

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

IN THE MATTER OF: LEIGH ARMSTRONG Operator No. 1254	ADMINISTRATIVE CONSENT ORDER 2021-WS- 04
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To: Leigh Armstrong
200 School Street
Deep River, Iowa 52222

I. SUMMARY

The Iowa Department of Natural Resources (DNR) and Leigh Armstrong hereby agree to the issuance of this administrative consent order (Order) pertaining to Mr. Armstrong's status as a certified operator in the fields of drinking water distribution and wastewater treatment.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Aaron Pickens
DNR Field Office 6
1023 W Madison
Washington, Iowa 52353
Phone: 319-653-2135

Relating to legal requirements:

Noah Poppelreiter, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-669-8752

II. JURISDICTION

Iowa Code section 455B.219 and 567 Iowa Administrative Code (IAC) 81.17(2) provide that disciplinary actions against certified operators may include revocation, partial revocation, suspension, probation, requirements for additional education, training and examination, and assessment of civil penalties up to \$1,000.00. 567 IAC 81.17(3)"a" provides that the DNR and a certified operator may enter into a settlement agreement that includes a disciplinary action.

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III. STATEMENT OF FACTS

1. Mr. Armstrong is certified as a Grade 1 water distribution operator, a Grade 1 water treatment operator, and a Grade 1 wastewater treatment operator.
2. At all times relevant to this Order, Mr. Armstrong was employed part time as the operator in charge of the City of South English's (South English) water distribution system. South English is required to collect chlorine samples from the source entry point and residual chlorine levels from various downflow locations in the distribution system proper.
3. At all times relevant to this Order, Mr. Armstrong was also employed as the operator in charge of the City of Deep River's (Deep River) water distribution and wastewater treatment systems.
4. On or about February 18, 2021, DNR Field Office 6 received an anonymous complaint alleging the volume of water sold to South English did not match the billing records of the city's water supplier, Wapello Rural Water Association.
5. On or about May 27, 2021, DNR environmental specialist Aaron Pickens went to South English to investigate the South English drinking water system.
6. During the investigation, Mr. Pickens interviewed one of the South English employees in charge of day-to-day monitoring of the South English source entry point, Steven Clarahan. When Mr. Pickens ask to see the chlorine test kit used at the source entry point, Mr. Clarahan stated that the colorimeter had dead batteries the prior few days and no readings were conducted.
7. On or about May 29, 2021, Mr. Clarahan sent Mr. Pickens pictures of the logbook used to keep track of the daily readings at the source entry point. Mr. Pickens noted missing chlorine readings for May 24-27, 2021, coinciding with Mr. Clarahan's statements.
8. On or about June 15, 2021, Mr. Pickens contacted Mr. Armstrong regarding the investigation. Mr. Armstrong stated that he checks on the South English system approximately once a week, but that he rarely makes contact with the city employees who takes readings. Mr. Pickens reminded Mr. Armstrong of his duty as an operator in charge to provide oversight and training to the staff under his operational control.
9. On or about June 30, 2021, Mr. Pickens conducted an audit of the South English drinking water monthly operating reports (MORs). Mr. Pickens noted that Mr. Armstrong reported chlorine readings on the days of May 24 – May 27, 2021.
10. Mr. Armstrong reported free chlorine readings at the source entry point of 1.61, 1.71, 1.71, and 1.74 mg/L for those days, respectively.
11. Mr. Armstrong reported total chlorine readings at the source entry point of 1.84, 1.84, 1.83, and 1.83 mg/L for those days, respectively.
12. Mr. Pickens noted other irregularities on South English's MORs in 2020 and 2021. In particular, on several occasions, the Mr. Armstrong noted in the MOR comments that the meter was broken on certain days, yet still reported chlorine readings for those days.
13. On July 1, 2021, Mr. Pickens called Mr. Clarahan to discuss the MOR irregularities. Mr. Clarahan provided text messages to Mr. Pickens confirming the data Mr.

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Clarahan submitted to Mr. Armstrong did not have chlorine readings at the source entry point for May 24 – May 27, 2021.

14. Additionally, these text messages also showed no chlorine reading at source entry point for May 31, 2021. For May 31, the May MOR documented a free chlorine reading of 1.64 mg/L and a total chlorine reading of 1.75 mg/L.
15. Lastly, the text messages showed the colorimeter used to collect residual chlorine readings in the distribution system was broken on May 29 – May 31, 2021. The May MOR noted a free chlorine reading of 1.87 mg/L and a total chlorine level of 2.18 mg/L for each of those days.
16. On July 31, 2021, Mr. Pickens made contact with Mr. Armstrong. Mr. Armstrong stated that he “carried the numbers down” when questioned about the irregularities.
17. On August 23, 2021, the DNR issued a Notice of Violation to Mr. Armstrong for the data falsification noted in the May 2021 MOR.

