

[Entered 3-24-09 by
Judge Charles Pelton]

IN THE IOWA DISTRICT COURT IN AND FOR CLINTON COUNTY

STATE OF IOWA, ex rel., IOWA)
DEPARTMENT OF NATURAL)
RESOURCES (99AG23542),)
)
Plaintiff,)
)
vs.)
)
CITY OF CLINTON, IOWA,)
)
Defendant.)

LAW NO. _____

**CONSENT ORDER,
JUDGMENT AND DECREE**

NOW on this ____ day of _____, 2009, the Court is presented with the plaintiff's petition seeking civil penalties and injunctive relief pursuant to Iowa Code section 455B.191. The Court having read the petition and being otherwise advised by the parties

FINDS:

1. The Court has jurisdiction of the parties and the subject matter of this action and the parties consent to entry of this Consent Order, Judgment and Decree.
2. Defendant City of Clinton, Iowa ("City") admits, for purposes of settlement and this action only, the violations alleged in paragraphs fifty-eight (58) through sixty-five (65) of the Petition at Law.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

Civil Penalty

1. Defendant City of Clinton, Iowa, is assessed a civil penalty of One Hundred Thousand and no/100 Dollars (\$100,000.00) for the violations alleged in the petition. The Defendant shall pay the civil penalty within ten (10) days of the entry of this Consent Order, Judgment and Decree. The Defendant shall also pay interest pursuant to Iowa Code section 535.3(1) on any

unpaid balance. Payments of the civil penalty and interest shall be made payable to the State of Iowa and submitted to plaintiff's attorney, David R. Sheridan, at the address noted below.

Construction of Upgraded Wastewater Treatment Facility

2. Defendant City of Clinton shall construct, install, and make fully operational an upgraded wastewater treatment facility to meet effluent limitations contained in NPDES Permit No. 2326001 and insure compliance with water quality standards according to the following schedule:

- a. submit to IDNR a request for a site survey by April 1, 2009;
- b. submit to IDNR a preliminary engineering report by March 27, 2009;
- c. submit to IDNR a preliminary design by July 31, 2009;
- d. submit to IDNR a construction permit application with final plans and specifications by October 31, 2009;
- e. award construction bids by January 26, 2010;
- f. complete construction by December 31, 2012; and
- g. achieve compliance with final effluent limitations by July 1, 2013.

Construction of New Wastewater Treatment Facility Outfall

3. Defendant City of Clinton shall construct, install, and make fully operational a new outfall from its wastewater treatment facility, replacing current Outfall 001. The new outfall shall be located downstream of the mouth of Mill Creek as it enters the Mississippi River or other location approved in writing by IDNR. The new outfall shall be constructed, installed, and made fully operational according to the following schedule:

- a. submit to IDNR a construction permit application with final plans and specifications by April 15, 2009;
- b. award construction bids by May 28, 2009; and
- c. complete construction by October 31, 2009.

Supplemental Environmental Project

4. Defendant City of Clinton shall fully implement the Supplemental Environmental Project entitled *18th Street South Stormwater SEP Proposal*, dated January 13, 2009, and according to the schedule outlined therein.

Combined Sewer Overflows

5. Defendant City of Clinton shall by June 30, 2010, submit to the IDNR a complete Long Term Control Plan (LTCP) to eliminate and reduce discharges from combined sewer outfalls. The LTCP shall include all items and information required by NPDES Permit No. 2326001, and as later amended, and the "Combined Sewer Overflow Control Policy" adopted by the US EPA on April 11, 1994, and incorporated into the federal Clean Water Act at 33 U.S.C. § 1342(q). In the event the water of the state to which the Defendant's wastewater treatment facility discharges is reclassified, Defendant shall be allowed an additional ninety (90) days from the date of reclassification to revise or complete its LTCP. The IDNR shall review such revised or new LTCP in good faith.

6. Defendant City of Clinton shall by December 31, 2009, permanently eliminate Combined Sewer Outfall 007, 13th Avenue North. "Permanently eliminate" shall mean all necessary structural changes to the combined sewer system and outfall to prevent any further discharge of wastewater from the outfall prior to entering the City's POTW.

7. Defendant City of Clinton shall by April 30, 2009, install and maintain booms and/or nets to control solids and floatables from Combined Sewer Outfall 009, 18th Avenue North.

