

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

IN THE MATTER OF:

**JOINT USE OF SANITARY SEWERS
AND SEWAGE DISPOSAL
FACILITIES: City of Davenport, Iowa,
City of Bettendorf, Iowa,
City of Riverdale, Iowa,
City of Panorama Park, Iowa**

**NPDES Permit #8222003
Scott County, Iowa**

**ADMINISTRATIVE CONSENT
ORDER**

NO. 2013-WW- 07

TO: William E. Gluba, Mayor
City of Davenport
226 W 4th Street
Davenport IA 52801

John J. Franklin, Mayor
City of Riverdale
110 Manor Drive
Riverdale, IA 52722

Robert S. Gallagher, Mayor
City of Bettendorf
1609 State Street
Bettendorf IA 52722

David White, Mayor
City of Panorama Park
P.O. Box 533
112 Short Street
Panorama Park, IA 52767

I. SUMMARY

This administrative consent order (Order) is entered into between the Cities of Davenport, Bettendorf, Riverdale, and Panorama Park and the Iowa Department of Natural Resources (DNR) for the purpose of establishing a schedule for necessary upgrades to the Davenport Water Pollution Control Plant and the wastewater collection systems of Davenport and Bettendorf to achieve compliance with applicable requirements and to eliminate the discharge of untreated wastewater from the collection systems.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Paul Brandt, Environmental Specialist Sr.
DNR Field Office #6
1023 W. Madison
Washington, Iowa 52353-1623
Phone: 319-653-2135

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515-281-8889

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II. JURISDICTION

This Order is issued pursuant to the provisions of 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 (wastewater) 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

The DNR and the Cities of Davenport, Bettendorf, Riverdale, and Panorama Park hereafter referred to as "Joint Use Cities" agree to the following facts:

1. An intergovernmental agreement providing for construction and joint use of sanitary sewers and sewage disposal facilities was signed by the City of Davenport, Iowa, the City of Bettendorf, Iowa, the City of Riverdale, Iowa and the City of Panorama Park, Iowa on January 5, 1974. This agreement which has been amended continues to be the basis for operating, maintaining, and financing the common plant and system assets.

2. The Joint Use Cities own and operate the Joint Sewerage Committee Water Pollution Control Plant, a mechanical wastewater plant serving approximately 29,590 residential connections, 7,032 commercial connections, and 20 industrial connections in the city of Davenport. The plant also serves approximately 12,749 residential connections, 776 commercial connections and 3 industrial connections in Bettendorf. Approximately 200 residential connections and 10 commercial connections are served in Riverdale. The plant serves approximately 55 residential connections in Panorama Park. The wastewater plant is designed to handle an average dry weather flow of 26.0 million gallons per day (mgd) and an average wet weather flow of 40.0 mgd. A construction permit was issued by the DNR on March 15, 1974 for the construction of the Davenport Water Pollution Control Plant in accordance with current NPDES.

3. The Davenport wastewater plant has historically received wet weather flows in volumes far exceeding the plant's design capacity. These excessive flows result in the discharge of untreated wastewater from the collection system and partially treated wastewater from the plant, blended with treated wastewater.

4. Pursuant to 567 IAC 60.2, a bypass is the diversion of waste streams from any portion of a treatment facility or collection system. A bypass does not include internal operational waste stream diversions that are part of the design of the treatment facility, maintenance diversions where redundancy is provided, diversions of wastewater from one point in a collection system to another point in a collection system, or wastewater backups into buildings that are caused in the building lateral or private sewer line.

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5. In 2010, the Joint Use Cities discharged 547.7 million gallons of partially treated wastewater to the Mississippi River at the wastewater treatment plant over a total of 74 separate days of discharge. In addition to these discharges, Davenport reported the discharge of untreated wastewater from the wastewater collection system on three occasions in 2010.

6. In 2009, the Joint Use Cities discharged 723.8 million gallons of partially treated wastewater to the Mississippi River at the wastewater treatment plant over a total of 90 separate days of discharge. In addition to these discharges, Davenport reported the discharge of untreated wastewater from the wastewater collection system on 18 occasions in 2009.

7. The Davenport Water Pollution Control Plant also serves Bettendorf, Riverdale and Panorama Park. Each city owns and maintains the wastewater collection system within each respective city limits and proportionately shares in the ownership, cost of operation and maintenance of the Davenport Water Pollution Control Plant. Proportionate ownership is allocated based on a community's use expressed as a percentage. Percentages for fiscal year 2012 are: Davenport, 79.66%; Bettendorf, 19.81%; Riverdale, 0.46%; and Panorama Park, 0.07%.

8. When influent flow to the wastewater plant exceeds the plant's design capacity, influent flow is restricted and backs up in the Bettendorf collection system. In 2010, the City of Bettendorf reported discharging over 33.2 million gallons of untreated wastewater to the Mississippi River over the course of 7 separate incidents lasting 11 days.

