

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
PHILADELPHIA, PENNSYLVANIA 19103

<b>In the Matter of:</b>	:	
	:	
<b>Pinnacle Water Association</b>	:	<b>U.S. EPA Docket No. SDWA-03-2023-0013DS</b>
<b>3327 Giatto Road</b>	:	
<b>Rock, WV 24747</b>	:	<b>ADMINISTRATIVE ORDER ON CONSENT</b>
	:	
<b>Respondent.</b>	:	<b>Pursuant to Section 1414(g) of the Safe</b>
	:	<b>Drinking Water Act, as amended, 42 U.S.C. §</b>
<b>PWS ID No. WV3302828</b>	:	<b>300g-3(g)</b>
<b>3327 Giatto Road</b>	:	
<b>Rock, WV 24747</b>	:	
	:	
<b>System.</b>	:	

**ADMINISTRATIVE ORDER ON CONSENT**

**I. STATUTORY AUTHORITY**

The United States Environmental Protection Agency, Region III (“EPA” or “Agency”) has made the following FINDINGS OF FACT and issues this ADMINISTRATIVE ORDER ON CONSENT (“the Order”) pursuant to 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 redelegate these authorities to the Director, Enforcement and Compliance Assurance Division, EPA Region III.

**II. 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. In accordance with Section 1411 of SDWA, 42 U.S.C. § 300g, national primary drinking water regulations shall apply to each public water system in each State. *See also* 40 C.F.R. § 141.3.
3. 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 SDWA, 42 U.S.C. § 300f(4).
4. A “community water system” is defined in the Act as a public water system that “(A) serves at least 15 service connections used by year-round residents ... or (B) regularly serves at least 25 year-round residents.” Section 1401(15) of SDWA, 42 U.S.C. § 300f(15).
  5. Pinnacle Water Association (“Respondent”) is a public water utility organized and operating under the laws of the State of West Virginia and as such, is a “person” as that term is defined in Section 1401(12) of SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
  6. Respondent is the owner and/or operator of public water system PWS Identification Number WV3302828 (“System”), located at 3327 Giatto Road, Rock, WV 24747, which provides water for human consumption.
  7. Respondent is a “supplier of water” as defined by Section 1401(5) of SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2.
  8. The System provides water from a ground water source. The System serves approximately 65 persons per year and has a minimum of 15 service connections and is therefore a “community water system” or “CWS,” as defined by Section 1401(15) of SDWA, 42 U.S.C. § 300f(15) and 40 C.F.R. § 141.2.
  9. The State of West Virginia, acting through the Department of Health and Human Resources (“WVDHHR”), has primary enforcement responsibility under Section 1413(a) of SDWA, 42 U.S.C. § 300g-2(a).
  10. According to Section 1411 of SDWA, 42 U.S.C. § 300g, Respondent is required to comply with the applicable regulations 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 February 25, 2021, WVDHHR conducted a Sanitary Survey at Respondent’s System. WVDHHR issued a Sanitary Survey Report to Respondent on March 16, 2021.
  12. WVDHHR notified EPA through the Safe Drinking Water Information System (SDWIS) of the violations listed in the following paragraphs. SDWIS contains records about public water systems and their violations of EPA's drinking water regulations, as reported to EPA by the states.
  13. Pursuant to Section 1414(g)(2) of SDWA, 42 U.S.C. § 300g-3(g)(2), EPA has offered the WVDHHR an opportunity to confer with the Agency regarding the Order.

**COUNT 1  
FAILURE TO MONITOR FOR TOTAL COLIFORM**

14. The information and allegations in the preceding paragraphs are incorporated herein by reference.
15. Pursuant to 40 C.F.R. § 141.21(a)(1), “[p]ublic water systems must collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan. These plans are subject to State review and revision.
16. Pursuant to 40 C.F.R. § 141.21(a)(2), community water systems must take a minimum of one (1) sample per month for a population between 25-1,000 people.
17. Based on the data WVDHHR provided through SDWIS, Respondent failed to monitor total coliform for each of the monthly monitoring periods from February 2019 to March 2022.
18. Based on the information available to EPA, Respondent continues to fail to monitor the System for total coliform.
19. Respondent’s failure to monitor for total coliform for thirty-eight (38) monthly monitoring periods from February 2019 to March 2022 is a violation of 40 C.F.R. § 141.21(a)(2) and SDWA.

