

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

IN THE MATTER OF: City of Carter Lake Pottawattamie County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2024-WW-11
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**TO: Honorable Mayor
 City of Carter Lake
 950 Locust Street
 Carter Lake, IA
 51510**

I. SUMMARY

This administrative consent order (order) is entered into between the City of Carter Lake (City) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order concerning the City's Storm Water National Pollution Discharge Elimination System (NPDES) permit.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Alison Manz, ESS
IDNR Field Office #4
1401 Sunnyside Lane
Atlantic, IA 50022
712-243-1934

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to 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 I, and the rules promulgated 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.

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III. STATEMENT OF FACTS

The City neither admits nor denies the following statements of fact and enters into this agreement solely for the purposes of settlement:

1. Under federal law, the City is considered a small municipal separate storm sewer system (MS4). 40 C.F.R. § 122.32 (2023). Because of this classification, the City must obtain an NPDES permit from the Department. It did so in 2004. On July 1, 2021 NPDES permit No. 78-12-0-00 was reissued to the City. This permit expires on June 30, 2026.
2. The City's NPDES permit designates what the City must do to properly carry out the MS4 program; numerous provisions of this permit have been violated. Most significantly the City has failed to:
 - (1) Submit annual reports for the last 5 years (2018-2022);
 - (2) Implement an active Operation and Maintenance Plan;
 - (3) Implement a program for Pesticide and Fertilizer Management;
 - (4) Include MS4 required stormwater information on the City website;
 - (5) Convene a storm water advisory committee and perform meetings;
 - (6) Adopt an illicit Discharge Prohibition Ordinance;
 - (7) Implement a program for routine inspections of all illicit discharges;
 - (8) Adopt a construction site runoff control ordinance; (9) Adopt a post-construction site runoff control ordinance; and
 - (10) Implement a watershed assessment program.
3. The Department has conducted 3 compliance inspections of the City's MS4 program, one in 2018, 2021, and 2022. Following each of these inspections, the Department notified the City of its failure to properly implement the MS4 program and the steps that needed to be taken to properly implement the program. Following each inspection, a Notice of Violation (NOV) was sent to the City. These NOVs contained a copy of the inspection report, summarized the law and the steps that needed to be taken to come into compliance. Nevertheless, the City has failed to properly implement the program and therefore, has been in significant noncompliance with its NPDES permit since at least 2018.
4. The City's NPDES permit requires that it submit an annual report each year to the Department no later than October 31st. This report was not submitted in 2018, 2019, 2020, 2021 and 2022. A NOV was sent to the City each year for these violations.

IV. CONCLUSIONS OF LAW

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The City neither admits nor denies the following conclusions of law but enters into this agreement solely for the purposes of settlement.

1. Iowa Code section 455B.173(3) authorizes the Environmental Protection Commission (Commission) to adopt rules relating to the operation of and issuance of permits to waste disposal systems. The Commission has adopted regulations pertaining to the issuance of NPDES permits for storm water discharge, at 567 IAC 60.2 and 64.3 through 64.16.

2. 567 IAC 64.3(1), *Permit to Operate*, states in part:

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.

The City has failed to comply with numerous provisions of its permit; therefore, the above stated facts demonstrate that the City has violated this legal requirement.

3 NPDES permit No. 78-12-0-00 Part II. A. 4 requires that the City maintain a website containing information regarding storm water. The above stated facts demonstrate noncompliance with this provision of law.

4. NPDES permit No. 78-12-0-00 Part II. B. 1 requires that the City convene a storm water advisory committee and perform meetings. The above stated facts demonstrate noncompliance with this provision of law.

5. NPDES permit No. 78-12-0-00 Part II. C. 1 requires that the City adopt an illicit discharge ordinance. The above stated facts demonstrate noncompliance with this provision of law.

6. NPDES permit No. 78-12-0-00 Part II. C. 2 requires that the City implement a program for routing inspections of all illicit discharges. The above stated facts demonstrate noncompliance with this provision of law.

7. NPDES permit No. 78-12-0-00 Part II. D. 1 requires that the City adopt a construction site runoff control ordinance. The above stated facts demonstrate noncompliance with this provision of law.

8. NPDES permit No. 78-12-0-00 Part II. E. 1 requires that the City adopt a post construction site runoff control ordinance. The above stated facts demonstrate noncompliance with this provision of law.

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9. NPDES permit No. 78-12-0-00 Part II. E. 4 requires that the City have a watershed assessment program. The above stated facts demonstrate noncompliance with this provision of law.
10. NPDES permit No. 78-12-0-00 Part II. F. 1 requires that the City implement an active operation and maintenance plan. The above stated facts demonstrate noncompliance with this provision of law.
11. NPDES permit No. 78-12-0-00 Part II. F. 2 requires that the City have a Pesticide and Fertilizer Management program. The above stated facts demonstrate noncompliance with this provision of law.
12. NPDES permit No. 78-12-0-00 Part III. requires that the City submit an annual report to the Department no later than October 31st of each calendar year. The above stated facts demonstrate noncompliance with this provision of law.

V. ORDER

THEREFORE, the Department orders and the City agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. The City shall comply with its Storm Water MS4 NPDES permit; and
2. The City shall pay a penalty of \$8,000.00 within 30 days of the date the Director of the Department 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 \$10,000.00, 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 Department has determined that the most effective and efficient means of addressing the above-cited violations and deterring this party and others from violating storm water permit requirements, is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:
 - a. **Economic Benefit.** The City saved a significant amount of time and money by not complying with its NPDES permit. Specifically, the City has saved a significant amount of money by not committing the necessary hours by staff to implement the MS4 program.

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Therefore, it is reasonable to estimate that economic benefit realized by the City is \$4,000.00. Therefore, this amount is assessed for this factor.

b. **Gravity of the Violation.** The City has continuously failed to comply with its NPDES permit since the date it was issued. This failure thwarts the integrity of the program because NPDES permits and the MS4 program are designed to protect the environment, public health and safety. And the NPDES permit is the backbone of the storm water program. The violations cited above are repeat in nature and despite notification of the violations they continue. Lastly, the Department has expended a significant amount of staff time in an effort to assist the City in achieving compliance. The Department has determined that the most effective and efficient means of addressing the above cited violations is with administrative penalties, which are lower than those that could be obtained through judicial enforcement. Therefore, \$2,000.00 is assessed for this factor.

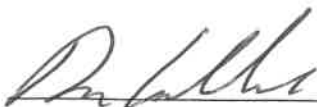
c. **Culpability.** In determining the degree of intent or negligence the standard of care required by the laws of the state of Iowa should be considered. The Department asserts that the City's actions were negligent rather than intentional. Generally, negligence is defined as the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation. The violations involved in this order are violations of conditions in Iowa law and a permit issued by the Department. Further, the City was issued an NPDES permit which it did not appeal. This permit detailed the requirements to obtain compliance. The issuance of this permit is deemed constructive knowledge of those conditions. Moreover, the City failed to comply with the permitting requirements subsequent to notification from the Department that it was in noncompliance. Therefore, \$2,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

Iowa Code section 455B.175(1), and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of the City. By signature to this order, all rights to appeal this order are waived by all parties.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with provision "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.



On behalf of the City of Carter Lake

Dated this 17 day June, 2024

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Kayla Lyon, Director
IOWA DEPARTMENT OF NATURAL RESOURCES

City of Carter Lake. NPDES Permit No. 78-12-0-00 (Copy of Order to Central Office
Records File), Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A