

FILED
Jul 30, 2024
8:14 am
U.S. EPA REGION 3
HEARING CLERK

1
 2
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525

U.S. EPA Docket No. SDWA-03-2024-0033DS

I. STATUTORY AUTHORITY

2. Section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), provides that, “In any case in which the Administrator is authorized to bring a civil action under this section or under section 300j-4 of this title with respect to any applicable requirement, the Administrator also may issue an order to require compliance with such applicable requirement.”

3. Section 1414(a)(2) of the Act, 42 U.S.C. § 300g-3(a)(2), provides that when the Administrator finds that a public water system is not in compliance with an applicable requirement, where the state where the public water system is located does not have primary enforcement responsibility, the Administrator shall issue an order to the public water system requiring compliance. Section 1414(i) of the Act, 42 U.S.C. § 300g-3(i), defines “applicable requirements,” to include requirements under Section 1433 of the Act, 42 U.S.C. § 300i-2, and any regulation, schedule, or requirement promulgated or imposed pursuant to that section.

4. A “public water system” (“PWS”) is defined in the Act as “a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals.” Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4).

5. A “community water system” is defined in the Act as “a public water system that . . . serves at least 15 service connections used by year-round residents . . . or regularly serves at least 25 year-round residents.” Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15).

6. Respondent is a “Federal agency” as defined by Section 1401(11) of the SDWA, 42 U.S.C. § 300f(11).

7. Respondent is a Federal agency and as such is a “person” as defined by Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.

8. Respondent is a person who owns and operates a public water system and is a “supplier of water” as defined by Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2.

9. Respondent owns and/or operates the Aberdeen Proving Ground (“A.P.G.”) – Edgewood Area water system, located in Aberdeen Proving Ground, MD, within the meaning of the Act.

10. Respondent provides water for human consumption to over 3,300 but less than 50,000 persons per year, year-round, and has a minimum of 15 service connections used by year-round residents or regularly serves at least 25 year-round residents, and is therefore a “community water system.” Respondent is therefore subject to the requirements of Part B of the SDWA, 42 U.S.C. § 300g, and its implementing regulations found at 40 C.F.R. Part 141, including but not limited to sampling and analyzing the drinking water and reporting analytical results to the state.

11. On October 23, 2018, the SDWA was amended in accordance with the America's Water Infrastructure Act ("AWIA") of 2018 (Public Law 115-270).

12. The State of Maryland, acting through the Maryland Department of Environment ("MDE"), has primary enforcement responsibility under Section 1413(a) of the SDWA, 42 U.S.C. § 300g-2(a). However, the AWIA requirements are requirements for which the EPA retains primary enforcement authority as per Section 1433 of the SDWA, 42 U.S.C. §300i-2.

13. Section 1433(a) of the SDWA, 42 U.S.C. § 300i-2(a), requires community water systems ("CWSs") serving a population of over 3,300 people to conduct a Risk and Resilience Assessment ("RRA") of its system, which shall include an assessment of:

- a. the risk to the system from malevolent acts and natural hazards;
- b. the resilience of the pipes and constructed conveyances, physical barriers, source water, water collection and intake, pretreatment, treatment, storage and distribution facilities, electronic, computer, or other automated systems (including the security of such systems) which are utilized by the system;
- c. the monitoring practices of the system;
- d. the financial infrastructure of the system;
- e. the use, storage, or handling of various chemicals by the system; and
- f. the operation and maintenance of the system.

14. Section 1433(a)(3)(A)(iii) of the SDWA, 42 U.S.C. § 300i-2(a)(3)(A)(iii), requires CWSs serving over 3,300 but less than 50,000 to submit a certification, prior to June 30, 2021, to the EPA Administrator that it has conducted its RRA.

15. Section 1433(b) of the SDWA, 42 U.S.C. § 300i-2(b), requires CWSs serving 3,300 or more persons to prepare or revise, where necessary, an emergency response plan ("ERP") that incorporates the findings of the RRA no later than six months after certifying completion of its RRA. Therefore, Respondent's deadline for submitting certification to the EPA Administrator that the ERP has been completed and/or revised is December 31, 2021.

16. On August 8, 2021, the Respondent certified to the EPA that it had conducted the RRA, as specified in Section 1433(a)(3)(A) of the SDWA, 42 U.S.C. § 300i-2(a)(3)(A), for the A.P.G. – Edgewood Area water system.

17. Based on information available to the EPA, the Respondent has failed to prepare or revise its ERP by December 31, 2021, in violation of Section 1433(b) of the SDWA, 42 U.S.C. § 300i-2(b).

18. Pursuant to Section 1414(g)(2) of the SDWA, 42 U.S.C. § 300g-3(g)(2), the EPA has notified MDE of this Order.

III. ORDER

19. Based on the foregoing FINDINGS, and pursuant to the authority of Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), the EPA hereby ORDERS and Respondent agrees to undertake the action specified below.

