

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF: CITY OF HASTINGS Public Water Supply Facility No. 6527038	ADMINISTRATIVE ORDER NO. 2010-WS-02
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TO: Mayor and Council Members
City of Hastings
401 Indian Avenue, P.O. Box 703
Hastings, Iowa 51540

I. SUMMARY

This administrative order (order) is issued to the City of Hastings (City) for violations of Iowa's water supply requirements. This order requires the City to:

- Submit to the Department within 30 days of receipt of this order a contract detailing a schedule to connect to Southwest Regional Water District (SWRW) or submit to the Department within 90 days of receipt of this order a comprehensive Preliminary Engineering Report (PER); and
- Pay an administrative penalty of \$10,000.00 as set forth in Section V. of this order.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Terisa Thomas, Environmental Specialist
Iowa Department of Natural Resources
401 SW 7th, Suite M
Des Moines, Iowa 50309-4611
Ph: 515/725-0283

Relating to legal requirements:

Diana Hansen, Attorney at Law
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-6267

Direct payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

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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) chapter 10 (455B), which authorize the Director to assess penalties.

III. STATEMENT OF FACTS

1. The City's public water supply system derives its water from a single, shallow, gravel-packed well. Treatment consists of the addition of polyphosphate and hypochlorination. Distribution pressure and storage are provided by a 60,000 gallon standpipe. There are 70 service connections that serve 214 persons.
2. This public water supply system has had numerous nitrate maximum contaminant level (MCL) violations and copper action level exceedances over the past nine years. There have also been several monitoring violations in the past. This supply has failed to meet four compliance schedules to correct deficiencies, the latest of which was to hook up to SWRW by November 30, 2009 to address the nitrate MCL issues. The City informed the Department that it would not be able to meet this deadline. The City has not connected to an acceptable alternative public water supply system as required by its compliance schedules to date.
3. The Department issued the City a revised water supply operation permit on February 17, 2003 that required this public water supply system to sample once per month for nitrate. The Department issued notices of violation (NOVs) on September 26, 2003, October 22, 2003, and February 10, 2004 informing the City that it had exceeded the nitrate MCL for the months of September 2003, October 2003 and January 2004. The NOVs required the City to give public notification of the MCL violations.
4. The Department issued the City a public water supply operation permit and appendix on February 10, 2004. The permit appendix required the City to either submit a PER by September 30, 2004 or submit a report for connection to an alternate source of drinking water and a schedule.
5. The Department issued NOVs to the City on February 20, 2004, June 3, 2005, October 21, 2005, and November 23, 2005 for nitrate MCLs occurring for the months of February 2004, May 2005, October 2005 and November 2005. NOVs required the City to provide public notification.
6. On April 22, 2005 the Department's Water Supply Engineering Section sent an approval letter to this public water supply for a wellhead protection plan. On July 6, 2005

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the Department issued a revised water supply operation permit that retracted the need for the City to submit a PER. The requirement was rescinded due to the City entering into a voluntary wellhead protection program.

7. The Department issued NOVs to the City on October 21, 2005 and November 23, 2005 informing the City of nitrate MCL violations occurring during the months of October and November 2005. Both NOVs required that public notification be given.

8. The City submitted proof of public notification on November 23, 2005 concerning the November 2005 nitrate MCL violation. The City provided a statement in the Corrective Action section of the public notice. "1) The farm land and 'city' land surrounding the area of land around the well, up to 2,000 ft or better is eligible for Conservation Reserve Program (CRP); Eliminating fertilizer from this property. The contracts with the CRP and the farmers is due to start the Fall of 2005. 2) The City is in the process of putting in a City Sewer System, grant application was sent November 22, 2005, until this can be successful, they are working with the City Residents and their private septic systems."

9. The Department issued an NOV to the City on January 20, 2006 informing the City of a nitrate MCL violation that occurred during the month of January 2006. The NOV required that public notification be given.

