

COUNCIL ACTION FORM

SUBJECT: WATER POLLUTION CONTROL PLANT DISCHARGE PERMIT APPEAL

BACKGROUND:

On September 1, 2010, the Iowa Department of Natural Resources (IDNR) issued a “final” National Pollutant Discharge Elimination System (NPDES) permit for the Ames Water Pollution Control Facility (WPC). Staff identified five elements of the new permit that could impose a significant financial impact on the rate-payers of the Ames sanitary sewer utility while providing only marginal environmental benefits. These were issues that staff had raised with the IDNR while the permit was open for public comment, and the IDNR rejected the recommended changes offered by Ames. On September 14, 2010, Council authorized staff to file an appeal of those five permit elements. (It should be noted that in a permit appeal, the City cannot challenge the appropriateness of a requirement in the Iowa Administrative Code; it may only challenge actions of the IDNR are contrary to the code requirements.)

Staff has been engaged in an extended discussion and negotiation with the IDNR over the past year in an attempt to find mutually acceptable resolutions to each of the five elements. The permit elements of concern are summarized below, along with the most recent settlement language proposed by IDNR.

1. The new permit altered the minimum dissolved oxygen limitations from the previous seven-day average limitation to a single-day limitation. Based on the way Iowa’s water quality standards were adopted, staff believes a seven-day average to be appropriate. However, IDNR has been applying single day minimums in other permits that have been issued. The table below shows the previous permit limits, the 2010 permit limits, and the revised limits in the proposed settlement agreement.

	1986 Permit		2010 “Final” Permit		2011 “Revised” Permit	
	Seven-Day Average	Single-Day Minimum	Seven-Day Average	Single-Day Minimum	Seven-Day Average	Single-Day Minimum
January	5.0	xx	xx	6.0	xx	5.0
February	5.0	xx	xx	6.0	xx	5.0
March	6.0	xx	xx	6.0	xx	5.0
April	6.0	xx	xx	7.5	xx	5.0
May	6.0	xx	xx	7.1	xx	5.0
June	6.0	xx	xx	6.8	xx	5.0
July	6.0	xx	xx	6.5	xx	5.0
August	6.0	xx	xx	6.5	xx	5.0

September	6.0	xx	xx	6.7	xx	5.0
October	6.0	xx	xx	7.0	xx	5.0
November	6.0	xx	xx	6.0	xx	5.0
December	6.0	xx	xx	6.0	xx	5.0

* Concentrations measured as “milligrams per liter”

2. The new permit established a single-day carbonaceous biochemical oxygen demand (CBOD₅) limit, as opposed to the previous permit’s seven-day average limit. Similar to the dissolved oxygen standard discussed above, staff believes that a seven-day average is both practical and appropriate for CBOD₅ limitations. The table below shows the previous permit limits, the 2010 permit limits, and the revised limits in the proposed settlement agreement.

	1986 Permit		2010 “Final” Permit		2011 “Revised” Permit	
	Seven-Day Average	Single-Day Minimum	Seven-Day Average	Single-Day Minimum	Seven-Day Average	Single-Day Minimum
January	30	xx	xx	30	30	xx
February	30	xx	xx	30	30	xx
March	30	xx	xx	30	30	xx
April	30	xx	xx	30	30	xx
May	30	xx	xx	30	30	xx
June	30	xx	xx	30	xx	30
July	30	xx	xx	30	xx	30
August	30	xx	xx	30	xx	30
September	30	xx	xx	30	xx	30
October	30	xx	xx	30	30	xx
November	30	xx	xx	30	30	xx
December	30	xx	xx	30	30	xx

* Concentrations measured as “milligrams per liter”

3. The new permit included language that reads “wastes in such quantities as to exceed the design capacity of the treatment works...are considered to be a waste which interferes with the operation or performance of the treatment works [and] are prohibited....” Staff’s concern is not with this wording in the permit since it is based on current state law. Rather, staff is concerned because an IDNR staff member’s written comment on this issue asserted that IDNR intends to treat “flow” as a “waste.”

The IDNR has provided language in the proposed settlement agreement clarifying that the requirement in the Iowa Administrative Code that led to the permit language arises solely from Iowa law. There would be no change to the final permit itself on this item, but the clarification would mean that there could be no federal enforcement under the Clean Water Act for a violation of this permit provision.

