

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**Mary Jo Engle and Doug Engle dba
Jo's Longbranch Bar and Grill**

Public Water Supply Operation permit No.
4515202

**ADMINISTRATIVE
CONSENT ORDER
NO. 2020-WS-02**

TO:

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

I. SUMMARY

This administrative consent order (order) is entered into between Mary Jo Engle and Doug Engle dba Jo's Longbranch Bar and Grill (Jo's Longbranch) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order concerning the public water supply system serving Jo's Longbranch.

Any questions or responses regarding this order should be directed to:

Relating to technical requirements:

Michele Smith

Iowa Department of Natural Resources
909 W Main St STE 4
Manchester, IA 52057

515/9272640

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law

Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street

Des Moines, Iowa 50319-0034
Ph: 515/725-8244

Payment of penalty to:

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

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10 (455B), which authorize the director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts.

1. Pursuant to Public Water Supply Operation permit No. 4515202 (permit) Jo's Longbranch provides drinking water to one residence, a hog buying station, and a restaurant via a drinking water well located at Section 10-Township 100-Range 11W, which is locally known as 22315 West Main Street, Cresco, Iowa. Jo's Longbranch is a transient non-community public water supply which uses groundwater as its source. This water is required to be treated with chlorination. The permit requires daily monitoring for chlorine and monthly testing for coliform bacteria.
2. On May 18, 2016, Administrative Order No. 2016-WS-05 (previous order) was issued to Jo's Longbranch by the Department.
3. In 2016, subsequent to the issuance of the previous order, Jo's Longbranch failed to submit the Monthly Operation Reports (MORs) by the deadline established in its permit during the months of April through December. A Notice of Violation (NOV) was sent for each violation. Additionally, these violations were not public noticed. A Public Notice Violation (PNV) was issued for failure to submit a copy of the public notification and/or delivery certification for the above violations.
4. In 2017, Jo's Longbranch failed to submit the MORs by the deadline established in its permit during the months of January, March, April, May, June, July, September, October, November and December. A NOV was sent for each violation. Additionally, these violations were not public noticed. A PNV was issued for failure to submit a copy of the public notification and/or delivery certification for the above violations.
5. On March 10, 2017, a telephone conference call was held between the Department and Jo's Longbranch to discuss the above referenced violations.
6. In 2018, Jo's Longbranch failed to submit the MORs by the deadline established in its permit during the months of January, February, March, April, May, June, July, September, October, November and December. A NOV was sent for each violation. In addition these violations were not public noticed. A PNV was issued for failure to submit a copy of the public notification and/or delivery certification for the above violations.

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7. On February 22, 2018, a letter was sent to Jo's Longbranch for failure to timely renew its permit.
8. On July 24, 2019, the Department visited Jo's Longbranch and provided onsite technical assistance.
9. On August 16, 2018, the Cerro Gordo County Health Department went to Jo's Longbranch to remind it to submit the required MORs.
10. To date, Jo's Longbranch failed to submit the MORs by the deadline established in its permit during the months of January through November. A NOV was sent for each violation. In addition these violations were not public noticed. A PNV was issued for failure to submit a copy of the public notification and/or delivery certification for the above violations.

IV. CONCLUSIONS OF LAW

The parties agree that the following conclusions of law are applicable to this matter.

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 Environmental Protection Commission (Commission) to promulgate rules relating to the operation of public water supply systems, to adopt drinking water standards to assure compliance with federal standards adopted pursuant to the federal Safe Drinking Water Act, and to adopt rules relating to monitoring, record keeping, and reporting requirements for any public water supply system. The Commission adopted such rules at 567 IAC chapters 40-43.

2. 567 IAC 41.2(1) "c" requires monthly monitoring for coliform bacteria in the distribution system. The above stated facts demonstrate noncompliance with this provision.

3. 567 IAC 42.1 requires that "[e]ach owner or operator of a public water system must give notice for all violations of public drinking water rules [.]" The above stated facts demonstrate noncompliance with this provision.

