding system upgrades to Water's Edge's facility for the purpose of meeting its compliance schedule deadlines.
19. On August 27, 2021, Warner Engineering submitted an updated facility plan to DNR.
20. On September 13, 2021, FO6 issued an NOV for a failure to meet permit limits for ammonia.
21. On November 22, 2021, FO6 conducted a wastewater inspection at Water's Edge.
22. On December 21, 2021, FO6 issued an NOV for a failure to meet permit limits for ammonia, and a failure to submit discharge monitoring reports on time.
23. On July 1, 2022, FO6 issued an NOV to Water's Edge for failure to meet permit limits.
24. On July 14, 2022, Warner Engineering emailed an updated facility design to FO6.

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25. On January 31, 2023, FO6 issued an NOV to Water's Edge for failure to meet permit limits for ammonia, CBOD, chloride, and E. coli effluent limits.
26. On May 11, 2023, a meeting was held between DNR and Water's Edge, where Water's Edge stated its intent to implement a combination of (1) single home systems with peat moss/coconut type filters on their individual properties, and (2) small cluster systems of 4 homes or less. The DNR informed Water's Edge of the requirements for such a system under 567 IAC 69.
27. On June 13, 2023, FO6 issued a summary letter and requested a wastewater status report from Water's Edge by July 1, 2023.
28. On July 12, 2023, Water's Edge emailed a wastewater status report to FO6.
29. On October 2, 2023, FO6 issued an NOV to Water's Edge for a failure to meet ammonia, chloride, and E. coli effluent limits. The NOV requested a statement of how Water's Edge would achieve compliance by October 16, 2023.
30. On October 23, 2023, Water's Edge emailed that the facility continues to work with an attorney regarding association bylaws, etc., but generally plans to install private on-site systems.
31. On December 5, 2023, FO6 receives notice that Water's Edge will move forward with on-site system installation.
32. On December 20, 2023, FO6 requested a response from Water's Edge outing the approximate achievable time frame to install all on-site systems.
33. On January 31, 2024, a response was received from Water's Edge outlining a timeframe for installation of individual on-site/cluster systems.
34. On February 5, 2024, FO6 issued Water's Edge a letter confirming that the facility can proceed with on-site system installation and that the matter would be referred to DNR legal for administrative enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the disposal of effluent into a waterway unless that effluent has been adequately treated.
2. 567 IAC 64.3(1) states that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director.

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3. 567 IAC 64.7(4)(e) states that if a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit such noncompliance shall constitute a violation of the permit for which the director may modify, suspend or revoke the permit or take direct enforcement action.

The above stated facts establish violations of these provisions.

V. ORDER

Therefore, the DNR orders and Water's Edge LLC agrees to the following:

1. Water's Edge must install compliant on-site treatment systems for all residences of the HOA. Complete installation of the all systems must be achieved 5 years from the effective date of this Order.
2. Water's Edge shall submit progress reports regarding the facility upgrade to FO6 every January 1 and July 1, until all systems are installed and fully functional, with the last report confirming that all systems are installed and functional.
3. Water's Edge shall pay an administrative penalty of \$4,000.00 within 30 days of the effective date of this Order.

VI. CIVIL PENALTY

1. 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 authorizing the Director to assess administrative penalties at 567 IAC 10.
2. 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..
3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the penalty should be. The general categories for consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. The administrative penalty assessed by this Order is determined as follows:
 - a. Economic Benefit: 567 IAC chapter 10 requires that the DNR consider the costs saved or that were 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

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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.”

Determining the facility’s costs for implementing a new or alternative treatment system has been delayed, and the anticipated costs have increased in recent years. Individual HOA members are paying the bulk of the cost to have on-site systems installed. Collected HOA funds are anticipated to be split between residents to help pay for installation.

No penalty is recommended for this factor.

- b. Gravity of the Violations: Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or public health and safety, and whether the violation threatens the integrity of the regulatory program.

Effluent violations have continued for years and Water’s Edge has been unable to meet their legal duty to adhere to the terms of their NPDES permit. As indicated above, substantial civil penalties are authorized by statute. Failure to comply with a NPDES permit can degrade water quality and undermines the state’s water quality program and goals. The discharge of wastewater exceeding permit limits has impacted the water quality in the receiving stream. 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.

As such, \$2,000.00 dollars is assessed for this factor.

- c. Culpability: The factors to be considered in determining the culpability of the violator include the degree of intent or negligence of the violator, whether the case involves false reporting of required information and whether the violator has taken remedial measures to address the harm caused by the violations.

Water’s Edge has attempted to work with an engineer, and subsequently worked with FO6 and DNR’s Wastewater Engineering Program. Progress toward an upgraded wastewater treatment facility slowly evolved, but ultimately dissolved. However, the facility did not take action until many years into the compliance schedule. Water’s Edge hired Warner Engineering in 2018, with whom DNR engineering staff had many conversations with in an attempt to bring the facility into compliance. A lack of effective communication between the parties made the process difficult and slow. Warner provided a design for a system that did not meet separation distances

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and the facility ultimately ended up dropping that engineer, further delaying the date that Water's Edge can achieve compliance.

As such, \$2,000.00 dollars is assessed for this factor.

VII. APPEAL RIGHTS

As this Order is entered by consent of the parties, there is no right of appeal.

VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and/or civil penalties consistent with Iowa Code section 455B.191.

Kayla Lyon, Director
Iowa Department of Natural Resources

Matthew Hartman
Waters Edge President

May 28th, 2024.
Month Day