

Date June 5 , 2006

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by repealing Division 3, Contractors, of Article II, Sewage and Sewage Disposal, of Chapter 118, Utilities, Sections 118-106 through 118-117, and adding and enacting a new Division 6, Regulation of Hauled Waste to Article III, Regulation of Industrial Wastewater and Commercial Wastewater of Chapter 118, Utilities, Sections 118-450 through 118-464",

which was considered and voted upon under Roll Call No. 06-1027 of May ~~22~~, 2006; again presented.

Moved by _____ that this ordinance be considered and given second vote for passage.

(Second of three required readings)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BROOKS				
COLEMAN				
HENSLEY				
MAHAFFEY				
KIERNAN				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk



**Council
Communication**
Office of the City Manager

Date

May 22, 2006

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Agenda Item No. 41
 Roll Call No. 06-1027
 Communication No. 06-313
 Submitted by: William G. Stowe,
 Assistant City Manager/Public
 Works/Engineering

AGENDA HEADING:

An Ordinance to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by repealing Division 3, Contractors, of Article II, Sewage and Sewage Disposal, of Chapter 118, Utilities, Sections 118-106 through 118-117, and adding and enacting a new Division 6, Regulation of Hauled Waste to Article III, Regulation of Industrial Wastewater and Commercial Wastewater of Chapter 118, Utilities, Sections 118-450 through 118-464.

SYNOPSIS:

Recommend approval to delete Sections 118-106 through 118-117 and add Sections 118-450 through 118-464 of the Municipal Code pertaining to regulation of hauled waste in order to adopt the WRA unified hauled waste ordinance. This ordinance is substantially similar to the existing hauled waste ordinance with changes made to provide for greater ease of enforcement including the addition of administrative penalties, municipal infractions, and corrective action orders.

FISCAL IMPACT:

Amount: No new fees or expenses are added as a result of this ordinance. Existing fees and service level commitments are maintained.

Funding Source: NA

ADDITIONAL INFORMATION:

The Wastewater Reclamation Facility's (WRF's) National Pollutant Discharge Elimination System (NPDES) permit requires an Industrial Pretreatment program which is administered under the Wastewater Reclamation Authority (WRA) Operating Agreement and legally implemented when each constituent community passes this ordinance. The Industrial Pretreatment Program regulates wastewater discharges throughout the WRA service area and is required to prevent the discharge of pollutants that would interfere with collection and treatment systems or pass through the wastewater treatment plant and cause environmental harm.

Control of wastes that enter the WRF via waste haulers is a significant part of maintaining a properly operating wastewater treatment facility. This ordinance provides for the sanitary removal, transportation, and disposal of hauled waste and collection of appropriate treatment fees to cover the treatment and program administration costs which make the hauled waste program self-funded. This ordinance is substantially similar to the existing hauled waste ordinance but changes were made to provide for greater ease of enforcement. The ordinance provides for administrative penalties, municipal infractions and corrective action orders that

make the ordinance enforceable as required by the Iowa Department of Natural Resources (IDNR). This ordinance has undergone an IDNR specified public review and comment process, approval by the WRA Board, and is now presented to the Council for their consideration.

PREVIOUS COUNCIL ACTION(S): NONE

Date: NA

Roll Call Number: NA

Action: NA

BOARD/COMMISSION ACTION(S):

Date: April 18, 2006

Board Resolution Number: 06-36

Action: WRA Board passage

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Second and third consideration followed by ordinance publication.

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ORDINANCE NO. _____

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by repealing Division 3, Contractors, of Article II, Sewage and Sewage Disposal, of Chapter 118, Utilities, Sections 118-106 through 118-117, and adding and enacting a new Division 6, Regulation of Hauled Waste to Article III, Regulation of Industrial Wastewater and Commercial Wastewater of Chapter 118, Utilities, Sections 118-450 through 118-464.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, is hereby amended by repealing Division 3, Contractors, of Article II, Sewage and Sewage Disposal, of Chapter 118, Utilities, Sections 118-106 through 118-117, and adding and enacting a new Division 6, Regulation of Hauled Waste to Article III, Regulation of Industrial Wastewater and Commercial Wastewater of Chapter 118, Utilities, Sections 118-450 through 118-464, as follows:

DIVISION 6. REGULATION OF HAULED WASTE

- Sec. 118-450. Definitions.
- Sec. 118-451. License.
- Sec. 118-452. Issuance of license.
- Sec. 118-453. Standards for vehicles and equipment.
- Sec. 118-454. Disposal.
- Sec. 118-455. Identification of source.
- Sec. 118-456. Mixing wastes.
- Sec. 118-457. Standards of disposal at WRF.
- Sec. 118-458. Rejection of waste loads.
- Sec. 118-459. Treatment fees for hauled wastes.
- Sec. 118-460. Enforcement.
- Sec. 118-461. Notice of violation--administrative penalties--corrective action order.
- Sec. 118-462. Penalties.
- Sec. 118-463. Denial, suspension and revocation of license.
- Sec. 118-464. Alternative relief.
- Secs. 118-465--118-475. Reserved.

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DIVISION 6. REGULATION OF HAULED WASTE

Sec. 118-450. Definitions.

The definitions found in sections 118-316 and 118-422 shall apply to the provisions of this division, provided however that the following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Vehicle means a device equipped with a tank and used to remove or transport waste.

Waste means human excreta, water, scum, sludge, septage, and food waste or grease solids removed from public and private wastewater disposal systems, holding tanks, impervious vaults, portable or chemical toilets, or from devices used to trap grease resulting from food preparation. *Waste* also means liquid wastes resulting from spill clean-up.

Sec. 118-451. License.

No waste hauler shall remove waste from within the city or shall dispose of waste, whether from a source inside or outside the city, into the POTW without first obtaining a waste hauler license from the WRA, with the following exceptions:

- (1) WRA participating communities that operate vehicles to remove waste from their sewer systems.
- (2) Waste haulers hired by WRA participating communities to remove waste from their sewer systems and which bring no other wastes to the WRF.
- (3) Waste haulers utilized by industrial users issued a wastewater discharge permit by the WRA.
- (4) Waste haulers granted temporary authorization by the WRA director in order to deal with an emergency.

Sec. 118-452. Issuance of license.

The waste hauler's license shall be issued by the WRA director upon written application that shall consist of the following minimum requirements:

- (1) *Inspection.* The WRA director, upon application, shall inspect the trucks, hoses, valves, and associated equipment of the applicant for a waste hauler's license and determine if they meet the minimum qualifications for complying with the conditions of this division.
- (2) *License fee and bond.* An application shall require the payment of a fee of \$60.00 for each vehicle used by the applicant and the posting of a bond with reasonable surety in the penal sum of \$10,000.00 for the faithful compliance with this division, including prompt payment

of fees, fines and damages. WRA participating communities that contract with waste haulers in order to clean and rehabilitate storm and sanitary sewers owned by the community or that own and operate waste hauling vehicles may provide proof of self-insurance or provide a letter guaranteeing payment of up to \$10,000.00 in lieu of providing a surety bond.

- (3) *Renewal.* A waste hauler license shall expire on June 30 next after its issuance. The renewal application must be made in the same manner as the initial application and must be received by the director 30 days prior to expiration. Failure to apply 30 days prior to expiration may result in an interruption in the license and the privileges of such license.
- (4) *Transferability.* Waste hauler licenses are not transferable.

Sec. 118-453. Standards for vehicles and equipment.

As to all vehicles and equipment used by a waste hauler, the licensee shall:

- (1) Prevent waste and wastewater from leaking, spilling, or discharging onto roads or rights-of-way.
- (2) Ensure proper construction and repair of the equipment to allow cleaning.
- (3) Maintain vehicles and equipment in an essentially rustfree and sanitary condition and appearance.
- (4) Display the business name as it appears on the waste hauler license in three-inch or larger letters on the left and right sides of the vehicle.

Sec. 118-454. Disposal.

Hauled waste shall only be disposed at the WRF at the designated disposal station or as authorized by the Iowa Department of Natural Resources for land application. Waste haulers shall maintain the WRF designated disposal location in a clean and orderly condition to avoid noxious odors and unsanitary conditions.

