

IOWA DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF:

KENNETH BEYER

OPERATOR CERTIFICATE No. 1480

**NOTICE OF INTENT TO
REVOKE OPERATOR
CERTIFICATION**

2009-WS-01

**TO: Kenneth Beyer
3184 Dove Ave.
Rock Valley, IA 51247**

I. SUMMARY

Kenneth Beyer holds a Public Water System Grade 4 water distribution operator certification and a Grade 3 water treatment operator certification issued by the Iowa Department of Natural Resources (Department). The Department provides notice that it intends to permanently revoke Mr. Beyer's operator certifications. *See Division V below for further detail on this intended disciplinary action.*

This intended action will take effect 30 days from receipt of this notice unless you contest this action by filing an appeal. You must file a Notice of Appeal and Request for Hearing within 30 days of receipt of this notice. *See Division VI below for further detail on your appeal rights.*

Any questions regarding this notice should be directed to:

Relating to Technical Issues:

Shelli Grapp
Iowa Department of Natural Resources
401 SW 7th St., Suite I
Des Moines, IA 50309-4611
Tel. No. 1-515-725-0401

Relating to legal issues:

David Womson, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Tel. No. 1-515-242-5817

II. JURISDICTION

The Iowa Department of Natural Resources (Department) is taking this action pursuant to the authority granted in Iowa Code section 455B.219 and Iowa Code sections 272C.3 & 272C.10 and 567 Iowa Administrative Code (IAC) 81.17.

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III. STATEMENT OF FACTS

1. Kenneth Beyer currently holds a Public Water System operator certificate number 1480. Mr. Beyer recently applied for renewal of his operator certification. Because Mr. Beyer met the requirements for renewal, the Department issued a notice dated June 30, 2009 granting his application for renewal. However, the notice also informed Mr. Beyer that the Department intended to initiate a disciplinary action and the renewal did not in any way affect the Department's factual and legal basis for initiating that action.
2. Mr. Beyer has been the manager and operator in charge for the Rock Valley Rural Water District (Rock Valley). Effective July 28, 2006, Mr. Beyer was no longer employed by Rock Valley Rural Water District.
3. On July 25, 2000, while conducting a sanitary survey, Department inspector Julie Sievers determined that Rock Valley, under the management of Mr. Beyer, had completed construction of a ground storage reservoir without having obtained a construction permit. Rock Valley was undergoing an expansion of its water treatment plant and did not have permits for this project. The Department deferred enforcement since Rock Valley applied for permits prior to initiation of an enforcement action.
4. On August 12, 2005, the Department investigated a complaint that Rock Valley was not providing adequate pressure and water volume within the distribution system. The inspectors determined that Mr. Beyer had been responsible for constructing about 9 miles of 12 inch pipe without a construction permit. A notice of violation was issued to Rock Valley.
5. On January 5, 2006, the Department investigated a complaint concerning the construction of 8 test wells drilled by Rock Valley. The Department determined that Rock Valley had failed to obtain necessary well permits from the county permitting authority. Mr. Beyer as manager and operator in charge was responsible for obtaining private well construction permits from the county as required by law. A notice of violation was issued to Rock Valley. A Consent Order was issued to Rock Valley arising out of the August 2005 and January 2006 investigations.
6. On December 7, 2006, the Department field office received a complaint about private wells being constructed at the Ysselstein Dairy without a permit. The Department investigated the complaint on December 12, 2006 and determined that Mr. Beyer had been overseeing the well drilling as an employee of the dairy. At the time of the onsite inspection, the wells had not been in place for more than 7 days but it appeared the intention was that the wells would be in place more than 7 days which would require a permit. By December 18, 2006, the wells had been properly plugged so that no well had been in place more than 7 days. The Department issued Sjerp Ysselstein, owner of Ysselstein Dairy, a notice that any future construction of wells without a permit could result in an enforcement action.
7. On April 24, 2009, the Department determined that Mr. Beyer had cut and capped and installed a shut-off valve on Rock Valley lines without obtaining a construction permit. Mr. Beyer had been retained by Greg Koenen to cut and cap these lines in order to disconnect Mr.

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Koenen from the Rock Valley public water system and integrate the existing Rock Valley lines into Mr. Koenen's private water system extension.

8. During the Department's investigation of this incident, Mr. Beyer told the Department investigator, Julie Sievers, on April 24, 2009 that he had cut and capped a water line running from the Rock Valley main to Mr. Koenen's hog finishing unit and two trailers. Mr. Koenen also reported to Julie Sievers that Mr. Beyer had reported cutting and capping this line. Scott Persing of Persing Excavation Company told Julie Sievers that Mr. Beyer had told him that he had found a shut off valve on this line and had closed it allowing this Rock Valley line to be used in the event Mr. Koenen's private water system failed.

