

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:)
)
) Docket No. SDWA-07-2017-0111
Beloit, Kansas)
PWS Identification # KS2012301)
)
)
)
Respondent)
)
) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE
) ON CONSENT
Proceedings under Section 1414 of the)
Safe Drinking Water Act, 42 U.S.C. § 300g-3)
_____)

I. STATUTORY AUTHORITY

The following findings are made and Administrative Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 1414(g) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. Section 300g-3(g) (“the Act”), and duly delegated to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

II. FINDINGS

1. The city of Beloit, Kansas (hereinafter “Respondent”) owns and/or operates the Beloit Public Water System, a “public water system” (“PWS”) within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. §300f(4), and 40 C.F.R. §141.2, located in Mitchell County, Kansas. The PWS identification number is KS2012301.
2. Respondent is a “supplier of water” within the meaning of Section 1401(5) of the SDWA, 42 U.S.C. §300f(5), and 40 C.F.R. §141.2.
3. Respondent is a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. §300f(12), and is subject to an Administrative Order (“Order”) issued under Section 1414(g)(1) of the SDWA, 42 U.S.C. §300g-3(g)(1).
4. Respondent provides piped water for human consumption and regularly serves a population of

at least 25 individuals year-round or has at least 15 service connections, and is therefore a "community water system" as defined by Section 1401(15) of the SDWA, 42 U.S.C. §300f(15), and 40 C.F.R. §141.2. The PWS serves approximately 3,790 customers through 1,847 service connections.

5. On January 4, 2006, EPA promulgated the Stage 2 Disinfectants and Disinfection Byproducts Rule ("Stage 2 DBPR"), regulated under 40 C.F.R. Part 141, Subparts U and V, to provide for increased public health protection against the potential risks for cancer and reproductive developmental health effects associated with disinfection byproducts ("DBPs"). The Stage 2 DBPR requires that compliance with the maximum contaminant levels ("MCL") for total trihalomethanes ("TTHM") and haloacetic acids ("HAA5") be based on the locational running annual average ("LRAA") concentration of these DBPs. Respondent was required to begin complying with the compliance monitoring provisions of the Stage 2 DBPR beginning October 1, 2013.
6. The Kansas Department of Health and Environment ("KDHE") administers the Public Water Supply Supervision Program in Kansas pursuant to Section 1413 of the SDWA. The approval of primary enforcement authority from EPA to the KDHE was effective as of September 9, 1977. However, the KDHE has not yet obtained primary enforcement responsibility for the Stage 2 DBPR. Therefore, as of the date of this Order, the EPA has primary responsibility for enforcement of the Stage 2 DBPR.
7. Respondent serves approximately 3,790 persons and, therefore, was required to begin complying with the compliance monitoring provisions of the Stage 2 DBPR beginning October 1, 2013.
8. Respondent uses a surface water source and adds a chemical disinfectant(s) to the water as part of the drinking water treatment process.
9. Pursuant to 40 C.F.R. §141.621, Respondent is required to monitor for TTHMs and HAA5. Specifically, the system is required to take individual TTHM and HAA5 samples at the locations with the highest TTHM and HAA5 concentrations, respectively, once per quarter. For systems serving between 3,301-9,999 people, two locations with a dual sample set at each location per monitoring period, are required to be sampled.
10. Pursuant to 40 C.F.R. §§141.64(b)(2), 141.620(d) and 141.625(b), Respondent must calculate LRAAs for TTHM and HAA5 using monitoring results collected and determine whether each LRAA exceeds the MCL. If Respondent fails to complete four consecutive quarters of monitoring, Respondent must calculate compliance with the MCL based on the average of the available data from the most recent four quarters. If Respondent takes more than one sample per quarter at a monitoring location, Respondent must average all samples taken in the quarter at that location to determine a quarterly average to be used in the LRAA calculation.
11. 40 C.F.R. §141.64(b)(2) establishes the MCL for TTHMs of 0.080 mg/L.
12. Based on information provided by KDHE, Respondent failed to comply with the MCL for TTHMs under the Stage 2 DBPR in the following monitoring periods:

2014 - 3rd quarter
2014 - 4th quarter
2015 - 1st quarter
2015 - 2nd quarter
2015 - 3rd quarter
2015 - 4th quarter
2016 - 1st quarter
2016 - 2nd quarter
2016 - 3rd quarter
2016 - 4th quarter
2017 - 1st quarter

Respondent is therefore in violation of 40 C.F.R. §141.64(b)(2).

