

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Four Penn Center
1600 John F Kennedy Blvd
Philadelphia, PA 19103-2852

In the Matter of:

**ADMINISTRATIVE ORDER
ON CONSENT**

Logan County Public Service District,
Northern Regional

Docket No. SDWA-03-2022-0142DS

Respondent.

PWS ID No. WV3302364
Logan County Public Service District,
Northern Regional
41 Armory Road
Logan
Logan County, WV 25601

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 United States Environmental Protection Agency, Region III (“EPA” or “Agency”) has made the following FINDINGS OF FACTS 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 & 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. 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).
3. 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.” 42 U.S.C. § 300f(15).
4. Logan County Public Service District, Northern Regional (“Respondent”) is a corporation organized and operating under the laws of the Commonwealth of West Virginia 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.
5. Respondent is a person who 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.
6. The Respondent is the owner and/or operator of the Logan County Public Service District, Northern Regional, PWS Identification Number WV3302364 (“System”), located at 41 Armory Road, Logan, West Virginia 25601, which provides water for human consumption.
7. The System serves approximately 16,949 persons per year, year-round, and has a minimum of 15 service connections. The System is therefore a “community water system” or “CWS,” as defined by Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15) and 40 C.F.R. 141.2. The System 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.
8. The State of West Virginia, acting through the West Virginia Department of Health & Human Resources (“WVDHHR”), has primary enforcement responsibility under Section 1413(a) of the SDWA, 42 U.S.C. § 300g-2(a).
9. 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.
10. On February 3rd, 2021, EPA sent a Notice of Violation (“NOV”) to Respondent via certified mail, pursuant to Section 1414(a) of the SDWA, 42 U.S.C. § 300g-3(a) and provided a copy to WVDHHR. The NOV was delivered on February 8th, 2021. EPA did not receive a response from Respondent.

11. On February 11th, 2021, EPA sent an NOV to Respondent via email, pursuant to Section 1414(a) of the SDWA, 42 U.S.C. § 300g-3(a) and provided a copy to WVDHHR.
12. Pursuant to Section 1414(g)(2) of the SDWA, 42 U.S.C. § 300g-3(g)(2), EPA has offered WVDHHR an opportunity to confer with the Agency regarding the Order by submitting an advance draft copy of this Order to WVDHHR.

*Failure to conduct operational
evaluation for disinfectant by products*

13. Community water systems that use a primary or residual disinfectant other than ultraviolet light or deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light must comply with Subpart V of 40 CFR Part 141. Those PWSs must monitor for total trihalomethanes (“TTHM”) and total haloacetic acids (“HAA5”) at the frequency provided in 40 CFR § 141.621. PWSs serving populations of 10,000-49,999 must monitor quarterly.
14. The regulations require that if the PWS exceeds the operational evaluation levels for TTHM and HAA5 as provided in 40 CFR § 141.626, the PWS must conduct an operational evaluation and submit it to the State within 90 days of receiving the results.
15. For the quarters ending on December 31st, 2016, and September 30th, 2019, the System exceeded the operational evaluation level (“OEL”) for TTHM where the determined average exceeded 0.080 mg/L. The System failed to conduct an operational evaluation and submit a written report to the State by the 90-day deadlines of March 31st, 2017, and December 29th, 2019, respectively, after being notified of the analytical result that caused the system to exceed the OEL, in accordance with 40 CFR §141.62.
16. For the quarter ending on September 30th, 2018, the System exceeded the OEL for total haloacetic acids (“HAA5”) where the determined average exceeded 0.060 mg/L. The System failed to conduct an operational evaluation and submit a written report to the State by the 90-day deadline of December 29th, 2018, after being notified of the analytical result that caused the system to exceed the OEL, in accordance with 40 CFR §141.626, and thus violated an applicable requirement of the SDWA, as defined by Section 1414(i) of the SDWA, 42 U.S.C. § 300g-4(i).

*Failure to respond to and to address significant
deficiencies identified in a sanitary survey*

17. On September 26th, 2017, WVDHHR conducted a sanitary survey at the System and identified significant deficiencies, which included the following: (1) failure to submit and obtain approval for the Long Term 2 Enhanced Surface Water Treatment Rule (“LT2”) plan for the second round of cryptosporidium, E. coli, and

turbidity testing that was currently on-going, (2) a malfunctioning master meter to Chapmanville near Route 119, (3) severe leaking of the storage tank located above the treatment plant, and (4) leaking of the clarifier/sedimentation tank. The System failed to respond to WVDHHR in writing within 45 days of report receipt indicating how and on what schedule the System will address the deficiencies, in accordance with 40 CFR §142.16(b)(1)(ii). (See also 40 CFR §141.723(c)).