**COUNT 2  
FAILURE TO CONDUCT ARSENIC MONITORING**

20. The information and allegations in the preceding paragraphs are incorporated herein by reference.
21. Pursuant to 40 C.F.R. § 141.23, “[c]ommunity water systems shall conduct monitoring to determine compliance with the maximum contaminant levels specified in 141.62 [Maximum contaminant levels for inorganic contaminants (including arsenic)] in accordance with this section.”
22. Pursuant to 40 C.F.R. § 141.23(a)(1) [Inorganic chemical sampling and analytical requirements], “[g]roundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point) beginning in the initial compliance period.”
23. Pursuant to 40 C.F.R. § 141.2, a “compliance period” is defined as “a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods.”
24. Pursuant to 40 C.F.R. § 141.2, “compliance cycle” is defined as “the nine-year calendar

year cycle during which public water systems must monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle begins January 1, 1993 and ends December 31, 2001; the second begins January 1, 2002 and ends December 31, 2010; the third begins January 1, 2011 and ends December 31, 2019.”

- 25. Pursuant to 40 C.F.R. § 141.23(c)(1), to determine compliance with the maximum contaminant level in § 141.62 for arsenic, “[g]roundwater systems shall take one sample at each sampling point during each compliance period.”
- 26. Based on the data WVDHHR provided through SDWIS, and WVDHHR’s March 16, 2021 Sanitary Survey Report, Respondent failed to monitor for arsenic for the three-year compliance period of 2017-2019.
- 27. Based on the information available to EPA, Respondent continues to fail to monitor the System for arsenic.
- 28. Respondent’s failure to monitor for arsenic during the compliance period of 2017-2019 is a violation of 40 C.F.R. § 141.23(c)(1) and SDWA.

**COUNT 3  
FAILURE TO CONDUCT INORGANIC CHEMICAL MONITORING**

- 29. The information and allegations in the preceding paragraphs are incorporated herein by reference.
- 30. Pursuant to 40 C.F.R. § 141.23(c)(1), to determine compliance with the maximum contaminant levels in § 141.62 for antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, and thallium (together, “Inorganic Chemicals”), “[g]roundwater systems shall take one sample at each sampling point during each compliance period.”
- 31. Based on the data WVDHHR provided through SDWIS and WVDHHR’s March 16, 2021 Sanitary Survey Report, Respondent failed to monitor Inorganic Chemicals for the three-year compliance period of 2017-2019.
- 32. Based on the information available to EPA, Respondent continues to fail to monitor the System for Inorganic Chemicals.
- 33. Respondent’s failure to monitor for Inorganic Chemicals during the three-year compliance period of 2017-2019 is a violation of 40 C.F.R. § 141.23(c)(1) and SDWA.

**COUNT 4  
FAILURE TO CONDUCT VOLATILE ORGANIC CHEMICAL MONITORING**

- 34. The information and allegations in the preceding paragraphs are incorporated herein by reference.

35. Pursuant to 40 C.F.R. § 141.24(f)(1), beginning with the initial compliance period, analysis of the contaminants listed in § 141.61(a) (1) through (21) [Maximum contaminant levels for organic contaminants] for the purpose of determining compliance with the maximum contaminant level shall be conducted as follows: “[g]roundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.”
36. Pursuant to 40 C.F.R. § 141.24(f)(4), “[e]ach community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in § 141.61(a)(2) through (21) during each compliance period, beginning in the initial compliance period.”
37. Based on the data WVDHHR provided through SDWIS, and WVDHHR’s March 16, 2021 Sanitary Survey Report, Respondent failed to monitor for volatile organic compounds listed: 1,1,1 Trichloroethane, 1,1,2 Trichloroethane, 1,1 Dichloroethylene, 1,2,4 Trichlorobenzene, 1,2 Dichloroethane, 1,2 dichloropropane, benzene, carbon tetrachloride, chlorobenzene, cis-1,2 dichloroethylene, dichloromethane, ethylbenzene, styrene, tetrachloroethylene, toluene, trans-1-2 dichloroethylene, vinyl chloride, and xylenes for all the quarterly monitoring periods ending on December 31, 2018, March 31, 2019, June 30, 2019, September 30, 2019, December 31, 2019, March 31, 2020, June 30, 2020, September 30, 2020, December 31, 2020, March 31, 2021, June 30, 2021, September 30, 2021, December 31, 2021, and March 31, 2022.
38. Based on the information available to EPA, Respondent continues to fail to monitor the System for volatile organic chemicals.
39. Respondent’s failure to monitor for the volatile organic chemicals during fourteen (14) quarterly monitoring periods ending from December 2018 to March 2022 is a violation of 40 C.F.R. § 141.24(f)(4) and SDWA.

**COUNT 5**

**FAILURE TO CONDUCT SYNTHETIC ORGANIC CHEMICAL MONITORING**

40. The information and allegations in the preceding paragraphs are incorporated herein by reference.
41. Pursuant to 40 C.F.R. § 141.24(h)(1), analysis of the contaminants listed in § 141.61(c) [Maximum contaminant levels for synthetic organic contaminants] for the purposes of determining compliance with the maximum contaminant level shall be conducted as follows, with the exception that no monitoring is required for aldicarb, aldicarb sulfoxide or aldicarb sulfone: “[g]roundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source

or treatment plant.”