IV. CONCLUSIONS OF LAW

Iowa Code section 455B.219 and 567 IAC 81.17(1) specify criteria which may form the basis for a disciplinary action against a certified operator. These criteria include failing to use reasonable care or judgment in performing the duties of a certified operator; failing to submit required records of reports; knowingly making any false statement, representation, or certification on any application, record, report, or document required to be maintained or submitted under any applicable permit or rule of DNR; professional incompetence; and/or knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. The facts stated in Section III of this Order meet the criteria for disciplinary action.

V. ORDER

Therefore, DNR orders and Leigh Armstrong agrees to the following as a settlement under 567 IAC 81.17(3)“a”:

1. Within 30 days of the date the director signs this Order, Mr. Armstrong shall either remove himself from being the operator in charge of the South English water distribution and wastewater treatment systems or apply to be the affidavit operator for those systems in accordance with 567 IAC 81.16.
2. Mr. Armstrong shall be subject to a one-year probation of all DNR-issued licenses related to water treatment and/or distribution and wastewater treatment, subject to the following terms during the period of probation:
 - a. At the end of one year, the DNR may in its sole discretion continue the terms of this probation for one additional year (a second year), after notifying Mr. Armstrong in writing of the extension. At the end of the second year, the DNR may in its sole discretion continue the terms of this probation for one additional year (a third year), after notifying Mr. Armstrong in writing of the extension.

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- b. Mr. Armstrong shall conduct his operation of all drinking water treatment and/or distribution and wastewater systems under his supervision in a competent, professional manner.
 - c. Mr. Armstrong may not perform operator duties for additional water supply or wastewater systems or otherwise engage in any other activity that would require a DNR drinking water treatment and/or distribution operator certification and/or a wastewater operator certification, other than the operation of the City of South English and the City of Deep River wastewater and water distribution systems, unless approved in writing by DNR Field Office 4. Any approval under this paragraph is at the sole discretion of the DNR. Any approval by the DNR under this paragraph, including any conditions of that approval, are expressly made part of this probation.
 - d. The following terms apply specifically to Mr. Armstrong' operation of the public water supplies under his operational control:
 - i. Mr. Armstrong must personally collect all samples from the water supply systems under his operational control that are submitted to a certified laboratory, except as described in subparagraph V(4)"d"(ii), below.
 - ii. Mr. Armstrong (or staff trained and supervised by Mr. Armstrong) shall measure and record free and total disinfectant residuals daily at the source entry point and as residuals in the distribution system.
 - iii. Mr. Armstrong (or staff trained and supervised by Mr. Armstrong) must ensure the log used for recording daily disinfectant measurements at the source entry point and as residuals in the distribution system includes the staff initials and the location, time, and date measurements were taken.
 - iv. Mr. Armstrong (or staff trained and supervised by Mr. Armstrong) must ensure the iog used for recording daily flow includes the staff initial and the location, time and date.
 - v. Mr. Armstrong must submit the hand-written log or a copy or picture of the log with the electronically submitted monthly operation report.
 - e. Within two months of the date the director signs this Order, Mr. Armstrong shall make arrangements with the Iowa Association of Municipal Utilities (IAMU) for both he and staff under his operational control to engage in training with IAMU staff.
 - f. The DNR may request in writing or by email additional information from Mr. Armstrong related to his operation of any facility under his control as a term of the probation, but the DNR shall not impose any other condition of probation without an amendment to this Order.
3. Within 30 days of the director signing this Order, Mr. Armstrong shall pay an administrative penalty of \$500.00.

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VI. PENALTY

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Additionally, 567 IAC 81.17(2) allows for the assessment of a penalty of up to \$1,000 during disciplinary actions. The DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$500.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Mr. Armstrong avoided costs associated with ensuring the collection of all required chlorine readings at South English. Using reasonable estimates, a cost of \$50 is assessed for this factor.

Gravity – Proper monitoring and reporting is an essential component of the NPDES permitting program. By failing to adequately monitor and report, an operator in charge of a facility masks whether the facility is in compliance with applicable laws and permits. Mr. Armstrong failed to appropriately monitor and report chlorine residuals for the City of South English. \$200.00 is assessed for this factor.

Culpability – Mr. Armstrong has a duty to report readings accurately. Mr. Armstrong failed to report readings accurately when he reported chlorine residual readings when no such readings were taken. \$250.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.219 entitles a water treatment operator to a hearing prior to revocation of a certificate. This Order is entered into knowingly by, and with the consent of, Mr. Armstrong. By signing this Order, Mr. Armstrong waives all rights to a hearing on or appeal of this Order.

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VIII. NONCOMPLIANCE

Completion of the probationary period in Section V of this Order (including any extension as allowed) constitutes full satisfaction of all requirements pertaining to the violations described in the Statement of Fact. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146.


LEIGH ARMSTRONG

Dated this 20th day of
December, 2021

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Field Office 6, Noah Poppelreiter, EPA, I.I.D.