

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

IN THE MATTER OF:

CITY OF MITCHELLVILLE

Polk County, Iowa
NPDES Permit #7751001
Water Supply Operation
Permit #IA7751092

ADMINISTRATIVE CONSENT ORDER

NO. 2023-WW-23

2023-WS- 05

TO: City of Mitchellville
c/o Tammie Dillavou, City Administrator
204 Center Ave North
Mitchellville, Iowa 50169

I. SUMMARY

This administrative consent order (Order) is entered into between the City of Mitchellville (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 City's failure to timely employ a Grade II operator-in-charge of the City's water treatment plant, and the City's failure to employ a Grade II operator-in-charge of the City's water distribution system. The Order requires the City to retain a Grade III certified wastewater treatment operator-in-charge and a Grade II certified water distribution system 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 9th Street

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Des Moines, IA 50319-0034

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. Facts Related to the Wastewater Treatment Plant

1. The City owns and operates a wastewater treatment plant located at or about 208 Cotton Avenue NW, Iowa (STP).
2. The STP discharges treated wastewater to an unnamed tributary of Camp Creek.
3. On November 1, 2018, the DNR issued National Pollutant Discharge Permit (NPDES) number 7751001 (NPDES Permit) to the City, which authorized the discharge of treated wastewater from the STP. The terms of the NPDES Permit are incorporated by reference into this Order.
4. The STP uses a sequencing batch reactor treatment system to treat wastewater from the City. Based on recent U.S. census data, the City has over 2,000 individuals. The STP has a biochemical oxygen demand load of 1003 pounds/day. NPDES Permit, page 13.
5. The STP is a Grade III wastewater treatment plant. See 567 IAC 81.3(1). Additionally, the Permit expressly notes that the STP is required to be operated by a Grade III certified operator. NPDES Permit, page 13.
6. On or about September 2, 2021, the STP's Grade III operator-in-charge retained by the City prior to that date left the City's employment.
7. Between September 2, 2021, and May 18, 2022, the City employed a Grade I certified wastewater operator in a capacity as the STP's operator-in-charge.
8. After May 19, 2022, the City retained only a Grade II certified wastewater operator in a capacity as the STP's operator-in-charge.

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9. The parties jointly recognize the attempts by the City and its staff to retain a Grade III operator-in-charge for the STP. However, these attempts have repeatedly failed, leaving the STP without a Grade III operator-in-charge for over two years.

10. The City has not retained a Grade III operator-in-charge for the STP as of the issuance of this Order.

B. Facts related to the Drinking Water Treatment Plant and Drinking Water Distribution System

11. The City owns and operates a drinking water treatment plant located at or about 110 2nd Street NE, Mitchellville, Iowa (PWS). The PWS supplies water as a community water supply through a distribution system (DS).

12. At all times relevant to this Order, the PWS has operated under a water supply operation permit, issued for the PWS and DS under Public Water Supply Id. No. 7751092.

13. The most recent WSO Permit for the City was issued September 20, 2022 (WSO Permit). The terms of that permit are incorporated by reference. For purposes of this Order, the terms of the WSO Permit are substantially identical to prior water supply operation permits issued to the City for the operation of the PWS and DS.

14. Through the WSO Permit, the DNR has determined the PWS is a Grade II water treatment plant. The City is required to retain an operator-in-charge of the PWS who is certified for Grade II water treatment plants. WSO Permit, page 2.

15. Through the WSO Permit, the DNR has determined the DS is a Grade II distribution system. The City is required to retain an operator-in-charge of the DS who is certified for Grade II water distribution systems. WSO Permit, page 2.

16. On or about September 2, 2021, the operator-in-charge retained by the City to manage PWS and DS prior to that date left the City's employment. This operator held water treatment plant and water distribution system certifications of at least Grade II.

17. Between September 2, 2021, and October 13, 2022, the City employed a Grade I certified drinking water operator in a capacity as the STP's operator-in-charge. On October 13, 2022, the individual managing the PWS became a Grade II certified water treatment operator.