42. Pursuant to 40 C.F.R. § 141.24(h)(4)(i), “[e]ach community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in § 141.61(c) during each compliance period, beginning in the initial compliance period.”
43. Based on the data WVDHHR provided through SDWIS, and the WVDHHR’s March 16, 2021 Sanitary Survey Report, Respondent failed to monitor for Synthetic Organic Chemicals for twenty (20) quarterly monitoring periods ending on June 30, 2017, September 30, 2017, December 31, 2017, March 31, 2018, June 30, 2018, September 30, 2018, December 31, 2018, March 31, 2019, June 30, 2019, September 30, 2019, December 31, 2019, March 31, 2020, June 30, 2020, September 30, 2020, December 31, 2020, March 31, 2021, June 30, 2021, September 30, 2021, December 31, 2021, and March 31, 2022.
44. Based on the information available to EPA, Respondent continues to fail to monitor the System for synthetic organic chemicals.
45. Respondent’s failure to monitor for the synthetic organic chemicals during twenty (20) quarterly monitoring periods ending from June 2017 to March 2022 is a violation of 40 C.F.R. § 141.24(h)(4)(i) and SDWA.

**COUNT 6  
FAILURE TO CONDUCT NITRATE MONITORING**

46. The information and allegations in the preceding paragraphs are incorporated herein by reference.
47. Pursuant to 40 C.F.R. § 141.23(d)(1), community water systems served by groundwater systems shall monitor for nitrate annually.
48. Based on the data WVDHHR provided through SDWIS, and WVDHHR’s March 16, 2021 Sanitary Survey Report, Respondent failed to monitor for nitrates for the annual monitoring periods of 2018-2021.
49. Based on the information available to EPA, Respondent continues to fail to monitor the System for nitrates.
50. Respondent’s failure to monitor for nitrates for four annual monitoring periods from 2018-2021 is a violation of 40 C.F.R. § 141.23(d) and SDWA.

**COUNT 7  
FAILURE TO MONITOR FOR RADIONUCLIDES**

51. The information and allegations in the preceding paragraphs are incorporated herein by

- reference.
52. Pursuant to 40 C.F.R. § 141.26(a)(2), systems must conduct initial monitoring for gross alpha particle activity, radium–226, radium–228, and uranium (collectively, “radionuclides”) in accordance with 40 C.F.R. § 141.26(a)(2)(i) and (ii).
  53. Pursuant to 40 C.F.R. § 141.26(c)(1)-(2), “the state may require more frequent monitoring than specified in paragraphs (a) and (b) of this section, or may require confirmation samples at its discretion. Each public water systems [*sic*] shall monitor at the time designated by the State during each compliance period.”
  54. Pursuant to 40 C.F.R § 141.26(c)(1)-(2), WVDHHR requires Respondent to monitor for radionuclides quarterly.
  55. Based on the data WVDHHR provided through SDWIS, and WVDHHR’s March 16, 2021 Sanitary Survey Report, Respondent failed to monitor for radionuclides for the fifteen (15) quarterly monitoring periods ending on September 30, 2018, December 31, 2018, March 31, 2019, June 30, 2019, September 30, 2019, December 31, 2019, March 31, 2020, June 30, 2020, September 30, 2020, December 31, 2020, March 31, 2021, June 30, 2021, September 30, 2021, December 31, 2021, and March 31, 2022.
  56. Based on the information available to EPA, Respondent continues to fail to monitor the System for radionuclides.
  57. Respondent’s failure to monitor for radionuclides during the fifteen (15) quarterly monitoring periods ending from September 2018 to March 2022 is a violation of 40 C.F.R. § 141.26(a)(2) and(c)(1)-(2) and SDWA.

**COUNT 8**

**FAILURE TO CONDUCT DISINFECTANT RESIDUALS, DISINFECTION BYPRODUCT AND DISINFECTION BYPRODUCT PRECURSORS MONITORING**

58. The information and allegations in the preceding paragraphs are incorporated herein by reference.
59. Pursuant to 40 C.F.R. § 141.132(c)(1)(i), “[u]ntil March 31, 2016, community and non-transient non-community water systems that use chlorine or chloramines must measure the residual disinfectant level in the distribution system at the same point in the distribution system and at the same time as total coliforms are sampled, as specified in § 141.21. Beginning April 1, 2016, community and non-transient non-community water systems that use chlorine or chloramines must measure the residual disinfectant level in the distribution system at the same point in the distribution system and at the same time as total coliforms are sampled, as specified in §§ 141.854 through 141.858. Subpart H systems of this part may use the results of residual disinfectant concentration sampling conducted under § 141.74(b)(6)(i) for unfiltered systems or § 141.74(c)(3)(i) for systems which filter, in lieu of taking separate samples.”

