

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF: Hilltop Road Association # 1 Public Water Supply Facility No. 7048392	ADMINISTRATIVE ORDER NO. 2016-WS-06
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TO: Missy Forneau, President
Hilltop Road Association # 1
2281 North Hilltop Drive
Muscatine, Iowa 52761

I. SUMMARY

This administrative order (order) is issued to Hilltop Road Association # 1 (Hilltop), by the Iowa Department of Natural Resources (Department). This order is issued to resolve violations for failure to monitor for coliform bacteria, for failure to submit consumer confidence reports timely, for failure to have a bacteria sampling plan, and for failure to provide public notification. This order assesses a penalty of \$5,000.00.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Jim Kacer
Environmental Specialist
Iowa Department of Natural Resources
Field Office No. 6
1023 West Madison
Washington, Iowa 52353
Ph: 319/653-2135

Relating to legal requirements:

Diana Hansen
Attorney at Law
Iowa Department of Natural Resources
Legal Services Bureau
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

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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. Missy Fourneau is President of Hilltop Road Association # 1, also known as Hilltop Farm Subdivision (Hilltop). Hilltop is a housing subdivision located on the north side of 231st Street approximately 1.8 miles west of Muscatine, Iowa in Muscatine County. Hilltop owns and operates a community water supply with 17 service connections and approximately 45 residents.

2. This public water supply system (PWS) obtains its water from two wells. Well No. 1 is 92 feet deep and was constructed in 1971. This well is located in a well house. Well No. 2 is 251 feet deep and was constructed in 1984. This well is not located in the well house. The piping from both wells connects inside the well house prior to the storage tanks. The facility does not utilize treatment equipment to treat water. The facility has four 86-gallon hydropneumatic storage tanks located inside the well house near Well No. 1. The total storage capacity is 344 gallons.

3. On August 27, 2012, the Department's Water Supply Operation Section (WSOS) renewed the water supply operation permit (permit) for the PWS system for Hilltop. The permit required monthly sampling for total coliform bacteria and annual (once per year) sampling for nitrate.

4. On September 27, 2015, the WSOS renewed the permit for this PWS. The permit required monthly sampling for coliform bacteria and annual (once per year) sampling for nitrate.

Coliform Bacteria Monitoring and Reporting

5. The permit for this PWS requires this PWS system 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 in accordance with 567 IAC chapter 83.

6. This PWS failed to take the required monthly coliform bacteria samples on at least two occasions and was informed of these monitoring violations by notice of violation (NOV) letters. The NOV letters were issued for failure to monitor for coliform bacteria

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for July 2015 and November 2015. The NOVs for these coliform bacteria monitoring violations were issued on August 18, 2015 and December 15, 2015. 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. The Department has not received proof that public notice for these monitoring violations was given. An NOV was issued on December 15, 2015 for failure to provide public notice of the July 2015 coliform bacteria monitoring violation by the due date of November 21, 2015. Public notice for the November 2015 coliform bacteria monitoring violation was due by March 18, 2016. The Department has not received confirmation that public notice was given as required for this monitoring violation. A public notice violation was issued for failing to comply with public notice requirements for this monitoring violation.

Bacteria Sampling Plan

7. This PWS is required to have a bacteria sampling plan in accordance with Department subrule 567 IAC 41.2(1)“c”1. Field Office No. 6 (FO 6) notified this PWS that it was required to have a bacteria sampling plan by an April 8, 2014 letter and sanitary survey report for a sanitary survey conducted on March 21, 2014. The sanitary survey report also stated that the facility had not provided monitoring records for review during the sanitary survey as required by rule. On April 29, 2015, FO6 issued a treatment technique violation letter to this PWS requiring it to submit a bacterial sampling plan within 10 days of receipt of the letter. To date this facility has not complied with the rule requirements for sampling plans.

CCR

8. Subrule 567 IAC 42.3 pertains to CCRs. This rule applies to all PWS systems. The purpose of this rule is to establish the minimum requirements for the content of annual reports that community water systems must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize the risks, if any, from exposure to contaminants in the drinking water in an accurate and understandable manner. The Department did not receive the CCR and CCR certification form required to be submitted by this facility timely for four years. This includes reports for the calendar years of 2011, 2012, 2013 and 2014. Each report was required to be submitted by July 1 of the subsequent year along with the required CCR certification form.

An NOV was issued on September 15, 2014 for failure to produce the 2013 CCR by July 1, 2014. On September 10, 2015, an NOV was issued for failure to submit the 2014 CCR that was due by July 1, 2015. The 2013 CCR was received in March 2015. The 2011 CCR was received in September 2012 instead of by the required date of July 1, 2012. The 2012 CCR that was due by July 1, 2013 was never received by the Department.

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Public Notice Requirements

9. This PWS has received two coliform bacteria monitoring violations since January 1, 2015. The information sent with the NOV letters that informed this PWS of July 2015 and November 2015 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 these monitoring violations. The Department has not received proof of providing public notification for these 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.

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 community water system.

Coliform Bacteria Monitoring

3. Subrule 567 IAC 41.2(1) requires a community water system that serves a population of 25 to 1,000 persons to be sampled for coliform bacteria at a minimum of five routine samples per month unless the Department determines, after completing sanitary surveys, that the monitoring frequency should be a minimum of one sample per month. 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 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

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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. These records are to be made available to the Department during a sanitary survey.

