

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



**In the Matter of:** :  
:   
**Leadsville Public Services District** : **U.S. EPA Docket No. SDWA-03-2024-0030DS**  
**108 2nd Street** :   
**Elkins, WV 26241** : **Proceeding under Section 1414(g) of the**  
: **Safe Drinking Water Act, as amended,**  
**Respondent.** : **42 U.S.C. Section 300g-3(g)**  
:   
**PWS ID No. WV3304215** :   
:   
**System.** :   
:   
:

**ADMINISTRATIVE ORDER ON CONSENT**

**I. STATUTORY AUTHORITY**

The United States Environmental Protection Agency, Region III (“EPA” or the “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 redelegated these authorities to the Director of the Enforcement and Compliance Assurance Division, EPA Region III.

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

1. Section 1414(g)(1) of the Act, 42 U.S.C. § 300g-3(g)(1), provides that, “In any case in which the Administrator is authorized to bring a civil action under this section or under [section 1445 of the SDWA, 42 U.S.C. §300j-4], with respect to any applicable requirement, the Administrator also may issue an order to require compliance with such applicable requirement.”
2. Pursuant to section 1414(i)(4) of the Act, 42 U.S.C. § 300g-3(i)(4), an “applicable requirement” includes “a requirement of . . . an applicable State program for which the Administrator has made a determination that the requirements of [section 1413 of the SDWA, 42 U.S.C. § 300g-2] have been satisfied, or an applicable State program approved pursuant to this part.”

3. 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.
4. A “public water system (‘PWS’)” is defined in Section 1401(4)(A) of SDWA, 42 U.S.C. § 300f(4)(A), 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.”
5. A “community water system (‘CWS’)” is defined in Section 1401(15) of SDWA, 42 U.S.C. § 300f(15), as a PWS that serves at least fifteen service connections used by year-round residents or that regularly serves at least twenty-five year-round residents.
6. Leadsville Public Services District (“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.
7. Respondent is the owner and/or operator of the PWS, Identification Number WV3304215, located at 108 2<sup>nd</sup> Street Elkins, WV 26241, which provides water for human consumption (the “System”).
8. 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.
9. The System provides water from a surface water source. The System serves approximately 1,606 persons per year and has 667 service connections. Therefore, the System is a CWS.
10. Pursuant to Section 1413(a) of SDWA, 42 U.S.C § 300g-2(a), “a State has primary enforcement responsibility for [PWSs] during any period for which the Administrator determines” that such State meets requirements specified in Section 1413(a)(1)-(7), 42 U.S.C § 300g-2(a)(1) – (7), including, but not limited to, implementing adequate procedures for the enforcement State regulations prescribed under Section 1413(b), 42 U.S.C. § 300g-2(b), “including conducting such monitoring and making such inspections as the Administrator may require” *See also* 40 C.F.R § 142.10.
11. Pursuant to Section 1413(a) of SDWA, 42 U.S.C § 300g-2(a), the Administrator determined that the State of West Virginia meets the requirements specified in Section 1413(a)(1)-(7), 42 U.S.C § 300g-2(a)(1) – (7).
12. The State of West Virginia, acting through the West Virginia Department of Health and Human Resources (“WVDHHR”), has primary enforcement responsibility as it meets the requirements under Section 1413(a) of SDWA, 42 U.S.C § 300g-2(a).

13. Pursuant to W. Va. Code R. § 64-3-6.1, West Virginia must inspect PWSs and conduct sanitary surveys in accordance with the federal regulations adopted in W. Va. Code R. § 64-3.
14. In W. Va. Code R. § 64-3-10, West Virginia adopted 40 C.F.R. Part 141 by reference, with the exception of the monitoring reduction provisions of Subpart Y.
15. Pursuant to W.Va. Code R. § 64-3-10-10.3, “In the event of a conflict between a federal standard adopted in [§ 64-3-10] and a state standard adopted in [§ 64-3-10], the more stringent standard applies.”
16. WVDHHR notified EPA through the Safe Drinking Water Information System (“SDWIS”) of the violations listed in the following paragraphs. SDWIS contains records on PWSs and their violations of EPA’s drinking water regulations, as reported to EPA by states.
17. Pursuant to Section 1414(g)(2) of SDWA, 42 U.S.C. § 300g-3(g)(2), EPA has offered WVDHHR an opportunity to confer with the Agency regarding the Order.

