

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF:

**CLIFF'S PLACE, INCORPORATED, dba
CLIFF'S PLACE
Public Water Supply Facility No. 0929200**

**ADMINISTRATIVE ORDER
NO. 2007-WS- 07**

**TO: David Tibbitts, President and
Registered Agent
Cliff's Place, Incorporated
1211 230th Street
Nashua, IA 50658**

I. SUMMARY

This order requires you to:

- sample this public water supply for bacteria immediately, and at least once per quarter thereafter, and perform required follow-up sampling when a positive result is obtained;
- sample this public water supply for nitrate immediately, and at least once per month thereafter;
- provide public notice as required by the department;
- install nitrate removal equipment and disinfection equipment or connect to an approved alternate water source;
- perform operating, monitoring and record keeping requirements for the nitrate removal and disinfection facilities;
- complete a viability assessment for this public water supply; and
- pay a penalty of \$5,800.00 and fees of \$250.00, subject to your appeal rights as stated in Paragraph VII of this order.

Any questions regarding this order should be directed to:

Relating to technical requirements:
Anne Lynam, Environmental Specialist
IDNR Water Supply Section
401 SW 7th, Suite M
Des Moines, Iowa 50309-4611
Ph: 515/725-0280

Relating to appeal rights:
Diana Hansen, Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-6267

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Appeal, if any, addressed to:

Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

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) 10(455B), which authorize the director to assess administrative penalties.

III. STATEMENT OF FACTS

1. This public water supply facility is owned by Cliff's Place, Incorporated and operates as Cliff's Place, located at 1404 Easton Avenue, Waverly, Iowa. David Tibbits, 1211 230th Street, Nashua, Iowa is listed as the president and registered agent of this corporation with the Iowa Secretary of State.

2. This public water supply facility provides piped water to the public for human consumption and regularly serves at least 25 persons. This facility, a transient non-community public water supply, serves a restaurant and bar that has 50 to 200 customers and employees daily. Water is derived from one well, which is approximately 50 feet deep. The well is located thirty feet west of the building. Water from this facility is not treated.

3. During an inspection on August 27, 2004, the Black Hawk County Health Department inspector observed that this facility does not have continuous chlorination equipment. The inspection report recommended the addition of such equipment. The inspector observed that the facility does not have nitrate removal equipment despite water samples that have exceeded the nitrate MCL level of 10 ppm.

Sampling Required for Lab Analysis

Bacteria

4. The water supply operation permits issued to the facility owner on April 3, 2002, October 14, 2003, and February 17, 2005 require this facility to be monitored for bacteria at least once per quarter. Department rules also require that when a routine bacterial sample is analyzed as containing bacteria; additional recheck and routine samples shall be taken. These samples must be analyzed at a certified laboratory.

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5. During an inspection on August 27, 2004, Black Hawk County Health Department inspectors found that the facility owner was not taking all required quarterly samples as required by the operation permit. The inspector also noted that the facility had unsatisfactory samples in August 2003. By a letter dated September 3, 2004 and the enclosed inspection report, the facility owner was notified of these violations.

6. This facility owner failed to take a bacteria sample for the first quarter 2004, the third quarter 2005, and the third quarter 2006. The facility owner was notified of these bacteria monitoring violations by letters dated April 19, 2004, November 4, 2005 and October 20, 2006. The letters and public notice instructions sent with the letter additionally advised the facility owner that public notification was required to be given and that proof of public notice was required to be submitted to the department. The department has not received proof that public notice for these violations was given.

7. On August 27, 2007 the department sent a letter advising that the facility owner needed to take three repeat samples due to a positive total coliform bacteria sample result received on August 22, 2007. The letter informed the facility owner that five routine samples needed to be taken in September 2007. The department issued a notice of violation letter dated September 24, 2007 informing the facility owner that the facility had incurred a monitoring violation for failure to take repeat samples. The letter advised the facility owner of public notice requirements due to the monitoring violation. To date the department has not received proof that public notice for this violation was given.

Nitrate

8. The water supply operation permit issued to the facility owner on April 3, 2002 required quarterly nitrate monitoring. The permit was amended on October 14, 2003 to change quarterly monitoring to monthly monitoring. This was done due to nitrate data that indicated that this water supply met or exceeded 10 mg/L N, the nitrate MCL.

The facility received an acute nitrate MCL violation for a sample taken on September 24, 2003 that tested at 11 mg/L. Public notice was given for this MCL violation. A second acute nitrate MCL violation was received for a sample taken on April 28, 2004 that tested at 11 mg/L. It does not appear that public notice was given for this MCL violation.

