IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER NO. 2020-WS-01
Casey's General Stores, Inc., Casey's Marketing Company d/b/a Casey's General Store Public Water Supply Operation permit No. 5857201 **Louisa County, Iowa**	

TO: **Michael Richardson, President**
One SE Convenience Boulevard
Ankeny, IA
50021

I. SUMMARY

This administrative consent order (order) is entered into between the Casey's General Stores, Inc., Casey's Marketing Company d/b/a Casey's General Store (Casey's) 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 a Casey's in Wapello, Iowa.

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

Relating to technical requirements:
Benjamin Stracuzzi, Environmental Specialist

Iowa Department of Natural Resources
1023 W. Madison
Washington, IA 52353
319-653-2135

Relating to legal requirements:
Carrie Schoenebaum,
Attorney at Law
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, IA 50319-0034
Ph: 515/725-8244

Payment of penalty to:
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, IA 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

Casey's neither admits nor denies the following statement of facts and enters into this agreement solely for the purposes of settlement.

1. Pursuant to Public Water Supply Operation permit No. 5857201 (permit) Casey's provides drinking water to property located at 13410 State Highway 78 Wapello, Iowa (section 27-Township 73-Range 3). This public water supply is classified as a transient non-community system and is reported to serve 715 people on a daily basis. In addition to supplying drinking water to Casey's it also provides drinking water to a Subway restaurant that is located on the property. The drinking water for this location is derived from one well which is 165 feet deep. The well head is located outdoors near the back of the building.

2. On April 21, 2015, the Department sent Casey's a letter informing the company that because it had recently acquired ownership of the above referenced location the deadline for correcting deficiencies noted in the most recent sanitary survey of the public water supply system would be extended. This letter also reiterated the following recommended corrective measures: (1) the electrical conduit was not sealed properly; and (2) monthly operation reports (MORs) had not been submitted for the past two years.

3. On April 30, 2015, permit No. 5857201 was issued to Casey's.

4. On May 26, 2015, the Department approved an affidavit agreement between Casey's and Raymond Francis, for Mr. Francis to serve as the affidavit operator for the Wapello facility.

5. On November 10, 2015, a revised permit was issued to update Casey's monitoring requirements.

6. On July 25, 2016, the Department sent Casey's a letter regarding a monitoring violation for failure to collect and report a coliform bacteria sample by the May 31, 2016, deadline as required by the permit.

7. On March 1, 2017, Brian Cox, an Environmental Specialist with the Department, sent Jeff Rosener of Casey's, an e-mail asking if Raymond Francis, the affidavit operator on record with the Department, was still conducting the sampling required by the permit. Mr. Cox explained that Louisa County Health Department appeared to have conducted the

coliform bacteria sample in September 2016. Mr. Rosener responded that Mr. Francis was still employed by Casey's, and that he was to maintain the chlorine treatment, but Louisa County sampled the water subsequent to receipt of the July 25, 2016, monitoring violation.

8. On August 31, 2017, a Notice of Violation (NOV) was sent to Casey's for the following deficiencies noted in an August 25, 2017, inspection: (1) a crack was identified in the conduit below the location that it meets the bottom of the well cap and (2) MORs had not been submitted as required by the permit.

9. On September 21, 2017, the Department sent a deficiency correction confirmation letter and a letter of noncompliance to Casey's. This letter acknowledged that the deficiencies noted in the above NOV had been corrected however, a review of the August MOR showed that Casey's had not maintained its total chlorine residual above the minimum requirement of 1.5 milligrams per liter (mg/L).

10. On September 27, 2017, Mr. Rosener called the Department and spoke to Jon Ryk, an Environmental Specialist with the Department. Mr. Ryk informed Mr. Rosener in this call that MORs were still not being timely submitted to the Department as required by the permit.

11. On May 1, 2018, a monitoring violation was sent to Casey's for failure to timely collect and report coliform bacteria samples.

12. Casey's failed to submit MORs to the Department during the following time periods: March 2015 through July 2017 and January 2018 through June 2018. Further, between November 2017 and October 2018 several MORs were submitted late or were incomplete.

13. On July 12, 2018, Department staff went to Casey's to check the chlorine residuals in the system. A sample was collected from the mop sink tap which is located several feet from the chlorine injection point and the hypropneumatic tank. Free chlorine was detected at .19 mg/L and total chlorine was detected at 1.20 mg/L. A sample was also collected from the distribution system in the Subway restaurant that is connected to Casey's. Free chlorine was detected at 1.08 mg/L and total chlorine was detected at 1.36 mg/L.

