

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>NEWT’S CAFE LLC</p> <p>Public Water Supply Operation permit No. 7052204</p>	<p style="text-align:center">ADMINISTRATIVE ORDER NO. 2022-WS-03</p>
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TO: Newt’s Cafe
 c/o Roxann Hostetler
 425 Main St.
 Nichols, Iowa 52766

I. SUMMARY

The Director of the Iowa Department of Natural Resources (DNR) through this administrative order (Order) requires Newt’s Cafe LLC (Newt’s Cafe) to comply with the provisions of Section V of this Order, subject to the appeal rights stated in this Order.

Any questions 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 of the DNR 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 adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: NEWT'S CAFE LLC**

III. STATEMENT OF FACTS

1. Newt's Cafe operates a restaurant with a public drinking water system (System) 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).
4. The Permit requires Newt's Cafe to conduct monthly certified laboratory nitrate testing of the finished drinking water and daily self-testing of the nitrate level in the drinking water. Documentation of the monthly testing is submitted to the DNR by the certified lab that receives the sample from Newt's Cafe and conducts the test. Documentation of daily self-testing is submitted in the form of the MORs.
5. The Permit requires Newt's Cafe to conduct monthly coliform bacteria testing of the finished drinking water. Documentation of this testing is submitted to the DNR by the certified lab that receives the sample from Newt's Cafe and conducts the test.
6. The Permit requires Newt's Cafe to submit monthly operation reports (MOR) within 10 days of the end of each month.
7. On February 4, 2022, Newt's Cafe agreed to DNR Consent Order 2022-WS-01 (Prior Order). The Prior Order addressed violations related to Newt's Cafe's failure to monitor for nitrates and coliform and its failure to submit MORs as required.
8. The terms of the Prior Order are incorporated by reference into this Order.
9. For ease of reference, and among other requirements, the Prior Order notably required Newt's Cafe to retain the services of a certified operator to ensure the proper operation the System.
10. Through the month of February, 2022, Newt's Cafe informally worked with a certified operator, but failed to properly retain the operator. Notably, the operator declined to sign an affidavit as required by 567 IAC 81.16.
11. On March 4, 2022, the DNR contacted Newt's Cafe by email to inform it of its failure to legally retain a certified operator as agreed to in the Prior Order.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: NEWT'S CAFE LLC**

12. Throughout the month of March, 2022, DNR field and central office staff attempted to resolve the situation through discussions with Newt's Cafe and the operator.
13. On March 28, 2022, the operator contacted the DNR to provide notice that he was no longer interested in working for Newt's Cafe and would no longer be offering his services to Newt's Cafe.
14. On March 29, 2022, the DNR sent Newt's Cafe a Notice of Violation detailing violations of the terms of the Prior Order.
15. On April 11, 2022, DNR Field Office 6 environmental specialist senior Aaron Pickens contacted Newt's Cafe to provide a list of certified operators, to remind Newt's Cafe of the requirements to conduct nitrate sampling, and to remind Newt's Cafe of the requirement to submit MORs as required by law and the Prior Order.
16. As of the date of this Order, Newt's Cafe has not responded to the DNR relative to the April 11, 2022, communication.
17. As of the date of this Order, Newt's Cafe has failed to retain a certified drinking water operator as required by the Prior Order.
18. As of the date of this Order, Newt's Cafe has failed to submit MORs for the months of February, March, April, May, and June, 2022.
19. As of the date of this Order, the DNR has not received any testing results from any certified labs for the May 2022 monthly nitrate testing required at Newt's Cafe.
20. As of the date of this Order, the DNR has not received any testing results from any certified labs for the May 2022 monthly coliform bacteria testing required at Newt's Cafe.

IV. CONCLUSIONS OF LAW

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.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: NEWT’S CAFE LLC**

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.
8. Pursuant to Iowa Code section 455B.191, any person who violates any rule or order related the operation of a public water supply shall be subject to a civil penalty not to exceed five thousand dollars for each day of such violation. Additionally, section VIII, Noncompliance, of the Prior Order allows the imposition of further penalties for violations of the Prior Order. The above facts demonstrate violations of the rules related to the operation of a public water supply and of the Prior Order.

V. ORDER

Therefore, DNR orders Newt’s Cafe to do the following:

1. Newt’s Cafe shall submit all required MORs to the DNR with ten (10) days of the end of each month.
2. Newt’s Cafe shall maintain a nitrate level below 10 mg/L in the finished drinking water. To ensure this level is maintained, Newt’s Cafe shall conduct daily nitrate testing of the raw and finished drinking water and shall provide to the DNR documentation of this testing.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: NEWT’S CAFE LLC**

3. Newt’s Cafe shall conduct monthly nitrate testing of the finished drinking water and shall provide to the DNR documentation of this testing.
4. Newt’s Cafe shall conduct monthly coliform bacteria testing of the finished drinking water and shall provide to the DNR documentation of this testing.
5. 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). If posted in the restaurant owned by Newt’s Cafe, the notice shall remain posted for a period of at least 30 days.
6. In addition to the certification requirements of 567 IAC 42.4(1)“c”, Newt’s Cafe shall submit to the DNR evidence of compliance with paragraph 4 of this section.
7. 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.
8. Newt’s Cafe shall promptly reply to all communications from any DNR employee related to the operation or management of the System.
9. Within 30 days of the date the Director signs this Order, Newt’s Cafe shall pay an administrative penalty of \$1,500.00.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 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 at 567 IAC chapter 10. To ensure prompt compliance by Newt’s Cafe in retaining a certified operator, conducting all monitoring required by law, and submitting MORs when required, DNR is assessing a penalty of \$1,500.00 for the violations described above. The following factors were considered in the assessment of this penalty:

a. Economic Benefit. 567 IAC 10.2(1) provides that when a violator realizes an economic benefit through the violation, “the department shall take enforcement action which includes penalties which at least offset the economic benefit. Reasonable estimates of economic benefit should be made where clear data are not available.” Newt’s Cafe avoided costs of retaining a certified operator when required. Newt’s Cafe also avoided costs associated with required monitoring and reporting. \$1,500.00 is assessed for this factor.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: NEWT’S CAFE LLC**

b. Gravity. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. Newt’s Cafe's repeated and chronic failure to comply with the laws related to the operation of the System is a serious matter. However, the DNR is committed to promptly bringing Newt’s Cafe into compliance. This is best obtained by ensuring Newt’s Cafe obtains a certified operator and immediately begins monitoring. Therefore, no penalty is assessed for this factor.

c. Culpability. Newt’s Cafe signed the Prior Order and has historically been in communication with the DNR. Newt’s Cafe is aware of the requirements of operating the System, yet has consistently failed to comply with those requirements. However, the DNR is committed to promptly bringing Newt’s Cafe into compliance. This is best obtained by ensuring Newt’s Cafe obtains a certified operator and immediately begins monitoring. Therefore, no penalty is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175 and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The Notice of Appeal must identify the specific portion or 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, and constitutes a permanent remedy of the conditions which caused the violations. 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.

_____ Dated this 2nd day of
ALEX MOON, DEPUTY DIRECTOR for KAYLA LYON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES August, 2022