4. The new permit contained a compliance schedule for the installation of disinfection at the facility, calling for the system to be operational within 37

months of the effective date of the permit. However, there are steps in the process where the City is entirely at the mercy of IDNR staff to process applications and grant approvals in a timely manner. Staff is not comfortable accepting a compliance schedule with a fixed end date when critical portions are outside the City's control.

As a part of the proposed settlement agreement, IDNR has identified a list of factors for which they have routinely granted an extension to a compliance schedule. Included in that list is "...delays in the review and approval of necessary authorization documents such as...DNR authorizations." IDNR also stipulates that "...similar factors will be considered in regard to the granting of an extension to the schedule of compliance for Ames' disinfection system."

In February of this year, IDNR issued a letter that confirmed the City's design capacity proposal, eliminating one potential point of contention. Through the appeal negotiation process, Ames staff requested a minor extension to the compliance schedule, extending the date of final completion by six weeks. The proposed settlement agreement provides a permit revision that includes the requested compliance schedule modification.

5. The new permit would not allow the continued use of the plant's existing peak wet-weather treatment scheme of "blending" and, instead, would treat it as an illegal bypass. Federal and state laws allow a community to bypass treatment works under extreme conditions where feasible alternatives to bypassing do not exist. Generally, when bypasses occur during flood flow conditions they are not treated as violations. Nevertheless, in order to avoid any bypass incidents under any and all circumstances, the City would need to spend an estimated \$30 to \$40 million to construct additional hydraulic capacity that would be needed, on average, only a few times each year.

Ames staff and IDNR have reached agreement in the proposed settlement agreement on the following points.

- Ames agrees to conduct a Sanitary Sewer System Evaluation in general conformity with the City's 2011-2016 Capital Improvements Plan.
- Ames agrees to conduct a Long-Range Water Pollution Control Facility Plan in general conformity with the City's 2011-2016 Capital Improvements Plan.
- The settlement agreement requires that by July 1, 2014, the City will submit to IDNR a plan outlining the conclusions thus far derived by the above two studies and a plan and schedule for completing any proposed improvements or additions to the equalization basins thus far determined to be needed.
- Ames agrees to take action to reduce infiltration and inflow into its wastewater collection system. No additional specificity is proposed to quantify what will be required in the collection system.
- Ames will be responsible for determining the extent to which additional equalization basin capacity is appropriate. However, IDNR must concur with conclusions and recommendations reached by the City.
- Overflows from the equalization basin will be considered by IDNR to be a bypass.

- Pending the completion of the above activities, IDNR acknowledges that overflows from the equalization basin are events that are beyond the control of Ames and that the IDNR may not impose civil penalties. However, protection from the imposition of civil penalties does not preclude IDNR from requiring Ames to increase its storage basin capacity if they determine it will be necessary.

As of Monday evening (August 22, 2011), staff is still negotiating minor modifications in the final language of the proposed settlement agreement. The hearing on the City's appeal of the NPDES permit conditions is scheduled for September 15, 2011. Staff is seeking direction from Council at this time in order to have enough time for preparations to be made if Council decides to reject the terms of the proposed settlement agreement.

ALTERNATIVES:

1. Direct staff to accept the negotiated language, resolving all issues that the City raised in the appeal of the NPDES permit for the Water Pollution Control Facility.
2. Direct staff to reject the negotiated language for any or all of the issues raised in the City's appeal of the NPDES permit for the Water Pollution Control Facility and to continue the administrative appeal through to a hearing.
3. Direct staff to take no further action on the appeal. This would leave the 2010 final permit as issued by the IDNR in place without modification.

MANAGER'S RECOMMENDED ACTION:

City staff has engaged in extensive discussion and negotiation with staff from the IDNR seeking to find mutually agreeable language to resolve the City's appeal. Neither side is completely happy with the terms of the proposed settlement, but both sides believe that the revised permit language is as protective of public health and the environment as the original permit. **Staff has concluded that the negotiated terms are the best for the City that can be secured at this time.** Therefore, provided that IDNR agrees to the City's proposed minor modifications to the final agreement, it is the recommendation of the City Manager that the City Council should adopt Alternative No. 1, thereby directing staff to accept the proposed settlement agreement with IDNR. If however IDNR does not agree to the proposed modifications and the Council finds that the proposed terms are unacceptable, then Alternative No. 2 should be adopted, and the staff will reject the proposed settlement agreement and proceed to hearing on the administrative appeal.