

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Received by
EPA Region VIII
Hearing Clerk

IN THE MATTER OF:)
)
Anita Swope and)
Jay Skellenger,)
)
Respondents.)
)
Hot Springs Court Public Water System)
PWS ID #083090312)

Docket No. SDWA-08-2021-0029

ADMINISTRATIVE ORDER

1. This Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by section 1414(g) of the Safe Drinking Water Act (Act), 42 U.S.C. § 300g-3(g), as properly delegated to the undersigned official.
2. Anita Swope is an individual who owns the Hot Springs Court Public Water System, and Jay Skellenger is an individual who operates the Hot Springs Court Public Water System (System), which provides piped water to the public at Hot Springs Court, Hot Springs, Montana, for human consumption.
3. The System is supplied by a groundwater source accessed via one well. The water is untreated. The System was activated as a public water system on October 22, 2018.
4. The System has approximately 17 service connections used by year-round residents and/or regularly serves an average of approximately 50 year-round residents. Therefore, the System is a “public water system” and a “community water system” as defined in 40 C.F.R. § 141.2 and section 1401 of the Act, 42 U.S.C. § 300f.
5. For purposes of federal enforcement, Respondents are “persons” as defined in section 1401(12) of the Act, 42 U.S.C § 300f(12) and are subject to the Act and 40 C.F.R. part 141 (Part 141). Part 141 is an “applicable requirement” as defined in section 1414(i) of the Act, 42 U.S.C. § 300g-3(i).
6. Part 141 includes monitoring requirements. The EPA has sent Respondents annual notifications of the specific monitoring requirements that apply to the System.

VIOLATIONS

7. Respondents are required to correct any sanitary defect found through either a Level 1 or 2 assessment in compliance with an EPA-approved schedule and, further, must notify the EPA when each scheduled corrective action is completed. 40 C.F.R. § 141.859(c). The EPA’s record reflects that Respondents failed to timely correct all of the sanitary defects found during an assessment conducted on April 14, 2020, and failed to notify the EPA of corrective action completion and therefore, violated these requirements.
8. The maximum contaminant level (MCL) for fluoride is 4.0 milligrams per liter (mg/L), with compliance to be based on a running annual average (RAA) of fluoride samples. 40 C.F.R.

§§ 141.23(i)(1) and 141.62(b). The RAA of fluoride samples from the System for the fourth quarter 2020 of 5.0 mg/L exceeded the MCL and therefore, Respondents violated this requirement.

9. Respondents are required to conduct triggered source monitoring within 24 hours of being notified that a regular, routine total coliform monitoring sample is positive for total coliform. 40 C.F.R. § 141.402. Respondents must sample each groundwater source, and have it analyzed for a fecal indicator (e.g., *E. coli*). Respondents failed to monitor the System's source for a fecal indicator within 24 hours after being notified that routine samples, taken on March 26, 2020 and on April 29, 2020, were analyzed as total coliform positive and therefore, violated this requirement. 40 C.F.R. § 141.402. Respondents did sample the groundwater source and have it analyzed for a fecal indicator on April 7, 2020, and on June 29, 2020.

10. Respondents are required to notify the public of certain violations of Part 141 and, within 10 calendar days after completing public notice, provide a copy of the public notice and certification to the EPA. 40 C.F.R. §§ 141.31(d) and 141.201-141.211. The violation identified in paragraph 7, above, is classified as a violation requiring Tier 2 public notice no later than 30 calendar days after the System learns of the violation and every three months as long as the violation or situation persists, according to 40 C.F.R. § 141.203. The violation identified in paragraph 9, above, is classified as a violation requiring Tier 3 public notice within 1 year, according to 40 C.F.R. § 141.204. The EPA's records reflect that Respondents failed to notify the public of the violations cited in paragraphs 7 and 9 and failed to submit a copy of the public notice and certification to the EPA and therefore, violated this requirement.

11. Respondents are required to report any failure to comply with Part 141 to the EPA within 48 hours (except where Part 141 specifies a different time period). 40 C.F.R. § 141.31(b). Respondents failed to report the violations cited in paragraphs 7 and 9, above, to the EPA within 48 hours and therefore, violated this requirement.

ORDER

Respondents are ordered to perform the following actions upon Respondents' receipt of this Order (unless a different deadline is specified below):

12. Respondents are ordered to comply with all provisions of the Act and Part 141, including but not limited to each requirement cited above.

13. Within 30 calendar days of receipt of this Order, Respondents shall submit a schedule (Schedule) for completion of the remaining overdue corrective action after consulting with the EPA. The Schedule shall be incorporated into this Order as an enforceable requirement upon written approval by the EPA. Within 10 calendar days after completing all tasks included in the Schedule, Respondents shall notify the EPA of the project's completion. Respondents shall provide sufficient evidence to the EPA including photographs of the corrective actions. Thereafter, Respondents shall comply with all provisions of 40 C.F.R. § 141.859(c) regarding any identified sanitary defects at the System.