18. By January 24th, 2018, 120 days following the State-led sanitary survey mentioned in Paragraph 17, the System failed to correct the significant deficiencies identified in the September 26th, 2017, sanitary survey report, in accordance with WVDHHR's Manual of Environmental Procedures, Procedure #DW-47: Sanitary Survey Procedures. (See also 40 CFR §142.16(b)(1)(ii) and 40 CFR §141.723(c)).
19. On July 28th, 2020, WVDHHR conducted a sanitary survey at the System and identified significant deficiencies, which included the following: (1) failure to provide documentation to show compliance for the cross-connection / backflow prevention program, (2) severe lack of security for the Lower Whitman Tank, including an open access gate, and unlocked ladder and an unlocked manhole cover, (3) inadequate method and frequency for disposal of sludge in the spiral clarifier, (4) inadequate retention time for sludge in the spiral clarifier, (5) an excessive accumulation of vegetation within the fenced area of the clearwell tank, and (6) significant standing water around the clearwell tank from natural runoff / improperly graded drainage area. The System failed to respond to WVDHHR in writing within 45 days of report receipt indicating how and on what schedule the System will address the deficiencies, in accordance with 40 CFR §142.16(b)(1)(ii). (See also 40 CFR §141.723(c)).
20. By November 25th, 2020, 120 days following the State-led sanitary survey mentioned in Paragraph 19, the System failed to correct the significant deficiencies identified in the July 28th, 2020, sanitary survey report, in accordance with WVDHHR's Manual of Environmental Procedures, Procedure #DW-47: Sanitary Survey Procedures. (See also 40 CFR §142.16(b)(1)(ii) and 40 CFR §141.723(c)).

Failure to monitor a contaminant

21. The regulations at 40 CFR § 141.24 require PWSs to monitor for certain specified contaminants, including di(2-ethylhexyl)phthalate.
22. During the three-year monitoring period from January 1st, 2017, through December 31st, 2019, during which the System was required to sample twice within 12 months in different quarters, the System failed to monitor for di(2-ethylhexyl)phthalate, in accordance with 40 CFR § 141.24, and thus violated an applicable requirement of the SDWA, as defined by Section 1414(i) of the SDWA, 42 U.S.C. § 300g-4(i).

Failure to issue required public notices

23. Owners and operators of PWSs must give notice of violations of the SDWA regulations in the form, manner, and frequency required, as provided in 40 CFR §141.201 – 141.202.
24. Between 2019-2021, the System failed to issue a total of nine (9) Public Notifications in the form, manner, and frequency required, in accordance with 40 CFR § 141.201 – 141.202, and thus violated an applicable requirement of the SDWA, as defined by Section 1414(i) of the SDWA, 42 U.S.C. § 300g-4(i). These Public Notifications relate to the following: (1) failure to conduct source water monitoring for cryptosporidium, (2) failure to conduct source water monitoring for *E. coli*, (3) 3 separate instances of failure to monitor for turbidity, (4) failure to monitor for source water turbidity, (5) failure to conduct a Level 1 Assessment for Total Coliforms, (6) failure to monitor for di(2-ethylhexyl)phthalate.

Failure to conduct system assessment

25. PWSs are required to conduct system assessment if they exceed the treatment technique triggers as specified at 40 CFR § 141.859.
26. On December 15th, 2020, the System failed to conduct the Level 1 Assessment for Total Coliforms, in accordance with 40 CFR § 141.859, and thus violated an applicable requirement of the SDWA, as defined by Section 1414(i) of the SDWA, 42 U.S.C. § 300g-4(i).

Failure to Comply with America's Water Infrastructure Act

27. Section 1433(a) of the SDWA requires community water systems (CWSs) serving more than 3,300 persons to conduct a Risk and Resilience Assessment (RRA) of its system, including:
 - a. an assessment of 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);
 - c. the monitoring practices of the system; the use, storage, or handling of various chemicals by the system; and
 - d. the operation and maintenance of the system
28. Section 1433(a)(3)(A) of the SDWA requires CWSs serving over 3,300 but less than 50,000 persons to submit its certification to the EPA Administrator that it has conducted its RRA on or before June 30, 2021.
29. Section 1433(b) of the SDWA requires CWS serving over 3,300 but less than 50,000 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 31st, 2021.

30. Based on information available to EPA, the Respondent certified that it has 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 Logan County Public Service District, Northern Regional on June 29th, 2021, but failed to comply with the subsequent requirement to revise its ERP by the December 31st, 2021, deadline, in violation of Section 1433(b), the SDWA, 42 U.S.C. § 300i-2(b), an “applicable requirement” of the SDWA.

