

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

STATE OF IOWA ex rel. IOWA)	
DEPARTMENT OF NATURAL)	NO. EQCE126530
RESOURCES,)	
)	
Plaintiff,)	
)	
vs.)	CONSENT DECREE
)	
PEETERS DEVELOPMENT CO. INC.)	
d/b/a MT. JOY MOBILE HOME PARK,)	
)	
Defendant.)	
)	

The Court is presented with Plaintiff's Amended Petition in Equity seeking civil penalties and injunctive relief pursuant to Iowa Code sections 455B.191(2) and 455B.191(5). The Court has reviewed the Amended Petition and being otherwise advised by the parties which stipulate to entry of this Consent Decree, hereby orders, adjudges and decrees as follows:

1. The Court has jurisdiction over the parties and the subject matter of this action pursuant to Iowa Code sections 455B.191(2) and (5).
2. Defendant Peeters Development Co. Inc. ("Peeters") admits for purposes of settlement of this action only and for no other purpose, the violations alleged in paragraphs 86-108 in Plaintiff's Amended Petition. Without admission of any other alleged violations or waiver of any defense, legal or equitable which Peeters may have in any future administrative or judicial proceeding, except a proceeding to enforce this Consent Decree, Peeters stipulates to entry of this Consent Decree.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

Civil Penalty

3. Peeters is assessed a civil penalty pursuant to Iowa Code section 455B.191(2) of Twenty Thousand and no/100 Dollars (\$20,000.00) for the violations alleged in the Amended Petition. Peeters shall pay the penalty within ten (10) days of entry of this Consent Decree. Peeters 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 S. Steward, Iowa Attorney General's Office, Environmental Law Division, Hoover State Office Building, 1305 E. Walnut Street, 2nd Floor, Des Moines, Iowa 50319.

Future Compliance

4. Peeters shall at all times maintain the use of a Grade II certified operator for its wastewater treatment facilities.

5. Peeters shall comply with the following schedule to achieve compliance with applicable ammonia nitrogen, E. coli bacteria, 5-day carbonaceous biochemical oxygen demand (CBOD5), and total suspended solids (TSS) permit limitations contained in its NPDES Permit No. 8222603:

- a. Complete a Self-Assessment Matrix that is prepared by a professional engineer licensed in the State of Iowa, and submit a Work Record Request form to DNR's Wastewater Engineering Section **within 30 days of entry of this Consent Decree.**
- b. Submit a progress report to the DNR by **June 1, 2017.**
- c. Submit a Facility Plan to the DNR that is prepared by a professional engineer licensed in the State of Iowa, by **September 1, 2017.** The Facility Plan shall be in accordance with Chapter 11.2 of the Iowa Wastewater Facilities Design Standards adopted April 25, 1979.
- d. Submit a progress report to the DNR by **June 1, 2018.**
- e. Submit final plans and specifications to the DNR that are prepared by a professional engineer licensed in the State of Iowa, by **December 1, 2018.**
- f. Award a contract for construction of wastewater treatment improvements and provide a copy of the contract to the DNR by **May 1, 2019.**

- g. Submit a progress report to the DNR by **February 1, 2020**.
- h. Complete construction of wastewater treatment improvements and provide notice of completion to the DNR by **September 1, 2020**.
- i. Achieve compliance with all final CBOD5, TSS, ammonia and *E. coli* limits and certify compliance to the DNR by **October 1, 2020**.

Notice Recipient

6. Unless otherwise specified, all written notices and progress reports shall be sent to the following address:

Iowa Department of Natural Resources
 Environmental Services Division
 Regional Office #6
 1023 West Madison
 Washington, IA 52353

Stipulated Civil Penalties for Failure to Comply with Deadlines

- 7. Peeters shall pay the following stipulated civil penalties:
 - a. For each day Peeters fails to timely and satisfactorily comply with a deadline contained in Paragraph sections 5(a)-(i) herein:

<u>Period of violation</u>	<u>Penalty per day per violation</u>
1-30 days	\$100
31-60 days	\$250
Each day over 60	\$500

- 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 \$500 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 Peeters up to a maximum civil penalty of \$1,000 per day per violation for such additional violations occurring after the date of the Application or other pleading. Peeters reserves the right to contest the amount of any such penalties.