8. Defendant City of Clinton shall maintain closure of the associated levee gates, thereby eliminating any overflow to the Mississippi River from the following Combined Sewer Outfalls:

Outfall 002, 22nd Place

Outfall 003, 18th Place

Outfall 004, South 5th Street

Outfall 005, South 4th Street.

9. Defendant City of Clinton shall maintain closure of the associated levee gates for the following Combined Sewer Outfalls, thereby causing the wastewater to flow to the associated pump station:

Outfall 006, First Avenue Pump Station

Outfall 010, 20th Avenue North Sanitary Pumping Station

Outfall 012, 25th Avenue North Sanitary Pumping Station

Outfall 013, 3rd Avenue South Stormwater Pumping Station.

10. Defendant City of Clinton shall operate and maintain permanent, continuous flow monitoring at the following locations:

Outfall 001, wastewater treatment plant's secondary bypass

Outfall 006, First Avenue Pump Station

Outfall 010, 20th Avenue Pump Station

Outfall 012, 25th Avenue Pump Station.

Flow data shall be maintained by the city for five (5) years, made available to the IDNR upon request, and be included in the Annual Compliance Report required under paragraph sixteen (16).

11. Defendant City of Clinton shall operate and maintain permanent, continuous flow monitoring no later than January 30, 2010, at the Margaret Street Storm Water Pump Station. Within ninety (90) days of entry of this Consent Order, Judgment and Decree, and until such time as permanent, continuous flow monitoring equipment is installed, Defendant City of Clinton shall use a portable hourly meter at the Margaret Street Storm Water Pump Station to calculate flow by multiplying the design capacity times the number of hours the meter runs. Flow data shall be maintained by the city for five (5) years, made available to the IDNR upon request, and be included in the Annual Compliance Report required under paragraph sixteen (16).

12. Defendant City of Clinton shall operate and maintain continuous flow monitoring at the following locations:

Outfall 013, 3rd Avenue Pump Station (flow monitoring of all tributary sanitary sewer connections only), and

Outfall 014, 9th Avenue North (flow monitoring of all tributary sanitary sewer connections only).

Flow data shall be maintained by the City for five (5) years, made available to the IDNR upon request, and be included in the Annual Compliance Report required under paragraph sixteen (16).

13. Defendant City of Clinton shall monitor for E.coli bacteria and pH during one rainfall event per month, unless no sufficient CSO discharge occurred that month, for the first

twelve (12) full months after the entry of this Consent Order, Judgment and Decree, and quarterly thereafter, for each of the following combined sewer outfalls:

Outfall 006, First Avenue Pump Station

Outfall 010, 20th Avenue North Sanitary Pumping Station

Outfall 012, 25th Avenue North.

Monitoring data shall be maintained by the City for five (5) years, made available to the IDNR upon request, and be included in the Annual Compliance Report required under paragraph sixteen (16). It shall not be considered a violation of this Consent Order, Judgment and Decree if no sample is taken for a CSO event when there is insufficient discharge. This paragraph shall terminate upon written approval by IDNR.

14. Defendant City of Clinton shall monitor for biological oxygen demand (BOD), total suspended solids (TSS) and ammonia-nitrogen (NH₃-N) during one rainfall event per week, unless no sufficient CSO discharge occurred that week, for the first twelve (12) full months after the entry of this Consent Order, Judgment and Decree, and bi-monthly thereafter, for each of the following combined sewer outfalls:

Outfall 006, First Avenue Pump Station

Outfall 010, 20th Avenue North Sanitary Pumping Station

Outfall 012, 25th Avenue North.

Monitoring data shall be maintained by the City for five (5) years, made available to the IDNR upon request, and be included in the Annual Compliance Report required under paragraph sixteen (16). It shall not be considered a violation of this Consent Order, Judgment and Decree if no sample is taken for a CSO event when there is insufficient discharge. This paragraph shall terminate upon written approval by IDNR.

15. Defendant City of Clinton shall perform all tasks necessary to fully implement the Nine Minimum Controls referenced in NPDES Permit No. 2326001, and as later amended.

Annual Compliance Report

16. Defendant City of Clinton shall submit to the IDNR by January 31st of every year for the preceding calendar year an Annual Compliance Report documenting in detail the City's efforts to implement the requirements of this Consent Order, Judgment and Decree.

