IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF: EASTERN HILLS BAPTIST CHURCH Public Water Supply Facility No. 7820851	ADMINISTRATIVE ORDER NO. 2010-WS-07

TO: **Seth Shipman, Pastor and President**
Eastern Hills Baptist Church
16996 State Orchard Road
Council Bluffs, Iowa 51501

I. SUMMARY

This administrative order (order) is issued to the Eastern Hills Baptist Church (Eastern Hills) due to bacteria and nitrate monitoring violations. This order requires you to:

- Sample this public water supply (PWS) for coliform bacteria at least once per month, submit the sample to a certified laboratory, and perform required follow-up sampling when a positive result is obtained;
- Sample this PWS for nitrate at least once per year and submit the sample to a certified laboratory;
- Collect all additional sampling required by this PWS's operation permit; and
- Pay an administrative penalty of $3,000.00 and fees of $125.00.

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 Street, 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

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. Eastern Hills is located at 16996 State Orchard Road, Council Bluffs, Iowa 51501. Seth Shipman is the Pastor and President of Eastern Hills, which owns and operates a PWS. The PWS derives its water from one deep well. There is no treatment provided at the facility. Distribution pressure and storage is provided by a small hydropneumatic tank. The PWS serves a church and the Hilltop Child Development Center, a day care center. The daycare is licensed to serve 46 children, but the exact total number of persons served is unknown. The facility is classified by the Department as a nontransient noncommunity (NTNC) PWS system.

2. On November 16, 2006, the Department issued this PWS a water supply operation permit. The operation permit required sampling for total coliform bacteria and nitrate. On July 24, 2009, the PWS was reclassified as a NTNC PWS system. The reclassification required the PWS to hire a Grade A certified operator to monitor the treatment and distribution systems. On January 12, 2010, the PWS's operation permit was renewed. The new operation permit required the PWS to sample for coliform bacteria once per month, nitrate once per year, lead and copper between January 1 and June 30, 2010 and between July 1 and December 31, 2010, inorganic chemicals (IOCs) by June 30, 2010, synthetic organic chemicals (SOCs) by September 30, 2010, and volatile organic chemicals (VOCs) by September 30, 2010.

The events leading up to and including the alleged violations include:

- October 20, 2005: PWS received a report of a sanitary survey conducted by Mr. Mike Spetman, environmental specialist with Field Office No. 4 (FO 4). At this time, the facility was classified as a transient, noncommunity water supply (TNC).
- July 18, 2006: PWS received a monitoring violation for failure to collect a total coliform bacteria sample for the third quarter of 2006. Public notification was requested in regards to this violation.
- November 16, 2006: Operation permit was renewed with TNC sample requirements (quarterly bacteria samples and annual nitrate samples).

- January 26, 2007: PWS received a monitoring violation for failure to collect a nitrate sample for 2006. Public notification was requested in regards to this violation.
- October 29, 2007: PWS received a monitoring violation for failure to collect a total coliform bacteria sample for the third quarter of 2007. Public notification was requested in regards to this violation.
- April 28, 2008: PWS received a monitoring violation for failure to collect a total coliform bacteria sample for the first quarter of 2008. Public notification was requested in regards to this violation.
- July 16, 2008: PWS received a monitoring violation for failure to collect an annual nitrate sample due in the second quarter of 2008. Public notification was requested in regards to this violation.
- September 8, 2008: PWS was sent a reminder letter of past due public notification for total coliform bacteria monitoring violations that occurred for the third quarter of 2007 and for the first quarter of 2008.
- October 21, 2008: PWS received a notice of violation for failure to conduct public notification that was due by October 8, 2008. Public notification was requested in regards to this violation.
- January 22, 2009: PWS received a notice of a monitoring violation for failure to collect a total coliform bacteria sample for the fourth quarter of 2008. Public notification was requested in regards to this violation.
- July 9, 2009: PWS received a notice of violation for failure to conduct public notification for the total coliform bacteria monitoring violation that occurred in the fourth quarter of 2008. This was due April 25, 2009. Public notification was requested in regards to this violation and a prior notice of violation issued on October 21, 2008.
- July 24, 2009: FO 4 issued this PWS a sanitary survey report. This report reclassified the PWS as an NTNC water supply. The reclassification was necessary due to the discovery by FO 4 staff that there was also a daycare operated on site. An NTNC is defined as a PWS system other than a community water system which regularly serves at least 25 of the same persons four hours or more per day, for four or more days per week, for 26 or more weeks per year. This PWS met this definition.
- July 27, 2009: PWS received a monitoring violation for failure to collect a total coliform bacteria sample for the second quarter of 2009. Public notification was requested in regards to this violation.
- July 28, 2009: A revised operation permit was sent to this PWS to change monitoring to include additional NTNC requirements. The revised operation permit required monthly sampling for total coliform bacteria.