60. Pursuant to 40 C.F.R. § 141.21(a)(2), community water systems must take a minimum of one (1) sample of residual disinfectant levels per month for a population between 25-1,000 people.
61. Based on the data WVDHHR provided through SDWIS, Respondent failed to monitor for disinfectant residuals levels from chlorine for each of the monthly monitoring periods of January 2019 to March 2022.
62. Based on the information available to EPA, Respondent continues to fail to monitor the System for disinfectant residuals levels from chlorine.
63. Respondent's failure to monitor for disinfectant residuals levels from chlorine during the thirty-nine (39) monthly monitoring periods from January 2019 to March 2022 is a violation of 40 C.F.R. § 141.132(c)(1)(i) and SDWA.

**COUNT 9**

**FAILURE TO CONDUCT STAGE 2 DISINFECTANTS AND DISINFECTION  
BYPRODUCT MONITORING FOR TTHM AND HAA5**

64. The information and allegations in the preceding paragraphs are incorporated herein by reference.
65. 40 C.F.R. Part 141, Subpart V “establish[s] monitoring and other requirements for achieving compliance with maximum contaminant levels based on locational running annual averages (LRAA) for total trihalomethanes (TTHM) and haloacetic acids (five (HAA5)).” 40 C.F.R. § 141.620(a).
66. Pursuant to 40 C.F.R. § 141.621(a)(2), community water systems serving less than 500 people must monitor groundwater for TTHM and HAA5 (together, “Stage 2 Disinfection Byproducts”) at no fewer than two locations annually.
67. Pursuant to 40 C.F.R. § 141.625(a), community water systems “must increase monitoring to dual sample sets once per quarter (taken every 90 calendar days) at all locations if a TTHM sample is >0.080 mg/L or a HAA5 sample is >0.060 mg/L at any location.” *See also* 40 C.F.R. § 141.132(b)(1)(i).
68. Pursuant to 40 C.F.R. § 141.628, “[i]f you were on increased monitoring under § 141.132(b)(1), you must remain on increased monitoring until you qualify for a return to routine monitoring under § 141.625(c). You must conduct increased monitoring under § 141.625 at the monitoring locations in the monitoring plan developed under § 141.622 beginning at the date identified in § 141.620(c) for compliance with this subpart and remain on increased monitoring until you qualify for a return to routine monitoring under § 141.625(c).”
69. Based on the data WVDHHR provided through SDWIS and WVDHHR's March 16,



- 2021, Sanitary Survey Report, Respondent failed to monitor groundwater for the Stage 2 Disinfection Byproducts TTHM and HAA5 for the 2018-2019 monitoring period.
70. Respondent’s failure to monitor annually for the Stage 2 Disinfection Byproducts TTHM and HAA5 in the 2018-2019 monitoring period is a violation of 40 C.F.R. § 141.621(a)(2) and SDWA.
  71. In accordance with 40 C.F.R. § 141.625(a), WVDHHR determined that Respondent had to increase monitoring for the Stage 2 Disinfection Byproducts beginning in 2020 and required Respondent to collect samples of TTHM and HAA5 once per quarter.
  72. Based on the WVDHHR data provided through SDWIS and WVDHHR’s March 16, 2021, Sanitary Survey Report, Respondent failed to take one (1) sample per quarter for the Stage 2 Disinfection Byproducts TTHM and HAA5 for all quarterly monitoring periods ending on March 31, 2020, June 30, 2020, September 30, 2020, December 31, 2020, March 31, 2021, June 30, 2021, September 30, 2021, December 31, 2021, and March 31, 2022.
  73. Based on the information available to EPA, Respondent continues to fail to monitor the System for TTHM and HAA5.
  74. Respondent’s failure to take one (1) sample per quarter for the Stage 2 Disinfection Byproducts TTHM and HAA5 for nine (9) quarterly monitoring periods ending from March 2020 to March 2022 is a violation of 40 C.F.R. § 141.625(a) and SDWA.

**COUNT 10**  
**FAILURE TO CONDUCT LEAD AND COPPER MONITORING**

75. The information and allegations in the preceding paragraphs are incorporated herein by reference.
76. Pursuant to 40 C.F.R. § 141.86(d)(1), the initial monitoring period for lead and copper is a six-month tap sampling monitoring period that begins on January 1 or July 1 of the year in which the water system is monitoring at the number of sites required by 40 C.F.R. § 141.86(c).
77. Pursuant to 40 C.F.R. § 141.86(d)(4), water systems may qualify for reduced monitoring of annual or triennial tap sampling monitoring period.
78. Pursuant to 40 C.F.R. § 141.86(d)(4)(i), “[a] water system that meets the criteria for reduced monitoring under paragraph (d)(4) of this section must collect these samples from sampling sites identified in paragraph (a) of this section. Systems monitoring annually or less frequently must collect the lead and copper tap sampling during the months of June, July, August, or September unless the state has approved a different sampling period in accordance with paragraph (d)(4)(i)(A) of this section.”

