

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

<b>IN THE MATTER OF:</b>  <b>GREG KOENEN</b>	<b>ADMINISTRATIVE CONSENT ORDER NO. 2009-WS-04</b>
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**TO: Greg Koenen  
2070 360<sup>th</sup> St.  
Hawarden, IA 51023**

**I. SUMMARY**

The Iowa Department of Natural Resources (Department) and Greg Koenen enter into this consent order for the purpose of resolving regulatory violations arising from Mr. Koenen's unpermitted modifications to the Rock Valley Rural Water District (Rock Valley) public water distribution system. Mr. Koenen agrees to pay an administrative penalty of \$1,000.00.

Any questions or response regarding this Order should be directed to:

**Relating to technical requirements:**

Julie Sievers,  
Environmental Specialist  
Department Field Office #3  
1900 N. Grand, Gateway North, Ste E17  
Spencer, IA 51301-2200  
Ph: 712.262.4177

**Relating to legal requirements:**

David Wornson, Attorney  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/242-5817

**II. JURISDICTION**

The parties hereby agree that this Order is issued pursuant to Iowa Code section 455B.175 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 administrative penalties.

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**III. STATEMENT OF FACTS**

1. On April 22, 2009, the Department received a call from Mr. Garvin Buyert, manager of Rock Valley, who reported receiving several calls from water service customers about intermittent loss of water on the evening of April 21, 2009 and discolored water on the evening of April 21, 2009 and the day of April 22, 2009. Mr. Buyert reported that he suspected there may be a cross-connection between the Rock Valley public water system and a private water system owned by Greg Koenen and located on his farm property at 1919 350<sup>th</sup> St., Rock Valley, Iowa. A neighbor of Mr. Koenen had reported a loss of water for about 15 minutes on the evening of April 21, 2009 and reported discolored water when the water returned. Other customers downward of Mr. Koenen's connection to the Rock Valley public water system also reported discolored water on April 22, 2009.

2. The Department field office conducted an investigation beginning on April 24, 2009. It is undisputed that Mr. Koenen hired Kenneth Beyer for the purpose of disconnecting two of Mr. Koenen's three connections to the Rock Valley rural water system in order to allow him to connect his private water lines to the existing service lines in order to provide water service from his own private water distribution system.

3. Mr. Koenen contacted Rock Valley with a proposal to partially disconnect from its public water system and use existing lines to integrate into his proposed private water system extension. Rock Valley notified Mr. Koenen by letter dated December 22, 2008 that it owned the lines to the meter and that Rock Valley was not interested in donating or selling the lines to Mr. Koenen so he could use them to construct his private water system.

4. One two inch line provides water to dilute manure from a slatted cattle barn on Mr. Koenen's property. It is undisputed this line was not modified and remains connected to the Rock Valley system. A second line off the Rock Valley main provides water to the Koenen residence and a hog nursery. It is undisputed that Mr. Koenen hired Kenneth Beyer to cut and cap this line. Mr. Beyer did install a shut-off valve and cut and capped this line on April 21, 2009. Scott Persing of Persing Backhoe Services did the excavation on this project. Neither Mr. Koenen nor Mr. Beyer obtained a construction permit for this modification.

5. A third line provides water to a hog finishing unit and two trailers on the Koenen property. When interviewed by the Department investigator, Julie Sievers, Mr. Pershing reported that Mr. Beyer had stated that he left this line connected with the existing Rock Valley system as a backup water system to the hog finishing unit in the event Mr. Koenen's private system failed. Mr. Pershing stated a new private water line was then constructed and tied into the Rock Valley line to provide water to the hog finishing unit and trailers from Mr. Koenen's private water system.

6. The Department conducted chlorine residual tests at several locations. Normal chlorine residuals were found at the slatted barn location which had remained connected to the Rock Valley rural water system. No chlorine residuals were detected at the house or the hog nursery unit as expected since these lines were disconnected from the Rock Valley rural water system

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and were provided water from Mr. Koenen's private system which was not chlorinated. However, chlorine residuals were detected at the hog finishing unit and the metering pit which serves the line to the two trailers.

7. When questioned on April 24, 2009 by Department investigator, Julie Sievers, both Mr. Koenen and Mr. Beyer stated the chlorine residual detections at the hog finishing location and the trailer location were not expected since they claimed the lines had been cut and capped contrary to what Mr. Pershing had reported to Julie Sievers. Mr. Koenen stated that Mr. Beyer had told him this line had been cut and capped. When interviewed by Julie Sievers on April 24, 2009, Mr. Beyer stated that the line to the hog finishing unit had a valve so he had closed it and cut and capped the line. Mr. Koenen agreed to allow Rock Valley to supervise the excavation of the service line going to the hog finishing unit and the trailers.