**COUNT 1**  
**FAILURE TO MAINTAIN CHLORINE RESIDUAL CONCENTRATION**

18. The preceding paragraphs are incorporated herein by reference.
19. Pursuant to W. Va. Code R. § 64-3-7.6, all public water systems must maintain “at least 0.2 [mg/L] of total chlorine residual...throughout the distribution system at all times.”
20. On September 30, 2019, a WVDHHR representative sampled the System and found that, after twenty minutes of flushing, the sample collected had 0.08 mg/L of total chlorine residual.
21. On August 27, 2020, a WVDHHR representative sampled the System and found that, after four minutes of flushing, the sample collected had 0.06 mg/L total chlorine residual.
22. Respondent’s failure to maintain at least 0.2 mg/L chlorine residual throughout the distribution system at all times is a violation of W. Va. Code R. § 64-3-7.6 and a violation of SDWA.

**COUNT 2**  
**FAILURES TO CORRECT A SIGNIFICANT DEFICIENCY FOUND IN SANITARY SURVEYS**

23. The preceding paragraphs are incorporated herein by reference.
24. Pursuant to 40 C.F.R § 141.723(b), which West Virginia adopted by reference in W. Va. Code R. § 64-3-10, “a significant deficiency includes a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system...to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.”
25. Pursuant to 40 C.F.R § 141.723(d), which West Virginia adopted by reference in W. Va. Code R. § 64-3-10, systems are required to “correct significant deficiencies identified in sanitary survey reports according to the schedule approved by EPA” or the primacy agency.
26. Under WVDHHR’s Manual of Environmental Procedures, Procedure #DW-47: Sanitary Survey Procedures, a “PWS is required to provide a written response to the [District Office staff of the Environmental Engineering Division of WVDHHR] within thirty (30) days of the receipt of the written notice of the significant deficiency to discuss corrective measures.” Moreover, a PWS must “make the necessary modifications to correct the significant deficiency within the one-hundred-twenty (120) days from receipt of the written notice of the significant deficiency.”
27. In an August 28, 2020 letter sent by WVDHHR to Respondent, the state agency notified Respondent of a significant deficiency associated with a booster pump station that did not have a functioning booster chlorination.
28. On September 17, 2020, Respondent provided a response to the August 28, 2020 letter.
29. On September 25, 2020, WVDHHR issued a letter confirming that Respondent met its response requirement. The letter, however, indicated that the resolution provided in the September 17, 2020 letter was insufficient in resolving the significant deficiency.
30. On January 1, 2021, WVDHHR issued to Respondent a State Notice of Violation (“NOV”) for failure to complete corrective actions because Respondent failed to correct the significant deficiency identified in the August 28, 2020 letter within 120 days.
31. On May 6, 2021, WVDHHR conducted a Sanitary Survey of the System where the state agency identified the same significant deficiency noted in the August 28, 2020 letter, related to a booster pump station not having a functioning booster chlorination in the System. WVDHHR issued a Sanitary Survey Report to Respondent on May 24, 2021.

32. On June 9, 2021, Respondent provided a response to the May 2021 Sanitary Survey Report.
33. On June 24, 2021, WVDHHR issued a letter notifying Respondent that the resolution provided in its June 9, 2021 response was insufficient in resolving the significant deficiency.
34. Respondent did not respond to WVDHHR's June 24, 2021 letter. Respondent also failed to correct the significant deficiency by September 22, 2021, the deadline specified in the 2021 Sanitary Survey and the June 24, 2021 letter.
35. On November 17, 2021, WVDHHR issued a State NOV to Respondent for failure to complete corrective actions because Respondent failed to correct the significant deficiency identified in the 2021 Sanitary Survey by September 22, 2021, the deadline specified in the 2021 Sanitary Survey and the June 24, 2021 letter.
36. On January 25, 2022, Respondent provided a Corrective Action Plan ("CAP") to address the significant deficiency identified in the Sanitary Surveys with a completion date of June 1, 2022.
37. Based on the data WVDHHR provided to EPA through SDWIS, Respondent failed to meet the June 1, 2022, deadline outlined in its CAP.
38. Based on the information available to EPA, Respondent has not corrected the significant deficiency identified in the Sanitary Surveys.
39. Respondent's failure to correct the significant deficiency identified in WVDHHR's letters, the Sanitary Surveys, the NOVs, and the CAP by specified deadlines is a violation of 40 C.F.R § 141.723(d), which W. Va. Code R. § 64-3-10 incorporated by reference, and a violation of SDWA.