- July 30, 2009: PWS received a letter from FO 4 stating the requirement to obtain the services of a Grade A operator due to the recent reclassification of the PWS as an NTNC. The letter stated that a Grade A operator was required to be obtained by no later than November 1, 2009.
- September 21, 2009: PWS received a monitoring violation for failure to collect a monthly total coliform bacteria sample for August 2009. Public notification was requested in regards to this violation.
- October 1, 2009: PWS was issued a notice for four repeat samples following a total coliform positive routine collected on September 30, 2009.
- October 9, 2009: PWS was issued a non-acute total coliform bacteria MCL violation for September 2009. Three out of four repeat samples tested positive for total coliform bacteria. Public notification was requested for this MCL violation.
- October 9, 2009: A revised operation permit was sent to the PWS to extend the monitoring requirements for lead and copper, SOCs, VOCs, and IOCs to the first quarter of 2010 at Pastor Shipman's request. Coliform bacteria monitoring remained monthly.
- October 15, 2009: PWS was issued an Application for Renewal for its operation permit. A response was due by November 30, 2009.
- November 25, 2009: PWS was issued a monitoring violation for failure to collect five routine samples following the previous month's non-acute MCL violation. Public notification was requested in regards to this violation.
- December 14, 2009: PWS was sent a delinquency letter for failure to submit its operation permit renewal application to the Department. It was required to submit the application by no later than January 31, 2010.
- December 17, 2009: PWS was issued a monitoring violation for failure to collect a monthly total coliform bacteria sample for November 2009. Public notification was requested in regards to this violation.
- December 17, 2009: FO 4 sent letter advising Pastor Shipman that despite Department efforts to address this PWS's monitoring violations, violations continued to occur. The FO 4 letter stated that further violations would result in legal action. The FO 4 letter reminded the PWS of the requirement to hire a certified operator by January 1, 2010.
- January 12, 2010: PWS was issued a revised operation permit to spread out monitoring requirements throughout the first three quarters of 2010, per its request. This was the second extension for this monitoring.
- February 17, 2010: PWS was issued a monitoring violation for failure to collect a total coliform bacteria sample for January 2010. Public notification was requested in regards to this violation.

- April 22, 2010: PWS was issued a monitoring violation for failure to collect an annual nitrate sample due in the first quarter 2010. Public notification was requested in regards to this violation.

Sampling Required for Lab Analysis

Coliform Bacteria

3. The water supply operation permit currently issued for this facility requires this facility to be monitored for bacteria at least once per month. Department rules also require that when a routine coliform bacteria sample is analyzed as containing coliform bacteria, additional recheck and routine samples shall be taken. These samples must be analyzed at a certified laboratory.

4. This facility owner failed to take a coliform bacteria sample for the third quarter of 2006, the third quarter of 2007, the first quarter of 2008, the fourth quarter of 2008, and the second quarter of 2009 while this facility was operating as a TNC PWS. After the PWS was reclassified as a NTNC PWS, this facility was required to take monthly samples for coliform bacteria. This facility owner failed to take a coliform bacteria sample for August and November of 2009 and January of 2010. The facility owner was notified of these coliform bacteria monitoring violations by letters dated July 18, 2006, October 29, 2007, April 28, 2008, January 22, July 27, September 21, and December 17 of 2009, and February 3, 2010. The letters and public notice instructions sent with the letters additionally advised the facility owner that public notification was required to be given and proof of public notice was required to be submitted to the Department. This facility was also issued a non-acute total coliform bacteria MCL violation for October 2009. By letter dated October 9, 2009, five repeat samples and public notification were required for this violation. Proof of public notice was required to be submitted to the Department. The Department received proof that public notice for all coliform bacteria monitoring violations was given on May 13, 2010.

Nitrate

5. The water supply operation permit issued for this facility owner requires annual nitrate monitoring. Nitrate samples are required to be analyzed at a certified laboratory.

6. This facility owner failed to take nitrate samples for 2006, 2008, and 2010. By letters dated January 26, 2007, July 16, 2008, and April 22, 2010, the facility owner was notified of the nitrate 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 received proof that public notice for these violations was given on May 13, 2010.

Annual Water Supply Fee

7. On June 25, 2009, an invoice was sent to this facility owner for fiscal year 2010 for a $25.00 operation fee. The fee was required to be remitted by September 1, 2009. A second notice was sent to this facility owner on September 3, 2009 advising that the fee had not been received and that the amount is due by September 30, 2009. 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.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.172 designates this Department as the state agency authorized to conduct the PWS program. Iowa Code section 455B.171 defines a PWS 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 Environmental Protection Commission (Commission) to promulgate rules relating to the operation of PWS 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 PWS. The Commission has adopted such rules at 567 IAC chapters 40- 43.