The Annual Compliance Report shall include but not be limited to:

- a. the dates and a description of all construction activities relating to the treatment plant, outfalls, and collection system required by this Consent Order, Judgment and Decree;
- b. the dates and a description of all activities conducted to implement the Supplemental Environmental Project referred to in paragraph four (4);
- c. the dates and a description of all activities conducted to implement the Combined Sewer Overflow requirements referred to in paragraphs five (5) through fifteen (15);
- d. a listing of all overflow events that occurred at each Combined Sewer Overflow outfall and the Margaret Street Storm Water Pump Station, along with flow data for each outfall during each overflow event; and
- e. a summary of sampling data results and dates for each outfall for which sampling is required by this Consent Order, Judgment and Decree.

Stipulated Civil Penalties for Failure to Comply with Deadlines

17. Except as otherwise provided herein, Defendant City of Clinton shall pay the following stipulated civil penalties:

- a. For each day that the City fails to comply with each of the deadlines contained in paragraphs two (2)(a) through (g), three (3) (a) through (c), four (4), five (5), six (6), and seven (7):

<u>Period of violation</u>	<u>Penalty per day per violation</u>
1-30 days	\$ 250
31-60 days	\$ 500
Each day over 60 days	\$1,000

- b. If a particular violation, referred to in subparagraph (a) above, occurs for more than one hundred eighty (180) days, the stipulated civil penalty of \$1,000 per day per violation shall continue unless and until the State of Iowa files in this action an Application or other pleading requesting that the Court assess against the City up to a maximum civil penalty of \$5,000 per day per violation for such additional violations occurring after the date of the Application or other pleading. The City reserves the right to contest the amount of any such penalties.
- c. One Hundred Dollars (\$100) per day that the City fails to comply with the deadline contained in paragraph sixteen (16).

18. Payment of the stipulated civil penalties referred to in paragraph seventeen (17) shall be made no later than ten (10) days after receipt of a written demand from the Plaintiff for payment, or after a court order requiring such payment, whichever is later. Payments shall be made payable to the State of Iowa, and sent to the Iowa Attorney General's Office at 1305 E. Walnut Street, Des Moines, Iowa 50319. Payment of these stipulated civil penalties shall not relieve the Defendant from obligations established by this Consent Order, Judgment and Decree, NPDES Permit No. 2326001, and as subsequently amended, any subsequently approved LTCP, or other provision of law. Payment of these stipulated civil penalties shall constitute full and final settlement of any penalty claims that were made or could have been made by IDNR in this action for the particular violations to which the stipulated civil penalties apply. In any event, the Plaintiff may at any time seek entry of contempt and appropriate sanctions and relief for any willful failure to comply with the requirements of this Consent Order, Judgment and Decree.

Effect of Consent Decree

19. This Consent Order, Judgment and Decree constitutes full and complete settlement of the claims made, or which could have been made, by the IDNR in this action against the City relating to the City's wastewater on or before the date of entry of this decree.

Notice and Copy Recipients

20. For purposes of implementation of this Consent Order, Judgment and Decree, all technical submittals, documents or correspondence shall be sent to the following:

Dennis Ostwinkle, Supervisor
Iowa Department of Natural Resources
Field Office No. 6
1023 West Madison
Washington, IA 52353
(319) 653-2135

Gary Schellhorn
Director of Public Works
611 S. 3rd Street
Clinton, IA 50232
(563) 242-0261

All legal notices, documents or correspondence shall be sent to the following:

David R. Sheridan
Assistant Attorney General
Environmental Law Division
Lucas Building, Ground Floor
321 E. 12th Street, Room 018
Des Moines, IA 50319

Jane B. McAllister
Ahlers & Cooney, P.C.
100 Court Avenue, Suite 600
Des Moines, IA 50309

Diana Hansen, Attorney
Iowa Department of Natural Resources
Wallace Building
502 East 9th Street
Des Moines, IA 50319

Paul Walter
City Attorney
611 S. Third
Post Office Box 2958
Clinton, IA 52733-2958

A party may change either the notice recipient or the address for providing notices to it by serving all other parties with a notice setting forth such new notice recipient or address.

Force Majeure

21. If the Defendant is unable to meet any of the deadlines set forth in this order, the Defendant shall provide notice to the Plaintiff within thirty (30) days specifying the delayed event, the cause of the delay, its possible duration, the Defendant's efforts to remedy the situation, and the expected effect of the delay upon the schedule contained in this order. Defendant shall adopt all reasonable measures to avoid or minimize such delays. Failure by Defendant to provide notice to the Plaintiff of an event which causes or may cause a delay or impediment to performance shall render the Force Majeure provisions of paragraphs twenty-one (21) through twenty-five (25) voidable by Plaintiff as to the specific event for which Defendant has failed to comply with such notice requirement, and, if voided, are of no effect as to the particular event involved.

