

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:	:	
	:	
United States Department of the Navy	:	ADMINISTRATIVE ORDER
	:	ON CONSENT
	:	
Respondent.	:	Docket No. SDWA-03-2020-0134DS
	:	
	:	
PWS ID No. DC0000005	:	
U.S. Naval Observatory,	:	
1411 Parsons Avenue SE	:	
Suite 303	:	
U.S. Naval Observatory, DC 20374-5003	:	
	:	
System.	:	
	:	
Proceedings Pursuant to Section 1414(g)	:	
of the Safe Drinking Water Act,	:	
as amended, 42 U.S.C. § 300g-3(g)	:	

I. STATUTORY AUTHORITY

The following FINDINGS are made and ADMINISTRATIVE ORDER ON CONSENT (“the Order”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or “Agency”) by Section 1414(g) of the Safe Drinking Water Act (“SDWA” or “the Act”), 42 U.S.C. § 300g-3(g). The Administrator of EPA has delegated the authority to take these actions to the Regional Administrator of EPA, Region III, who has re delegated these authorities to the Director, Enforcement & Compliance Assurance Division, EPA Region III.

II. EPA’S FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

1. 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.”

2. Section 1447(a) of the Act, 42 U.S.C. § 300j-6(a) provides that, “Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government . . . (3) owning or operating any public water system . . . shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting the protection of such wellhead areas, respecting such public water systems, and respecting any underground injection in the same manner and to the same extent as any person is subject to such requirements, including the payment of reasonable service charges.”

3. Section 1447(a) of the Act, 42 U.S.C. § 300j-6(a), expressly waives any sovereign immunity otherwise applicable to the United States with respect to any substantive or procedural requirements of the SDWA, including any injunctive relief, administrative order, or civil or administrative penalty.

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 “noncommunity water system” is defined in the Act as “a public water system that is not a community water system.” 42 U.S.C. § 300f(16). “A non-community water system is either a ‘transient non-community water system (TWS)’ or a ‘non-transient non-community water system (NTNCWS).’” 40 Code of Federal Regulations (“C.F.R.”) § 141.2. A “non-transient non-community water system” or “NTNCWS” “means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year.” 40 C.F.R. § 141.2.

6. The District of Columbia (“D.C.”) does not have primary enforcement responsibility pursuant to Section 1413 of the Act. Therefore, EPA Region III directly implements the Act in D.C., and EPA is the “State” for purposes of enforcement responsibility for the SDWA in D.C. 42 U.S.C. § 300g-2; 40 C.F.R. § 141.2.

7. The United States Department of the Navy (“Navy” or “Respondent”) is a “Federal agency” and “person” as defined by the Act. “The term ‘Federal agency’ means any department, agency, or instrumentality of the United States.” 42 U.S.C. § 300f(11). The definition of “person” under the Act includes Federal agencies. 42 U.S.C. § 300f(12); 40 C.F.R. § 141.2.

8. The Navy is the owner and/or operator of the U.S. Naval Observatory, Public Water System, Identification Number DC0000005 (“Naval Observatory PWS” or “the System”), located at the U.S. Naval Observatory (“Naval Observatory”) at 1411 Parsons Avenue SE, Suite 303, U.S. Naval Observatory, DC 20374-5003, that provides water for human consumption.

9. The Navy is a person who owns and/or 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.

10. The Naval Observatory PWS serves approximately 250 persons and has 25 service connections year-round, and is therefore a “non-transient non-community water system” or “NTNCWS”, as defined by Section 1401(16) of the SDWA, 42 U.S.C. § 300f(16) and 40 C.F.R. 141.2. The Navy 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.

Count 1: Failure to Correct Significant Deficiency 2013SD1: Cross-Connection Control

11. The allegations in the preceding paragraphs are incorporated herein by reference.

12. EPA Region III conducts sanitary surveys of regulated water systems in D.C. every three years.

13. A sanitary survey performed by EPA “is an onsite review of the water source (identifying sources of contamination by using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a PWS to evaluate the adequacy of the PWS, its sources and operations, and the distribution of safe drinking water.” 40 C.F.R. § 141.723(a).

14. During the sanitary survey, EPA identifies any significant deficiencies. A significant deficiency “includes a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that EPA determines to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.” 40 C.F.R. § 141.723(b).

15. An example of “a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage or distribution system” includes the failure to timely repair and replace backflow preventers. D.C. Municipal Regulations dictate that, “[a]n Owner shall repair or replace any backflow preventer [“BFP”] that has failed within ten (10) days of the date the failure is made known to the Owner. In the event a device is replaced, or repairs are made, an Owner shall test the device to ensure correct operation.” 21 D.C. Mun. Regs. § 5406(b).

16. “For sanitary surveys performed by EPA, systems must respond in writing to significant deficiencies identified in sanitary survey reports no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.” 40 C.F.R. § 141.723(c).