Hours of operation at the WRF disposal station shall be set by the WRA director. In the event of emergency situations, special arrangements between the waste hauler and the WRA director regarding disposal at an alternative disposal site shall be allowed to permit response to such emergency. Any violation of an Iowa Department of Natural Resources rule or regulation for land disposal of hauled wastes by a waste hauler shall be grounds for rejection of a hauled waste load in section 118-458 by such waste hauler or shall be grounds for denial, suspension and revocation of such waste hauler's license in section 118-463.

Sec. 118-455. Identification of source.

Waste haulers must document the nature and origin of wastes collected and the site and method of disposal for wastes that are removed from any locations or are delivered to the WRF. Such information shall be provided on a manifest form provided by the WRA director. The manifest shall also include: (i) the name, address and phone number of the waste generator, (ii) the type of waste collected, (iii) the approximate volume of the load, (iv) any other information consistent with identification and tracking of wastes. The WRA director or his or her designee shall have the right to verify all information required by this section, including the right to measure, sample and analyze any waste regulated by this division. The waste hauler shall obtain approval from the WRA director or his or her designee prior to loading wastes originating from an industrial/commercial source unless prior approval is on record with the WRA.

Sec. 118-456. Mixing wastes.

- (a) For the purposes of this division, wastes from residential and nonresidential sources shall not be mixed. Wastes from an industrial/commercial source shall not be mixed with wastes of any type from another location. Portable toilet and FSE grease trap wastes may be mixed with similar wastes from different locations. Residential wastes from several sources may be mixed as long as each source is identified.
- (b) Any tanks or equipment used for hauling waste to the WRF shall not be used for hauling hazardous wastes or hazardous substances, as defined in I.C. § 567.1 et seq., chapter 131 of the Iowa Administrative Code and in 40 CFR 261, or other wastes detrimental to the WRF.

Sec. 118-457. Standards of disposal at WRF.

Under this division, disposal of wastes at the WRF shall be carried out in accordance with pretreatment standards and requirements established by federal, state, county and city governments including categorical standards developed for the waste generator's industrial category. The WRA director may reject wastes from waste haulers who do not comply with this section or with any other section of this division. Waste haulers shall not deliver wastes to the WRF, or to any other disposal location approved by the WRA director which are:

- (1) Prohibited by section 118-342 or exceed the limits found in subsection 118-343(c)(4), sections 118-344 and 118-345 of this chapter.
- (2) Hazardous wastes or hazardous substances as defined in 40 CFR Part 261 or 567 I.A.C., Chapter 131.
- (3) Originate from mineral oil and grease traps unless first

- treated to remove the oil and grease.
- (4) Not completely identified or are from industrial/commercial sources that are not approved by the director as required in section 118-455.
- (5) Mixed in a manner prohibited in section 118-456.
- (6) Wastes other than residential from outside the WRA, except through requests to the director.

Sec. 118-458. Rejection of waste loads.

- (a) The WRA director may reject any hauled waste load that violates or is suspected of violating the requirements of this division or that fails to meet any other guidelines established by the WRA director to protect personnel, equipment, and the WRF. Waste haulers must:
 - (1) Remove rejected waste from the WRF.
 - (2) Immediately remove any additional wastes contaminated by the rejected waste while contained at the WRF prior to introduction into the sewer.
 - (3) Properly dispose of all rejected wastes in accordance with state and federal law.
 - (4) Provide the WRA director with a written statement, signed by the waste hauler license holder, stating the location, date, and time the rejected load was disposed of. The statement is due within five calendar days after the waste is rejected.
- (b) A vehicle used to haul rejected wastes shall not thereafter be allowed to dispose of additional wastes at the WRF until the statement required by this section is delivered to the WRA director.

Sec. 118-459. Treatment fees for hauled wastes.

- (a) A treatment fee shall be charged per pound of hauled waste received at the WRF for all wastes originating within WRA participating communities which are treated through the headworks at the WRF using all treatment processes at the WRF, which fee shall be equal to the cost of disposal and treatment of an equivalent volume and mass of pollutants otherwise delivered into the POTW. The treatment fee shall include: (1) the volume charge component, (2) a treatment surcharge component for each pollutant as found in section 118-352 of this division, and (3) a program cost component. The program cost component shall be calculated by dividing the annual administrative costs of the waste hauler program by the total gallons of hauled waste treated in the previous calendar year. The surcharge component shall be calculated using the average concentration of pollutants found in hauled wastes delivered to the wastewater reclamation facility. The treatment surcharge and program cost components shall be reviewed and

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updated annually based on the most recent data collected by the operating agency. The treatment fee for loads originating outside of the WRA participating communities shall be 1.5 times the fee for loads originating within the WRA participating communities.