18. Since September 2, 2021, the City retained only a Grade I certified water distribution system operator in a capacity as the DS' operator-in-charge.

19. The parties jointly recognize the attempts by the City and its staff to retain a Grade II operator-in-charge for the DS. However, these attempts have repeatedly failed, leaving the DS without a Grade II operator-in-charge for over two years.

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20. The City has not retained a Grade II operator-in-charge for the DS as of the issuance of this Order.

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 the operation of wastewater treatment plants and public water supply systems. The Commission adopted rules related to the operation of public water supplies in 567 IAC chapter 43. The Commission has adopted rules governing the issuance of wastewater treatment operation permits at 567 IAC chapter 64.

2. 567 IAC 43.1(5) requires all community water supplies to have a properly certified operator-in-charge of the water treatment plant and the distribution system. The facts of this case show a violation of this provision.

3. 567 41.3(2) prohibits the operation of any public water supply system in violation of a permit issued to that system. By failing to retain an operator-in-charge of the PWS with a Grade II water treatment plant certification, the City operated the PWS in violation the WSO Permit. By failing to retain an operator-in-charge of the DS with a Grade II water distribution system certification, the City is operating the PWS in violation of the WSO Permit. The facts of this case show a violation of this provision.

4. 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 of the STP with a Grade III wastewater treatment plant certification, the City is operating the STP in violation the NPDES Permit. The facts of this case show a violation of this provision.

5. Pursuant to Iowa Code section 455B.222, the Commission may adopt rules determining the technical competency of wastewater treatment and drinking water 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.

6. 567 IAC 81.3(1) details the various grades of wastewater treatment plants.

7. 567 IAC 81.4(1) details the various grades of water treatment plants.

8. 567 IAC 81.5(1) details the various grades of water distribution systems.

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9. 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.

10. 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). An operator-in-charge of a water treatment plant must hold a certificate of at least the grade of the plant. *Id.* An operator-in-charge of a water distribution system must hold a certificate of at least the grade of the system. *Id.* The City has failed to retain an operator-in-charge of the STP with a Grade III wastewater treatment plant certification. The City has failed to retain an operator-in-charge of the DS with a Grade II water distribution system certification. The City failed to retain for approximately 13 months an operator-in-charge of the PWS with a Grade II water treatment plant certification. The facts of this case show a violation of these provisions.

V. ORDER

Therefore, DNR orders and the 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 STP 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.

2. Within 60 days of the date the Director signs this Order, the City shall retain at all times an operator-in-charge of the DS who has a Grade II water distribution system 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.

3. The City shall continue to retain an operator-in-charge of the PWS who has a Grade II water treatment plant certification.

4. In the event the City is in noncompliance with this Order, the City agrees to pay an administrative penalty of \$10,000.00 for violations 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

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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 STP, PWS, and DS have an appropriate certified operator, the parties agree that a total 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 certified Grade III wastewater operator-in-charge, a certified Grade II water treatment plant operator-in-charge, and a certified Grade II water distribution system operator-in-charge, and in order to promptly settle this matter and ensure immediate compliance with the terms of this Order, \$5,000.00 will be assessed for this factor, but only if necessary, and to be divided equally between the economic benefit gained for failure to obtain a certified wastewater treatment operator and a certified operator to water treatment and water distribution.

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 City’s failure to retain properly certified operators causes programmatic harm and increases the risk of negative impacts to human health and the environment. A penalty of \$2,500.00 will be assessed for this factor, but only if necessary, and to be divided equally between the gravity of a failure to obtain a certified wastewater treatment operator and a certified operator to water treatment and water distribution.

Culpability – The City has a duty to operate the STP, the PWS, and DS in a manner that does not violate Iowa law and the various permits related to the operation of these facilities. A penalty of \$2,500.00 will be assessed for this factor, but only if

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necessary, and to be divided equally between the culpability of the City's failure to obtain a certified wastewater treatment operator and a certified operator to water treatment and water distribution.

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 Polk 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 Mitchellville

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

Dated this 12th day of
October, 2023