Bacteria Sampling Plan

5. Subrule 567 IAC 41.2(1)“c”(1) provides the requirements for a routine sampling plan. This subrule provides as follows:

c. Monitoring requirements.

(1) Routine total coliform monitoring.

1. Public water supply systems must collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan. The plan shall be reviewed or updated by the public water supply system every two years and shall be retained on file at the facility. Major elements of the plan shall include, but are not limited to, a map of the distribution system, notation or a list of routine sample location(s) for each sample period, resample locations for each routine sample, and a log of samples taken. The plan must be made available to the department upon request and during sanitary surveys and must be revised by the system as directed by the department.

CCR

6. Subrule 567 IAC 42.3 pertains to CCRs. This rule applies to all community PWS systems. The purpose of this rule is to establish the minimum requirements for the content of annual reports that community water systems must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize the risks, if any, from exposure to contaminants in the drinking water in an accurate and understandable manner. The Department did not receive the CCRs for 2011, for 2012, for 2013, or 2014 timely. The CCRs for 2012 and 2014 have not been submitted to the Department to date.

Public Notification of Violations

7. 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. 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 along with a completed certification form. This PWS did not

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comply with public notice requirements for failure to monitor for 2015 coliform bacteria monitoring violations and for other violations.

Public Water Supply Operation Permit

8. 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.” Subrule 43.2(5)“a” provides that operation permits may contain such conditions as are deemed necessary by the director to ensure compliance with all applicable rules of the Department, to ensure that the PWS system is properly maintained, to ensure that potential hazards to the water consumer are eliminated promptly, and to ensure that the requirements of the Safe Drinking Water Act are met. This facility has operated a PWS system contrary to conditions of its permit.

V. ORDER

THEREFORE, the Department orders Hilltop 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. 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 provide public notice of the bacteria monitoring violations that occurred in 2015 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. You are required to provide public notice as required by the Department for any future coliform bacteria monitoring violations.

3. You are required to comply with all requirements of a PWS system and the permit reissued for this PWS. This includes filing monthly operation reports (MORs) timely with FO 6.

4. You are required to develop and implement a written sample siting plan for coliform bacteria. A template for this plan can be found at <http://www.iowadnr.gov/InsideDNR/RegulatoryWater/DrinkingWaterCompliance/Forms.aspx>. You are required to submit a copy of this plan to FO 6 for review and approval within 30 days of receipt of this order.

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5. You are required to provide copies of the monitoring records for this PWS to FO 6 for review as required by WSOS and FO 6.

6. You are required to complete and distribute to the homeowners served by Hilltop a CCR for 2014 within 30 days of receipt of this order. Send a copy of the 2014 CCR and the certification form to the Department within 40 days of receipt of this order.

7. You are required to pay an administrative penalty of \$5,000.00. The administrative penalty is 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 taking the samples required by the permit for this facility. The facility has avoided paying for the cost of sample analysis and the cost of shipping the samples to a certified laboratory. There have also been avoided costs for the savings in time not spent collecting and preparing samples for shipping, and for the time not spent in preparing, posting, and delivering the CCRs and public notices to residents, and mailing the CCR and public notice certifications to the Department. The total economic benefit assessed by this order is set at \$100.00.

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.

Bacterial sampling plans are required in order to ensure that samples are collected in the proper location, at the proper frequency, and using the proper technique. Representative samples are collected in order to determine whether the water meets safe drinking water standards. Failure to maintain a bacterial sampling plan is inconsistent with the primary goals of the SDWA and represents an unnecessary and unknowing potential exposure to customers of the system that are depending on the homeowners association to provide safe drinking water.

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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 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 \$3,000.00 for this factor, due to multiple violations.

c. Culpability. This facility has received numerous contacts by the Department by phone, letters, and field office site visits, which have been disregarded. The responsible party has been made fully aware of the responsibilities of a PWS. Despite these contacts, this PWS remains non-compliant with the stated rules and the permit issued for this facility. The facility owner has not provided a copy of the bacteria sampling plan as required by the April 8, 2014 cover letter and report of the sanitary survey conducted on March 21, 2014, and the treatment technique violation letter issued April 29, 2015. This facility did not issue its 2013 CCR by July 1, 2014 as required. The Department finally received this CCR in March 2015. This facility never submitted the 2012 CCR, which was due by July 1, 2013, to the Department. The 2011 CCR that was due by July 1, 2012 was received by the Department in September 2012. Additionally, this facility was issued an NOV for failure to submit the 2014 CCR, which was due by July 1, 2015. The facility was issued NOVs for monitoring violations for failure to sample for coliform bacteria in July 2015 and November 2015. The NOVs required the facility to issue public notice for these monitoring violations. This facility was issued an NOV for failure to give public notice of the July 2015 coliform bacteria monitoring violation that was due by November 21, 2015. This facility was issued an NOV for failure to give public notice of the November 2015 coliform bacteria monitoring violation that was due by March 18, 2016. The amount of \$1,900.00 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

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 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.

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CHUCK GIPP
DIRECTOR
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Dated this 9th day of

June, 2016

Hilltop Road Association # 1- Water Supply Facility No. 7048392, Cecilia Naughton-
Water Supply Operations Section, Jim Kacer- Field Office No. 6, Diana Hansen- Legal
Services Bureau, II.B.2.a(1), II.B.2.f, II.B.2.g, and II.C.4.