- (b) A treatment fee shall be charged for hauled wastes originating within the WRA participating communities which are treated using only a portion of the treatment processes at the WRF, which fee shall be calculated to recover the cost of treatment. The cost of treatment shall include electrical, chemical, personnel, and any capital costs associated with the treatment processes utilized, and a program cost component which shall be calculated by dividing the annual administrative costs of the waste hauler program associated with partial process treatment by the total gallons of hauled waste treated using only a portion of the treatment processes in the previous calendar year. Treatment costs shall be reviewed and updated annually based on the most recent data collected by the operating agency. The treatment fee for loads originating outside of the WRA participating communities shall be 1.5 times the fee for loads originating within the WRA participating communities.
- (c) Fees shall be computed and recorded at the disposal station and shall be paid by the waste hauler on the basis of monthly billings by the operating contractor. Limits of credit shall not exceed 60 days. Abuse of such credit shall be grounds for liability on the waste hauler's bond and for refusal of disposal services to any waste hauler under this division.
- (d) Waste haulers may elect to have their loads tested for actual concentration at their expense as set out in section 118-352. When a waste hauler has elected to have loads tested for actual concentration, the treatment fee will be based on the actual concentration whether it be higher or lower than the average concentration treatment fee. Said testing will be done at least once a month or more often as required by the WRA director.

Sec. 118-460. Enforcement.

The WRA director, the city building official, or such other governmental official hereafter designated by the WRA, shall be authorized to enforce this division as hereinafter provided.

Sec. 118-461. Notice of violation - administrative penalties - corrective action order.

- (a) The director, or such other designated officers or officials with enforcement authority as provided in section 118-460, are authorized to issue a notice of violation imposing an administrative penalty upon any person who fails to perform an

- act required by this division or who commits an act prohibited by this division.
- (b) The administrative penalty for such violations shall be as provided in the schedule of administrative penalties adopted by the city council by resolution.
- (c) Notice of violation, with the applicable penalty for such violation noted thereon, shall be issued to and served upon the violator. Service of the notice may be by regular mail or by delivery in person.
- (d) Penalties assessed pursuant to notice of violation shall be paid by the violator in full as directed in the notice within thirty (30) days of its issuance.
- (e) The administrative penalties set out in the schedule of administrative penalties shall be charged in lieu of the fines and penalties provided for in section 118-462, unless the violator refuses to correct the violation and pay the scheduled administrative penalty, or the WRA director determines that immediate enforcement action by misdemeanor or municipal infraction prosecution pursuant to section 1-15 is, in view of the particular circumstances of the case, necessary to achieve compliance with the requirements of this article. The WRA shall maintain a record of all violations, administrative penalties charged or other enforcement actions taken.

Sec. 118-462. Penalties.

- (a) Any person who fails to perform an act required by this division or who commits an act prohibited by this division shall be guilty of a misdemeanor punishable by fine or imprisonment as provided by section 1-15 of this Code or shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15 of this Code.
- (b) Any person who violates a discharge prohibition set forth in section 118-342, or discharges in excess of local limits as set forth in section 118-343, shall be guilty of an environmental violation punishable as provided by section 364.22 of the Iowa Code.

Sec. 118-463. Denial, suspension and revocation of license.

- (a) *Grounds for denial, suspension or revocation of waste haulers license.* The WRA director may deny, suspend or revoke the waste hauler license of any wastehauler who violates any provision of this division or any condition of its license, or who commits any of the following violations, or who does not meet the following requirements:
 - (1) Violation of any term, condition or requirement of this division, the license, or applicable state of Iowa or federal laws or regulations.

