

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

ADMINISTRATIVE ORDER

COLO COUNTRY LIVING LLC

NO. 2024-WW-~~XX~~16

NO. 2024-AQ-~~XX~~17

NO. 2024-SW-~~XX~~11

NPDES Permit No. 8500601

To: Colo Country Living, LLC
2150 Niles Ave.
Saint Paul, MN 55116

Sean Raisch
Registered Agent for Colo Country Living, LLC
215 10th Street, Ste. 1300
Des Moines, IA 50309

Re: Violations of Iowa's wastewater, air quality, and solid waste laws

I. SUMMARY

This administrative order (Order) is entered into by the Iowa Department of Natural Resources (DNR) and Colo Country Living, LLC for violations of Iowa law governing wastewater, solid waste disposal, and air quality. Colo Country Living, LLC is ordered to pay a \$10,000 administrative penalty and take corrective actions as detailed below. Any questions regarding this Order should be directed to:

Relating to technical requirements:

Tim Grotheer, Env. Specialist
Iowa Department of Natural Resources
6200 Park Ave., Ste. 200
Des Moines, IA 50321
Phone: (515) 452-7646

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
Wallace State Office Building
6200 Park Ave., Ste. 200
Des Moines, Iowa 50321

II. JURISDICTION

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 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that Division; and Iowa Code section 455B.307(2), 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 IV, Part 1 (Solid Waste); 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. Country Living Court is a mobile home community located at 67677 250th Street in Colo, Iowa. There is a total of 37 home sites. The mobile home park is owned by Colo Country Living, LLC (Colo Country). Colo Country took ownership of the property on September 19, 2001. Wastewater treatment is provided by a four cell, controlled discharge lagoon. Originally consisting of two cells, two additional cells with synthetic liners were constructed in 2000. Wastewater is pumped to the primary cell via two 55 GPM grinder pumps, then flows by gravity through the second cell and the remaining (older) cells in series. Flow is measured based on the pumps' hour meter times at the lift station.
2. On May 16, 2020, in response to a routine compliance inspection conducted on May 7, 2020, DNR Field Office 5 (FO 5) issued a Letter of Noncompliance to Colo Country for its failure to properly operate and maintain the wastewater treatment facility (facility). The inspection report required Colo Country to repair the broken lift station pump, and remove the excessive tree growth around the lagoons and tears in the synthetic cell liners. The report also noted deficiencies with timely submittal of Discharge Monitoring Reports (DMRs) and the failure to adhere to the compliance schedule contained in the facility's National Pollutant Discharge Elimination System (NPDES) permit. A response was requested from Colo Country detailing actions that would be taken to address the violations by July 1, 2020; the response was not received. The pump was repaired sometime later.
3. On August 1, 2022, FO 5 issued a Notice of Violation to Country Living Court for failure to timely submit DMRs for the months of April, May and June of 2022.
4. On December 28, 2022, Colo Country submitted the DMRs for April, May and June of 2022.
5. On February 24, 2023, in response to a routine compliance inspection conducted on February 20, 2023, DNR FO 5 issued a Notice of Violation to Colo Country for its failure to timely submit DMRs and to properly maintain the facility. The inspection report

required Colo Country to timely submit DMRs, repair the tears in the cell liners, repair areas of damaged fencing, replace faded or missing warning signs, and properly dispose of the debris pile on site. A response was requested from Colo Country detailing actions that would be taken to address such violations by April 1, 2023; the response was not received. These corrective actions have not yet been completed.

6. On April 27, 2023, DNR FO 5 issued a Notice of Violation to Colo Country for its failure to timely submit the DMR for the month of March, 2023.
7. On May 19, 2023, Colo Country submitted the DMR for March, 2023.
8. On November 27, 2023, Colo Country submitted the DMRs for September and October 2023.
9. On December 22, 2023, DNR FO 5 conducted a follow-up visit to determine if progress had been made towards correcting the deficiencies noted during the February 20, 2023, compliance inspection. During the visit, it was noted that the lagoon liners and damaged fencing have not been repaired, and that the warning signs had not been replaced. In addition, solid waste had accumulated on site and evidence of open burning was observed.
10. On January 8, 2024, DNR FO 5 issued a Notice of Violation to Colo Country for improper open burning and solid waste disposal.
11. Currently, the synthetic liner around the secondary cell has a leak that must be repaired to properly use the lagoon system. The secondary cell is a bypass cell and is not being used. This system was designed to be a 4-cell lagoon system. Only cells 1, 3 and 4 are being used to treat wastewater. Large trees were observed growing on the lagoon berms during site inspections in 2020 and 2023. Roots from these trees may compromise the integrity of these structures.
12. Between January 1, 2020, and January 1, 2024, Colo Country failed to timely submit DMRs on 33 occasions as shown below:

DMR DUE DATE	DATE RECEIVED	DAYS LATE
01/15/20	01/24/20	9
02/15/20	02/17/20	2
03/15/20	03/24/20	9
04/15/20	04/18/20	3
06/15/20	06/16/20	1
07/15/20	07/22/20	7
08/15/20	08/20/20	5
09/15/20	09/17/20	2
10/15/20	11/09/20	25
12/15/20	12/22/20	7
10/15/21	10/22/21	7

11/15/21	12/01/21	16
12/15/21	12/30/21	15
01/15/22	01/21/22	6
02/15/22	03/16/22	29
03/15/22	03/16/22	1
04/15/22	06/02/22	48
05/15/22	06/02/22	18
06/15/22	12/28/22	196
07/15/22	12/28/22	166
08/15/22	12/28/22	135
09/15/22	12/28/22	104
10/15/22	01/05/23	82
11/15/22	01/05/23	51
12/15/22	01/05/23	21
01/15/23	03/14/23	58
02/15/23	03/14/23	27
04/15/23	05/19/23	34
05/15/23	05/19/23	4
06/15/23	06/26/23	11
07/15/23	08/12/23	28
10/15/23	11/27/23	43
11/15/23	11/27/23	12

“Failure to provide, within forty-five (45) days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules” constitutes significant noncompliance under the United States Environmental Protection Agency’s (EPA) significant noncompliance (SNC) criteria.

13. The previous NPDES permit, issued December 1, 2016, contained a compliance schedule, as shown below, allowing time to meet new ammonia-nitrogen (NH₃-N) and dissolved oxygen (DO) limitations by November 1, 2021. The primary objective to achieve compliance was to hookup to the City of Colo’s wastewater collection and treatment system before the new permit was issued in April 1, 2022, but the project never transpired.

The current NDPEs permit contains a compliance schedule for NH₃-N and E coli. A compliance strategy was due April 1, 2023, and a progress report was due April 1, 2024, but neither has been received by DNR to date.

The current NDPEs permit also contains a special monitoring study for sulfides and chlorides, due April 1, 2023. A study has not been received by DNR to date.

“Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone in a permit or enforcement order for starting construction, completing

construction, or attaining final compliance” constitutes significant noncompliance under EPA’s SNC criteria.

Previous NPDES Permit Compliance Schedule and Event Milestones – NH₃-N & DO

Events				
	Schedule Date	Actual Date	Report Date	Event
Select	12/01/2017	10/16/2015	10/16/2015	SUBMIT COMPLIANCE STRATEGY
Select	12/01/2018			SUBMIT PROGRESS REPORT
Select	12/01/2019			SUBMIT PROGRESS REPORT
Select	12/01/2020			SUBMIT PROGRESS REPORT
Select	11/01/2021			COMPLY WITH FINAL LIMITS

Current NPDES Permit Compliance Schedule and Event Milestones – NH₃-N & E coli

Events				
	Schedule Date	Actual Date	Report Date	Event
Select	04/01/2023			SUBMIT COMPLIANCE STRATEGY
Select	04/01/2024			SUBMIT PROGRESS REPORT
Select	04/01/2025			SUBMIT PROGRESS REPORT
Select	04/01/2026			SUBMIT PROGRESS REPORT
Select	03/01/2027			COMPLY WITH FINAL LIMITS

Current NPDES Permit Compliance Schedule and Event Milestones – Sulfide and Chlorides

Events				
	Schedule Date	Actual Date	Report Date	Event
Select	04/01/2023			SPECIAL MONITORING DUE

Add New Event

IV. CONCLUSIONS OF LAW

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. 567 IAC 64.7(4)(a) states that “[W]ith respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in 64.7(2)“f” and 64.7(2)“g,” the permittee shall be required to take specific steps to achieve compliance with: applicable effluent standards and limitations; if more stringent, water quality standards; or if more stringent, legally applicable requirements listed in 64.7(2)“f” and 64.7(2)“g.”
3. 567 IAC 63.7(1) states that “[E]xcept as provided in this rule and subrules 63.3(4) and 63.5(2), records of operation required by NPDES permits shall be submitted

electronically to the department within 15 days following the close of the reporting period specified in 567—63.8(455B) and in accordance with monitoring requirements derived from this chapter and incorporated in the NPDES permit. Records of operation required by operation permits shall be submitted to the department within 15 days following the close of the reporting period specified in 567—63.8(455B) and in accordance with monitoring requirements derived from this chapter and incorporated in the operation permit.”

4. 567 IAC 64.7(7)(f) states that “the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities and systems of control to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance also include adequate laboratory control and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which have been installed by the permittee only when such operation is necessary to achieve compliance with the conditions of the permit.”
5. Iowa Code section 455B.133 requires the Commission to adopt rules governing the quality of air and emission standards. The Commission has adopted such rules at 567 IAC chapters 20 through 35.
6. 567 IAC 23.2(1) states that “[N]o person shall allow, cause or permit open burning of combustible materials, except as provided in 23.2(2) and 23.2(3).”
7. Iowa Code section 455B.304 requires the Commission to adopt rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100 through 123.
8. 567 IAC 100.4 states that “[E]xcept as provided otherwise in 567—Chapters 100 to 121, a private or public agency shall not dump or deposit or permit the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director, or pursuant to a permit granted by the department which allows the disposal of solid waste on land owned or leased by the agency.”

