

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

**IN THE MATTER OF:**

**CITY OF TAMA**

Tama County, Iowa  
NPDES Permit #8670002

**ADMINISTRATIVE CONSENT ORDER  
NO. 2023-WW-18**

TO: Mayor Doug Ray  
City of Tama  
305 Siegel Street  
Tama, Iowa 52339

**I. SUMMARY**

This administrative consent order (Order) is entered into between the City of Tama (City) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving violations related to the City's failure to employ a Grade III operator-in-charge for the City's wastewater treatment plant. The Order requires the City to retain a Grade III certified wastewater treatment operator as the Facility's operator-in-charge within 60 days of the signature of this order. 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:**

Janet Gastineau  
Iowa Department of Natural Resources  
DNR Field Office 5  
502 E 9th St.  
Des Moines, Iowa 50319  
515-725-0268

**Relating to legal requirements:**

Noah Poppelreiter  
Iowa Department of Natural Resources  
Legal Services Bureau  
502 E. 9th Street  
Des Moines, IA 50319  
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

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

**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 wastewater treatment plant located at or about 800 South State Street, Tama, Iowa (Facility).
2. The Facility discharges treated wastewater to the Iowa river.
3. On November 1, 2018, the DNR issued National Pollutant Discharge Permit (NPDES) number 8670002 (Permit) to the City, which authorized the discharge of treated wastewater. The terms of the Permit are incorporated by reference into this Order.
4. The Facility uses an activated sludge treatment system to treat wastewater from the City. Based on recent U.S. census date, the City has over 2,000 individuals. The Facility has a biochemical oxygen demand of 830 pounds/day. See Permit, page 13.
5. The Facility is a Grade III wastewater treatment plant. See 567 IAC 81.3(1). Additionally, the Permit expressly notes that the Facility is required to be operated by a grade 3 certified operator. Permit, page 13.
6. On or about December 27, 2019, the Facility's Grade III operator-in-charge retained by the City prior to that date retired.
7. Since that date, the City has retained only a Grade II certified operator, who is acting as the operator-in-charge of the Facility.
8. The parties jointly recognize the attempts by the City and its staff to retain a Grade III operator-in-charge for the Facility. However, these attempts have repeatedly failed, leaving the City without a Grade III operator-in-charge for over three and a half years.
9. The City has not retained a Grade III operator-in-charge for the Facility as of the issuance of this Order.

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

**IV. CONCLUSIONS OF LAW**

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 operation of wastewater treatment plants. The Commission has adopted rules governing the issuance of wastewater treatment operation permits at 567 IAC chapter 64.

2. 567 IAC 64.3(1) prohibits the operation of any wastewater disposal system in violation of a permit issued to that system. By failing to retain an operator-in-charge with a Grade III wastewater treatment certification, the City is operating the Facility in violation the Permit. The facts show a violation of this provision.

3. Pursuant to Iowa Code section 455B.222, the Commission may adopt rules determining the technical competency of wastewater treatment operators, as detailed in Iowa Code chapter 455B, subchapter III, part 2. This competency is demonstrated through the certification of operators for various grades of treatment plants. The Commission has adopted rules governing the certification of wastewater treatment operators at 567 IAC chapters 81.

4. 567 IAC 81.3(1) details what makes the various grades of wastewater treatment plants. 567 IAC 81.7 details the education and work requirements that must be met to be a certified operator of a specific grade. Iowa Code section 455B.216 and 217, and 567 IAC 81.10(1), requires an examination showing technical competency in a specific wastewater treatment plant grade prior to the issuance of the certification for that grade.

5. Iowa Code section 455B.223 prohibits the operation of a wastewater treatment facility unless operated by an operator whose competency is certified by the DNR. An operator-in-charge of a wastewater treatment plant must hold a certificate of at least the grade of the plant. 567 IAC 81.2(3). The City has failed to retain an operator-in-charge of the Facility with a Grade III wastewater treatment certification. The facts show a violation of these provisions.

**V. ORDER**

Therefore, DNR orders and City agrees to the following:

1. Within 60 days of the date the Director signs this Order, the City shall retain at all times an operator-in-charge of the Facility who has a Grade III wastewater treatment certification from the DNR. In its sole discretion, the DNR may extend this deadline for contracting and other human resource considerations related to the retention of the operator. The DNR will not extend this deadline solely to afford time for any operator to take an examination for certification under 567 IAC chapter 81.

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

2. In the event the City is in noncompliance with this Order, the City agrees to pay an administrative penalty of \$10,000.00 as detailed in Section VI of this Order. The DNR shall enforce this penalty through the actions described in Section VIII of this order. Nothing in this paragraph shall limit the DNR's or any other party's ability to take any action(s) as necessary to ensure compliance with applicable law and/or to address future violations of such laws, including but not limited to the issuance of any injunctive relief or any other penalty allowed by law.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the violations involved in this matter. Iowa Code section 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. In order to promptly bring the City into compliance and ensure the facility has an appropriate certified operator, the parties agree that a penalty of \$10,000 will only be assessed in the event that the City is in noncompliance with this Order. 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.” The City gained avoided and delayed benefits by failing to comply with the Permit and hire a properly certified operator-in-charge. Using reasonable estimates for the salary of a Grade III certified operator-in-charge, and in order to promptly settle this matter and ensure immediate compliance with the terms of this Order, \$10,000.00 will be assessed for this factor, if necessary.

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. Therefore, no penalty will assessed for this factor, if necessary.

Culpability – The City has a duty to operate the Facility in a manner that does not violate Iowa law and the Permit. However, to assure this matter is handled promptly at the administrative level, no penalty will assessed for this factor, if necessary.

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

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of the City. For that reason, the City waives the right to appeal this Order or any part thereof.

**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 and as detailed in this Order, or referral to the Attorney General and/or the Tama County Attorney to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191 and 455B.224.

---

KAYLA LYON, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES



City of Tama

Field Office #5; EPA; I.B.2.b.; I.C.1

Dated this 8<sup>th</sup> day of

September, 2023

