

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

Docket No.

SDWA-07-2011-0023

City of Herington

Respondent

Proceedings Pursuant To
Section 1414(g) of the Safe Drinking
Water Act, as amended,
42 U.S.C. § 300g-3(g)

FINDING OF VIOLATIONS AND
ADMINISTRATIVE ORDER

Preliminary Statement

1. The following Finding of Violations is made and Administrative Order (Order) is issued pursuant to the authority of Section 1414(g) of the Safe Drinking Water Act (SDWA or Act), 42 USC. § 300(g)-3(g). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (EPA) to the Regional Administrator, EPA, Region 7, and redelegated to the Director of Region 7's Water, Wetlands and Pesticides Division.
2. The Respondent is City of Herington, which owns and/or operates a community public water system (PWS) in Herington, Kansas. The PWS has a water system identification number of KS2004102.
3. The Kansas Department of Health and Environment (KDHE) administers the Public Water Supply Supervision Program in Kansas pursuant to Section 1413 of the SDWA. However, KDHE has not yet obtained primary enforcement responsibility for the Stage 2 Disinfection By-Product Rule (Stage 2 DBPR) promulgated on January 4, 2006. Therefore, as of the date of this Order, EPA has primary responsibility for enforcement of the Stage 2 DBPR.

Statutory and Regulatory Background

4. "Person" is defined by Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and by 40 C.F.R § 141.2 to include an "individual, corporation, company, association, partnership, State, municipality, or Federal agency."

5. "Public water system" (PWS) is defined by Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and by 40 C.F.R. § 141.2, to include "a system for provision to the public of water for human consumption through pipes," where "such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals."
6. "Supplier of water" is defined by Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and by 40 C.F.R. § 141.2 to include "any person who owns or operates a public water system."
7. "Community water system" is defined by Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15), and by 40 C.F.R. § 141.2 to include a PWS which "regularly serves at least 25 year-round residents."
8. Pursuant to 40 C.F.R. §141.600(b), a community water system that uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light is subject to the requirements of 40 C.F.R Part 141 Subparts U and V.
9. Pursuant to 40 C.F.R. §141.600(c), community water systems serving fewer than 10,000 residents were required to submit a standard monitoring plan (SMP) prepared in accordance with 40 C.F.R. §141.601(a), a system specific study plan prepared in accordance with 40 C.F.R. §141.602(a), or 40/30 certification pursuant to 40 C.F.R. §141.603(b) by April 1, 2008.
10. Pursuant to 40 C.F.R. §141.600(c), community water systems serving fewer than 10,000 residents were required to submit an Initial Distribution System Evaluation (IDSE) report prepared in accordance with 40 C.F.R. § 141.601(c) by July 1, 2010.
11. Wholesale and consecutive systems that are part of a combined distribution system, as defined by 40 C.F.R. §141.2, are required to comply with 40 C.F.R. § 141.600(c) at the same time as the largest system within their combined distribution.

Factual Background

12. Respondent owns and/or operates a PWS (the System) located in Herington, Kansas, with a PWS identification number of KS2004102.
13. The System is a "public water system" within the meaning of Section 1401(4) of the Act, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2, and a "community water system" within the meaning of Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2.
14. Respondent is a "person" as defined by Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and by 40 C.F.R. § Section 141.2.
15. Respondent is a "supplier of water" within the meaning of Section 1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2.

16. The System delivers water that has been treated with a disinfectant other than ultraviolet light, and therefore is subject to the requirements of 40 C.F.R Part 141 Subparts U and V.
17. The System is a community water system that serves fewer than 10,000 residents. Systems serving fewer than 10,000 residents are defined as Schedule 4 systems according to Subpart U of the National Primary Drinking Water Regulations, at 40 C.F.R. § 141.600 (c).
18. Respondent submitted a SMP to EPA on February 14, 2008, which was approved by EPA on February 25, 2009. The SMP indicated that July was the System's peak month of Total Trihalomethane (TTHM) or Haloacetic Acid (HAA5) formation.

A. FINDINGS OF VIOLATION

19. The facts stated in Paragraphs 12 through 18 above are herein incorporated.
20. Respondent failed to collect TTHM and HAA5 dual sample sets at each of the locations listed in the approved SMP, in accordance with 40 C.F.R. § 141.601 and the schedule listed in the approved SMP.
21. Respondent failed to submit to EPA Region 7 by July 1, 2010, its IDSE Report pursuant to 40 C.F.R. § 141.600(c)(1).

B. ORDER FOR COMPLIANCE

22. Respondent shall revise its proposed sampling schedule in the approved SMP as follows:

Pursuant to 40 C.F.R. § 141.601(b), TTHM and HAA5 dual sample sets shall be collected from two (2) distinct monitoring locations, over four (4) separate monitoring periods, conducted at 90 day intervals, with one monitoring period coinciding with the peak month of TTHM or HAA5 formation. Sampling data collected in the four monitoring events shall be used to prepare the IDSE Report to be submitted by January 1, 2012, as referenced in Paragraph 24 below.
23. Respondent shall collect the standard monitoring samples as specified in the approved SMP according to a schedule that satisfies the conditions referenced in the preceding paragraph. These samples shall be analyzed by a laboratory certified by the Kansas Department of Health and Environment (KDHE).
24. By January 1, 2012, Respondent shall submit an IDSE Report that meets the requirements described in 40 C.F.R. § 141.600 and 40 C.F.R. § 141.601. Templates for preparing the IDSE Report can be found on the following EPA Region 7 website:

<http://www.epa.gov/region07/water/IDSE/index.htm> (URL is case-sensitive).

25. By July 1, 2011, Respondent shall issue Public Notice to its consumers of the violations identified in Paragraphs 20 and 21 above, in accordance with 40 C.F.R. § 141.204.
26. Respondent shall, within 10 days of completing the public notification requirements referenced above, submit to EPA a certification that it has fully complied with the public notice requirements, pursuant to 40 C.F.R. § 141.31(d). The certification must include a representative copy of each type of notice distributed, published, posted, and/or made available to the persons served by the system.
27. Respondent shall submit the IDSE Report to:

Mr. Scott Marquess
U.S. Environmental Protection Agency, Region 7
WWPD/WENF
901 North 5th Street
Kansas City, Kansas 66101
marquess.scott@epa.gov

Effect of Order

28. This Order does not waive, suspend, or modify the requirements of the SDWA, 42 U.S.C. §§ 300f-300j-26, and 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.
29. Violation of any term of this Administrative Order subjects Respondent to a civil penalty of up to \$37,500 per day of violation under Section 1414(g)(3) of the SDWA, 42 U.S.C. §§ 300g-3(g)(3) pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.
30. This Administrative Order in no way relieves Respondent's duty to comply with any federal, state, or local law, regulation, or permit. Compliance with this Administrative Order shall be no defense to any action commenced pursuant to such authorities.
31. Any request for modification of this Administrative Order must be in writing and must be approved by EPA in order for the modification to be given effect.
32. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.
33. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

Date: 12/10/10

Karon A. Spratlin
for William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

Date: 12/14/10

Chris R. Dudding
Chris R. Dudding
Assistant Regional Counsel
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I filed the original and one true and correct copy of the signed original Findings of Violation and Administrative Order with the Regional Hearing Clerk, Region 7.

I further certify that I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Administrative Order together with cover letter to the following:

Mr. David Gehrke
City of Herington
17 North Broadway
P.O. Box 31
Herington, Kansas 67449

Kathy Rouman

12/20/10
Date