

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: NEWT’S CAFE LLC Public Water Supply Operation permit No. 7052204	ADMINISTRATIVE CONSENT ORDER NO. 2021-WS-2022-WS-01
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TO: Newt’s Cafe
c/o Roxann Hostetler
425 Main St.
Nichols, Iowa 52766

I. SUMMARY

This administrative consent order (Order) is entered into between Newt’s Cafe LLC (Newt’s Cafe), and the Iowa Department of Natural Resources (DNR). The parties hereby agree to the issuance of this Order concerning the public water supply system serving the restaurant owned and operated by Newt’s Cafe (System).

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

Relating to technical requirements:

Celia Naughton
Iowa Department of Natural Resources
Wallace State Office Bldg.
502 E. 9th Street Des Moines, IA 50319
Ph: 515/725-0289

Relating to legal requirements:

Noah Poppelreiter, Attorney II
Iowa Department of Natural Resources
Wallace State Office Bldg.
502 E. 9th Street
Des Moines, Iowa 50319
Ph: 515/669-8752

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 DNR and Newt's Cafe hereby agree to the following statement of facts.

1. The System operates under Public Water Supply Operation permit No. 7052204 (Permit).
2. As detailed in the Permit, the System is a transient noncommunity water supply with a groundwater source. The System supplies water to customers of Newt's Cafe at 425 Main Street, Nichols, Iowa. Water for this supply is derived from one twenty-foot sand point well.
3. The Permit requires that the System use reverse osmosis treatment to ensure nitrate concentration levels in the finished drinking water are less than 10 mg/L (as nitrogen). Additionally, Newt's Cafe must conduct monthly nitrate testing of the finished drinking water.
4. The Permit requires Newt's Cafe to conduct monthly coliform bacteria testing of the finished drinking water.
5. The Permit requires Newt's Cafe to submit monthly operation reports (MOR) within 10 days of the end of each month.
6. For purposes of settling this matter, the DNR and Newt's Cafe agree on multiple occasions between May 2, 2017, and May 1, 2021, Newt's Cafe:
 - failed to conduct monthly nitrate sampling as required,
 - failed to conduct monthly coliform testing as required,
 - failed to submit MORs as required, and
 - failed to provide public notice of violations as required.
7. Between the Permit's issuance on May 2, 2017, and August 5, 2020, the DNR issued Newt's Cafe a total of 13 Notices of Violation (NOV) for the above violations.
8. On July 20, 2020, DNR environmental specialist Ryan Stouder conducted a sanitary survey of the System. In that survey, Mr. Stouder noted significant deficiencies at the System. Notably, Mr. Stouder noted that Newt's Cafe was failing to submit MORs and was failing to conducting appropriate monitoring of the finished drinking water.
9. The DNR issued NOV's to Newt's Cafe on August 6, 2020, for these violations and others as detailed in paragraph 6 of this section.

10. On October 5, 2020, the DNR issued Newt's Cafe an NOV for violations detailed in paragraph 6 of this section.
11. On November 18, 2020, the DNR issued Newt's cafe multiple NOVs for violations as detailed in paragraph 6 of this section.
12. Newt's Cafe failed to timely submit a MOR for the month of May 2021.
13. Newt's Cafe failed to conduct monthly nitrate testing for the month of May 2021.
14. Newt's Cafe failed to conduct monthly coliform bacteria testing for the month of May 2021.
15. Newt's Cafe failed to provide public notice of the violations in paragraph 12 through 14 of this section. Additionally, Newt's Cafe has continually failed to provide public notice of the prior violations detailed in paragraph 6 of this section.

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 41.3(1)"c"(5) requires routine monitoring for nitrate. The above stated facts demonstrate noncompliance with this provision of law.
3. 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.
4. 567 IAC 42.4(3)"a"(1) requires that "[m]onthly records of operation shall be completed by all public water supplies, on forms provided by the department or on

similar forms [.]” The above stated facts demonstrate noncompliance with this provision of law.

5. 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.
6. 567 IAC 42.4(1)“c” requires that “public water supply system, within ten days of completion of each public notification required pursuant to 567—42.1(455B) for the initial public notice and any repeat notices, shall submit to the department a certification that it has fully complied with the public notification rules.” The above stated facts demonstrate noncompliance with this provision of law.
7. 567 IAC 43.2(2) requires permittees to comply will all terms of the water supply system permits issued by the DNR. The above stated facts demonstrate noncompliance with this provision of law.