13. Pursuant to 40 C.F.R. §141.203, Respondent must conduct public notification of violations, including violations of the MCLs under the Stage 2 DBPR.
14. In September 2014, Respondent contracted with TREKK Design Group, LLC (“TREKK”) to address Respondent’s water quality issues through a Water Treatment and Taste and Odor Study.
15. On May 17, 2016, TREKK presented its Water Treatability Study findings to Respondent’s governing body.
16. On June 21, 2016, Respondent entered into a Water Treatment Preliminary Design and Pilot Testing Contract with TREKK.
17. In January 2017, TREKK, on behalf of Respondent, submitted to KDHE a cover letter and report entitled “Beloit, KS Water Treatment Plant Disinfection Profiling and Benchmarking” (1/17/17). The cover letter indicates that Respondent wishes to make changes to its disinfection practice to reduce DBP formation.
18. Pursuant to 40 C.F.R. §141.540 – 544, because Respondent wishes to make a significant change to their disinfection practices, the Disinfection Profile and Benchmark report (1/17/17) must be approved by KDHE before Respondent implements any significant changes to their disinfection practices.
19. As of May 2, 2017, the January 17, 2017, report remains under review by KDHE.
20. EPA is issuing this Order to place the Respondent on an enforceable schedule to comply with the monitoring, reporting and MCL requirements of 40 C.F.R. Part 141 Subpart V and the SDWA.

III. ORDER

Based on the foregoing FINDINGS, and pursuant to the authority of Section 1414(g) of the SDWA, EPA hereby ORDERS and Respondent AGREES to perform the following actions upon the effective date of this Order:

21. Respondent shall conduct monitoring quarterly for TTHM and HAA5 in accordance with 40 C.F.R. §141.621(a) and its state approved monitoring plan. Samples shall be analyzed in accordance with 40 C.F.R §141.621(b). Respondent must calculate the LRAAs for TTHM and HAA5 using monitoring results collected, in accordance with 40 C.F.R. §141.620(d). Specifically, Respondent must calculate compliance with the MCL based on the available data from the most recent four quarters.
22. Within thirty (30) days of receipt of this Order, Respondent must submit documentation that all public notice requirements specified in 40 C.F.R. Part 141, Subpart Q have been completed for the DBP MCL violations noted in this Order. Thereafter, Respondent must continue to repeat public notice quarterly until the violations have been resolved.
23. Respondent shall submit to EPA, in addition to routine reporting to KDHE, the results of the monitoring required pursuant to 40 C.F.R. §141.621 by the 10th of the month following the end of the calendar quarter within which the sample was collected in accordance with 40 C.F.R. §141.629. Respondent shall report quarterly to EPA until directed otherwise.
24. In order to rectify the violations referenced in this Order, Respondent shall comply with the following compliance schedule:
 - a. Within fourteen (14) days of KDHE approval of the Disinfection Benchmark described in paragraph 17, Respondent shall submit to EPA for review and approval, a sampling plan to evaluate the effects of the disinfection changes on TTHM levels, and whether the changes to the disinfection practices may sufficiently reduce TTHM levels to enable Respondent to comply with the DBP MCLs over time. The purpose of the sampling effort is to collect information to evaluate whether impacts to TTHM levels associated with the changes to disinfection practices should be evaluated for an additional year, or whether Respondent should begin taking additional actions more immediately to address the TTHM MCL exceedances. The sampling plan shall include a schedule for completing work, specify collection of samples before and after implementing changes to the disinfection practices, outline sample collection procedures, and describe how the data that will be collected will be used to evaluate the effects of the disinfection change and to estimate whether the TTHM MCL may be attained.
 - b. Within fourteen (14) days of EPA approval of the sampling plan in paragraph 24(a), Respondent shall implement changes to their disinfection practices as outlined in the KDHE-approved Disinfection Benchmark Report, complete sampling as outlined in the approved sampling plan, and continue with routine monitoring for DBPs as outlined in paragraph 9.