9. The Department and the Joint Use Cities have been working together for several years to develop a strategy to eliminate or minimize the bypassing of partially treated wastewater at the Davenport Water Pollution Control Plant and within the wastewater collection systems of the Joint Use Cities.

10. The Joint Use Cities have committed to a 20-year Capital Improvement Plan that contains at least 20 sewer-related projects at a cost of over \$160 million dollars.

11. This Order is intended to establish a schedule for the completion of wastewater collection, handling and treatment improvements necessary for the Joint Use Cities to achieve compliance with applicable regulations. In the event a signatory fails to abide by the schedules contained herein, each or any of the other signatories may enforce this Order against the breaching party.

IV. CONCLUSIONS OF LAW

The DNR and the Joint Use Cities agree that the following conclusions of law are applicable in this case:

1. Pursuant to Iowa Code section 455B.186(1), a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that

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this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the director.

2. Pursuant to 567 IAC 63.6, bypasses from any portion of a treatment facility or from a sanitary sewer collection system designed to carry only sewage are prohibited. Pursuant to 567 IAC 60.2, a bypass is the diversion of waste streams from any portion of a treatment facility or collection system. A bypass does not include internal operational waste stream diversions that are part of the design of the treatment facility, maintenance diversions where redundancy is provided, diversions of wastewater from one point in a collection system to another point in a collection system, or wastewater backups into buildings that are caused in the building lateral or private sewer line. The DNR has documented violations related to untreated discharges by the Joint Use Cities, as documented in the Statement of Facts above.

3. Pursuant to 567 IAC 64.2(10)“b”, a sanitary sewer construction permit may be denied if bypassing has occurred at the treatment facility, except when any of the following conditions are being met:

- (1) The bypassing is due to a combined sewer system, and the facility is in compliance with a long-term CSO control plan approved by the department.
- (2) The bypassing occurs as a result of a storm with an intensity or duration greater than that of a storm with a return period of five years.
- (3) The department determines that timely actions are being taken to eliminate bypassing.

4. Pursuant to 567 IAC 64.2(10) “c”, a sanitary sewer construction permit may be denied if an existing downstream sewer is or will be overloaded or surcharged, resulting in bypassing, flooded basements, or overflowing manholes, unless:

- (1) The bypassing or flooding is the result of a precipitation event with an intensity or duration greater than that of a storm with a return period of two years.
- (2) The system is under full-scale facility planning (I/I and SSES) and the applicant provides a schedule that is approved by the department for rehabilitating the system to the extent necessary to handle the additional loadings.

V. ORDER

By the execution of this Order, the DNR orders and the Joint Use Cities agree to undertake the wastewater collection, handling, and treatment projects set forth in the Joint Sewer Use Communities Capital Improvement Plan (CIP) submitted to the DNR by the Joint Use Cities, dated March 30, 2012, as amended on May 31, 2012. The Joint Use Cities specifically agree to the following deadlines:

1. Beginning upon the execution of this Order and continuing until the sooner of the completion of all related projects set forth in the CIP or July 1, 2018, the Joint Use Cities shall undertake the cleaning and televising of interceptor sewers within the sanitary sewer collection systems of the respective cities including but not limited to the Old Riverfront

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Interceptor (1930's), the 1970's Riverfront Interceptor and the Eastern Interceptor sewer in order to identify blockages, any cross connections with storm sewers or other clear-water connections, needed repairs or other potentially necessary improvements in the interceptor sewers as shown in Figures AO-1 and AO-2.

2. By July 1, 2013, the Joint Use Cities shall install and maintain such permanent sanitary sewer metering devices as are necessary to evaluate flow conditions within the sanitary sewer system and determine the wastewater storage and treatment capacity needs of the cities.

3. Continuing until the sooner of the completion of all related projects set forth in the CIP or July 1, 2018, the Joint Use Cities shall undertake the study and actions to remove inflow and infiltration sources from the Interceptor Sewers shown in Figures AO-1 and AO-2 beginning upon the execution of this Order. To the extent that the tasks as identified in paragraph #6 below required to complete this project require the cooperation of, and performance of work by, the United States Army Corps of Engineers; the DNR and the Joint Use Cities agree to work cooperatively to obtain such cooperation and assistance of the Corps as identified in facility plan CIP.

4. By January 1, 2015, Davenport shall submit all construction permit applications necessary for the wastewater treatment plant optimization project.

5. By July 1, 2017, the Joint Use Cities shall substantially complete construction for the wastewater treatment plant optimization project. The goal of the plant optimization Phase I project shall be, in part, to increase the secondary capacity from 45 mgd to approximately 52 mgd. Phase II will complete the plant optimization project following the identification of cost effective inflow/infiltration projects.

6. By December 2018, the Joint Use Cities shall contact the DNR Wastewater Engineering Section to request the scheduling of a meeting to review and discuss the anticipated construction projects necessary to address the conclusions and findings derived from the evaluations of the sanitary sewer collection systems conducted pursuant to paragraph #1, #2 and #3, above.

