

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

IN THE MATTER OF: THE CITY OF KEOKUK NPDES Permit No. 5640001	ADMINISTRATIVE CONSENT ORDER NO. 2022-WW- 11
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To: Mayor Kathie Mahoney
c/o Water Pollution Control Department
City of Keokuk
1000 Mississippi Dr.
Keokuk, Iowa 52632

I. SUMMARY

This administrative consent order (Order) is entered into between the City of Keokuk, Iowa (City), and the Iowa Department of Natural Resources (DNR) for the purpose of resolving violations related to the discharge of effluent in violation of the City's NPDES permit. The Order requires the City to pay an administrative penalty of \$10,000.00 and to comply with all laws and rules related to wastewater and hazardous conditions. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Terry Jones
Iowa Department of Natural Resources
Field Office 6
1023 W Madison
Washington, Iowa 52353
319-653-2135

Relating to legal requirements:

Noah Poppelreiter
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, IA 50319-0034
Ph. 515-669-8752

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East 9th Street
Des Moines, IA 50319-0034

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
THE CITY OF KEOKUK, IOWA**

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director of the DNR to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and the rules adopted or permits issued pursuant thereto 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

1. The City owns and operates a publicly owned treatment work as defined in 567 IAC 60.2, located at 1000 Mississippi Drive, Keokuk, Iowa (Facility). The Facility discharges to the Mississippi River, which is both a water of the state and a water of the United States.
2. The Facility is authorized to discharge effluent pursuant to National Pollution Elimination Discharge Permit (NPDES) No. 5640001.
3. For purposes of this Order, NPDES Permit No. 5640001 includes the permit issued in 2013 and expiring on August 30, 2018 (Prior Permit); the permit issued on September 1, 2018 (Original Permit); and the amendment to the Original Permit dated December 1, 2020 (Amended Permit). Jointly, these permits are referred to as "the Permits."
4. This Order hereby incorporates the terms and conditions of the Permits by reference.
5. On September 1, 2017, the DNR issued a notice of violation (NOV) to the City. This NOV noted high concentrations of carbonaceous biochemical oxygen demand (CBOD) and total suspended solids (TSS) in the Facility's effluent between March 2017 and June 2017. These concentration levels exceeded the limits of the Prior Permit.
6. On July 11, 2019, the DNR issued a Letter of Noncompliance to the City. This letter noted the bypass of effluent from the Facility in August and October of 2018. The letter also noted high concentrations and mass of TSS in February 2018 and May 2019. This discharge exceeded the limits of the Prior and Original Permit.
7. On August 10, 2020, the DNR issued a NOV to the City. This NOV noted the Facility's effluent contained high levels of TSS in January and February of 2020. These levels exceeded the limits of the Original Permit.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
THE CITY OF KEOKUK, IOWA**

8. Between the period of January 1, 2021, and September 30, 2022, the effluent discharging from the City was in violation of terms of the Amended Permit at the times and in the amounts¹ shown on the following chart:

Month	CBOD5 30 Day Average ² Limit: 35 mg/L, <i>1,460 lbs/day</i>	CBOD5 7Day Average ³ Limit: 77 mg/L, <i>3,211 lbs/day</i>	TSS 30 Day Average ³ Limit: 40 mg/L, <i>1,664 lbs/day</i>	TSS 7 Day Average ³ Limit: 82 mg/L, <i>3,419 lbs/day</i>
January 2021	46.63	101.52 <i>3,216.34</i>	89.99	135
August 2021	137.53 <i>2,254.80</i>	257.75 <i>3,776.90</i>	274.40 <i>4,410.17</i>	587.5 <i>8,608.86</i>
October 2021	67.96	121.8 <i>3,689.59</i>	88.83	192.5
November 2021	103.83	180.9	192.96 <i>2,533.23</i>	297.95 <i>3,965.64</i>
March 2022	153.24 <i>3,994.70</i>	320.25 <i>11,204.43</i>	289.92 <i>7,763.18</i>	579.5 <i>22,125.74</i>
April 2022	160.57 <i>3,238.76</i>	212.25 <i>4,147.08</i>	223.09 <i>4,303.75</i>	313.25 <i>5,885.67</i>
May 2022	87.71 <i>1,848.83</i>	152.8	185.43 <i>3,534.14</i>	318.5 <i>5,175.32</i>
July 2022	131.58 <i>1,491.13</i>	403 <i>4,336.88</i>	306.22 <i>3,962.48</i>	434.25 <i>5,396.99</i>
August 2022	80.26	271	147.60	231.25

9. Between the period of January 1, 2021, and September 30, 2022, the City failed to remove 85% of the CBOD from the influent for multiple days during the months of August and November 2021, and March, April, May, July, and August 2022.

