

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

**IN THE MATTER OF:**

**CITY OF ARMSTRONG  
Water Supply Facility No. 3203066**

**CONSENT AMENDMENT TO  
ADMINISTRATIVE ORDER  
NO. 2008-WS-07-A1**

To: City of Armstrong  
c/o Mayor and Council Members  
519 6<sup>th</sup> Street, P.O. Box 229  
Armstrong, Iowa 50514-0229

Administrative Order No. 2008-WS-07 (order) was issued to the City of Armstrong (City) on December 18, 2008 by the Iowa Department of Natural Resources (Department). The order, including the \$5,000.00 penalty, was appealed by the City.

1. Section V. Order is amended by rescinding Section V. and replacing it with new Section V., which reads as follows:

THEREFORE, the Department orders the City to not construct or modify any public water supply system, or part thereof, until appropriate construction permits have been obtained from the Department. This order imposes an administrative penalty of \$3,000.00. This penalty is required to be paid to the Department within 30 days after the Director signs this order.

2. Paragraph 2 of Section VI. Penalty is rescinded and replaced by the following:

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. The maximum amount that can be assessed per order is \$10,000.00.

Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations and deterring the City and others from constructing without permits and other water supply violations is the issuance of an order with a \$3,000.00 penalty. ~~The administrative penalty assessed by this order is~~ determined as follows:

a. Economic Benefit. If the water main construction had not been discovered, the City would have saved the construction permit fee. The City would have additionally saved the cost of hiring an engineer to complete the construction permit application and the plans and specifications for submittal to the Department. The City has paid an as-

built fee and has had its engineer submit the as-built engineering documentation. Accordingly, the Department assesses a penalty of \$100.00 for these delayed costs.

b. Gravity of the Violation. 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 the type of violation. As indicated above, substantial civil penalties are authorized by statute. Construction prior to obtaining required permits threatens the integrity of the permit and water supply programs. The public water supply program is based on sound construction and requires construction permits to ensure such construction. Failure to submit a permit application and obtain a construction permit contradicts the basis of the program. The Department's Water Supply engineers had no opportunity to review or comment on the design or proposed construction since the project was completed when the application was received. For these reasons, the amount of \$1,500.00 is assessed for this factor.

c. Culpability. The City and the City's engineer should have been aware that a construction permit was needed for installation of the new water main. Due to the Department's communications to the City in 2007 concerning the installation of a new disinfection system, the City was aware of the need to obtain a construction permit for a water supply project. It appears that the City did not inform the certified operator of the water main project until shortly before the final part of the project, the tie-in, was installed. The amount of \$1,400.00 is assessed for this factor.

3. Section VII. Appeal Rights is rescinded and replaced by the following:

#### **VII. WAIVER OF APPEAL RIGHTS**

This consent amendment to Administrative Order No. 2008-WS-07 is entered into knowingly and with the consent of the City. For this reason, the City waives the right to appeal this consent amendment to Administrative Order No. 2008-WS-07. The City agrees to dismissal of the appeal of Administrative Order No. 2008-WS-07. This consent amendment shall not be construed as a release or waiver of the City's responsibility to comply with applicable statutes and rules or as a release of liability for violations occurring after the date of issuance of Administrative Order No. 2008-WS-07. In all other respects, Administrative Order No. 2008-WS-07 remains in full force and effect.

For questions contact:

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Iowa Department of Natural Resources  
502 East 9th Street  
Des Moines, Iowa 50319-0034  
Phone: (515) 281-6267

  
MARVIN DAILEY, MAYOR  
CITY OF ARMSTRONG

Dated this 15<sup>th</sup> day of  
September, 2009.

  
RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23 day of  
Sept., 2009.

City of Armstrong- Water Supply Facility No. 3203066, Julie Sievers- Field Office No. 3  
(Spencer Office), James Warren- Water Supply Operations Section, Diana L. Hansen-  
Legal Services Bureau, US EPA Region VII, I.A.I.