The operation permit was reissued on February 17, 2005. The reissued permit is effective through April 30, 2008. It continues to require this facility to be monitored for nitrate at least once per month. These samples are required to be analyzed at a certified laboratory. Due to nitrate MCL violations the addition of nitrate removal equipment is needed at this facility.

9. During an inspection on August 27, 2004, Black Hawk County Health Department inspectors found that this facility owner was not taking nitrate samples as required by the

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operation permit in effect at the time. By a letter dated September 3, 2004 and the enclosed inspection report, the facility owner was notified of these violations. The facility owner failed to take nitrate samples for the months of November 2003, December 2003, February 2004, October 2004, December 2004, January 2005, July 2005, December 2005, July 2006, October 2006, and June 2007. By letters dated December 19, 2003; January 16, 2004; March 16, 2004; November 24, 2004; January 24, 2005, February 17, 2005, August 29, 2005, January 24, 2006, August 22, 2006, November 28, 2006, and August 29, 2007, the facility owner was notified of these monitoring violations. The letters and public notice instructions sent with the letters advised the facility owner that public notification was required to be given and that proof of giving public notice was required to be furnished to the department. The department has not received proof that public notice for these violations was given.

Annual Water Supply Fee

10. On June 26, 2002 an invoice was sent to this facility owner for the fiscal year 2003 \$25.00 annual operation fee. The fee was required to be remitted by September 1, 2002. A second notice was sent to this facility owner on September 10, 2002 advising that the fee had not been received and that the amount due by September 30, 2002 was \$125.00. A late fee of \$100.00 was added since the fee was not paid by the original due date. These fees have not been paid to date. On June 24, 2005 an invoice for fiscal year 2006 was sent to this facility owner advising that the \$25.00 annual operation fee was due by September 1, 2005. A second notice was sent on September 9, 2005. The \$25.00 fee and \$100.00 late fee for fiscal year 2006 have not been paid to date.

Viability Assessment

11. As shown by the above discussion, this facility has failed to take all required bacteria and nitrate samples. The facility has experienced nitrate MCL violations but has not added nitrate removal equipment. The facility owner had a connection installed between Cliff's Place and Winner's Circle, an adjacent restaurant. The October 12, 2006 annual survey of this system noted that the connection was not approved. Winner's Circle has since closed and is no longer open for business. It is questionable whether this facility has the managerial and technical ability to achieve or remain in compliance with the rules applicable to a public water supply system. Due to these factors the department finds that this system is not viable. This order requires that a viability study be conducted.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.172 makes this department the agency of the state to conduct the public water supply program. 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. Iowa Code sections 455B.173(3), (5), and (6) authorize the

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Environmental Protection 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.

2. Rule 567 IAC 40.2(455B), further defines public water supply by defining "community water system" as a public water supply which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents, consistent with federal regulations. A "noncommunity water system" is any other public water supply. This facility is a transient noncommunity water system.

Bacterial Monitoring

3. Subrule 567 IAC 41.2(1) requires a noncommunity water system to be sampled at least once per calendar quarter. More frequent sampling may be required. Subparagraph "c"(1) of the subrule requires that bacterial samples must be collected at sites which are representative of water throughout the distribution system, according to a written sampling plan that meets the criteria of the subparagraph. When positive results are obtained in a routine sample, additional follow-up sampling is required.

Subrule 83.1(3) requires the samples be analyzed at a certified laboratory, subrule 42.4(1) requires that the analytical results be reported to the department within ten days after the test, and subrule 42.5(1) requires a public water supply system to retain records of bacteria analyses of its water supply for a period of five years. The facility has failed to properly sample, as specified above.

Nitrate Monitoring

4. Subrule 41.3(1), subparagraph "c"(5), requires a transient noncommunity water system to be sampled at least once every year, and have the samples analyzed for nitrate, in accordance with prescribed analytical procedures. Repeat monitoring is required to be quarterly for at least one year following any one sample in which the concentration is greater than or equal to 5.0 mg/L as N. The department may allow a ground water system to reduce the sampling frequency to annually after four consecutive quarterly samples are reliably and consistently less than 5.0 mg/L as N. The repeat monitoring frequency is required to be monthly for at least one year following any one sample in which the concentration is greater than or equal to 10.0 mg/L as N. The monthly requirement was imposed by operation permits issued on October 14, 2003 and on February 17, 2005.

Subrule 83.1(3) requires the samples to be analyzed at a certified laboratory. Subrule 42.4(1) requires that the analytical results be reported to the department within ten days after the test. Subrule 42.5(1) requires a public water supply system to retain records of chemical analysis of its water supply for a period of ten years.