10. Between the period of January 1, 2021, and September 30, 2022, the City failed to remove eighty-five percent of the TSS from the influent for multiple days during for the months of August 2021, and March, April, May, July, and August 2022.

11. For the months of March, April, and May 2022, the City also reported concentrations of *E. coli* at levels in violation of the Amended Permit.

12. On January 14, 2022, and again on May 19, 2022, the DNR issued NOV's to the City to address these violations.

¹ For readability in this Order, all numbers are rounded down to the nearest hundredth.

² The top, smaller number is reported in mg/L; the bottom, italicized number (if any) is in lbs/day.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
THE CITY OF KEOKUK, IOWA**

IV. CONCLUSIONS OF LAW

DNR and the City agree the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.173 provides that the Environmental Protection Commission (Commission) shall adopt rules related to water quality standards, pretreatment standards, and effluent standards. The Commission has adopted such rules at 567 IAC chapters 61 through 64.
2. Iowa Code section 455B.186 and 657 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a NPDES permit from the DNR or otherwise in compliance with applicable state rules. The City has on multiple occasions discharged pollutants, and notably CBOD, TSS, and *E. coli*, to a water of the state in violation of the Permits. The facts as detailed above demonstrate a violation of these laws.
3. 567 IAC 64.3(1) prohibits the operation of any wastewater disposal system in violation of a permit issued to that system. The City has on multiple occasions discharged pollutants, and notably CBOD, TSS, and *E. coli* to a water of the state in violation of the Permits. The facts as detailed above demonstrate a violation of this rule.
4. 567 IAC 62.3(1)"a"(3) requires eighty-five percent removal of CBOD from the influent prior to discharge of effluent. The City on multiple days, over multiple months, failed to remove 85% of the CBOD prior to discharge of the effluent. The facts as detailed above demonstrate a violation of this rule.
5. 567 IAC 62.3(1)"b"(3) requires eighty-five percent removal of TSS from the influent prior to discharge of effluent. The City on multiple days, over multiple months, failed to remove 85% of the TSS prior to discharge of the effluent. The facts as detailed above demonstrate a violation of this rule.

V. ORDER

Therefore, DNR orders and the City agrees to do the following:

1. Immediately and in the future ensure the Facility and its discharges comply with all applicable federal and state laws and permits, including but not limited to the laws detailed in the Conclusions of Law section of this Order and the Amended Permit.
2. Within 30 days of receipt the date the Director signs this Order, submit to the DNR a plan of action that will ensure the Facility's future compliance with applicable laws and with the Amended Permit.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
THE CITY OF KEOKUK, IOWA**

3. Within 30 days of the date the Director signs this Order, the City shall pay an administrative penalty of \$10,000.00.

VI. PENALTY

1. Iowa Code 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day per violation for the violations involved in this matter.

2. Iowa Code 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. DNR is assessing a penalty of \$10,000.00 for the violations described above. The following factors were considered in the assessment of this penalty:

a. 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." The City gained a substantial economic benefit by failing to properly treat the effluent from the Facility. However, the DNR has determined the best and most equitable way to bring the Facility into compliance is to resolve this matter through an administrative consent order. Therefore, \$10,000.00 is assessed for this factor.

b. Gravity. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The discharge of pollutants in this case caused harm to the environment and to Iowa, Missouri, Illinois, and other states' citizens. The City's failure to comply with the Permits caused programmatic harm to the state and federal NPDES permitting programs. However, to resolve this matter through a consensual administrative order and ensure the Facilities compliance in the future, no penalty is assessed for this factor.

c. Culpability. The City has a duty to maintain and operate the Facility in a manner that complies with the law and the Permits. The City failed in this duty. However, to resolve this matter through a consensual administrative order and ensure the Facilities compliance in the future, no penalty is assessed for this factor.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
THE CITY OF KEOKUK, IOWA**

VII. WAIVER OF APPEAL RIGHTS

Iowa Code 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC 7.1, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of the City. By signing this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order, and constitutes a permanent remedy of the conditions which caused the violations. 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 455B.191.

KAYLA LYON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

K. Mahoney
MAYOR, CITY OF KEOKUK

Dated this 8th day of
June, 2023
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Noah Poppelreiter, Field Office #6; EPA; I.C.1