**COUNT 3  
FAILURE TO ISSUE TWO PUBLIC NOTIFICATIONS**

40. The preceding paragraphs are incorporated herein by reference.
41. Pursuant to 40 C.F.R. § 141.201(a), which West Virginia adopted by reference in W. Va. Code R. § 64-3-10, each owner or operator of a CWS "must give notice for all violations of national primary drinking water regulations ('NPDWR') and for other situations, as listed in Table 1" in § 141.201(a).
42. Based on the data WVDHHR provided through SDWIS, Respondent failed to issue the following public notifications:

- a. One (1) for failure to monitor and report for total trihalomethanes (“TTHM”) on November 16, 2022;
  - b. One (1) for failure to monitor and report for haloacetic acid (“HAA5”) on November 16, 2022.
43. Respondent’s failure to issue two (2) public notifications in 2022 is a violation of 40 C.F.R § 141.201(a), which W. Va. Code R. § 64-3-10 incorporated by reference, and a violation of 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:

44. Respondent shall comply with all provisions and applicable requirements of SDWA and its implementing regulations.
45. Within twenty (20) calendar days of the Effective Date of this Order, Respondent shall provide EPA and WVDHHR a CAP for compliance with this Order, including specific interim and final milestones for such plans. As part of the CAP, Respondent shall send a written response to EPA and WVDHHR indicating how and on what schedule Respondent will address the significant deficiency identified in the August 28, 2020 letter and the May 05, 2021 sanitary survey conducted by WVDHHR, in accordance with 40 CFR §141.723(d). (See also 40 CFR §142.16(b)(1)(ii)). Additionally, Respondent shall submit an enhanced monitoring plan that incorporates additional samples for *E. Coli*, total coliform and chlorine residual, including monitoring for the area served by the booster pump station.
46. 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.
47. Within five (5) calendar 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.
48. Within five (5) calendar days of notification of EPA approval, Respondent shall begin implementation of the CAP. All actions required by the CAP shall be completed within 120 calendar days of notification of EPA approval.
49. Within thirty (30) calendar days of the effective date of this Order, Respondent shall

collect the appropriate samples identified in the enhanced monitoring plan. Respondent shall submit the analytical results to EPA and WVDHHR within five calendar days of receipt of verified results from the lab.

50. Within thirty (30) calendar days of the Effective Date of this Order, Respondent shall issue the required Public Notifications identified in Paragraph 42 in the form, manner, and frequency required, pursuant to 40 C.F.R. § Part 141 Subpart Q.
51. Electronically submit to EPA and fax to WVDHHR 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

52. Any request for modification of this Order must be in writing and must be approved by EPA.
53. 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.
54. 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.
55. This Order does not waive, suspend, or modify the requirements of SDWA, 42 U.S.C. §§

300f - 300j-27, or its implementing regulations, promulgated at 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 or criminal action otherwise authorized under SDWA.

56. Any violation of the terms of this Order may result in further EPA enforcement action including the imposition of civil penalties of up to \$67,544 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 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.
57. 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.
58. This 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.
59. 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.
60. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, contractors, agents, trustees, successors, and assigns.
61. 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.
62. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this Order and to execute and legally bind the party.
63. 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.

64. 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. § 1.162-21(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

65. 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.
66. 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 the immediately preceding paragraph.

#### VI. EFFECTIVE DATE

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

**SO ORDERED:**

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

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

AGREED TO FOR THE RESPONDENT: LEADSVILLE PUBLIC SERVICES DISTRICT

Date: 10/20/23

By:   
Thomas Nick Channel, Chairman  
Leadville Public Services District

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

**In the Matter of:** :  
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**Leadsville Public Services District** : **U.S. EPA Docket No. SDWA-03-2024-0030DS**  
**PO Box 1336** :   
**Elkins, WV 26241** : **Proceeding under Section 1414(g) of the**  
: **Safe Drinking Water Act, as amended,**  
**Respondent.** : **42 U.S.C. Section 300g-3(g)**  
:   
**PWS ID No. WV3304215** :   
:   
**System.** :   
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**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:

Thomas Nick Channel, Chairman  
Leadsville Public Services District  
PO Box 1336  
Elkins, WV 26241  
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Promy Tabassum, Esq.  
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Lesly Huerta  
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U.S. EPA, Region III  
[huerta.lesly@epa.gov](mailto:huerta.lesly@epa.gov)

By: \_\_\_\_\_  
[Digital Signature and Date]  
Regional Hearing Clerk  
U.S. EPA – Region III