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Continuous Disinfection

5. Subrule 42.4(3), subparagraph " b", provides:

(1) Continuous disinfection.

1. When required. Continuous disinfection must be provided at all public water supply systems, except for the following: groundwater supplies that have no treatment facilities or have only fluoride, sodium hydroxide or soda ash addition and that meet the bacteria standards as provided in 567—41.2(455B) and do not show other actual or potential hazardous contamination by microorganisms.

2. Method. Chlorine is the preferred disinfecting agent. Chlorination may be accomplished with liquid chlorine, calcium or sodium hypochlorites or chlorine dioxide. Other disinfecting agents will be considered, provided a residual can be maintained in the distribution system, reliable application equipment is available and testing procedures for a residual are recognized in Standard Methods for the Analysis of Water and Wastewater.

3. Chlorine residual. A minimum free available chlorine residual of 0.3 mg/L or a minimum total available chlorine residual of 1.5 mg/L must be continuously maintained throughout the water distribution system, except for those points in the distribution system that terminate as dead ends or areas that represent very low use when compared to usage throughout the rest of the distribution system as determined by the department.

4. Test kit. A test kit capable of measuring free and combined chlorine residuals in increments no greater than 0.1 mg/L in the range below 0.5 mg/L, and in increments no greater than 0.3 mg/L in the range from 1.0 mg/L to 2.0 mg/L must be provided at all chlorination facilities. The test kit must use a method of analysis that is recognized in Standard Methods for the Examination of Water and Wastewater.

6. Other disinfection residuals. If an alternative disinfecting agent is approved by this department, the residual levels and type of test kit used will be assigned by the department in accordance with and based upon analytical methods contained in Standard Methods for the Examination of Water and Wastewater.

6. Subrule 42.4(3) also provides that systems that provide treatment such as disinfection must perform routine operational monitoring, as follows:

- Daily free and total available chlorine residuals.
- Daily record of the amount of chlorine used.
- Daily or weekly record of the total water used.
- Static water levels and pumping water levels once per month.

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Construction Permits

7. Subrule 43.3(1) requires that any public water supply that does not meet the drinking water standards shall make the alterations in accordance with the construction standards of subrule 43.3(2) necessary to comply with the drinking water standards. Subrule 43.3(3) provides that no person shall construct, install or modify any project without first obtaining, or contrary to any condition of, a construction permit issued by the director, except as provided in 43.3(3)"b", 43.3(4), and 43.3(6).

Viability Assessment

8. Subrule 43.8(5), subparagraph "a"(2), requires that existing public water supply systems categorized as being in significant noncompliance by the department due to their history of failure to comply with drinking water standards, are required to complete a viability assessment for the department's review and approval. "Significant noncompliance" means the failure to comply with any drinking water standard. See subrule 43.8(1).

The viability assessment must address the areas of technical, financial, and managerial viability for a public water supply system. The assessment must include evaluation of the following areas at a minimum. The public water supply may be required to include additional information as directed by the department. The viability of a system should be forecast for a twenty year period.

a. Technical Viability

- (1) Supply sources and facilities,
- (2) Treatment, and
- (3) Infrastructure (examples: pumping, storage, and distribution).

b. Financial Viability.

- (1) Capital and operating costs
- (2) Revenue sources
- (3) Contingency plans.

c. Managerial Viability

- (1) Operation
- (2) Maintenance
- (3) Management
- (4) Administration

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Public Notification of Violations

9. Subrule 567 IAC 42.1(4) requires the owner or operator of a public water supply system which fails to perform monitoring required by rule to notify persons served by the system within three months. Noncommunity systems may provide public notice by continuous posting in conspicuous places within the area served by the system.

The notice is required to provide a clear and readily understandable explanation of the violation, the steps the system is taking to correct the violation, and include the telephone number of the owner, operator, or designee of the system as a source of additional information. Subrule 567 IAC 42.4(1), paragraph "c", provides that the public water supply shall submit a representative copy of the public notice, to the department within ten days of completion of the notice.

Annual Fee Requirements

10. Iowa Code section 455B.183A(2)"b" allowed the Environmental Protection Commission to adopt fees for operation permits for public water supply systems. This code section imposed a \$25.00 fee on public water supply systems not owned or operated by a community and serving a transient population. Subrule 43.2(1) was adopted pursuant to this code section. This subrule requires payment of a nonrefundable fee for the operation of a public water system by September 1, of each year. For transient noncommunity systems the fee is \$25.00. The subrule also allows the addition of a late fee of \$100.00 if the fee is not paid timely. This facility owner did not pay the fee and late fee of \$125.00 for fiscal years 2003 and 2006.