79. Pursuant to the 2019 Monitoring Report provided to Respondent by WVDHHR, Respondent was required to take five (5) samples annually for lead and copper during the annual monitoring period of 2019.
80. On September 6, 2019, WVDHHR notified Respondent that if samples were not collected by September 30, 2019 for lead and copper for the 2019 monitoring period, Respondent was subject to enforcement actions as well as increased monitoring.
81. Based on the data WVDHHR provided through SDWIS and WVDHHR's March 16, 2021, Sanitary Survey Report, Respondent failed to monitor for lead and copper for the annual monitoring period of 2019.
82. Respondent's failure to monitor for lead and copper during the annual monitoring period of 2019 is a violation of 40 C.F.R. § 141.86(d) and SDWA.
83. Pursuant to the 2020 Monitoring Report provided to Respondent by WVDHHR, Respondent was required to collect five (5) lead and copper samples every six (6) months beginning on January 1, 2020.
84. Based on the 2020 Monitoring Report provided by WVDHHR and WVDHHR's March 16, 2021, Sanitary Survey Report, Respondent failed to monitor for lead and copper for two (2) semiannual monitoring periods ending on June 30, 2020 and December 31, 2020.
85. Respondent's failure to monitor for lead and copper during the semiannual monitoring periods of 2020 is a violation of 40 C.F.R. § 141.86(d) and SDWA.
86. Pursuant to the 2021 Monitoring Report provided to Respondent by WVDHHR, Respondent was required to collect five (5) lead and copper samples annually.
87. Based on the data WVDHHR provided through SDWIS and WVDHHR's March 16, 2021, Sanitary Survey Report, Respondent failed to monitor for lead and copper for the annual monitoring period of 2021.
88. Based on the information available to EPA, Respondent continues to fail to monitor the System for lead and copper.
89. Respondent's failure to monitor for lead and copper during the annual monitoring period of 2021 is a violation of 40 C.F.R. § 141.86(d) and SDWA.

**COUNT 11  
FAILURE TO PRODUCE AND DELIVER A COPY OF THE CONSUMER  
CONFIDENCE REPORT TO THE PUBLIC**

90. The information and allegations in the preceding paragraphs are incorporated herein by reference.

91. Pursuant to 40 C.F.R. § 141.152(b), each existing community water system must deliver its Consumer Confidence Report by July 1 of each year. Each report must contain data collected during, or prior to, the previous calendar year with the information described in 40 C.F.R. § 141.153.
92. Pursuant to 40 C.F.R. § 141.155(a), “each community water system must mail or otherwise directly deliver one copy of the [Consumer Confidence Report] to each customer.”
93. Pursuant to 40 C.F.R. § 141.155(c), “no later than [July 1 of each year], each community water system must mail a copy of the report to the primacy agency, followed within 3 months by a certification that the report has been distributed to customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to the primacy agency.”
94. Based on the data WVDHHR provided through the SDWIS, Respondent failed to deliver a copy of the Consumer Confidence Reports to the public and to WVDHHR for the 2019 and 2020 calendar years.
95. Respondent’s failure to produce and deliver a copy of the Consumer Confidence Reports to the public and WVDHHR in 2019 and 2020 is a violation of 40 C.F.R. § 141.155(a) and (c) and SDWA.

**COUNT 12**  
**FAILURE TO MONITER TREATMENT FOR GROUND WATER**

96. The information and allegations in the preceding paragraphs are incorporated herein by reference.
97. Pursuant to 40 C.F.R. § 141.403(b)(3), “A ground water system subject to the requirements of paragraphs (a), (b)(1), or (b)(2) of this section must monitor the effectiveness and reliability of treatment for that ground water source before or at the first customer.”
98. Pursuant to 40 C.F.R. § 141.403(b)(3)(i)(B), “A ground water system that serves 3,300 or fewer people must monitor the residual disinfectant concentration using analytical methods specified in § 141.74(a)(2) at a location approved by the State and record the residual disinfection concentration each day that water from the ground water source is served to the public. The ground water system must maintain the State-determined residual disinfectant concentration every day the ground water system serves water from the ground water source to the public. The ground water system must take a daily grab sample during the hour of peak flow or at another time specified by the State. If any daily grab sample measurement falls below the State-determined residual disinfectant concentration, the ground water system must take follow-up samples every four hours until the residual disinfectant concentration is restored to the State-determined level. Alternatively, a ground water system that serves 3,300 or fewer people may monitor

continuously and meet the requirements of paragraph (b)(3)(i)(A) of this section.”