- (2) Obtaining a license by misrepresentation.
 - (3) Falsification of, failure to complete or failure to fully disclose all relevant facts in a license application.
 - (4) Failure to pay fees, administrative penalties or fines.
 - (5) Failure to report a spill to the WRA.
 - (6) Using wash down water or otherwise diluting the permitted waste for the purpose of meeting discharge limitations or requirements.
 - (7) Falsification of, failure to complete or failure to fully disclose all relevant facts in any report, manifest information or record required by the license or this division.
 - (8) Tampering with samples or sampling equipment intended to accurately reflect the contents of each hauled waste load.
 - (9) Refusing to allow WRA personnel timely access to the wastehauler's facility premises, vehicles, or records.
 - (10) Failure to perform as required under a corrective action order or compliance schedule issued by the WRA director.
 - (11) Failure to correct any violation of this division within 30 days after notice by the WRA Director.
 - (12) Failure to immediately correct any violation of this division if the condition constituting the violation is declared a threat to public health, safety or welfare by the WRA director and the director orders immediate correction.
- (b) *Procedure for denial, suspension or revocation of wastehauler's license.* The procedure for denial, suspension or revocation of a wastehauler's license shall be as follows:
- (1) Any license issued to a wastehauler pursuant to this division may be denied, suspended or revoked by written order of the WRA director specifying the grounds for such action as outlined in subsection (a) of this section, which order shall not take effect until hearing thereon as hereafter provided. Upon determining that grounds exist for an order to deny, suspend or revoke a wastehauler's license, the WRA director shall cause a notice of hearing to be prepared, specifying the violations of subsection (a) of this section which are deemed to have occurred, and the time, date and place that such hearing will be held. The notice shall be sent to the wastehauler by regular mail addressed to the wastehauler's address listed on the wastehauler's license a minimum of ten days prior to the date set for hearing, and shall be deemed delivered when placed in the mail.
 - (2) If after such a hearing the WRA director makes a finding based on substantial evidence that one or more violations under subsection (a) of this section have occurred as alleged, the director may deny issuance of the license, suspend the license for a fixed period, or may issue an

order immediately revoking the license and ordering the waste hauler to discontinue hauling waste to the WRF or any other disposal locations approved by the director. The determination whether to deny issuance of a license, to suspend a license, or to revoke a license, shall be in the discretion of the director and shall be dependent upon the circumstances surrounding the violations of subsection (a) of this section and the severity of those violations. If the waste hauler does not appear for the hearing, the director shall issue the order revoking the waste hauler's license and ordering the cessation of delivery of hauled waste at the WRF or any other disposal locations approved by the director, which order shall take effect immediately.

- (3) The decision and order of the WRA director to deny issuance, to suspend or to revoke the license of a waste hauler may be appealed to the WRA appeal committee. Such appeal request shall be in writing, shall include the grounds for appeal including any factual findings which are disputed, and shall be delivered to WRA not less than 10 days after the director's entry of the order of denial, suspension or revocation. Such appeal request shall be considered delivered when placed in the mail, return receipt requested, addressed to:

WRA Appeal Committee
%Des Moines Metropolitan Wastewater
Reclamation Authority
3000 Vandalia Road
Des Moines, Iowa 50326

The chair of the appeal committee shall schedule the appeal and shall cause notice of the time, date and place of the hearing to be mailed to the appealing waste hauler.

Such appeal shall be decided by majority vote of the appeal committee. If the appeal committee affirms the order of the WRA director denying issuance, suspending or revoking the license and ordering the cessation of waste deliveries at the WRF or other approved locations, the appeal committee shall so state and order in its written decision.

- (4) A waste hauler whose license has been denied or revoked shall not be eligible for issuance or reinstatement of its license until 30 days after the violating conditions have been corrected to the satisfaction of the director.

Sec. 118-464. Alternative Relief.

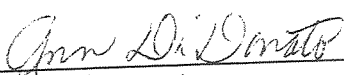
Neither the WRA nor the city is precluded from seeking alternative relief from the court, including an order for abatement or injunctive relief, in the event that the WRA or the city files a

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misdemeanor citation, notice of administrative penalty, and/or files a municipal infraction for the same violation of this division, or in the event the WRA seeks to deny, suspend or revoke the wastehauler's license.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Ann DiDonato
Assistant City Attorney