

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

<b>IN THE MATTER OF:</b>  <b>THE CITY OF KEOKUK</b>  <b>NPDES Permit No. 5640001</b>	<b>ADMINISTRATIVE CONSENT ORDER</b> <b>NO. 2023-WW- 12</b>
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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 City's failure to properly implement the pretreatment program as required by federal and state law, including the City's NPDES permit. The Order requires the City to pay an administrative penalty of \$10,000.00; to comply with the terms of the Facility's NPDES permits; to comply with all applicable law related to the Facility; and to submit and implement a plan of action to upgrade and improve the Program. 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. 9<sup>th</sup> 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 9<sup>th</sup> Street  
Des Moines, IA 50319-0034

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**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**

**a. Background**

1. The City owns and operates a publicly owned treatment work (POTW) 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. On or about July 27, 1984, the DNR approved the City's pretreatment program (Program).

5. The Amended Permit requires the City to require all users of the Facility to comply with Sections 204(b), 307, and 308 of the Clean Water Act. Amended Permit, Page 15, paragraph 1.

6. The Amended Permit requires the City to implement the Program and any amendments to the Program. Amended Permit, Page 15, paragraph 2.

7. The Amended Permit requires the City to "evaluate the adequacy of its local limits to meet the general prohibitions against interference and pass through listed in 40 CFR 403.5(a) and the specific prohibitions listed in 40 CFR 403.5(b)." Amended Permit, Page 15, paragraph 4.

8. This Order hereby incorporates the terms and conditions of the Permits, including but not limited to the terms of the Program, by reference.

**b. Facts related to ADM Milling Co.**

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9. At all times relevant to this Order, the Facility received wastewater from the ADM Milling Co. located at 2620 Henkel Road, Keokuk, Iowa (ADM).

10. On or about March 1, 2017, ADM began discharging wastewater to the Facility with CBOD and TSS in concentrations that caused the City to violate the Prior Permit and that interfered with the Facility's treatment of wastewater. This interfering discharge continued into June, 2017.

11. On or about January 1, 2020, ADM again began discharging wastewater to the Facility with CBOD and TSS in concentrations that caused a violation of the Original Permit and disrupted with the Facility's treatment of wastewater. This interfering discharge continued into February 2020.

12. Between the months of January 2021 and August 2022, ADM was regularly discharging wastewater to the Facility with CBOD and TSS in concentrations that caused the City to violate the Amended Permit and that disrupted with the Facility's treatment of wastewater. The discharges from the Facility are detailed in the table below.

Month	CBOD5 30 Day Average <sup>1</sup>  Limit: 35 mg/L, <i>1,460 lbs/day</i>	CBOD5 7Day Average <sup>1</sup>  Limit: 77 mg/L, <i>3,211 lbs/day</i>	TSS 30 Day Average <sup>1</sup>  Limit: 40 mg/L, <i>1,664 lbs/day</i>	TSS 7 Day Average <sup>1</sup>  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

<sup>1</sup> The top, smaller number is reported in mg/L; the bottom, italicized number (if any) is in lbs/day.



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13. Additionally, between the period of January 1, 2021, and September 30, 2022, the discharge from ADM interfered with the City's ability to remove eighty-five percent 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.

14. Additionally, between the period of January 1, 2021, and September 30, 2022, the discharge from ADM interfered with the City's ability 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.

15. An investigation by the DNR into the discharges showed the City failed to adequately develop and enforce City-issued permit limits on ADM, and that this failure caused the City's discharges in violation of the Permits.

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

17. From December 2020 and August 2022, the City collected \$793,215.70 in surcharges from ADM for the violations. These surcharges are authorized under the authority of the City's ordinance implementing the Program.

18. On or about April 22, 2022, the City initiated an enforcement action under its delegated pretreatment program authority against ADM to address the violations detailed in paragraphs 9 through 15 of this Order, and for other violations by ADM relative to the City-issued permit and applicable law.

19. The City and ADM agreed to a city-level administrative consent order on July 16, 2022 (City's Consent Order), to resolve ADM's ongoing non-compliance and to reduce the discharge of conventional pollutants from ADM that were in violation of state and federal pretreatment program requirements and other applicable law, and that were continuing to interfere with the City's ability to adequately treat wastewater at the Facility.

20. The Department has reviewed that City's Consent Order, which set forth an administrative penalty of \$264,000 (with \$198,000 deferred if compliance with the requirements of the Order were met) and a schedule of compliance to meet more restrictive discharge requirements.

21. By seeking to address the ongoing interference caused by ADM's effluent to the Facility, the DNR considers the City's Consent Order a reasonable and appropriate effort to rectify the City's ongoing NPDES program violations.

22. Subsequent to the execution of this Order, the City has begun enforcement against ADM for violations of the City's Consent Order. Notably, the City has requested ADM's payment of the deferred fines in the amount of \$198,000. The City's enforcement is ongoing. Due to ADM's closure of the discharging facility, the DNR considers this enforcement timely.