The above stated facts establish violations of these regulatory provisions.

V. ORDER

Therefore, the DNR orders the following:

1. By June 1, 2024, Colo Country shall submit a facility plan for the wastewater treatment facility upgrades necessary to comply with the final effluent limitations contained in NPDES Permit No. 8500601. In addition, Colo Country Living LLC shall adhere to the following compliance schedule:
 - a. By October 1, 2024, submit a progress report for NH₃-N and E coli and complete a special monitoring study for sulfide and chlorides.
 - b. By October 1, 2025, submit a progress report.

- c. By October 1, 2026, submit a progress report.
 - d. By October 1, 2027, comply with final limits.
2. Colo Country shall submit Discharge Monitoring Reports to Field Office 5 by the 15th of each month.
 3. Colo Country shall immediately discontinue the practice of improper open burning and solid waste disposal, and prevent it from happening in the future.
 4. By June 1, 2024, Colo Country shall submit proof, such as but not limited to disposal receipts and photos, to FO 5 that all existing solid waste has been removed and properly disposed of at an approved sanitary landfill or bona fide recycling center.
 5. Colo Country shall pay an administrative penalty of \$10,000 within 30 days of the date the Director signs the 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 provides for civil penalties up to \$5,000 per day for wastewater and water quality violations. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations. Iowa Code section 455B.146 authorizes civil penalties of up to \$10,000.00 per day for air quality violations.
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 10.30(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 10.30(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.”

Needed repairs to the cell liners and excessive tree growth were first identified and made known to Colo Country in May, 2020. Repairs have not been conducted to date, which constitute avoided compliance costs in both parts and labor. This allowed the company to use these funds for some other economic purpose.

According to DNR records, only the first NPDES permit compliance schedule milestone for NH₃-N and DO was completed. Failure to follow the compliance schedules has saved significant time and money by not completing necessary studies, submitting progress reports, developing a facility plan to comply, developing detailed plans and specifications or completing any necessary construction to comply with more stringent limits. This constitutes avoided compliance costs in both parts and labor, and allowed the company to use these funds for some other economic purpose.

The improper disposal of solid waste avoids tipping fees at solid waste disposal facilities and associated transportation costs.

As such, \$3,000.00 is assessed 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.

The facility has failed to timely submit monthly Discharge Monitoring Reports (DMRs) on 33 occasions. A number of these violations were more than 45 days late and are considered significant noncompliance under EPA's SNC criteria.

The previous NPDES permit contained a compliance schedule for NH₃-N and DO; the current permit contains compliance schedules for NH₃-N and E coli, and a special monitoring study for sulfide and chlorides. Only the initial milestone in 2017 was met. Failure to meet, within ninety days after the schedule date, a compliance schedule milestone in a permit or enforcement order for starting construction, completing construction, or attaining final compliance constitutes significant noncompliance under EPA's SNC criteria. These actions also undermine the NPDES program and environmental protection regulations.

As such, \$3,000.00 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, and whether the violator has taken remedial measures to address the harm caused by the violations.

In May of 2020, Colo Country was reminded of the compliance schedule requirements and was required to repair the cell liners. Similarly, a February 2023 inspection report contained the same requirements and also reminded Colo Country to properly dispose of the solid waste debris pile on site. These items have not been completed to date. On both

occasions, Colo Country was asked to respond to the reports by detailing actions that will be taken to address such violations. Responses were not received.

As such, \$3,000.00 is assessed for this factor.

- d. Mitigating or Aggravating Factors. 567 IAC 10.30(5) instructs the department to consider other relevant factors which arise from the circumstances of each case.

Colo Country was subject to a compliance schedule listed in its December 1, 2016, NPDES permit, requiring a strategy and progress reports describing wastewater treatment improvements to ensure compliance with the final NH₃-N and DO limits by November 1, 2021. Only the first of these milestones were met. The current NPDES permit issued April 1, 2022, contains two compliance schedules. The initial milestones due April 1, 2023 for both schedules were not met, and the April 1, 2024 milestone for NH₃-N and DO were also not met. The DNR allows owners/operators to submit a request for a permit amendment to extend a compliance schedule. Requests for amendments were not received.

As such, \$1,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175 and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The Notice of Appeal must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code Chapter 17A and 561 IAC Chapter 7.

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, as applicable, Iowa Code sections 455B.146, 455B.191, and 455B.307.

Kayla Lyon, Director
Iowa Department of Natural Resources