10. The Department received a letter from the City in regards to the public notice related to the January 2006 nitrate MCL violation. The City clerk's letter stated that the City did not receive a grant from the Watershed Improvement Review Board. The money was to be used to give incentive payments to put land in the wellhead protection areas into CRP.

11. On January 26, 2006, the Department issued the City a revised public water supply operation permit with an appendix. The appendix required the City to complete and submit a PER to the Department by June 30, 2006. By a March 8, 2006 letter, the City informed the Department that the City would continue to enter into contracts to propose the use of CRP.

12. The Department issued NOVs to the City on February 24, 2006, March 24, 2006, April 13, 2006, and December 22, 2006 for nitrate MCL violations for the months of February 2006, March 2006, April 2006, and December 2006. The NOVs required that public notification be given of the MCL violations.

13. The Field Office No. 4 (FO 4) supervisor attended the September 18, 2006 City Council meeting. By a letter dated September 25, 2006, the FO 4 supervisor informed that City that it had received eleven nitrate MCL violations since September 2003. The FO 4 supervisor urged the City to hire an engineer to complete the PER to discuss options for nitrate treatment.

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14. The Department issued the City two NOV's dated February 23, 2007 due to nitrate MCL violations during January and February 2007 and an NOV on March 21, 2007 due to a nitrate MCL violation during March 2007. The NOVs required that the City provide public notice of the nitrate MCL violations.

15. Due to continued nitrate MCL violations, the Department issued a revised water supply operation permit with an appendix on March 27, 2007. The appendix required the City to submit a PER by September 30, 2007. The Department and the City exchanged emails and letters concerning possible alternatives that the City was investigating concerning correction of the nitrate MCL violations. Alternatives considered included drilling another well, installing nitrate removal equipment, and connection to an alternate water source.

16. The Department's FO 4 conducted a sanitary survey on October 23, 2007. The FO4 environmental specialist noted in his report that the City had not complied with the requirements of the March 27, 2007 appendix to the water supply operation permit. The sanitary survey report found the City's public water supply system to be non-viable. The City was given an extension to submit the PER to December 15, 2007.

17. On December 20, 2007, the Department's Water Supply Engineering Section received the viability assessment required by the October 23, 2007 sanitary survey report. The Department was not able to approve the assessment due to the City's ongoing issues.

18. The Department issued an NOV dated February 29, 2008 to the City for failure to obtain a certified operator.

19. By a letter dated March 14, 2008, FO 4 informed the City that the Department had received the City's PER. The City was informed that it needed to make a decision concerning the alternative that it would adopt. The FO 4 letter required that the City make this decision and send documentation of its decision to FO 4 by May 15, 2008.

20. By a letter dated May 23, 2008, FO 4 stated that it was the understanding of the Department that the City had selected as its alternative connection to Page 1 Rural Water (now SWRW) and discontinuing use of the City's water treatment plant.

21. By a letter dated April 28, 2008, the Department issued an NOV informing the City that it had incurred a monitoring violation for failure to collect a coliform bacteria sample for the month of March 2008. The NOV also informed the City of a monitoring violation for failure to measure and report a monthly chlorine residual at the same time and location as the total coliform bacteria sample for the month of March 2008.

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22. By a letter dated June 2, 2008, the Department's Water Supply Engineering Section approved the PER and required completion of the project by November 2009. The City was informed that the City needed to find alternative sources of funding to complete the project by the due date if the City failed to receive a Community Development Block Grant (CDBG).

23. On June 4, 2008 the Department issued a revised water supply operation permit with an appendix. The appendix required the City to connect to SWRW, formerly known as Page 1 Rural Water, by November 20, 2009.

24. By a letter dated June 30, 2008, the Department informed the City that it had a copper action level exceedance for the monitoring period of January 1 through June 30, 2008. The City's 90th percentile for copper was 1.38 mg/L, which exceeded the copper action level of 1.3 mg/L. The letter required the City to conduct two rounds of tap water monitoring for lead and copper. The first round of monitoring was to be conducted from July 1, 2008 to December 31, 2008 while the second round of monitoring was to be conducted from January 1, 2009 to June 30, 2009.