20. No later than 250 days from the effective date of this Order, Respondent shall complete the ERP and submit its certification for the completion or revisions of the ERP, as required by Section 1433(b) of the SDWA, 42 U.S.C. § 300i-2(b), to the EPA Administrator. For instructions on how to submit the ERP certification, visit the EPA's website. (<https://www.epa.gov/waterresilience/americas-water-infrastructure-act-risk-assessments-and-emergency-response-plans>)

21. No later than 250 days from the effective date of this Order, Respondent shall provide written confirmation to the EPA that the requirements of Paragraph 20 have been met and that Respondent is in compliance with Section 1433(b) of the SDWA, 42 U.S.C. §300i-2(b), and the Order. **Do not submit the ERP to the below address;** submit only the above referenced confirmation, electronically via email to:

Lesly Huerta
U.S. Environmental Protection Agency Region 3
huerta.lesly@epa.gov
215-814-2075

IV. GENERAL PROVISIONS

22. The provisions of this Order shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns.

23. This Order does not waive, suspend, or modify the requirements of the SDWA, 42 U.S.C. §§ 300f - 300j-27, or its implementing regulations found in 40 C.F.R. Part 141, which remain in full force and effect. Issuance of this Order is not an election by the EPA to forgo any civil or criminal action otherwise authorized under the SDWA. Respondent's failure to comply with all of the requirements of the Act, 40 C.F.R. Part 141, and milestones required under this Order, may subject Respondent to additional enforcement action, including but not limited to administrative actions, as appropriate, for penalties under Section 1414(g)(3)(A) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(A), and/or injunctive relief.

24. Any violation of the terms of this Order may result in further EPA enforcement action including the imposition of administrative penalties of up to \$47,061 per day for each day of violation that occurs, or a judicial action including the imposition of civil penalties, pursuant to Section 1447(b) of the SDWA, 42 U.S.C. § 300j-6(b), as modified by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 et seq., and subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

25. The EPA reserves the right to commence action against any person, including Respondent, in response to any condition which the EPA determines may present an imminent and substantial endangerment to the public health.

26. Any request for modification of this Order must be in writing and must be approved by the EPA.

27. This Order shall not prohibit, prevent, or otherwise preclude the EPA from taking whatever action it deems appropriate to enforce the Act in any matter and shall not prohibit, prevent, or otherwise preclude the EPA from relying on this Order in subsequent administrative proceedings.

28. This Order in no way relieves Respondent of the duty to comply with any federal, state, or local law, regulation, ordinance, or permit. Compliance with this Order shall be no defense to any action commenced pursuant to such authorities.

29. Pursuant to its authority under Section 1445(b)(1) of the SDWA, 42 U.S.C. § 300j-4(b)(1), the EPA and its authorized representatives, including contractors, shall have authority upon the presentation of proper identification to enter the premises of Respondent at any time without prior notification to monitor the activities required by this Order, verify any data or information submitted pursuant to this Order, obtain samples, and inspect and review any records generated and/or maintained pursuant to this Order. The EPA reserves and does not waive all existing inspection and information request authority.

30. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Order and to execute and legally bind the party. In addition, all reports and other documentation submitted under this Order shall be accompanied by the following certification:

Respondent certifies that any information or representation it has supplied to the EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. The EPA shall have the right to institute further actions to recover appropriate relief if the EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Order are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that the EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

31. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701- 706.

32. Respondent certifies that any information or representation it has supplied to the EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. The EPA shall have the right to institute further actions to recover appropriate relief if the EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Order are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that the EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

V. TERMINATION AND SATISFACTION

33. The provisions of this Order shall be deemed satisfied when Respondent receives written notice from the EPA that Respondent has demonstrated, to the satisfaction of the EPA, that the terms of this Order have been satisfactorily completed and the written notice will state that this Order is terminated.

34. Respondent may submit to the EPA a Certification of Compliance and Request for Termination of this Order, including documentation to demonstrate that it has met all requirements of this Order. If, following review of any Certification of Compliance and Request for Termination of this Order, the EPA agrees that Respondent has adequately complied with all requirements of this Order, the EPA shall provide written notification of termination of this Order, as described in Paragraph 33.

VI. EFFECTIVE DATE

35. The Order shall become effective on the date on which it is filed with the Regional Hearing Clerk, EPA Region 3.

VII. MULTIPLE COUNTERPARTS

36. This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

SO ORDERED this _____ day of _____ 2024.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

[Electronic Signature and Date]

Karen Melvin, Director

Enforcement & Compliance Assurance Division

U.S. EPA, Region 3

FOR THE RESPONDENT:

[Electronic Signature and Date]

Anna Lisa Marcum, Chief
Environmental Division
Directorate of Public Works
Aberdeen Proving Ground, Maryland

Lauren Curry

A.P.G. – Edgewood Area

U.S. EPA Docket No. SDWA-03-2024-0033DS

Assistant Regional Counsel
USEPA Region 3
curry.lauren@epa.gov
215-814-2496

Date: _____

[Electronic Signature and Date]

Bevin Esposito

Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 3