

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

<p>IN THE MATTER OF:</p> <p><b>City of Cedar Rapids</b></p> <p><b>Linn County, Iowa</b></p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2024-WW-01</p>
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TO: City of Cedar Rapids  
c/o Honorable Mayor and Council  
101 First St. SE  
Cedar Rapids, IA  
52401

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department) and the City of Cedar Rapids (City) for the purpose of resolving violations resulting from a discharge of chlorinated drinking water which resulted in water quality violations and a fish kill. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Chris Gelner, Field Office 1  
Iowa Department of Natural Resources  
1101 Commercial Ct. Ste 10  
Manchester, Iowa 52057  
Phone: 563/927-2640

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney for the DNR  
Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> St Wallace State Office Bldg  
Des Moines, Iowa 50319  
Phone: 515/444-8165

**Payment of penalty to:**

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

**II. JURISDICTION**

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director 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 promulgated 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

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administrative penalties. Iowa Code section 481A.151 authorizes the assessment and recovery of damages to natural resources.

**III. STATEMENT OF FACTS**

The City neither admits nor denies the following statement of facts and enters into this agreement solely for the purposes of settlement.

1. On March 30, 2023, at 2:35 pm Brian Jergenson, an Environmental Specialist Senior with the Department, received a call from Chris Mack, a Fisheries Technician with the Department. Mr. Mack stated that he received an anonymous call from an angler alleging that dead fish were observed in McCloud Run at 32 Street in Cedar Rapids and that the water was turbid. Upon receipt of this call Paul Sleeper, a Fisheries Biologist with the Department, and Mr. Mack went to the location at McCloud Run. At this location they observed turbid water and dead fish.

2. On March 30, 2023, at approximately 2:43 pm the Department received a call from Michael Kuntz, Utilities Environmental Manager for Cedar Rapids Water Pollution Control Facilities. He reported a water main break which resulted in a discharge of treated drinking water to a storm sewer which discharges to McCloud Run. McCloud Run is a tributary of the Cedar River. Mr. Kuntz stated that City crews placed dichlorination tablets into the discharging water prior to it entering the storm sewer and that crews did not observe any negative impacts on McCloud Run.

After receiving the above discussed phone call Chris Gelner, an Environmental Specialist Senior with the Department, investigated the complaint. Mr. Sleeper and Mr. Mack also conducted an investigation. During Mr. Gelner's investigation, field samples of the water were taken. All of the sample results are presented in the below table.

Location	Evergreen St NE (site 1)	McCloud Place (site 2)	Upstream of 42 <sup>nd</sup> St. NE (site 3)	Storm Sewer Discharge (site 4)
Time	4:29pm	5:05 pm	5:25 pm	5:54 pm
Monochloramine	0.34 mg/L	0.0 mg/L	0.0 mg/L	0.32 mg/L
Total Chlorine	0.16 mg/L	0.01 mg/L	0,01 mg/L	0.19 mg/L

At 4:00 pm the Department observed City repair crews working with excavation equipment at the location of Evergreen St NE and Terrace Hill Drive NE. The Department observed turbid water flowing from the work area west into the street gutter and entering a storm sewer inlet at Evergreen St NE and Northwood Drive NE (site 1). Several remnants of the dichlorination tablets were observed in the gutter and within the storm sewer inlet.

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At 5:05 pm the Department proceeded to the location at McLoud Place (site 2). Live and dead fish were observed at this location and the stream was turbid.

At 5:25pm the Department proceeded upstream to the location that the storm sewer discharges into McLoud Run (42<sup>nd</sup> St (site 3)). At this location, the Department observed live fish and clear water.

At 5:54 pm the Department proceeded to the location where the stormwater discharge impacted by the water main break discharges into McLoud Run (site 4). The stormwater flowing into McLoud Run was turbid.

3. On April 3, 2023, the Department returned to the site to conduct a follow-up investigation. Numerous dead fishes were observed; however, the stream was not as turbid.

4. On April 4, 2023, a Notice of Violation (NOV) was sent to the City for the above-discussed violations. Included in this NOV was a summary of the relevant law, a copy of the investigation report, and a fish kill memo drafted by Mr. Sleeper. The fish kill memo contained the following information:

The Department observed that the fish kill began at two culverts by a railroad bridge located below 42<sup>nd</sup> Street in Cedar Rapids Iowa. The kill extended approximately 1.25 miles to J Avenue in Cedar Rapids. Through the Department's observations, it is estimated that 1,359 Rainbow and Brown Trout were killed, which have a monetary value of \$20,385.00; and 311 Whiter Suckers of various sizes were killed, which have a combined monetary value of \$636.66. The Fisheries investigative costs equaled \$680.51 and the Field Office investigation costs were \$319.93. The total restitution and investigative costs equaled \$22,022.10.

#### IV. CONCLUSIONS OF LAW

The City neither admits nor denies the following conclusions of law and enters into this agreement solely for the purposes of settlement.

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. The above stated facts demonstrate non-compliance with this provision.

2. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The Department observed dead fish. Thus, the above stated facts indicate violations of the general water quality criteria.

3. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the

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Department for injury caused to a wild animal by the pollution. The Department has adopted 571 IAC chapter 113. 571 IAC chapter 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the Department for injury caused to a wild animal by the pollution. A fish kill resulted from discharge of chlorinated drinking water by the City.

**V. ORDER**

1. The City shall pay fish restitution in the amount of \$22,022.10 which includes investigative costs within 30 days of the date the Director signs this administrative consent order;

2. In lieu of payment of part of the administrative penalty to the Department, the City has elected to enter into a SEP with the Linn County Conservation Board (LCCB). Therefore, the City shall pay an amount of \$1,500.00 within 30 days of the date the Director signs this administrative consent order to the LCCB for use in a Supplemental Environmental Project. The City shall submit to the Department a copy of a check, bank statement or similar receipt showing that the \$1,500.00 was paid by the City to LCCB; and

3. Pay an administrative penalty of \$500.00 within 30 days of the date the Director signs this order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the water quality violation involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (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. Pursuant to this chapter, the Department 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 \$2,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the Department 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

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states, "reasonable estimates of economic benefit should be made where clear data are not available." The Department has determined that the City did not obtain an economic benefit from this violation. For that reason, no amount is assessed for this factor.

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 Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The Department documented a discharge which led to documented water quality violations and an extensive fish kill. These violations threaten the integrity of the regulatory programs because compliance with water quality requirements is required of all persons in this state. Therefore, \$2,000.00 is assessed for this factor.

Culpability – At this time the Department has determined that no amount should be assessed for this factor.


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**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 its right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent 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.191.

  
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on behalf of the City of Cedar Rapids  
Jeffrey A. Pomeranz, City Manager

Dated this 22 day of  
December, 2023

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KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources

Carrie Schoenebaum, DNR Field Office 1, EPA, I. C. 6.