The City experienced copper action level exceedances for the six-month periods ending June 30, 2000 and December 31, 2000. By a letter dated May 1, 2000, the Department revised the water supply operation permit to require the completion and submittal of a desktop corrosivity control study by December 31, 2000. This requirement was placed in a revised water supply operation permit.

The City submitted the corrosion control study, which was approved by the Department's Water Supply Engineering Section on March 13, 2001. The Department's approval letter required installation of a caustic feed system by June 30, 2002. The City notified the Department that the installation of the caustic soda chemical feed was complete as of November 13, 2001.

25. On October 13, 2008 the FO 4 supervisor met with the City's Mayor concerning the proposed connection to SWRW. The Mayor expressed concern that SWRW intended to connect the City with three inch lines rather than six inch lines. The Mayor maintained that this could be a deal breaker for the City.

26. In early 2009 the Iowa Department of Economic Development awarded a CDBG to SWRW on behalf of the City in order to connect the City to the regional water system. In September 2009 an engineer from the Department's Water Supply Engineering staff informed other Department staff that she had learned that the City never formally committed to SWRW accepting the proposal to connect and that SWRA had "shelved" the project since it did not want to commit any more funds without a firm commitment from the City. The Department engineer sent a letter dated September 4, 2009 requesting that the City send a written response detailing the steps the City had taken to complete the connection, a list of the remaining tasks and a schedule for completion of the project.

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27. On September 14, 2009, the FO 4 supervisor attended a City Council meeting to discuss the project for connection to the regional water system. The City's position was that there was a discrepancy between what SWRW originally offered as the project and the offer at that time of the September meeting. The City thought that SWRW originally offered to install a six inch water main and give the option to become franchised. The SWRW offer at the time of the September meeting was for a three inch water main and bulk sales of water to the City.

28. By a letter dated September 23, 2009, the City's attorney informed the Department that the City would be unable to meet the November 30, 2009 deadline for connection to SWRW. The City attorney stated in his letter that there would be a letter of intent for connection to be sent on October 5, 2009 and requested an extension for actual connection to the end of 2010.

29. On October 13, 2009, the FO 4 supervisor met with the City's mayor and the City's engineers to discuss a proposal for blending the City's well water with rural water for treatment of nitrate. On October 23, 2009, the Department was informed by SWRW that the blending proposal was not a viable option. On November 12, 2009, SWRW informed the Department that blending was not an option and that it would agree to install a three inch line to the City. SWRW's position was that if a large water main was requested the City would need to pay for it.

30. On February 26, 2010, the City attorney informed FO 4 that it was his understanding that certain City council members wanted to keep the City's well in operation and connected to the SWRW system after connection to SWRW. SWRW informed the City that a booster pump would be required to maintain pressure if the City's well were connected to the SWRW system when the City's distribution system was connected to the SWRW system. It was anticipated that the booster pump could cost an additional \$100,000. It appears that the City does not want to pay the additional amount for the booster pump and does not want to have its well not connected to the SWRW system if the City's distribution system were connected to SWRW. The Department has informed the City that it could maintain its well for fire protection purposes but not have it connected to the SWRW system after the City's distribution system is connected to SWRW. To date the Department has not been informed that a contract has been entered into between SWRW and the City to connect the City's system to SWRW.

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 (Commission) to promulgate rules relating to the operation of public water supply systems and to adopt drinking water standards to assure compliance with federal standards adopted pursuant to the federal Safe Drinking Water Act. The Commission has the authority 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 community water system.

3. Subrule 41.3(1)"b" provides that the maximum contaminant level (MCL) for nitrate is 10 mg/L as nitrogen. Subparagraph "c"(5), requires a 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. 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.