V. ORDER

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

1. Starting with the MOR for July 2021, Newt’s Cafe shall submit all required MORs to the DNR with ten (10) days of the end of each month.
2. Starting with the required testing for July 2021, Newt’s Cafe shall conduct monthly nitrate testing of the finished drinking water and shall provide to the DNR documentation of this testing. Compliance with paragraph 1 of this section shall be considered provision of documentation.
3. Starting with the required testing for July 2021, Newt’s Cafe shall conduct monthly coliform bacteria testing of the finished drinking water.
4. Within 15 days of the director signing this Order, Newt’s Cafe shall provide public notice of the violations as detailed in Section IV of this Order pursuant to the provisions of 567 IAC 42.1(5). Newt’s Cafe may contact Cecilia Naughton for assistance; see page 1 of this Order for contact information. If posted in the restaurant owned by Newt’s Cafe, the notice shall remain posted for a period of at least 30 days.
5. In addition to the certification requirements of 567 IAC 42.4(1)“c” and upon request, Newt’s Cafe shall provide the DNR with evidence of compliance with paragraph 4 of this section.

6. Pursuant to 567 IAC 43.1(5)(b) and within 30 days of the director signing this Order, Newt's Cafe shall retain a certified drinking water operator to manage the System and shall provide the DNR the contact information of the operator.
7. Newt's Cafe shall promptly reply to all communications from any DNR employee related to the operation or management of the System.

VI. PENALTY

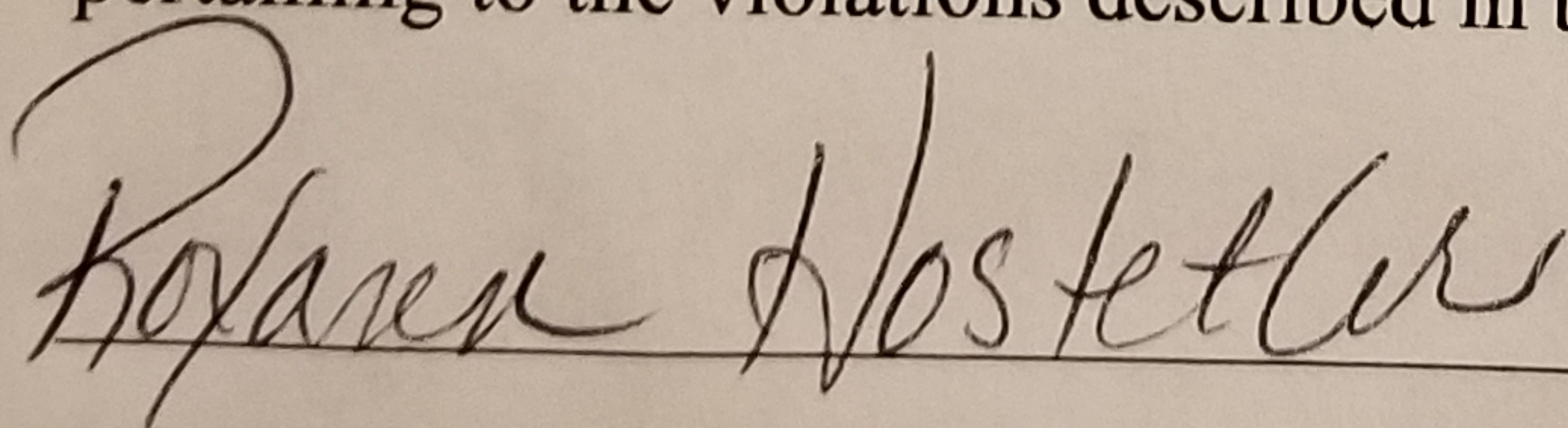
1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.
2. To ensure prompt compliance by Newt's Cafe, and with due consideration given to the requirement to retain a certified drinking water operator, the DNR agrees to withhold the issuance of a penalty at this time for the violations detailed in this Order. Noncompliance with this Order may result in the issuance of a penalty for these violations, in addition to and notwithstanding any penalties and relief in Section VIII of this Order.

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 Newt's Cafe. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Failure to comply with any requirement of 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.



NEWT'S CAFE LLC

Dated this 04 day of
February, 2021

Kayla Lyon, Director
IOWA DEPARTMENT OF NATURAL RESOURCES

II.B.2.a.1.2.g. Noah Poppelreiter; Field Office 6; Cecilia Naughton