2. Rule 567 IAC 40.2(455B), further defines PWS by defining "community water system" as a PWS 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 PWS. An NTNC is defined as a PWS system other than a community water system which regularly serves at least 25 of the same persons four hours or more per day, for four or more days per week, for 26 or more weeks per year. This facility is an NTNC water system due to the daycare operated at the church.

Bacteria Monitoring

3. Subrule 567 IAC 41.2(1) requires a noncommunity water system to be sampled for coliform bacteria monthly. More frequent sampling may be required. When positive results are obtained in a routine sample, additional follow-up sampling is 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.

4. Subrule 83.1(3) requires the samples to be analyzed for coliform bacteria 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 PWS system to

retain records of bacteria analyses of its water supply for a period of five years. This facility has failed to properly sample for coliform bacteria, as specified above in Section III. Statement of Facts.

Nitrate Monitoring

5. Subrule 41.3(1), subparagaraph "c"(5), requires a 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 once per year 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.

6. Subrule 83.1(3) requires the samples to be analyzed for nitrate 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 PWS system to retain records of chemical analysis of its water supply for a period of ten years. This facility has failed to properly sample for nitrate, as stated above in Section III. Statement of Facts.

Public Notification of Violations

7. 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.

8. The public 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

9. Iowa Code section 455B.183A(2)"b" authorized the Commission to adopt fees for operation permits for PWS systems. This Code section states that all PWS systems shall be assessed a fee of at least $25.00. Subrule 43.2(1) was adopted pursuant to this code section. This subrule requires payment of a nonrefundable fee for the operation of a PWS by September 1, of each year. For NTNC systems a minimum fee of $25.00 is assessed. 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 of $25.00 and late fee of $100.00 for fiscal year 2010.

V. ORDER

THEREFORE, the Department orders Eastern Hills to comply with the following provisions in order to abate and redress violations of Department rules and the facility's PWS operation permit:

1. You are required to monitor this facility on a monthly basis for coliform bacteria and to maintain full compliance with the coliform bacteria monitoring requirements. This includes taking all required repeat and additional routine samples required by the Department in the event of an unsatisfactory coliform bacteria sample.

2. You are required to sample this PWS for nitrate at least once per year, 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.

3. You are required to sample for lead and copper, IOCs, SOCs, and VOCs in accordance with the requirements of your operation permit. Continue sampling the drinking water provided by this PWS in full compliance with the requirements of 567 IAC sections 41.2(1)"a", "b", and "c" and 41.2(2).

4. You are required to submit a detailed report concerning actions that this PWS will take to correct monitoring violations to Thad Nanfito, Field Office No. 4, Iowa Department of Natural Resources, 1401 Sunnyside Lane, Atlantic, Iowa 50022 by November 1, 2010. You are also required to submit all required as-builts for construction of existing water treatment units for which construction permits were not obtained by this PWS to Water Supply Engineering, Iowa Department of Natural Resources, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309 by November 1, 2010.

5. You are required to pay an administrative penalty of $3,000.00. You also owe $125.00 for the annual water supply fee and late fee for fiscal year 2010. The administrative penalty and fees shall be paid to the Department within 60 days of your 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 is determined as follows:

a. Economic Benefit. There have been cost savings to the facility by not collecting all required coliform bacteria and nitrate samples. The total economic benefit assessed by this order is set at $500.00.

b. Gravity of the Violation. One of the factors the Department considers 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, the Iowa Code authorizes substantial civil penalties. 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 facility serves a daycare with a vulnerable population of children, which makes the need for monitoring even more important. Because of the importance of the safe drinking water program and self monitoring to the safe drinking water program, the Department assesses $1,000.00 for this factor, due to multiple violations.

c. Culpability. This facility has repeatedly failed to take action in order to bring the facility into compliance despite the issuance of water supply operation permit and notice of violation letters. This order assesses the amount of $1,500.00 due to multiple violations, for this factor.

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 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. constitutes full satisfaction of all requirements pertaining to the specific violations described in this order. Failure to comply with this administrative

order may result in referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

PATRICIA L. BODDY, ACTING DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23 day of Sept, 2010

Eastern Hills Hills Baptist Church- Water Supply Facility No. 7820851, Terisa Thomas-Water Supply Operations Section, Thad Nanfito - Field Office No. 4, Diana Hansen-Legal Services Bureau, II.B.2.a(1), II.B.2.a(2), II.B.2.e, II.B.2.f., II.B.2.g.