99. Based on the data WVDHHR provided through SDWIS, Respondent failed to monitor the effectiveness and reliability of treatment for the ground water source for the monthly monitoring periods of October 2018, February 2019, March 2019, April 2019, May 2019, June 2019, August 2019, September 2019, October 2019, November 2019, December 2019, January 2020, February 2020, March 2020, April 2020, May 2020, June 2020, July 2020, August 2020, September 2020, November 2020, December 2020, January 2021, February 2021, March 2021, April 2021, May 2021, June 2021, August 2021, September 2021, October 2021, November 2021, December 2021, January 2022, February 2022, and March 2022.
100. Based on the information available to EPA, Respondent continues to fail to monitor the effectiveness and reliability of treatment for the ground water source for the System.
101. Respondent’s failure to monitor the effectiveness and reliability of treatment for the ground water source for (36) thirty-six monthly compliance periods between 2018-2022 is a violation of 40 C.F.R. § 141.402(b)(3)(i)(B) and SDWA.

### **COUNT 13**

#### **FAILURE TO ISSUE PUBLIC NOTIFICATIONS DURING THE PERIOD OF 2018-2021**

102. The information and allegations in the preceding paragraphs are incorporated herein by reference.
103. Pursuant to 40 C.F.R. § 141.201(a), each owner or operator of a community water system “must give notice for all violations of national primary drinking water regulations (NPDWR) and for other situations, as listed in Table 1,” including the failure to perform water quality monitoring, as required by the drinking water regulations.<sup>1</sup>
104. Based on the data WVDHHR provided through SDWIS, Respondent failed to issue the following public notifications:
  - a. Nine (9) for failure to monitor and report for chlorine on March 31, 2018, March 31, 2019, June 30, 2019, September 30, 2019, December 31, 2019, March 31, 2020, June 30, 2020, September 30, 2020, and December 31, 2020;
  - b. Nine (9) for failure to monitor for volatile organic chemicals on March 31, 2018, December 21, 2018, March 31, 2019, June 30, 2019, September 30, 2019, December 31, 2019, March 31, 2020, June 30, 2020, and September 30, 2020;
  - c. Twenty-four (24) for failure monitor for total coliform on March 31, 2018, December 31, 2018, March 31, 2019, April 30, 2019, May 31, 2019, June 30, 2019, July 31, 2019, August 31, 2019, September 30, 2019, October 31, 2019, November 30, 2019, December 31, 2019, January 31, 2020, February 29, 2020,

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<sup>1</sup> The term “NPDWR violations” is used in 40 C.F.R Subpart Q to include violations of the maximum contaminant level, maximum residual disinfection level, treatment technique, monitoring requirements, and testing procedures in Part 141.

- March 31, 2020, April 30, 2020, May 31, 2020, June 30, 2020, July 31, 2020, August 31, 2020, September 30, 2020, October 31, 2020, November 30, 2020, and January 31, 2021;
- d. Nine (9) for failure to monitor for synthetic organic contaminants on September 31, 2018, December 31, 2018, March 31, 2019, June 30, 2019, September 31, 2019, December 31, 2019, March 31, 2020, June 30, 2020, and September 31, 2020;
  - e. Twenty-one (21) for failure to monitor treatment of ground water on March 31, 2018, March 31, 2019, April 30, 2019, May 31, 2019, June 30, 2019, August 31, 2019, September 31, 2019, October 31, 2019, November 30, 2019, December 31, 2019, January 31, 2020, February 29, 2020, March 31, 2020, April 30, 2020, May 31, 2020, June 30, 2020, July 31, 2020, August 31, 2020, September 30, 2020, November 30, 2020, and January 31, 2021;
  - f. Six (6) for failure to monitor and report TTHM on August 31, 2018, August 31, 2019, February 28, 2020, May 31, 2020, August 31, 2020, and November 30, 2020;
  - g. Two (2) for failure to monitor for nitrate on December 31, 2018 and December 31, 2019;
  - h. Nine (9) for failure to monitor for radionuclides on December 31, 2018, March 31, 2019, June 30, 2019, September 30, 2019, December 31, 2019, March 31, 2020, June 30, 2020, September 30, 2020, and December 31, 2020;
  - i. Two (2) for failure to conduct follow-up or routine Lead and Copper Tap monitoring and reporting on October 1, 2019 and January 1, 2021;
  - j. Five (5) for failure to monitor and report HAA5 on August 31, 2019, February 28, 2020, May 31, 2020, August 31, 2020, and November 30, 2020;
  - k. One (1) for failure to monitor for inorganic contaminants on December 31, 2019;
  - l. Two (2) for failure to address deficiency in ground water on July 7, 2021 and July 17, 2021; and
  - m. One (1) for failure to monitor for arsenic on December 31, 2019.
105. Respondent's failure to issue one hundred (100) public notifications between 2018 and 2021 is a violation of 40 C.F.R. § 141.201(a) and SDWA.