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:

31. Beginning immediately, Respondent shall comply with all the provisions of the SDWA and its implementing regulations.
32. Within fifteen (15) days of the Effective Date of this Order, Respondent shall respond to this Order by emailing EPA and WVDHHR at the addresses listed below a Corrective Action Plan (“CAP”) for compliance with this Order, including specific interim and final milestones for such plans.
33. Within ninety (90) days of the Effective Date of this Order, Respondent shall conduct an operational evaluation for TTHM and HAA5 and submit an operational evaluation report to EPA and WVDHHR, in accordance with 40 CFR § 141.626.
34. Within forty-five (45) days of the Effective Date of this Order, Respondent shall send a written response to EPA and WVDHHR indicating how and on what schedule the System will address the significant deficiencies identified during the September 26th, 2017, and July 28th, 2020, sanitary surveys conducted by WVDHHR, in accordance with 40 CFR § 141.723(c).
35. EPA will review the CAP and either: approve the CAP, approve the CAP in part and request modifications to address and correct any noted deficiencies, modify the CAP to cure any deficiencies, or disapprove the CAP, in writing.
36. Within five (5) days of receipt of any EPA request for modifications or disapproval of the CAP, Respondent shall address and correct all noted deficiencies and resubmit the CAP for EPA approval. EPA retains the right, if the CAP is not approved as provided herein, to order compliance in accordance with a CAP developed by EPA.
37. Within thirty (30) days of the Effective Date of this Order, Respondent shall correct the significant deficiencies identified in the 2017 and in the 2020 sanitary survey reports and submit all relevant documentation to EPA and WVDHHR, in accordance with 40 CFR § 141.723(d).

- 38. Within thirty (30) days of the Effective Date of this Order, Respondent shall publish all unissued Public Notifications, mentioned in Paragraph 24, in the form, manner, and frequency required, pursuant to 40 CFR §141.201 – 141.202.
- 39. Within thirty (30) days of the Effective Date of this Order, Respondent shall submit the monitoring results for di(2-ethylhexyl)phthalate to EPA and WVDHHR, in accordance with 40 CFR § 141.24.

AMERICA’S WATER INFRASTRUCTURE ACT REQUIREMENTS

- 40. No later than November 27th, 2022, Respondent shall submit its certification for the completion of its ERP, as required by Section 1433(b) of the SDWA, to the EPA Administrator. For instructions on how to submit the ERP certification, visit EPA’s website. <https://www.epa.gov/waterresilience/americas-water-infrastructure-act-risk-assessments-and-emergency-response-plans>.
- 41. Following submission, Respondent shall provide written confirmation to EPA, that the requirements of Paragraphs 27-30 have been met and that the Respondent is in compliance with Section 1433(b) of the SDWA and the Order. Do not submit the ERP to the below address, only the above referenced confirmation shall be submitted electronically via email to:

Miranda Cento
SDWA & Wetlands Section (3ED31)
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency, Region III
(215) 814-3273
cento.miranda.n@epa.gov

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

Miranda Cento
SDWA & Wetlands Section (3ED31)
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency, Region III
(215) 814-3273
cento.miranda.n@epa.gov

and

Daniel Mace
Compliance and Enforcement
350 Capitol Street, Room 313
Charleston, West Virginia 25301
(304) 352-5023

dan.j.mace@wv.gov

IV. GENERAL PROVISIONS

43. 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.
44. 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 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 42 U.S.C. § 1414(g)(3)(A) and/or injunctive relief.
45. 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, pursuant to Section 1414(g) of the 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.
46. EPA reserves the right to commence an 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.
47. Any request for modification of this Administrative Order must be in writing and must be approved by EPA.
48. 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.
49. This Administrative Order in no way relieves the Respondent of the duty to comply with any federal, state or local law, regulation, ordinance or permit. Compliance with this Administrative Order shall be no defense to any action commenced pursuant to such authorities.
50. 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.

51. 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 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.

52. 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.
53. 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.

V. TERMINATION AND SATISFACTION

54. 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.

55. 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 54.

VI. EFFECTIVE DATE

This Order shall become effective on the date on which it is filed with the Regional Hearing Clerk, EPA Region III.

VII. MULTIPLE COUNTERPARTS

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 _____, 2022

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

AGREED TO: FOR THE RESPONDENT:

Date: 9-28-22



William Baisden
System Owner/Operator
Logan Co. Public Service District,
Northern Regional

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

Philadelphia, Pennsylvania 19103-2029

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**ADMINISTRATIVE ORDER
ON CONSENT**

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Logan County Public Service District,
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41 Armory Road
Logan
Logan County, West Virginia 25601

System.

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

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 Administrative Order on Consent to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email via UPS to:

William Baisden
System Owner/Operator
Logan County PSD, Northern Regional
41 Armory Road
Logan, WV 25601

With copies served via email to:

Pamela J. Lazos
Senior Assistant Regional Counsel
USEPA Region III
lazos.pamela@epa.gov
(215) 814-2658

Miranda Cento
USEPA Region III