V. ORDER

THEREFORE, in order to abate and redress violations of department rules and the facility's public water supply operation permit, you are ordered to comply with the following:

1. Immediately and hereafter, sample this public water supply at least once per quarter, submit the samples to a laboratory certified for bacteria analysis, timely report the results to the department, and maintain the record of such analyses for five years. Required follow-up sampling for bacteria shall be conducted upon notice by the department.

2. Immediately and hereafter, sample this public water supply at least once per month, submit the samples to a laboratory certified for nitrate analysis, timely report the results to the department, and maintain the record of such analyses for ten years.

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3. Provide public notice of the bacteria and nitrate monitoring violations as required by department rules within 30 days of receipt of this order and submit proof of providing public notice to the department within ten days of completion of the notice.

4. Install nitrate removal equipment and continuous disinfection equipment or connect to an approved alternate water source. Inform Anne Lynam, Iowa Department of Natural Resources, Water Supply Section, 401 S.W. 7th Street- Suite M, Des Moines, Iowa 50309-4611 of your decision in writing within 30 days of receipt of this order. You are required to submit a construction permit application for nitrate removal equipment and continuous disinfection equipment or for connection to an alternate source within 30 days of receipt of this order. You are required to complete construction within 60 days of submittal of the construction permit application. You are required to properly operate and maintain such equipment once it is installed.

5. Provide continuous disinfection of your water supply. Chlorine residuals are required to be monitored on a daily basis using an approved test kit in accordance with the requirements of department rules. The permittee shall maintain minimum chlorine residuals of 0.3 mg/L free or 1.5 mg/L total available chlorine in finished water throughout the distribution system, except at dead ends or low use areas. Chlorine residuals shall be monitored in the distribution system in conjunction with all total coliform monitoring.

Record the following on the monthly operation report and submit that report to Field Office No. 1 in Manchester, Iowa, on a monthly basis.

- Daily free and total available chlorine residuals.
- Daily record of the amount of chlorine used.
- Weekly record of the total water used.
- Monthly record of the total water used.
- Monthly static water levels and pumping water levels

Operation report forms may be obtained from Field Office No. 1 in Manchester, Iowa by calling (563) 927-2640.

6. Complete and submit a viability assessment for this public water supply facility. You are required to contact Jennifer Bunton, Water Supply Section, Iowa Department of Natural Resources, 401 SW 7th Suite M, Des Moines, Iowa 50309-4611 within 15 days of receipt of this order to obtain the required information for completing this assessment. You are required to complete the viability assessment within the time period required by the Water Supply Section. You are required to contact Eric Halligan, Iowa Association of Municipal Utilities (IAMU), at (515) 289-1999, within 15 days of receipt of this order for assistance in completing the assessment.

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7. A penalty of \$5,800.00 is assessed. You also owe \$250 for the annual water supply fee and late fee for fiscal years 2003 and 2006. The penalty and fees shall be paid to the department within 60 days of your receipt of this order. If you appeal this order as provided in Section VII below, the penalty and fees are not due until the appeal is resolved by either a final department order, final court order or by agreement of the parties.

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 Environmental Protection 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 a penalty. The administrative penalty assessed by this order is determined as follows:

a. Economic Benefit. There have been cost savings to the facility in not performing the monitoring and reporting requirements after issuance of water supply operation permits to the current facility owner. There have been additional cost savings in not providing public notice following monitoring violations. The amount of \$800.00 is assessed for this factor.

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. 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. This matter involves a potential threat to public health due to the failure to take required bacteria and nitrate samples and the failure to give public notice of monitoring violations. Because of the relative importance of the drinking water program, \$2,500.00 is assessed for this factor, due to multiple violations.

c. Culpability. The facility owner was issued permits with the monitoring requirements. The September 3, 2004 cover letter and inspection report for the August 27, 2004 inspection advised this facility of monitoring deficiencies. Additionally, the facility owner was sent letters advising of monitoring violations for bacteria and nitrate. The facility owner has been given ample time to comply. Therefore, \$2,500.00 is assessed for this factor, in view of multiple violations.

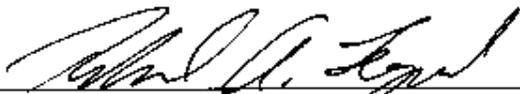
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VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1), and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the director of the department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A, 561 IAC chapter 7, and 567 IAC chapter 7.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 1 day of
November, 2007