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23. While developing this Order, the DNR considered the City's enforcement action, the level of fines imposed, and ADM's agreement to pay the deferred penalty.

**c. Facts related to other users**

24. On or about February of 2018, the Facility received influent from users in volume that caused a violation of the Prior Permit terms for TSS.

25. On or about May of 2019, the Facility received influent from users in volume that caused a violation of the Prior Permit terms for TSS.

26. On or about December 15, 2021, the City's consultant prepared a review of the Program (Review). The City provided the Review to the DNR.

27. The Review noted serious deficiencies in the Program and recommended the City conduct an in-depth review of the Program and take corrective action.

28. The Review noted eight Significant Industrial Users (SIU) with City-issued permits. The City failed to inspect any of these users since 2008.

29. The Review noted that none of the permits issued by the City to these SIUs contained limits that met federal, state, or city requirements. The City failed to develop and implement appropriate permit limits for these SIUs.

30. The Review noted twenty-nine users that may require a City-issued permit. The City failed to properly survey these users and determine whether a permit was required.

**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. 567 IAC 64.3(1) prohibits the operation of any wastewater disposal system in violation of a permit issued to that system. The facts as detailed above show the City failed to ensure the users of the Facility complied with applicable federal and state law, as required by the Permits. The facts as detailed above show the City failed to implement the Program as required by the Permits. The facts as detailed above show the City failed to evaluate the adequacy of the City's local permit limits as required by the

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Permits and that this failure caused the violation of the Permits and disrupted the Facility's ability to treat wastewater. The City has operated the Facility in violation of the Permits and in violation of state and federal law.

3. 40 CFR § 403.5(c)(1), on its own authority and as adopted by reference in 567 IAC 62.4(3), requires a POTW with an approved pretreatment program to develop and enforce specific limits to ensure that the POTW's users do not discharge to the POTW effluent in concentrations that cause a violation of the POTW's NPDES permit or disrupt the POTW's treatment of the wastewater. The facts show the City has failed to adopt adequate limits in City-issued permits. The facts show the City failed to effectively develop and enforce the limits in the City-issued permits, notably to ADM, and that such failure caused the violation of the Permits and disrupted the Facility's ability to treat wastewater. The City is in violation of these provisions of law.

**V. ORDER**

1. The DNR orders and the City agrees to immediately and in the future comply with the terms of the Permit, including but not limited the requirements related to ensuring the influent from users of the Facility do not cause a violation of the City's NPDES Permit or disrupt the Facility's ability to treat wastewater.

2. The DNR orders and the City agrees to comply with all applicable federal, state, and City law related to the Facility.

3. The DNR orders and the City agrees that the City shall pay an administrative penalty of \$10,000.00 within 30 days of the date the Director signs this Order.

4. The DNR and the City agree to the following terms to ensure the City's compliance with the terms of the Program:

- a. The City voluntarily agrees to set in a reserve a sum of \$793,215.70 to be used solely for activities in paragraph "c," below; agrees to provide the DNR evidence of this set-aside within 30 days of the date the Director signs this Order; and agrees that the use of these monies in a manner other than for the activities detailed in paragraph "c" will trigger section VIII of this Order;
- b. Within 60 days of the date the Director signs this Order, the DNR orders and the City agrees that the City shall submit to the DNR a plan of action to upgrade and improve the Program;
- c. Actions that will demonstrate the upgrade and improvement of the Program shall include:
  - i. Professional or in-house review of the Program and its implementation;

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- ii. Professional or in-house analysis, writings, and/or surveys related to Program and its implementation;
  - iii. Upgrades to the Facility to ensure it can adequately treat all influent from all users;
  - iv. Any other actions approved by the DNR in the submitted plan, in the DNR's sole discretion.
- d. The DNR shall approve or deny the plan of action within 30 days of receipt. If the plan is denied, the City shall have an additional 60 days to submit a plan to the DNR for approval. A subsequent denial of the submitted plan will trigger Section VIII of this Order.
- e. The DNR orders and the City agrees to effectively implement the Plan in a timely manner subject to its terms.
- f. The DNR orders and the City agrees that the City shall submit to the DNR annual updates of the progress on the plan, including itemized costs associated with the implementation of the plan.
5. To the extent possible, the City shall enforce the City's Consent Order against ADM. Any deferred penalties collected by the City shall be dedicated to fund improvements, operations and maintenance of the City's wastewater and stormwater system.

**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 implement the Program. This failure caused the violation of the Permits and disrupted the Facility's ability to treat wastewater. However, the DNR has determined the best and



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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 and the Program caused programmatic harm to the state and federal NPDES permitting and pretreatment 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.

**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.

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**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.

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KAYLA LYON, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Kd Mahoney  
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MAYOR, CITY OF KEOKUK

Dated this 8<sup>th</sup> day of  
June, 2023

Noah Poppelreiter, Field Office #6; EPA; I.C.1