IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF:	ADMINISTRATIVE ORDER NO. 2016-WS-05
Mary Jo Engle and Doug Engle DBA Jo's Longbranch Bar and Grill	
Public Water Supply Facility No. 4515202	

TO: **Mary Jo Engle and Doug Engle, Co-owners**
Jo's Longbranch Bar and Grill
4413 Valley Avenue
Cresco, IA, 52136

I. SUMMARY

This administrative order (order) is issued to Mary Jo Engle and Doug Engle, owners, Jo's Longbranch Bar and Grill (Longbranch), by the Iowa Department of Natural Resources (Department). This order is issued to resolve violations of the state's drinking water requirements for public water supply systems (PWSs). This order requires you to:

1. Sample this PWS for coliform bacteria at least once per month, submit the sample to a laboratory certified by the Department, and perform required follow-up sampling when a positive result is obtained;
2. Sample this PWS for nitrate quarterly and submit the sample to a laboratory certified by the Department;
3. Comply with all monitoring requirements and all other conditions of this facility's PWS operation permit (permit);
4. Submit monthly operation reports (MORs) to the Department's Field Office No. 1 (FO 1) by the 10th of the month following the reporting month. The reports are required to be complete and accurate and contain all required information. Submit all required additional information to FO 1 as requested by FO 1 to document the information on the submitted MOR and to confirm any of the information reported on the MOR within the timeframe requested by FO 1;
5. Provide public notice as required by this order and as required by the Department in the future; and

6. Pay an administrative penalty of $4,500.00 and fees of $750.00 to the Department within 60 days of receipt of this order.

Any questions regarding this order should be directed to:

Relating to technical requirements:
Michele Smith
Environmental Specialist
IDNR Field Office No. 1
909 W. Main Street
Manchester, Iowa 52057
Ph: 563/927-2640

Relating to legal requirements:
Diana Hansen
Attorney at Law
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/725-8248

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. Mary Jo Engle and Doug T. Engle own and operate Jo's Longbranch Bar and Grill (Longbranch) located at 22315 West Main Street, Cresco, Iowa 52136. This facility provides water to a restaurant, a hog buying station's office and one residence. It is located in Howard County, Iowa. The facility has a food license and a liquor license. The facility is classified as a transient noncommunity PWS.

2. The PWS system derives its water from one well, which was drilled to a depth of 120 feet in 1982. The well was cased to a depth of 56 feet with a 6 inch casing and then cased from 56 to 80 feet with a 5 ¼ inch casing that is equipped with a rope seal. The well is equipped with a pitless adaptor and submersible pump capable for providing water at a rate of 10 gallons per minute (GPM). This PWS system was required to install continuous disinfection under a prior owner due to several samples that were tested as containing fecal bacteria.

3. On September 12, 2012, Field Office No. 1 (FO 1) staff conducted a technical assistance visit. The purpose of the visit was to provide technical assistance to the

owners to help them comply with self-monitoring and reporting requirements. The report of the investigation noted that the PWS had failed to submit MORs to FO 1 for more than 12 months. The owners were advised concerning the self-monitoring and reporting requirements found in the water supply operation permit (permit) for this facility and the requirement for timely submittal of MORs to FO 1 on a monthly basis. Mary Jo Engle stated that they were submitting the reports to Des Moines every month. Monthly report forms and mailing labels were provided during the visit. The owners were instructed on how to complete the forms and told to only enter data that was actually collected. Sampling locations and techniques for collecting samples for chlorine residuals, nitrate and bacteria were reviewed with the owners.

4. The investigation report from the September 12, 2012 technical assistance visit required the facility to submit the required MORs with all required information to FO 1 timely each month. The investigation report also required the facility to install a smooth raw water tap at the treatment plant, to install a flow measurement device, to obtain an adequate test kit for measurement of the chlorine residuals that the system was maintaining, to install an appropriately sized day tank having a method to measure chlorine usage, to replace the tubing for the peristaltic pump per manufacturer recommendations, and to provide an air gap between the softener discharge line and the floor drain. The PWS was instructed to use the sample taps identified in the investigation report for collecting the water samples for this PWS system.

5. On May 23, 2013, FO 1 made a technical assistance visit to this PWS facility. FO 1 staff met with owner Doug Engle concerning the information required on MORs and the due date for MORs each month. The use of the excel spreadsheet to complete MORs and e-filing was discussed with Mr. Engle. The chlorinator was operating during the visit. The chlorine residual was tested by FO 1. Mr. Engle stated that with the contact tank, flow meter, and chlorine pump tied into the flow meter, chlorine residuals were consistent. FO 1 advised him to begin recording the amount of chlorine used weekly and to increase the chlorine concentration to maintain 1.5 mg/l or greater at all times.