17. “Systems must correct significant deficiencies identified in sanitary survey reports according to the schedule approved by EPA, or if there is no approved schedule, according to the schedule reported under paragraph (c) of this section if such deficiencies are within the control of the system.” 40 C.F.R. § 141.723(d).

18. EPA conducted its most recent sanitary surveys of the Naval Observatory PWS in November 2013, November 2016, and October 2019.

19. During the 2013, 2016, and 2019 sanitary surveys, EPA and its contractors identified the following significant deficiency: 2013-SD1: *Backflow prevention devices are not repaired or replaced within ten days of failing an inspection/test. Inspection/test results are not being entered into the work order tracking system in a timely manner. Repair/replace records are not entered into the work order tracking system at all.*

20. When this significant deficiency was first documented in November 2013, the Naval Observatory PWS was required to respond no later than 45 days after receipt of the report, indicating how and on what schedule it would address the significant deficiency per 40 C.F.R. § 141.723(c).

21. The Naval Observatory PWS (and Navy Yard PWS, which also had the same significant deficiency in its 2013 sanitary survey) submitted a joint Corrective Action Plan (“CAP”) to correct the significant deficiency on February 10, 2016. The 2016 CAP was revised on October 11, 2016.

22. In the 2016 CAP, the Naval Observatory’s Action Plan for the Significant Deficiency 2013-SD1 was to:

- a. Verify the process for implementing repairs or replacing BFPs that fail inspection;
- b. Verify repairs and/or replacements are completed within 10 days of a failed test;
- c. Verify BFPs that fail inspection are retested within 45 days of the original test;
- d. Verify test/repair records are maintained.

23. EPA approved the 2016 CAP on October 25, 2016.

24. When EPA conducted the November 2016 sanitary survey of the Naval Observatory PWS, EPA concluded that the Navy had not addressed the significant deficiency in accordance with the 2016 CAP. The Navy had still not effectively developed backflow prevention programs to repair and replace failed assemblies in a timely manner. The Navy proposed a second CAP on June 30, 2017. In the 2017 CAP, the Naval Observatory’s Action Plan for the ongoing Significant Deficiency 2013-SD1 was to:

- a. Submit work order promptly on notification of failure;
- b. Request funding for completion of work, if needed;
- c. Verify work order has been initiated by responsible party to complete work 5 days after notification of failure;
- d. Replace/repair device within 10 days of failed test; and
- e. Retest following repair and send reports to DC Water within 45 days of the original test within 30 days of test failure [as required as a customer of DC Water].

25. EPA approved the 2017 CAP on August 2, 2017.

26. The significant deficiency was still present at the time of EPA's October 2019 sanitary survey of the Naval Observatory PWS.

27. On April 20, 2020, the Navy submitted a 2020 Proposed CAP, including a "Backflow Preventer Devices Team" Description, to EPA for its Response to Significant Deficiency SD-2013 that has not yet been approved. This proposal is incorporated into this Order as Appendix A.

28. Through the actions described above, the Navy violated the SDWA implementing regulations at 40 C.F.R. Part 141 by failing to adhere to a Corrective Action Plan to remedy a significant deficiency identified during a sanitary survey per 40 CFR § 141.723(d).

III. ORDER FOR COMPLIANCE

Based on the foregoing FINDINGS, and pursuant to the authority of Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), EPA hereby ORDERS and Respondent agrees as follows:

29. The Navy shall comply with all provisions of the SDWA and its implementing regulations.

30. On or before the 15th calendar day following the Effective Date of this Order, the Navy shall develop and submit electronically to the addresses below for EPA's review a supplement to the Naval Observatory PWS's 2020 Proposed CAP ("Supplemental CAP"), that includes:

- a. How the Navy will streamline repairs and meet deadlines;
- b. Interim deadlines for each step of the backflow prevention repair process;
- c. An expanded explanation of the "Backflow Prevention Work Team Description," referenced in the 2020 Proposed CAP, the role of the Backflow Prevention Work Team, and how it will achieve deadlines; and
- d. Any contracts entered into by the Navy with outside parties to carry out the BFP inspections and repairs.

31. EPA will review the Supplemental CAP and either:

- a. approve the Supplemental CAP;
- b. approve the Supplemental CAP in part, and request modifications to address and correct any noted deficiencies;
- c. modify the Supplemental CAP to cure any deficiencies; or
- d. disapprove the Supplemental CAP, in writing.

32. Within thirty (30) days of receipt of any EPA request for modifications, or disapproval, of the Supplemental CAP, the Navy shall address and correct all noted deficiencies and resubmit the Supplemental CAP for EPA approval. EPA retains the right, if the Supplemental CAP is not approved as provided herein, to order compliance in accordance with a

Supplemental CAP developed by EPA.

33. Upon approval by EPA of the Navy's Supplemental CAP, the Navy shall implement the Supplemental CAP, and meet all milestones listed in the CAP no later than 30 days after the Effective Date of this Order.