**COUNT 14**

**FAILURE TO MEET REQUIREMENTS FOR QUALIFIED OPERATORS**

106. The information and allegations in the preceding paragraphs are incorporated herein by reference.
107. Pursuant to 40 C.F.R. § 141.130(c), each community water system ("CWS") and non-transient non-community water system ("NTNCWS") regulated under paragraph (a) of Section 141.130, described below, "must be operated by qualified personnel who meet the requirements specified by the State and are included in a State register of qualified operators."
108. Pursuant to 40 C.F.R. § 141.130 (a)(1), "The regulations in this subpart establish criteria

under which [CWSs] and [NTNCWSs] which add a chemical disinfection to the water in any part of the drinking water treatment process must modify their practices to meet MCLs and MRDLs in §§ 141.64 and 141.65, respectively, and must meet the treatment technique requirements for disinfection byproducts precursors in § 141.135.”

109. The system is considered a community water system that adds a chemical disinfectant to the water in its drinking water treatment process which requires a minimum of a Class I operator to meet state requirements.
110. During the February 25, 2021 Sanitary Survey conducted by WVDHHR, the Agency found a significant deficiency due to the system utilizing a water operator with an improper certification level in Respondent’s management of the System. Respondent was provided written notice of this significant deficiency from WVDHHR in the March 16, 2021 Sanitary Survey Report.
111. Respondent’s failure to meet the requirement for operator compliance with State requirements is a violation of 40 C.F.R. § 141.130(c) and SDWA.

### III. ORDER FOR COMPLIANCE

Based on the foregoing FINDINGS and pursuant to the authority of Section 1414(g) of SDWA, 42 U.S.C. § 300g-3(g), Respondent is HEREBY ORDERED, and Respondent agrees, to:

112. Comply with all provisions of SDWA and its implementing regulations.
113. **Within thirty (30) calendar days** of the Effective Date of this Order, respond to this Order by sending written correspondence to EPA and WVDHHR at the addresses listed below, outlining the actions Respondent has taken and plans to take to comply with this Order, including specific interim and final milestones for such plans.
114. **Within thirty (30) calendar days** of the Effective Date of this Order, Respondent shall have a certified Class 1 operator, operating and maintaining the system as required by 40 C.F.R. § 141.130(c).
115. **Within thirty (30) calendar days** of the Effective Date of this Order, Respondent shall take samples using the approved analytical methods at the State-approved sampling location and submit monitoring results for total coliform to EPA and WVDHHR, in accordance with 40 C.F.R. § 141.21.
116. **Within thirty (30) calendar days** of the Effective Date of this Order, Respondent shall take samples using the approved analytical methods at the State-approved sampling location and submit monitoring results for Stage 1 disinfection and disinfectant byproduct: chlorine to EPA and WVDHHR, in accordance with 40 C.F.R. § 141.132.
117. **Within thirty (30) calendar days** of the Effective Date of this Order, Respondent shall take samples and submit monitoring results for the residual disinfectant concentration

using the approved analytical methods at the State-approved sampling location to address treatment for ground water in accordance with 40 C.F.R. § 141.403(b)(3)(i)(B).

118. **Within thirty (30) calendar days** of the Effective Date of this Order, Respondent shall issue a copy of the Consumer Confidence Report to the public, in accordance with 40 C.F.R. § 141.155.
119. **During the monitoring period of October 1, 2022 to December 31, 2022**, Respondent shall submit the monitoring results for Stage 2 Disinfection Byproducts: HAA5 and TTHM to EPA and WVDHHR. **Respondent is required to sample in the month of November** using the approved analytical methods at the State-approved sampling location in accordance with 40 C.F.R. § 141.625.
120. **By December 31, 2022**, Respondent shall take samples using the approved analytical methods at the State-approved sampling location and submit monitoring results for volatile organic chemicals to EPA and WVDHHR, in accordance with 40 C.F.R. § 141.24.
121. **By December 31, 2022**, Respondent shall take samples using the approved analytical methods at the State-approved sampling location and submit monitoring results for synthetic organic chemicals to EPA and WVDHHR, in accordance with 40 C.F.R. § 141.24.
122. **By December 31, 2022**, Respondent shall take samples using the approved analytical methods at the State-approved sampling location and submit monitoring results for radionuclides to EPA and WVDHHR, in accordance with 40 C.F.R. §141.26.
123. **By December 31, 2022**, Respondent shall take samples using the approved analytical methods at the State-approved sampling location and submit monitoring results for arsenic to EPA and WVDHHR, in accordance with 40 C.F.R. § 141.23.
124. **By December 31, 2022**, Respondent shall take samples using the approved analytical methods at the State-approved sampling location and submit monitoring results for inorganic chemicals to EPA and WVDHHR, in accordance with 40 C.F.R. § 141.23.
125. **By December 31, 2022**, Respondent shall take samples using the approved analytical methods at the State-approved sampling location and submit monitoring results for nitrate to EPA and WVDHHR, in accordance with 40 C.F.R. §141.23.
126. **By December 31, 2022**, Respondent shall take samples using the approved analytical methods at State-approved sampling locations and submit results for lead and copper at taps used for Lead and Copper Rule monitoring to EPA and WVDHHR, in accordance with 40 C.F.R. § 141.86.
127. Respondent shall issue all Public Notifications in the form, manner, and frequency required, pursuant to 40 C.F.R. § 141.201.