6. On January 5, 2010, the Department's Water Supply Operation Section (WSOS) renewed the water supply operation permit (permit) for the PWS system. The permit required monthly sampling for total coliform bacteria and quarterly (four times per year) sampling for nitrate. Subsequent renewals of the permit on August 9, 2013 and February 26, 2015 have required monthly coliform bacteria sampling, quarterly nitrate sampling, and monthly submittals of MORs.

Coliform Bacteria Monitoring and Reporting

7. The January 5, 2010 permit and subsequent permit renewals on August 9, 2013 and February 26, 2015 have required the PWS system for this facility to be monitored for coliform 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 are required to be analyzed at

a laboratory certified by the Department to conduct testing of Safe Drinking Water Act (SDWA) samples for coliform bacteria.

8. This PWS failed to take the required coliform bacteria samples on numerous occasions in 2006, 2007, and 2008 and was notified of coliform bacteria monitoring violations by notice of violation (NOV) letters. This PWS was sent numerous NOV letters for failure to sample for coliform bacteria during this period. Public notice instructions sent with the NOV letters additionally advised this PWS that public notification was required to be given and that proof of public notice was required to be submitted to the Department. In 2009 this PWS collected samples to be tested for coliform bacteria but did not do so in accordance with an approved sampling plan for the facility. FO 1 issued NOVs on February 16, 2009 and April 23, 2009 for coliform bacteria due to this deficiency.

Nitrate Monitoring Requirements

9. The current permit reissued on February 26, 2015 for this PWS requires quarterly (four times per year) nitrate monitoring. The prior permit issued on August 9, 2013 also required quarterly nitrate monitoring. Nitrate samples are required to be analyzed at a laboratory certified by the Department to conduct testing of SDWA samples for coliform bacteria.

10. The WSOS notified the PWS of a nitrate monitoring violation through NOV letters sent in 2006, 2007, 2008 and 2009. The NOV letters were issued due to failure to sample for nitrate quarterly as required by the permit. The NOV letters and public notice instructions sent with the letters advised the facility owner that public notification was required to be given for the nitrate monitoring violations and that proof of giving public notice was required to be furnished to the Department.

Public Notice Requirements

11. This PWS has received numerous coliform bacteria monitoring violations and nitrate monitoring violations from 2006 through 2009. The information sent with the NOV letters that informed this PWS of monitoring violations provided instructions and a sample for giving public notification. Despite public notice instructions and a sample notice, this PWS failed to give public notice of monitoring violations. The Department has not received proof of providing public notification for any of the monitoring violations despite the requirement to provide public notification and to provide proof to the Department that public notice was provided and despite public notice reminder letters from the Department.

Annual Water Supply Fee

12. The Department sent the annual water supply fee (fee) letters and invoices for 2016. The letters advised this PWS that payment of the $25.00 fee for the 2016 fiscal year was

due by September 1, 2015. The fee was not remitted timely as required by the invoice. The Department sent a second notice to this PWS advising that the fee had not been received. Since the fee for fiscal year 2016 was not paid timely, a late fee of $100.00 has been assessed, increasing the fee due to $125.00 for fiscal year 2016. This facility also did not pay the fee and late fee for fiscal years 2007, 2008, 2009, 2011, and 2012.

Monthly Operation Reports

13. On January 22, 2015, FO 1 sent an NOV letter concerning failure to submit MORs to FO 1 timely. On April 15, 2015, FO 1 sent an NOV letter to this PWS due to failure to submit MORS for January 2015, February 2015 and March 2015. On July 13, 2015, FO 1 sent an NOV to this PWS due to failure to submit MORs for April 2015, May 2015, and June 2015. On October 21, 2015, FO 1 sent an NOV to this PWS due to failure to submit MORs for July 2015, August 2015, and September 2015. On January 11, 2016, FO 1 issued an NOV letter to this PWS for failure to submit MORs for October, November and December 2015. The NOV letters included instructions for giving public notification. The instructions required this facility to give public notification and submit proof to the Department that public notice was given.

14. This facility has a history of not submitting MORs timely as demonstrated by NOVs to this system from FO 1 from 2006 to date for failure to submit MORs timely. This PWS was sent numerous NOV letters for failure to sample for coliform bacteria during this period. Public notice instructions sent with the NOV letters additionally advised this PWS that public notification was required to be given and that proof of public notice was required to be submitted to the Department.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.172 makes this Department the agency of the state 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 SDWA. 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. This facility is a transient noncommunity water system.

3. Rule 567 IAC 40.2(455B) further defines a "transient noncommunity water system" (TNC) as "a noncommunity water system that does not regularly serve at least 25 of the same persons over six months per calendar year." This facility is a transient noncommunity water system.

Public Water Supply Operation Permit

4. 567 IAC 43.2(2) indicates "Except as provided in 43.2(3) and 43.2(4), no person shall operate any public water supply system or part thereof without, or contrary to any condition of, an operation permit issued by the director." This facility has operated a PWS system contrary to conditions of its permit.