34. The Navy shall send written progress reports to EPA no later than 10 calendar days following the end of every calendar quarter after the Effective Date of this Order at the address listed below until it has achieved four consecutive quarters of successful compliance. Reports may be submitted electronically. Such reports shall document progress toward compliance with the requirements of the Order and Supplemental CAP, and note any changes in the responsible party. In addition, for events which may or will delay compliance with this Order, the report shall include:

- a. The cause of the anticipated delay;
- b. The length of the anticipated delay;
- c. The efforts taken to prevent or minimize the delay; and
- d. A description of any future deadlines which could be affected by the present or anticipated delay.

35. Any documentation, plans, reports and analyses shall be submitted via electronic mail to:

Ms. Leah Zedella
SDWA & Wetlands Section (3ED31)
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103
(215) 814-2838
zedella.leah@epa.gov

and

Ms. Alysa Zirilli, P.G.
Drinking Water Section (3WD21)
Water Division
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103
Phone: (215) 814-5733
zirilli.alysa@epa.gov

IV. GENERAL PROVISIONS

36. Notwithstanding Respondent's compliance with any requirements of this Order, 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 Respondents to additional enforcement action, including but not limited to administrative actions, as appropriate, for penalties under 42 U.S.C. § 1414(g)(3)(A) and 42 U.S.C. § 1447(b)(1) and/or injunctive relief.

37. Any request for modification of this Administrative Order, including the CAP, must be in writing and must be approved by EPA. A revised CAP will be incorporated into this Order upon approval by EPA.

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

39. This Order does not waive, suspend, or modify the requirements of the SDWA, 42 U.S.C. §§ 300f - 300j-26, 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 action otherwise authorized under the SDWA.

40. This Order does not relieve Respondents of any responsibilities or liabilities established pursuant to any applicable Federal, state or local law.

41. Submission of reports shall not excuse the obligation of the Respondent to comply with this Order.

42. Respondent neither admits nor denies the Findings of Fact contained herein.

43. By voluntarily entering into these agreements, the Department of the Navy is not waiving the ability to raise defenses regarding its status as a public water system in this or future settings.

44. Issuance of this Order in no way alters EPA's primary SDWA enforcement responsibility for D.C.

45. 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. EPA reserves and does not waive all existing inspection and information request authority.

46. 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.

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

48. 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.

49. Respondent certifies that any information or representation it has supplied to 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. EPA shall have the right to institute further actions to recover appropriate relief if 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 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.

50. Violation of any term of this Administrative Order may subject Respondent to a civil penalty of up to \$38,954 per day of violation under Section 1447(b) of the SDWA, 42 U.S.C. § 300j-6(b).

51. Respondent shall not raise lack of funds as a defense to compliance with elements of the CAP. Nothing in this Order shall require the Respondents to violate the Anti-Deficiency Act, 13 U.S.C. § 1341.

V. TERMINATION AND SATISFACTION

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

53. Respondent may submit to 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, EPA agrees that Respondent has adequately complied with all requirements of this Order, EPA shall provide written notification of termination of this Order, as described in Paragraph 52.

VI. EFFECTIVE DATE

54. This Order shall become effective on the date on which it is filed with the Regional Hearing Clerk after the signature of the Director, Enforcement and Compliance Assurance Division, EPA Region III.

VII. MULTIPLE COUNTERPARTS

55. 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 _____, 2020.

Karen Melvin
Director, Enforcement and Compliance Assurance Division
U.S. EPA, Region III

AGREED TO FOR THE RESPONDENT:

Date: 01 SEP 2020



CAPT Grahame A. Dicks, Commanding Officer
Naval Support Activity Washington

APPENDIX A

Enclosure (2)

Naval Support Activity Washington

Public Works Department

Back Flow Preventer Devices Team

Objective: The BFP Team will be responsible for maintaining the current process of testing, repairing/replacing and retesting BFP devices in order to make improvements and comply with DC Water requirements. The team will also ensure the record keeping and reporting requirements are met. This Team will bring together all stakeholders involved with BFP work and will improve communication and work flow between all responsible parties.

BFP Team Work Members	Responsibilities
BFP Inspector	Inspect BFP devices as required
	Send failed/passed reports to PWD Facilities
	Retest failed devices after repair or replacement
	Send reports to Regulators
PWD Facilities	Send failed BFP work orders to BOS Contractor
	Send repair/replace reports to BFP Inspector
Base Operations and Service (BOS) Contractor	Repair BFP devices
	Send repair reports to PWD Facilities
PWD Environmental	Oversight and ongoing process review

Milestones: As indicated in the Sanitary Survey 2019 Corrective Action Plan, PWD Washington is expecting to form and bring the team together by June 30, 2020. Program will be developed as a continual process improvement under the umbrella of the NSA Washington Environmental Management System. PWD Environmental will update EPA on progress as part of the quarterly CAP submissions.

Please be advised that the current pandemic may impact coordination and process development. PWD Washington is currently testing and repairing BFP devices.