

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

IN THE MATTER OF:)
)
) Docket No. SDWA-07-2017-0223
Elk City, Kansas)
PWS Identification # KS2012520)
)
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 U.S. 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 Elk City, Kansas (hereinafter “Respondent”) owns and/or operates the Elk City Public Water System, a “public water system” 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 Montgomery County, Kansas. The PWS identification number is KS2012520.
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 308 customers through 169 service connections.

5. On January 4, 2006, the 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 the 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 308 persons, 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. The PWS is required to monitor for disinfectant residuals at the location(s) and dates identified in its monitoring plan established pursuant to 40 C.F.R. §§141.132(f) and 141.622, as well as the schedule identified in 40 C.F.R. § 141.621. Pursuant to 40 C.F.R. § 141.621, Respondent is required to monitor for TTHMs and HAA5 at the locations with the highest TTHM and HAA5 concentrations, respectively, once per year. For systems serving fewer than 500 people, only one location with a dual sample set per monitoring period is required if the highest TTHM and HAA5 concentrations occur at the same location and month.

9. Pursuant to 40 C.F.R. §141.625, systems required to routinely monitor annually must increase monitoring to dual sample sets once per quarter at all monitoring locations if a TTHM sample exceeds 0.080 mg/L or a HAA5 sample exceeds 0.060 mg/L at any location.

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 as 0.080 mg/L and for HAA5 as 0.060 mg/L.

12. Based on information provided by KDHE, Respondent failed to comply with the MCLs for TTHMs and HAA5 under the Stage 2 DBPR in the following monitoring periods:

TTHM MCL Violations

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
2017 - 2nd quarter

HAA5 MCL Violations

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
2017 - 2nd 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. The 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.

15. AquaTech Consultants (“Consultants”) on behalf of the Respondent submitted a Draft Water Supply Treatment System Study (“Draft Study”) dated November 2016 to KDHE.

16. KDHE provided technical comments regarding information in the Draft Study on January 5, 2017. The technical comments outlined the information needed by KDHE in order to consider the Draft Study final and assign a project number.
17. On March 17, 2017, Consultants on behalf of the Respondent submitted to KDHE a first draft of the Waste Stream Summary and Disposal Method Review report. The Waste Stream Summary and Disposal Method Review report indicated that Respondent intended to come into compliance with the DBP MCLs by making modifications to its water treatment plant and disinfection practices.
18. On March 25, 2017, KDHE provided comments to the Consultants regarding the first draft Waste Stream Summary and Disposal Method Review report.
19. On April 24, 2017, the Consultants on behalf of Respondent submitted a revised Waste Stream Summary and Disposal Method Review report based upon the March 25, 2017, KDHE comments.
20. On May 16, 2017, KDHE provided comments to the Consultants regarding the revised April 24, 2017, Waste Stream Summary Review submittal.
21. On June 9, 2017, Respondent participated in a conference call with KDHE and the EPA during which Respondent's plans to make modifications to its water treatment system and disinfection practices, along with the regulatory requirements and processes associated with implementing those modifications, were discussed.
22. On June 26, 2017, the Consultants on behalf of Respondent submitted a revised Waste Stream Summary and Disposal Method Review report based upon the May 16, 2017, KDHE comments.
23. On June 28, 2017, via electronic mail, KDHE approved Respondent's Waste Stream Summary and Disposal Method Review report received on June 26, 2017.

III. ORDER

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

24. Respondent shall conduct monitoring quarterly for TTHM and HAA5 in accordance with 40 C.F.R. §141.621(a) and its 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.