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V. ORDER

THEREFORE, the Department orders and Jo's Longbranch agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Jo's Longbranch shall comply with the public water supply system permit which includes conducting the required testing and submitting MORs;
2. Jo's Longbranch shall comply Administrative Order No. 2016-WS-05;
3. Jo's Longbranch shall pay all water supply system permit fees immediately; and
4. Jo's Longbranch shall pay an administrative penalty in the amount of \$4,500.00 in accordance to the following schedule:

\$187.50 shall be due on February, 28, 2020;
\$187.50 shall be due on March, 28, 2020;
\$187.50 shall be due on April, 28, 2020;
\$187.50 shall be due on May, 28, 2020;
\$187.50 shall be due on June, 28, 2020;
\$187.50 shall be due on July, 28, 2020;
\$187.50 shall be due on August, 28, 2020;
\$187.50 shall be due on September, 28, 2020;
\$187.50 shall be due on October, 28, 2020;
\$187.50 shall be due on November, 28, 2020;
\$187.50 shall be due on December, 28, 2020;
\$187.50 shall be due on January, 28, 2021;
\$187.50 shall be due on February, 28, 2021;
\$187.50 shall be due on March, 28, 2021;
\$187.50 shall be due on April, 28, 2021;
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\$187.50 shall be due on June, 28, 2021;
\$187.50 shall be due on July, 28, 2021;
\$187.50 shall be due on August, 28, 2021;
\$187.50 shall be due on September, 28, 2021;
\$187.50 shall be due on October, 28, 2021;
\$187.50 shall be due on November, 28, 2021;
\$187.50 shall be due on December, 28, 2021; and
\$187.50 shall be due on January, 28, 2022.

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If any of the payments are not made in accordance to the above schedule, the full penalty will be due immediately.

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, which 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 and deterring this party and others from violating public water supply permit requirements, is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:

a. **Economic Benefit.** 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Jo's Longbranch saved a significant amount of time and money by not conducting the proper sampling for coliform bacteria and chlorine. It is estimated that each bacteria sample costs approximately \$15.00 to conduct, which includes labor, cost of analysis and shipping fees. Further it is estimated that by not public noticing the violations approximately \$10.00 per notice was saved. For that reason, it is reasonable to estimate that \$1,000.00 was saved. Therefore, \$1,000.00 is assessed for this factor.

b. **Gravity of the Violation.** Jo's Longbranch has continuously failed to comply with the terms of its public water supply permit. Most significantly, it has failed to conduct the monitoring required in its permit. This thwarts the integrity of the program because such monitoring ensures that that a public water supply is operated in a manner that protects public health. Without conducting the required monitoring there is no way to know if the water is safe for consumption. Jo's Longbranch also failed to provide a required public notice for its failure to monitor. Public notice is intended to inform the public of noncompliance so that they may avoid consumption of the water. Failure to conduct public notice endangers public health. Multiple rules were violated and the violations are ongoing for multiple days. For these reasons, \$1,000.00 is assessed for this factor.

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c. **Culpability.** In determining the degree of intent or negligence the standard of care required by the laws of the state of Iowa should be considered. The Department asserts that Jo's Longbranch actions were negligent rather than intentional. Generally negligence is defined as "the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation." *Black's Law Dictionary*, 470 (2nd Pocket Edition, 2001). The violations involved in this order were violations of conditions of multiple rules and permit conditions. An owner of a public water supply has a duty to be aware of the terms of its permit and the laws which govern its operation. Moreover, Department staff has communicated with Jo's Longbranch numerous times in person and in writing regarding the monitoring requirements contained in the permit. And a prior order has been issued by the Department for the same violations. Nevertheless, the violations have persisted. Multiple rules were violated and the violations are ongoing for multiple days. For that reason \$2,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1), and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of the Jo's Longbranch. By signature to this order, all rights to appeal this order are waived by all parties.

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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 provision "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.

Mary Jo Engle Dated this 2 day 6, 2020
Mary Jo Engle d/b/a Jo's Longbranch Bar and Grill

Doug Engle Dated this ~~02~~ day 6, 2020
Doug Engle d/b/a Jo's Longbranch Bar and Grill

Kayla Lyon
Kayla Lyon, Director
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 17 day of
February, 2020

II.B.2.a.1.2.g. Carrie Schoenebaum; Field Office 1 - Michele Smith