4. Subrule 567 IAC 41.2(1) requires a community water system to be sampled at for total coliform bacteria, with the number of samples required based upon the population of the system. The water supply operation permit for this facility requires this facility to collect one sample per month. When positive results are obtained in a routine sample, additional follow-up sampling is required. 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 bacteria analyses of its water supply for a period of five years. There was a monitoring violation for June 2008 for failure to sample for coliform bacteria.

5. Subrule 567 IAC 41.4(1) concerns lead, copper and corrosivity regulation by the setting of a treatment technique requirement. The subrule provides in part as follows:

41.4(1) Lead, copper, and corrosivity regulation by the setting of a treatment technique requirement. The lead and copper rules do not set an MCL, although this could be

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changed in the future. The rules set two enforceable action levels, which trigger tap monitoring, corrosion control, source water treatment, lead service line replacement, and public education if exceeded.

a. Applicability. Unless otherwise indicated, each of the provisions of this subrule applies to community water systems and nontransient noncommunity water systems (hereinafter referred to as "water systems" or "systems").

b. Action levels.

(1) Lead action level. The lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with 41.4(1)"c" is greater than 0.015 mg/L (i.e., if the "90th percentile" lead level is greater than 0.015 mg/L).

(2) Copper action level. The copper action level is exceeded if the concentration of copper in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with 41.4(1)"c" is greater than 1.3 mg/L (i.e., if the "90th percentile" copper level is greater than 1.3 mg/L).

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The City received a copper action level exceedance for the six month period ending June 30, 2008.

6. 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. Public notice is also required for acute and non-acute total coliform bacteria MCL violations under 567 IAC 42.1(2) and (3). 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.

V. ORDER

THEREFORE, the Department orders the City to comply with the following provisions in order to abate and redress violations of Department rules and the facility's public water supply operation permit:

1. You are required to either submit a signed contract to the Department within 30 days of receipt of this order detailing a schedule to connect to SWRW or submit a comprehensive PER for Department approval to the Department within 90 days of receipt of this order. The PER is required to discuss alternatives for correction of the nitrate MCL violations, to select an alternative that the City will construct, and to state a schedule for construction of the preferred alternative. You are required to inform the

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Department within 30 days of receipt of this order of whether the City has elected to sign a contract with SWRW or will submit a PER.

2. You are required to pay an administrative penalty of \$10,000.00. The administrative penalty is due within 60 days of receipt of 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 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. There have been cost savings to the City by delaying appropriate action to correct its MCL violations to ensure safe drinking water. The amount of \$3,000.00 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. Failure to ensure that nitrate levels in the water are consistently below the nitrate MCL is a threat to public health and safety. Having adequate water quality that consistently meets the mandated nitrate MCL and other drinking water parameters is central to the administration of the State's safe drinking water program. The historical fluctuations and MCL violations threaten the integrity of this program. Because of the importance of the drinking water program, \$3,500.00 is assessed for this factor in view of multiple nitrate MCL violations.

c. Culpability. There has been adequate time to comply with MCL and operation permit requirements. Multiple visits by FO4 and written communications by the Department have failed to result in compliance. To date, the City has not taken adequate action to ensure that fluctuating nitrate levels will not exceed nitrate MCL requirements. The operation permits and Department letters contained schedules for returning this facility to compliance with nitrate MCL requirements. There has been adequate time to comply with the operation permit, sanitary survey requirements, and Department letters.

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Therefore, the amount of \$3,500.00 is assessed for this factor, in view of multiple violations.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175, and subrule 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the 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 and 561 IAC chapter 7.

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 further 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.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 5 day of
March, 2010

City of Hastings-- Public Water Supply Facility No. 6527038, Terisa Thomas-- Water Supply Operations Section, Dan Stipe-- Field Office No. 4, Diana Hansen -- Legal Services Bureau, II.B.2.a., II.B.2.b., and II.B.2.c.(2).