25. 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.
26. Respondent shall submit to the 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 the EPA until directed otherwise.
27. In order to rectify the violations referenced in this Order, Respondent shall comply with the following compliance schedule:
- a. Within ninety (90) days of the effective date of this Order, Respondent shall submit to KDHE for review and approval a design memorandum for the proposed scope of work to modify its water treatment plant and disinfection practices to come into compliance with the DBP MCLs as outlined in the approved Waste Stream Summary and Disposal Method Review report. The design memorandum shall include information describing general design parameters associated with the following proposed modifications:
 - 1. Installing new surface wash assemblies and a filter to waste system;
 - 2. Changing the primary disinfectant from free chlorine to chlorine dioxide and adding secondary disinfectant chloramine at the clearwell;
 - 3. Constructing a new laboratory/chemical/pump building; and
 - 4. Cleaning out the existing sludge holding basins.
 - b. Within sixty (60) days of KDHE approval of the design memorandum in paragraph 27(a), Respondent shall develop the disinfection profiles and calculate the benchmarks for the existing and proposed disinfection practices as required under 40 C.F.R. 141.503(c), 40 C.F.R. 141.530 – 141.536 and 40 C.F.R. 141.540 – 141.544 and submit to KDHE for review and approval;
 - c. Within one-hundred twenty (120) days of KDHE approval of the disinfection profiles and benchmarks in paragraph 27(b), Respondent shall submit to KDHE for review and approval project plans, specifications, public water supply permit application, and other information as may be required for implementing the improvements to the water system necessary to comply with the DBP MCLs;
 - d. Within one (1) year of KDHE approval of project plans, specifications, and other information in paragraph 27(c), Respondent shall complete upgrades and improvements to the water system treatment facilities as described in paragraph 27(c); and

e. Within thirty (30) days of completing water system upgrades in paragraph 27(d), and no later than January 1, 2020, the PWS shall produce water that will have DBP levels less than or equal to 0.080 mg/L for TTHM and 0.060 mg/L for HAA5 as measured at appropriate compliance sampling locations within the distribution system.

28. If KDHE identifies 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.

29. 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).

30. Respondent shall submit to the EPA quarterly progress reports for the preceding quarter describing progress in implementing the requirements of the Order, including any efforts to achieve compliance with the DBP MCLs. Quarterly progress reports shall be submitted within fourteen (14) days after the end of each quarter (i.e., by April 14, July 14, October 14, and January 14). The progress reports are required until the Order is terminated by EPA.

31. All information required to be submitted by this Order to the 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

32. 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

33. 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.

34. This Order shall not prohibit, prevent, or otherwise preclude the EPA from taking whatever action it deems appropriate to enforce the Act in any manner and shall not prohibit, prevent, or otherwise preclude the 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 the EPA to forgo any civil or criminal action otherwise authorized under the Law.

35. Once approved by the EPA or KDHE all deliverables, including schedules contained therein, shall be incorporated into this Order.

36. 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.

37. This Order does not relieve Respondent of any responsibilities or liabilities established pursuant to any applicable federal, State or local law.

38. 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 the EPA.

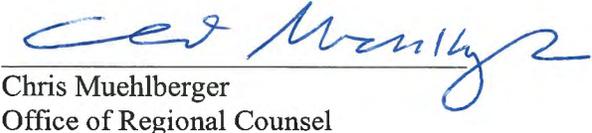
39. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

ORDERED, this 29th day of August, 2017.



Handwritten signature in blue ink, appearing to read "Jeffrey Robichaud".

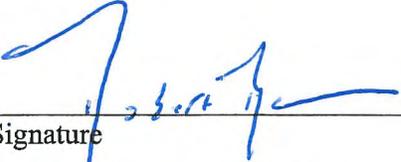
Jeffery Robichaud, Acting Director
Water, Wetlands and Pesticides Division



Handwritten signature in blue ink, appearing to read "Chris Muehlberger".

Chris Muehlberger
Office of Regional Counsel

For the Respondent, Elk City, Kansas Public Water System:



Signature

August 14, 2017

Date

Robert J. McCallum

Name

Mayor

Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

The Honorable Robert McCollam
Mayor of Elk City
114 North Montgomery
P.O. Box 245
Elk City, Kansas 67344

and via first class mail to:

Cathy Tucker-Vogel
Kansas Department of Health and Environment
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612

8.29.17
Date


Signature