- c. Within fourteen (14) days of receipt of sampling results as specified in the sampling plan in paragraph 24(a), Respondent shall report sampling results to EPA for review and approval, and include an evaluation of whether the changes to disinfection practices may enable Respondent to comply with the TTHM MCL.
- d. If the EPA-approved sampling report in paragraph 24(c) indicates that the changes to disinfection practices will not enable Respondent to comply with the TTHM MCL, Respondent shall take steps to implement a long-term solution to the TTHM MCL exceedances, shall consult with KDHE within thirty (30) days of EPA approval of the sampling report, and shall begin implementing actions as outlined starting with paragraph 24(e)(ii) below.
- e. If the EPA-approved sampling report in paragraph 24(c) indicates that the changes to disinfection practices may enable Respondent to comply with the TTHM MCL, Respondent shall continue routine monitoring for DBPs as outlined in paragraph 9. If after one year of implementing changes to disinfection practices Respondent's LRAA for TTHMs exceeds 80 ug/L, Respondent shall take steps to implement a long-term solution to the DBP MCL exceedances as follows:
 - i. Within thirty (30) days of notifying EPA of the TTHM LRAA exceeding 80 ug/L, Respondent shall consult with the KDHE in regards to deliverables required pursuant to this Order.
 - ii. Within sixty (60) days of completing paragraph 24(e)(i), Respondent shall submit to the KDHE for review and approval documentation for the waste stream summary review and disposal method consensus process.
 - iii. Within ninety (90) days of KDHE approval of the waste stream summary review and disposal method consensus process in paragraph 24(e)(ii), Respondent shall submit to the KDHE an engineering report for review and acceptance. The engineering report shall present options for attaining long-term compliance with the DBP MCLs, and include the KDHE-approved consensus outcome of the waste stream review summary and disposal method consensus process.
 - iv. Within ninety (90) days of the KDHE acceptance of the engineering report in paragraph 24(e)(iii) as final, Respondent shall submit to the KDHE a funding plan that includes implementation dates.
 - v. Within one hundred eighty (180) days of completion of paragraph 24(e)(iv), Respondent shall submit to the KDHE project plans, specifications, public water supply permit application, and other information as may be requested for review and approval.

- vi. Within thirty (30) days of the KDHE approval of plans, specifications or other information from paragraph 24(e)(v), Respondent shall advertise for bids to complete improvements to the water system treatment facilities.
 - vii. Within one hundred twenty (120) days of completion of paragraph 24(e)(vi), Respondent shall accept and award the contract for improvements to the water system treatment facilities.
 - viii. Within one (1) year of completion of paragraph 24(e)(vii), Respondent shall substantially complete upgrades and improvements of water system treatment facilities.
 - ix. Within thirty (30) days of completing paragraph 24(b)(viii), Respondent shall produce water that will achieve compliance with the MCLs established for Disinfection By-Products under the Stage 2 DBPR.
25. If EPA or KDHE identify any deficiencies in Respondent's submittals as described above, Respondent shall correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, in accordance with the preceding Paragraphs within thirty (30) calendar days or such longer time as agreed to by the EPA in writing.
26. Respondent shall remain in compliance with all applicable requirements of the Stage 2 DBPR, including the TTHM and HAA5 MCLs (40 C.F.R. §141.64(b)(2)), monitoring requirements (40 C.F.R. §141.621), compliance determination requirements (40 C.F.R. §141.620), and reporting requirements (40 C.F.R. §141.629).
27. All information required to be submitted by this Order to EPA shall be mailed to:

Scott Marquess, or designee
Water Enforcement Branch
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
(913) 551-7131

28. All information required to be submitted by this Order to KDHE shall be mailed to:

Cathy Tucker-Vogel, Section Chief
Public Water Supply Section
1000 SW Jackson St., Suite 420
Topeka, Kansas 66612

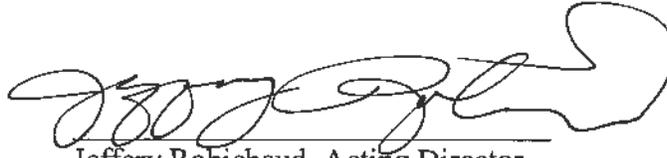
IV. GENERAL PROVISIONS

29. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's

authority or jurisdiction to issue and enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order, except that Respondent admits the jurisdictional allegations herein. Respondent also 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 under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

30. This Order shall not prohibit, prevent, or otherwise preclude EPA from taking whatever action it deems appropriate to enforce the Act in any manner and shall not prohibit, prevent, or otherwise preclude EPA from using this Order in subsequent administrative or judicial proceedings. Nothing in this Order shall constitute a waiver, suspension or modification of the requirements of the Act, or the rules and regulations promulgated there under which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Law.
31. Once approved by KDHE all deliverables, including schedules contained therein, shall be incorporated into this Order.
32. Violation of any part of this Order or the drinking water regulations may subject Respondent to a civil penalty of up to \$53,907 (as adjusted for inflation) per day of violation. 42 U.S.C. § 300g-3; 40 C.F.R. part 19.
33. This Order does not relieve Respondent of any responsibilities or liabilities established pursuant to any applicable federal, State or local law.
34. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by EPA.
35. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

ORDERED, this 22 day of May, 2017.

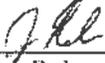


Jeffery Robichaud, Acting Director
Water, Wetlands and Pesticides Division



Chris Muehlberger
Office of Regional Counsel

For the Respondent, Beloit, Kansas Public Water System:



Jason Rabe, City Manager
City of Beloit, Kansas

5/17/17

Date