14. On July 13, 2018, MORs for December 2017 through June 2018 were submitted to the Department.

15. Between July 17, 2018, and September 6, 2018, Department staff went to Casey's eight times. During each visit Department staff checked free chlorine and total chlorine; the bulk of the tests indicated the proper levels were not being maintained. Moreover, on July 24, 2018, the Department compared the last ten results reported by Casey's in their MORs to the amounts recorded on the onsite chlorine meter and none of the reported amounts in the MORs matched the chlorine meter's readings.

16. On September 6, 2018, Department staff went to Casey's and met with the affidavit operator Mr. Francis. Mr. Francis admitted that he was checking chlorine residuals only two or three times per month and that he was falsifying data on the MORs. He said he had been doing this for several years.

17. On September 13, 2018, a NOV was sent to Casey's following a review of its MORs from November 2017 through July 2018. This NOV cited the following violations: (1) failure to timely submit MORs; (2) failure to measure and record chemical usage and residuals of daily chlorine; (3) failure to maintain adequate chlorine residual; and (4) failure to collect and or report chlorine residuals associated with routine and repeat coliform bacteria samples. This NOV informed Casey's that the matter was being referred to the Department's Legal Service's Bureau for enforcement.

IV. CONCLUSIONS OF LAW

Casey's neither admits nor denies the following conclusions of law and enters into this agreement solely for the purposes of settlement.

1. Iowa Code section 455B.172 makes this Department the agency of the state to oversee 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 quarterly monitoring for coliform bacteria in the distribution system. The above stated facts demonstrate noncompliance with this provision of law.

3. 567 IAC 41.2 (1) "c" (7) requires residual chlorine be recorded and reported to the laboratory when required coliform bacterial samples are collected. The above stated facts demonstrate noncompliance with this provision.

4. 567 IAC 42.4(1) "a" requires that MORs be submitted to the Department within ten days of the end of the reporting period. The above stated facts demonstrate noncompliance with this provision of law.

5. 567 IAC 42.4(1) "b" requires the permitee to report to the department within 48 hours after any failure to comply with the monitoring requirements. The above stated facts demonstrate noncompliance with this provision of law.

6. 567 IAC 42.4(3) "a" (1) requires that MORs be signed by the owner or the owner's designee. The above stated facts demonstrate noncompliance with this provision of law.

7. 567 IAC 42.4 (3) "a" (2) "5" requires that chlorine, which is potentially toxic in excessive concentration, shall be measured and recorded daily. The above stated facts demonstrate noncompliance with this provision of law.

8. 567 IAC 42.4 (3) "b" (1) "3" requires that a minimum free available chlorine residual of 0.3 mg/L or a minimum total available chlorine residual of 1.5 mg/L must be continuously maintained throughout the water distribution system. The above stated facts demonstrate noncompliance with this provision of law.

V. ORDER

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

1. Casey's shall comply with its public water supply system permit; and

2. Casey's shall pay a penalty of $4,400.00 within 30 days of the date the Director of the Department signs this order.

VI. PENALTY

Casey's neither admits nor denies the following penalty calculation and enters into this agreement solely for the purposes of settlement.

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." Casey's saved a significant amount of time and money by not conducting the proper sampling. At a minimum $400.00 was saved by not purchasing the supplies necessary to conduct chlorine monitoring. For that reason, $400.00 is assessed for this factor.

b. **Gravity of the Violation**. Casey's has continuously failed to comply with the terms of its public water supply permit. It has failed to submit the required MORs despite several notices by the Department, it failed to properly maintain chlorine residuals and it failed to report a coliform bacterial sample result. These violations thwart the integrity of the program because they ensure that that a public water supply is operated in a manner that protects public health. Without conducting the required monitoring and submitting it to the Department there is no way to know if the water is safe for consumption. This endangers public health. For these reasons, $2,000.00 is assessed for this factor.

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 Casey's 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 that the terms of its permit and the laws which govern its operation. Moreover, Department staff has communicated with Casey's numerous times the failure to timely submit MORs and the failure to properly operate its public water supply. Nevertheless, the violations persisted. For that reason, $2,000.00 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 Casey's. By signature to this order, all rights to appeal this order are waived by all parties.

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.

_____ Dated this 10 day Feb, 2020
On behalf of Casey's General Stores, Inc., Casey's Marketing Company d/b/a Casey's General Store

_____ Dated this 11 day Feb, 2020
Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

II.B.2.a.1.2.3.4.g. Carrie Schoenebaum; Benjamin Stracuzzi F.O. 6