Corrective Action:

Hire a professional to investigate the condition of the pitless adaptor and well integrity from the inside of the well. Damage to the pitless adaptor can allow contaminants into the wellbore. Update EPA on the integrity of the well and pitless adaptor. If problems are found, work with the EPA to establish a schedule to fix the well.

14. Within 30 calendar days after receipt of this Order, and quarterly thereafter as long as the violation cited in paragraph 7, above, persists, Respondents shall notify the public of this violation. Thereafter, following any future violation of Part 141, Respondents shall comply with any applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 calendar days after providing public notice, Respondents shall submit a copy of the notice and certification to the EPA. 40 C.F.R. § 141.31(d). Template and instructions are available at: <https://www.epa.gov/region8-waterops/public-notification-rtcr-treatment-technique-violation-template>.
15. Within 30 calendar days after receipt of this Order, Respondents must submit to the EPA a proposed plan and schedule to bring the System into compliance with the fluoride maximum contaminant level (MCL) as identified in 40 C.F.R. §§ 141.23(i)(1) and 141.62(b).
 - a. The plan must include proposed modifications to the System and estimated costs of such modifications. The schedule must include a project start date, interim milestone deadlines, and a final compliance deadline (which must be within six months of the project start date). Respondents may not begin construction or modifications to the System before the EPA has approved the schedule.
 - b. The EPA-approved schedule (Schedule) will be incorporated into this Order as an enforceable requirement upon written approval by the EPA.
 - c. After receipt of the EPA's approval of the Schedule, Respondents must begin providing the EPA with quarterly reports on the progress made toward bringing the System into compliance with the fluoride MCL. Each quarterly report is due by the 10th calendar day of the month following the relevant quarter.
 - d. Within 10 calendar days after completing all tasks included in the Schedule, Respondents must notify the EPA of the project's completion.
16. The System must achieve compliance with the fluoride MCL by the final compliance deadline specified in the Schedule. If Respondents' plan fails to achieve permanent compliance, the EPA may order further steps, seek penalties for noncompliance, or both.
17. Respondents shall notify the public quarterly by completing a public notice (PN) until the fluoride MCL violation is resolved. Respondents shall submit a copy of the completed PN and appropriate certification 10 calendar days after the PN is provided. 40 C.F.R. §§ 141.31(d) and 141.201(c)(3).

18. Within 24 hours of being notified that a routine total coliform monitoring result is positive, Respondents shall conduct source water monitoring as required by 40 C.F.R. § 141.402. If the sample is negative, Respondents shall report that result to the EPA no later than 10 calendar days after the end of the month in which the sample is taken. If a sample is *E. coli* positive, Respondents shall notify the EPA immediately for appropriate assistance 40 C.F.R. § 141.403(a)(4). Respondents shall comply with the treatment technique requirements, according to 40 C.F.R. § 141.403(a), and provide appropriate public notification pursuant to 40 C.F.R. § 141.402(g) within 24 hours as required by 40 C.F.R. § 141.202(b)(1). Thereafter, Respondents shall comply with all source water monitoring and related requirements in 40 C.F.R. § 141.402. When reporting any triggered source water sample result, Respondents shall specify that it is a triggered source water sample. Respondents shall report results to the EPA within the first 10 calendar days following the end of the required monitoring period. 40 C.F.R. § 141.31(a).

19. For any future violation of Part 141 for which this Order does not specify a reporting period, Respondents must report the violation to the EPA within 48 hours of the violation occurring, as required by 40 C.F.R. § 141.31(b). However, if Part 141 specifies a different time period for reporting the particular violation, Respondents must report the violation to the EPA within that different period.

20. If Respondents (a) lease or sell the System to another person or entity, or (b) contract with or hire any other person or entity to operate the System, Respondents must, within 10 calendar days, provide a copy of this Order to the lessee, purchaser, or contractor and notify the EPA in writing of the change. In either of these circumstances, Respondents will remain obligated to comply with this Order.

21. Respondents must send all reporting and notifications required by this Order to the EPA at:

Email: R8DWU@epa.gov, and
minter.jill@epa.gov

GENERAL PROVISIONS

22. This Order is binding on Respondents, their assigns and heirs, and any person (*e.g.*, employee, contractor, or other agent) acting in concert with Respondents.

23. This Order does not constitute a waiver, suspension, or modification of any requirement of the Act or Part 141. Issuance of this Order is not an election by the EPA to forgo any civil or criminal action.

24. Violation of any part of this Order, the Act, or Part 141 may subject Respondents to a civil administrative penalty of up to \$59,017 (as adjusted for inflation) per day of violation, a court injunction ordering compliance, or both. 42 U.S.C. § 300g-3; 40 C.F.R. part 19; 85 Fed. Reg. at 83821 (December 23, 2020).

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25. Respondents may seek federal judicial review of this Order pursuant to section 1448(a) of the Act, 42 U.S.C. § 300j-7(a).

Issued: June 23, 2021.

Colleen Rathbone, Chief
Water Enforcement Branch
Enforcement and Compliance Assurance Division