22. The Plaintiff shall notify the Defendant in writing regarding the Plaintiff's position as to the Defendant's claim of a delay or impediment to performance as soon as practicable, but in any event within thirty (30) days after receipt. If the Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the reasonable control of Defendant, and the Defendant could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances. Defendant shall not be liable for any stipulated penalties for the period of any such delay.

23. If the Plaintiff does not accept the Defendant's claim that a delay or impediment to performance is caused by a Force Majeure event, to avoid payment of stipulated penalties, Defendant must submit the matter to this Court for resolution within thirty (30) business days

after receiving notice of the Plaintiff's position by filing a petition for determination with this Court. Once Defendant has submitted this matter to this Court, the Plaintiff shall have twenty (20) business days to file its response to said petition.

24. If the Defendant submits the matter to this Court for resolution and the Court determines that the delay or impediment to performance has been or will be caused by circumstances beyond the reasonable control of Defendant, including any entity controlled by Defendant, and the Defendant could not have prevented the delay by the exercise of due diligence, Defendant shall be excused as to that event(s) and delay (including stipulated penalties), for a period of time equivalent to the delay caused by such circumstances. Defendant shall bear the burden of proving that any delay of any requirement(s) of this Consent Order, Judgment and Decree was caused by or will be caused by circumstances beyond its reasonable control, including any entity controlled by it, and the Defendant could not have prevented the delay by the exercise of due diligence. Defendant shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of a subsequent compliance date or dates.

25. Unanticipated or increased costs or expenses associated with performance of a Defendant's obligations under this Consent Order, Judgment and Decree shall not constitute circumstances beyond the reasonable control of the Defendant, or serve as a basis for an extension of time. In light of the fact that the parties cannot predict with certainty the underlying conditions that will be encountered as work proceeds in addressing CSOs, the parties recognize that the identification of unforeseen conditions may require additional time as a Force Majeure.

In addition, failure of a permitting authority to issue a necessary permit or other required approval in a timely fashion is an event of Force Majeure provided that Defendant can meet its burden of demonstrating that it has:

- a. submitted a timely and complete application;
- b. responded to requests for additional information by the permitted authority in a timely fashion; and
- c. prosecuted appeals of any disputed terms and conditions imposed by the permitting authority in an expeditious fashion.

Where the Defendant has successfully appealed a permit or condition thereof all dates affected by such appeal shall be appropriately extended. For the purposes of this paragraph, “successfully appealed a permit or condition thereof” includes the settlement of the appeal providing for modification of the permit condition.

Termination

26. This Consent Order, Judgment and Decree shall be subject to termination upon motion by any party after Defendant has satisfied all requirements of this Consent Decree. At such time, if Defendant believes that it is in compliance with the requirements of this decree, and has paid any stipulated penalties required by this decree, then Defendant shall so certify in writing to the Plaintiff, and unless the Plaintiff objects in writing with specific reasons within forty-five (45) days after receipt of the certification, the Court shall order that this Consent Order, Judgment and Decree be terminated on Defendant’s motion. If the Plaintiff objects to Defendant’s certification, then the matter shall be submitted to the Court for resolution. In such a case, Defendant shall bear the burden of proving that this Consent Order, Judgment and Decree should be terminated. Notwithstanding the above and foregoing, this Consent Order, Judgment

and Decree shall automatically terminate ten (10) years after the date of entry of this Consent Order, Judgment and Decree unless Plaintiff files an objection to termination based on the Defendant's non-compliance.

Modification

27. This Consent Order, Judgment and Decree and any schedule or activity required herein may be amended as necessary to accommodate changed circumstances by the written agreement of the parties (without court approval) or by further Order of the Court.

Jurisdiction Retained

28. The Court retains jurisdiction of this matter to insure compliance with the terms of this Consent Order, Judgment and Decree.


29. The costs of this action are taxed to the Defendant in the amount of \$ _____
(Clerk to enter).

[Charles H. Pelton]

JUDGE, 7th Judicial District of Iowa

Approved as to form:

IOWA DEPARTMENT OF NATURAL
RESOURCES



RICHARD A. LEOPOLD, Director

CITY OF CLINTON, IOWA



ROGER E. J. HOLM, Mayor

CITY OF CLINTON, IOWA



PAT VAN LOO, City Clerk

THOMAS J. MILLER
Attorney General of Iowa



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