Coliform Bacteria Monitoring

5. Department subrule 567 IAC 41.2(1) requires a transient noncommunity water system to be sampled for coliform bacteria at least once per calendar quarter. More frequent sampling may be required and was required by the revised water supply operation permit issued for this facility. 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.

6. Subrule 83.1(3) requires samples to be analyzed for coliform bacteria at a laboratory certified by the Department to conduct testing of SDWA samples. 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 had repeated coliform bacteria monitoring violations.

Nitrate Monitoring

7. Subrule 41.3(1), subparagaraph "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 once per year after test results for 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.

8. Subrule 83.1(3) requires the samples to be analyzed for nitrate at a laboratory certified by the Department to conduct tests of SDWA samples. 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.

Public Notification of Violations

9. Subrule 567 IAC 42.1(4) requires the owner or operator of a PWS 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.

10. 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)"c", provides that the PWS shall submit a representative copy of the public notice to the Department within ten days of completion of the notice. This PWS did not comply with public notice requirements for failure to monitor on repeated occasions.

Annual Water Supply Fee

11. Iowa Code section 455B.183A(2)"b" authorized the Commission to adopt fees for operation permits for PWS systems. This Iowa Code section imposed a $25.00 fee on PWS systems not owned or operated by a community and serving a transient population. Subrule 43.2(1) was adopted pursuant to this Iowa Code section. This subrule requires payment of a nonrefundable fee for the operation of a PWS 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. The $25.00 annual fee for fiscal year 2016 was due by September 1, 2015 and has not been paid timely. The annual fee and late fee now total $125.00 for fiscal year 2016. This facility additionally did not pay annual fees and late fees due for fiscal years 2007, 2008, 2009, 2011, and 2012.

Monthly Operation Reports

12. All PWS systems are required by 567 IAC 42.4(3)"a"(1) to complete MORs. The permit for this facility requires that this PWS submit its MOR to FO 1 by the 10th day after the preceding month. The MOR is required to include the information required by the facility's permit and by Department rules.

V. ORDER

THEREFORE, the Department orders Longbranch 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 included in the permit and in letters from the Department. 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 quarterly as required by the permit, submit the samples to a laboratory certified by the Department 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 provide public notice as required by the Department for the violations that occurred in 2015 and 2016 and for any future violations for failure to submit MORs timely and coliform bacteria and nitrate monitoring.

4. You are required to comply with all requirements of a PWS system and the permit reissued for this PWS.

5. You are required to complete MORs accurately and correctly with all required information and to submit MORs to FO 1 by the 10th of the month following the reporting month. Submit all required additional information to FO 1 as requested by FO 1 to document the information on the submitted MORs and to confirm any of the information reported on the MOR within the timeframe requested by FO 1. All data generated at the facility to comply with the self-monitoring requirements must be maintained at the facility for inspection by the Department and must be in a form that allows easy retrieval and interpretation.

6. An administrative penalty of $4,500.00 and annual fees of $750.00 are assessed by this order. The administrative penalty and fees are required to 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.

a. Economic Benefit. There have been cost savings to the facility by not completing and submitting MORs to FO 1 timely and on a monthly basis as required by the permit for this PWS. There have also been cost savings in not providing public notice as required by Department rules and NOVs sent to facility owners. There have also been cost savings in not submitting the annual water supply fees to the Department. The annual water supply fees are assessed in Paragraph V of this order. 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. Issuance of an administrative order that includes an administrative penalty appears to be as the most equitable and efficient means of resolving the matter. Because of the importance of the safe drinking water program, self-monitoring and reporting to the safe drinking water program, the Department assesses $2,000.00 for this factor, due to multiple violations.

c. Culpability. The facility owner has received numerous contacts by the Department by phone, letters, and FO 1 site visits, which have been disregarded. Many NOV letters were issued to this facility for failure to submit MORs on a monthly basis. WSOS has sent yearly reminders and follow-up letters concerning submittal of water supply operation fees, which have been disregarded. The responsible party has been made fully aware of the responsibilities of a PWS by FO 1 and WSOS. Despite these contacts, this PWS remains non-compliant with the stated rules and the permits issued for this facility. The amount of $2,000.00 is assessed for this factor, due to multiple violations.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175, and subrule 561 IAC 7.4(1), as adopted 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 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

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

Chuck Gipp

CHUCK GIPP
DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 18th day of May, 2016

Mary Jo Engle and Doug Engle dba Jo's Longbranch Bar and Grill- Water Supply Facility No. 4515202 , Marie Leat & Anne Lynam- Water Supply Operations Section, Michele Smith & Amber Sauser- Field Office No. 1, Diana Hansen- Legal Services Bureau, II.B.2.a(1), II.B.2.a(2), II.B.2, II.B.2.f, and II.B.2.g.