7. It is the intent of the parties that by December 31, 2018, the DNR and the Joint Use Cities will execute a written agreement or exchange correspondence that identifies, based on the meeting required by paragraph #6, above, all repairs and improvements to the sanitary sewer collection system which are necessary and appropriate and which will be undertaken by the Joint Use Cities.

8. By July 1, 2019, the Joint Use Cities shall submit all construction permit applications necessary to undertake repairs and improvements to the sanitary sewer collection system as identified during the inspection and televising process described in paragraph #1, above.

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9. By December 31, 2019, the Joint Use Cities shall submit all construction permit applications, if any, necessary to undertake repairs and improvements to the sanitary sewer collection system as identified during the inspection and televising process described in paragraph #3, above.

10. By January 1, 2019, Davenport shall submit an application for a construction permit for the construction of a wastewater disinfection system at the Davenport Water Pollution Control Plant.

11. By July 1, 2021, Davenport shall complete substantial construction of a wastewater disinfection system at the Davenport Water Pollution Control Plant.

12. By December 31, 2021 the Joint Use Cities shall complete sanitary sewer trunk system repairs or improvements identified as necessary and appropriate pursuant to paragraph #7, above.

13. By October 1, 2021, Davenport shall comply with applicable effluent limitations for bacteria in its discharges from the Davenport Water Pollution Control Plant. Such effluent limitations are not yet established at the time of execution of this Order. Nothing in this Order shall be construed to restrict the rights of the parties to establish, contest, or appeal such bacterial effluent limitations.

14. By July 1, 2023 (need time to measure flows after completion of #12 and #9), Davenport shall submit an application for a construction permit for an equalization basin or such other modifications or improvements to the Davenport Water Pollution Control Plant as are necessary to comply with 567 IAC 63.6.

15. By July 1, 2025, Davenport shall complete construction of an equalization basin or such other modifications or improvements to the Davenport Water Pollution Control Plant as are necessary to comply with 567 IAC 63.6.

16. Beginning April 1, 2013 and continuing through January 31, 2026, the Joint Use Cities shall submit yearly progress reports to the DNR, due by April 1 (approval of CIP), of each year, detailing progress toward compliance with this Order and setting forth a timeline of work to be performed in furtherance of this Order for the following 12-month period.

17. By July 1, 2026, the Joint Use Cities shall achieve and maintain compliance with 567 IAC 63.6, NPDES Permit No. 8222993, and all other applicable requirements of state and federal law related to the operation and maintenance of a publicly owned treatment works which are required by the Joint Use Cities NPDES permit.

18. The Joint Use Cities agree and acknowledge that nothing in this Order is intended to modify the standard construction permitting procedures of the DNR or the requirements thereof. The Joint Use Cities shall take full consideration of such procedures in the timing of required submissions in order to comply with the deadlines set forth herein.

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19. Nothing in this Order is intended to dictate or establish the apportionment of costs or funding obligations between the Joint Use Cities for any joint projects required by this Order or for any projects for which existing municipal agreement establish the funding liabilities of the Joint Use Cities. It is the responsibility of the Joint Use Cities to determine and assess such costs as determined to be appropriate by the parties. Pursuant to the agreement of the Joint Use Cities, the costs of any joint projects required by this Order shall be allocated in proportion with and expressly limited to each constituent community's percentage share of ownership of the Davenport Water Pollution Control Plant.

20. If the remediation steps called for in this consent order result in a cessation of violation for an extended period of time, Joint Sewer Use Committee (JSUC) may request that the IDNR review the status of this order. The parties agree that the goal of this order is compliance with statutes and regulations in order to provide protection of human health and the environment, and not to unduly burden the sewer rate payers with infrastructure that is not needed.

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 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at IAC Chapter 567 - 10. Pursuant to this chapter, the Department is authorized to issue an administrative order with penalties for noncompliance with this Order or to refer such noncompliance to the Iowa Attorney General for the initiation of a District Court action seeking such penalties and injunctive relief.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly by and with the consent of the Joint Use Cities. For that reason, the Joint Use Cities individually waive the right to appeal this Order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in referral to the Attorney General to obtain injunctive relief pursuant to Iowa Code section 455B.191. Compliance with section V. of this Order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this Order.

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Chuck Gipp
CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 14th day of
March, 2013

William E. Gluba
WILLIAM E. GLUBA, MAYOR
City of Davenport

Dated this 19th day of
Feb., 2013

Rob. S. Gallagher
ROBERT S. GALLAGHER, MAYOR
City of Bettendorf

Dated this 22nd day of
Feb., 2013

John J. Franklin
JOHN J. FRANKLIN, MAYOR
City of Riverdale

Dated this 25 day of
Feb, 2013

David White
DAVID WHITE, MAYOR
City of Panorama Park

Dated this 20 day of
Feb, 2013

NPDES #8222003; Field Office #6; Jon Tack; EPA; Water Quality Bureau; I.C.1