128. Electronically submit or fax any documentation, plans, reports, and analyses to:

Ms. Lesly Huerta  
SDWA & Wetlands Section (3ED31)  
Enforcement & Compliance Assurance Division  
U.S. Environmental Protection Agency, Region III  
[huerta.lesly@epa.gov](mailto:huerta.lesly@epa.gov)  
(215) 814-2075

and

Mr. Dan J. Mace  
Compliance and Enforcement  
West Virginia Department of Health and Human Resources  
350 Capitol Street, Room 313  
Charleston, WV 25301  
(304) 558-0139  
Fax: (304) 558-0139  
Address as Attention: Dan Mace

#### IV. GENERAL PROVISIONS

129. Any request for modification of this Administrative Order must be in writing and must be approved by EPA.
130. 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.
131. Respondent's submission of progress reports and/or any delay in performing laboratory analyses shall not excuse the obligation of Respondent to comply with this Order.
132. This Order does not waive, suspend, or modify the requirements of 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 EPA to forgo any civil action otherwise authorized under SDWA.
133. Any violation of the terms of this Order may result in further EPA enforcement action including the imposition of administrative penalties of up to \$43,678 per day for each day of violation that occurs, or a judicial action including the imposition of civil penalties up to \$62,689 per day pursuant to Section 1414(g) of SDWA, 42 U.S.C. § 300g-3(g), 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.



134. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health.
135. This Administrative Order in no way relieves Respondent of its 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.
136. 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 any and all existing inspection and information request authority.
137. 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 of the Respondent.
138. 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.
139. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the term and conditions of this Order and to execute and legally bind the party.
140. 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 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.
141. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of Section III of this Order is restitution, remediation, or required to come into compliance with the law.

## V. TERMINATION AND SATISFACTION

142. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Order have been satisfactorily completed.
143. Respondent may submit to EPA a Certification of Compliance and Request for Termination of this Order, including the necessary documentation to demonstrate that it has met all requirements of this Order. If, following review of a 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 immediately preceding paragraph.

#### VI. EFFECTIVE DATE

144. This Order shall become effective on the date a fully executed copy is received by Respondent.

AGREED TO FOR RESPONDENT: PINNACLE WATER ASSOCIATION

Date: \_\_\_\_\_

By: \_\_\_\_\_

Mike Kennett  
Chairman  
Mercer County  
Pinnacle Water Association

SO ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

By: **KAREN  
MELVIN**  Digitally signed by  
KAREN MELVIN  
Date: 2022.11.16  
16:52:05 -05'00'

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*[Digital Signature and Date]*  
Karen Melvin, Director  
Enforcement & Compliance Assurance Division  
U.S. EPA, Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
Philadelphia, Pennsylvania 19103-2029**

<b>In the Matter of:</b>	:	
	:	
<b>Pinnacle Water Association</b>	:	<b>U.S. EPA Docket No. SDWA-03-2023-0013DS</b>
<b>3327 Giatto Road</b>	:	
<b>Rock, WV 24747</b>	:	<b>ADMINISTRATIVE ORDER ON CONSENT</b>
	:	
<b>Respondent.</b>	:	<b>Pursuant to Section 1414(g) of the Safe</b>
	:	<b>Drinking Water Act, as amended, 42 U.S.C. §</b>
<b>PWS ID No. WV3302828</b>	:	<b>300g-3(g)</b>
<b>3327 Giatto Road</b>	:	
<b>Rock, WV 24747</b>	:	
	:	
<b>System.</b>	:	

**CERTIFICATE OF SERVICE**

I certify that the foregoing *Administrative Order on Consent* was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the *Administrative Order on Consent*. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Mike Kennett  
Chairman  
Mercer County PSD  
Pinnacle Water Association  
[REDACTED]

Copies served via email to:

Hannah Leone  
Assistant Regional Counsel  
U.S. EPA, Region III  
[leone.hannah@epa.gov](mailto:leone.hannah@epa.gov)

Lesly Huerta  
Life Scientist  
U.S. EPA, Region III  
[huerta.lesly@epa.gov](mailto:huerta.lesly@epa.gov)


By: **BEVIN ESPOSITO** Digitally signed by BEVIN ESPOSITO  
Date: 2022.11.17 13:39:19 -08'00'  
\_\_\_\_\_  
[Digital Signature and Date]  
Regional Hearing Clerk  
U.S. EPA – Region III

*In the Matter of: Pinnacle Water Association*

*Docket No. SDWA-03-2023-0013DS*

AGREED TO FOR RESPONDENT: PINNACLE WATER ASSOCIATION

Date: 10/14/22

By:   
Mike Kennett  
Chairman  
Mercer County  
Pinnacle Water Association