8. On April 24, 2009 the Rock Valley line was excavated. It is undisputed that that this line had not been cut and capped. Instead, a continuous screw type valve had been partially closed but not sufficient to shut off the flow of chlorine treated Rock Valley public water. Mr. Beyer had not installed an anti-siphon or backflow device when connecting Mr. Koenen's private water line system to the Rock Valley public water system. Rock Valley then cut and capped the line which created an air gap. This removed any cross connection between Mr. Koenen's private system and the public water system.

9. Rock Valley staff conducted chlorine residual testing on April 27, 2009 at the hog finishing location and no chlorine was detected.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code sections 455B.173(3), (5), and (6) authorize the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of public water supply systems, to adopt drinking water standards to assure compliance with federal standards adopted pursuant to the federal Safe Drinking Water Act, and to adopt rules relating to monitoring, record keeping, and reporting requirements for any public water supply. The Commission has adopted such rules at 567 IAC chapters 40-43. Pursuant to Iowa Code section 455B.172, the Department is the state agency responsible for implementing Commission rules applicable to the public water supply program.

2. Iowa Code section 455B.171 defines a public water supply system as a system for the provision of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. Rock Valley is a public water supply system.

3. Iowa Code section 455B.183 states that "...it is unlawful to carry on any of the following activities without first securing a written permit from the director...the construction, installation, or modification of any disposal system or public water supply system or part thereof or any extension or addition thereto...". Commission sub-rule 567 IAC 43.3(3) states that "No person shall construct, install or modify any project without first obtaining, or contrary to any condition

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of a construction permit issued by the director or by a local public works department authorized to issue permits under 567--Chapter 9 except as provided in 43.3(3)"b," 43.3(4) and 43.3(6)." Further 43.3 (3) "b" states that an "Application for... [a construction permit] shall be submitted to the department at least 30 days prior to the proposed date for commencing construction or awarding of contracts." Mr. Koenen failed to obtain a construction permit from the Department prior to cutting and capping the Rock Valley lines and connecting a private water distribution system to the Rock Valley lines.

**V. ORDER**

THEREFORE, the Department hereby orders and Mr. Koenen agrees to the following:

Mr. Koenen shall pay an administrative penalty of \$1,000.00 by check payable to the "Iowa Department of Natural Resources" no later than 30 days after the last signature date of this Order. The check shall be accompanied by a copy of the front page of this Order or a cover letter identifying this Order by name and reference number.

**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 violations involved in this matter.

2. 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 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 order with an administrative penalty. The administrative penalty assessed by this Order is determined as follows:

a. **Economic Benefit.** Mr. Koenen originally saved the cost of constructing additional service line since Rock Valley had not agreed to rent or sell their lines to him. The Department understands Mr. Koenen and Rock Valley are negotiating for payment of these lines. Mr. Koenen has avoided the costs of applying for a construction fee and possibly the costs of preparing an engineering report. The Department is not assessing an amount for this factor but reserves the right to do so.

b. **Gravity of the Violation.** The requirement to obtain a construction permit is both statutory and established by agency rule. The purpose of the construction permit system is to assure quality and compliance with design standards adopted to protect the public health. The failure to obtain a permit contributed to a potentially unsafe condition by allowing Mr. Beyer to create a cross-connection with the Rock Valley public water system. Applying an amount of up to \$3,000.00, \$1,500.00 is assessed for this factor.

c. **Culpability.** Mr. Koenen knew or should have known that by retaining Mr. Beyer to cut and cap service lines he would be tampering with water lines owned by Rock Valley. Mr.

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Koenen holds a water use permit and would reasonably be expected to know or have reason to find out if he needed a permit to modify the Rock Valley public water system. His actions were at the least negligent if not intentional. Applying an assessment of up to \$3,000.00, \$1,000.00 is assessed for this factor.

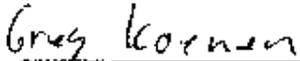
d. **Mitigating Factors.** Mr. Beyer has been issued a Consent Order which includes a gravity assessment of \$3,000 for the failure to obtain a permit and constructing an illegal cross-connection. Mr. Koenen should share the responsibility for the permit violation although Mr. Beyer given his qualifications should bear primary responsibility. Therefore, the gravity assessment attributed to Mr. Koenen is reduced by \$1,500.

**VII. WAIVER OF APPEAL RIGHTS**

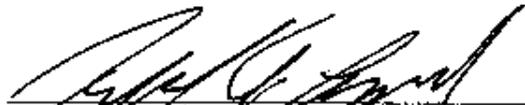
Iowa Code section 455B.175, and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Mr. Koenen. By signature to this Order, Mr. Koenen waives all rights to appeal the terms of this Order.

**VIII. NONCOMPLIANCE**

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. 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 section 455B.191.

  
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GREG KOENEN

Dated this 8-20 day of 2009

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 31 Aug day of 2009

Greg Koenen, FO 3, David Wornson, H.A.1.