8. Payment of the stipulated civil penalties referred to in paragraph seven (7) 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 Plaintiff's attorney, David S. Steward, at the

address noted in Paragraph three (3) herein. Payment of these stipulated civil penalties shall not relieve Peeters from obligations established by this Consent Decree 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 the State of Iowa for violations of this Consent Decree, to which the stipulated civil penalties applied. 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 Decree.

Force Majeure

9. If Peeters is unable to meet any of the deadlines set forth in this Consent Decree, Peeters shall provide notice to Plaintiff within thirty (30) days specifying the delayed event, the cause of the delay, its possible duration, Peeters' efforts to remedy the situation, and the expected effect of the delay upon the schedule contained in this order. Peeters shall adopt all reasonable measures to avoid or minimize such delays. Failure by Peeters to provide notice to Plaintiff of an event which causes or may cause a delay or impediment to performance shall render the Force Majeure provisions of paragraphs 9 through 13 voidable by Plaintiff as to the specific event for which Peeters has failed to comply with such notice requirement, and, if voided, are of no effect as to the particular event involved.

10. Plaintiff shall notify Peeters in writing regarding Plaintiff's position as to Peeters' claim of a delay or impediment to performance as soon as practicable, but in any event within thirty (30) days after receipt. If Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the reasonable control of Peeters, and Peeters 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. Peeters shall not be liable for any stipulated penalties for the period of any such delay.

11. If Plaintiff does not accept Peeters' claim that a delay or impediment to performance is caused by a Force Majeure event, to avoid payment of stipulated penalties, Peeters must submit the matter to this Court for resolution within thirty (30) business days after receiving notice of Plaintiff's position by filing a petition for determination with this Court. Once Peeters has submitted this matter to this Court, Plaintiff shall have twenty (20) business days to file its response to said petition.

12. If Peeters 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 Peeters, including any entity controlled by Peeters, and Peeters could not have prevented the delay by the exercise of due diligence, Peeters 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. Peeters shall bear the burden of proving that any delay of any requirement(s) of this Consent Decree was caused by or will be caused by circumstances beyond its reasonable control, including any entity controlled by it, and the Peeters could not have prevented the delay by the exercise of due diligence. Peeters shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances.

13. Unanticipated or increased costs or expenses associated with performance of Peeters' obligations under this Consent Decree shall not constitute circumstances beyond the reasonable control of Peeters, 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, 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 Peeters 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 Peeters 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.

Permanent Injunction

14. Peeters is permanently enjoined from further violations of Iowa Code section Iowa Code section 455B.186(1); 567 Iowa Admin. Code 41.2(1)“c”(1)“3”, 41.3(1)“b”, 41.3(1)“c”, 41.4(1)“c”(4)“4”, 42.1, 42.1(1)“a”(3), 42.1(4)“a”(6), 42.3(2), 62.1(1), 63.7, 63.8, 64.3(1), and 64.7(7)“f”; NPDES Permit No. 8222603; Public Water Supply Permit No. 8222603; and Consent Amendment to Administrative Order No. 2005-WW-04-A1.

Jurisdiction Retained

15. Willful failure to comply with the terms of this Order may subject Peeters to punishment for contempt of court as well as other penalties and sanctions provided by law. The Court, therefore, retains jurisdiction over this matter to ensure compliance with the terms of this Order.

Court Costs

16. The costs of this action are taxed to Peeters in the amount of 213.05.




State of Iowa Courts

Type: STIPULATED DECREE

Case Number **Case Title**
EQCE126530 IOWA DNR VS PEETERS DEVELOPMENT CO. INC.

So Ordered



J. Hobart Darbyshire, Senior Judge,
Seventh Judicial District of Iowa