9. The Department had tested and found chlorine residuals in the water in this water line to the hog finishing unit which would not be expected if this line had in fact been cut and capped since Mr. Koenen did not chlorinate his private water system. With Mr. Koenen's permission, the line was excavated and it was determined that there was a continuous shut-off valve that appeared to have been partially closed and the line had not been cut and capped. Mr. Beyer had connected Mr. Koenen's private water system service lines to this Rock Valley public water system line creating a cross connection without installing a Department approved anti-siphoning device and without obtaining a construction permit.

10. Mr. Breyer's statements to the Department investigator, Julie Sievers, that the Rock Valley line had been cut and capped were intentionally false and intended to mislead and impair her investigation.

IV. CONCLUSIONS OF LAW

1. Iowa Code sections 455B.212, 213(1) and Iowa Code section 272C.1(6)"x" authorize the Director of the Department to establish water treatment and water distribution certification programs. In addition, Iowa Code section 455B.219 and Iowa Code sections 272C.3 and 272C.10 authorize the Department to establish criteria for taking disciplinary actions and a range of sanctions that may be imposed including but not limited to suspension and revocation of operator certifications and assessment of civil penalties. The Environmental Protection Commission (Commission) pursuant to rule making authority in Iowa Code section 455B.105(3) has adopted rules establishing the certification programs and providing for disciplinary actions. See chapter 567 IAC 81.

2. Iowa Code sections 455B.219 and 272C.10 and Department sub-rule 567 IAC 81.17(1) specify criteria which may form the basis for a disciplinary action. Disciplinary action may include: revocation, partial revocation, suspension, probation, requirements for additional education, training and examination, and assessment of civil penalties up to \$1,000. See Iowa Code section 272C.3(2)(e) and 567 IAC 81.17(2). Under 567 IAC 81.17(1), the criteria for disciplinary action includes the following:

- a. Failure to use reasonable care or judgment or to apply knowledge or ability in performing the duties of a certified operator.

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- b. Failure to submit required records of operation or other reports required under applicable permits or rules of the Department, including the failure to submit complete records or reports.
- c. Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or rule of the Department.
- d. Fraud in procuring a license.
- e. Professional incompetence.
- f. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
- g. Habitual intoxication or addiction to the use of drugs.
- h. Conviction of a felony related to the profession or occupation of the licensee. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
- i. Fraud in representations as to skill or ability.
- j. Use of untruthful or improbable statements in advertisements.
- k. Willful or repeated violations of the provisions of Iowa Code chapters 272C or 455B, division III.

3. Based on facts available to the Department at this time, the Department finds that disciplinary action against Mr. Beyer is warranted for the following reasons:

a. 567 IAC 81.17(1)"k". Mr. Beyer has demonstrated a pattern of willful and repeated violations of the construction permitting requirements applicable to public water systems as well as private water wells under Iowa Code chapter 455B, Division III (see Iowa Code section 455B.183 and Commission rules in 567 IAC 43.3(3)). Mr. Beyer's actions in creating a cross-connection with the Rock Valley public water system without an anti-siphoning device constituted a willful violation of Commission rules. These violations have occurred during the performance of duties as a certified operator and also while performing duties as construction contractor and when taken together constitute grounds for disciplinary action.

b. 567 IAC 81.17(1)"f". Mr. Beyer's pattern of willful disregard for construction permit requirements both while performing functions as a certified operator and a contractor demonstrate a disregard for the law and constitute a "practice that is harmful and detrimental to the public".

c. 567 IAC 81.17(1)"f". Mr. Beyer made intentionally false statements to the Department investigator that he had in fact cut and capped the Rock Valley line to Mr. Koenen's hog finishing unit which were intended to mislead and impair the Department's investigation which ultimately revealed that the lines had not been cut and capped.

d. 567 IAC 81.17(1)"e". Mr. Beyer's actions in connecting Mr. Koenen's private water service lines to the Rock Valley public water system without an anti-siphoning device constitute professional incompetence.

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V. TERMS AND CONDITIONS OF DISCIPLINARY ACTION

The Department intends to impose the following disciplinary actions:

Mr. Beyer's Grade 4 water distribution and Grade 3 water treatment certification number 1480 shall be permanently revoked.

VI. APPEAL RIGHTS

As provided in Iowa Code sections 17A.18, 455B.219, 272C.4 and 272C.6 and Commission rule 567 IAC 81.17(3) (referencing Commission rules in chapter 561 IAC 7), you may contest this intended action and request an evidentiary hearing by filing a "Notice of Appeal" within 30 days of receipt of this notice of intended action addressed to the Director with a copy to the "Bureau Chief, Legal Services Bureau, Department of Natural Resources, 502 East 9th St., Des Moines, Iowa 50319". The "Notice of Appeal" shall contain the name of the appellant, a description of the specific portions of this intended action being appealed and a short and plain statement of the reasons for the appeal. See 561 IAC 7.4.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 12 day of
August, 2009

Operator certification no. 1480, Kenneth Beyer, Shelli Grapp, Julie Sievers, Field Office 3, David Wornson, Barb Lynch, I(D) & II(D).