

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

MISSOURI DEPARTMENT OF CORRECTIONS )  
ST. FRANCOIS COUNTY, MISSOURI )

Respondent )

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

) Docket No. SDWA-07-2007-0001

) FINDING OF VIOLATIONS AND  
) AMENDED ADMINISTRATIVE  
) ORDER

Preliminary Statement

1. The following Finding of Violations is made and Amended 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 the State of Missouri (State) which owns and operates a community public water system (PWS) at the Farmington Correctional Center in Farmington, Missouri in St. Francois County. The PWS has a water system identification number of MO4069041.

Statutory and Regulatory Background

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

4. "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."
5. "Supplier of water" is defined by Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and by 40 C.F.R. § Section 141.2 to include "any person who owns or operates a public water system."
6. "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."
7. "Maximum Contaminant Level" (MCL) is defined by 40 C.F.R. § 141.2 as "the maximum permissible level of a contaminant in water which is delivered to any user of a public water system."
8. 40 C.F.R. § 141.66(b) sets the MCL for combined radium-226 and radium-228 (combined radium) at 5 pico-curies per liter (pCi/L).
9. 40 C.F.R. § 141.66(c) sets the MCL for gross alpha particle activity (gross alpha) at 15 pCi/L.
10. A community water system must sample for radium-226 and radium-228 in accordance with 40 C.F.R. § 141.26.
11. 40 C.F.R. § 141.203(b) and (c) require that as soon as practical, but no later than 30 days after the system learns of a violation of the combined radium or gross alpha MCL, it must provide public notice of the violation, in a form and manner that is reasonably calculated to reach persons served in the required time period.

#### **Factual Background and Findings of Violation**

12. Respondent owns and/or operates a PWS at the Farmington Correctional Center (the System), located in St. Francois County, Missouri with a PWS identification number of MO4069041.
13. The System regularly serves at least 25 year-round residents and is therefore 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. The system utilizes a ground water source.
15. The System is subject to Part B of the SDWA, 42 U.S.C. Sections 300g – 300g-9, and the regulations promulgated thereunder at 40 C.F.R Part 141.
16. 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.
17. Respondent owns and/or operates a public water system and is therefore 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. Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g et seq., and its implementing regulations, 40 C.F.R. Part 141.
18. EPA has determined that the running annual averages for combined radium as calculated from quarterly samples collected by Respondent from January 1, 2003, through March 31, 2007, exceeded the MCL of 5.0 pCi/L throughout that time period.
19. Respondent violated 40 C.F.R § 141.66(b) by exceeding the MCL for combined radium for the monitoring period beginning January 1, 2003, through the monitoring period ending March 31, 2007.
20. EPA has determined that the running annual average for gross alpha radiation calculated from quarterly samples collected by Respondent from January 1, 2003, through March 31, 2007, exceeded the MCL of 15.0 pCi/L throughout that time period
21. Respondent violated 40 C.F.R § 141.66(c) by exceeding the MCL for gross alpha from the monitoring period beginning January 1, 2003, through the monitoring period ending March 31, 2007.
22. Respondent failed to monitor for combined radium and for gross alpha radiation for the period beginning January 1, 2000, through March 31, 2002, and for combined radium for the period beginning April 1, 2003, and ending June 30, 2003, as required by 40 C.F.R. § 141.26
23. Respondent failed to publish public notice of the violations noted in paragraphs 18-22 above prior to July 2006, in violation of 40 C.F.R § Section 141.203.
24. By Notice of Violation dated June 29, 2006, EPA notified the Respondent and the State of Missouri Department of Natural Resources of Respondent’s noncompliance with applicable requirements of the SDWA, in accordance with Section 1414(a) of the SDWA, 42 U.S.C. § 300g-3(a).

25. A Finding of Violations and Administrative Order (Order) was issued to Respondent by EPA on July 9, 2007, to be amended by the Order For Compliance below.
26. On December 8, 2009, the State of Missouri, Office of Administration, Division of Facilities Management, entered into a construction contract with Brockmiller Construction to perform water system improvements at the Farmington Correctional Center in Farmington, Missouri, including the installation of a filtration system intended to address the violations noted in paragraphs 18-21 above.

### Order For Compliance

Based on the foregoing Findings and pursuant to the authority granted to EPA by Section 1414(g) of the SDWA, IT IS HEREBY ORDERED:

27. Within 30 days of the effective date of this Order, Respondent shall submit to EPA a detailed plan for bringing Respondent's public water system into compliance with the Radionuclides Rules at 40 C.F.R. § 141.66. The plan shall include:
  - a. A description of proposed system modifications;
  - b. The estimated costs of modifications; and
  - c. A detailed schedule for construction of the system modifications and return to compliance with the Radionuclides Rules.

The proposed schedule shall include specific milestone dates for the construction project, including identifiable milestones at approximately 25%, 50%, and 75% of project completion, as well as a final date for attaining compliance with the regulations noted in paragraphs 19, 21, 22, and 23 above. The schedule shall be submitted to EPA for review and approval.

The milestone date for the completion of construction of the system modifications project shall be no later than October 1, 2010, and the final date for attaining compliance with the regulations noted in 19, 21, 22, and 23 above shall be no later than January 1, 2012.

Upon receipt of the compliance plan from Respondent, EPA will review the plan and if necessary provide comments, request modification, and/or directly modify the submittal before EPA approval. Within seven (7) days of receipt of any comments and/or request for modification, Respondent shall submit a revised compliance plan that has been revised to fully address all of EPA's comments or requests for modification. EPA may approve the revised submittal, or modify and approve the submittal.

28. Failure to submit an approvable compliance plan pursuant to paragraph 27 above within 30 days of the effective date of this Order or within 7 days of receipt of any comments and/or request for modification shall constitute a violation of this Order.
29. The schedule for construction and completion of modifications will be incorporated into this Order and fully enforceable pursuant to this Order upon written approval by EPA.
30. Within 14 days of the effective date of the Order, Respondent shall submit to EPA reports on the progress made toward bringing Respondent's system into compliance with the Radionuclides Rule at 40 C.F.R. § 141.66. Each report shall update EPA on the status of the plan, the success in meeting interim milestones within the compliance schedule and proof of public notice. Initially, and continuing until the completion of construction of the system modification project referenced in Paragraph 27, such progress reports shall be submitted monthly, by the 7<sup>th</sup> day of each calendar month. After completion of the construction of the system modification project, progress reports shall be submitted quarterly. Each quarterly report is due by the 7<sup>th</sup> day of the month following the end of each calendar quarter (January 7, April 7, July 7, October 7). The initial quarterly report is due by the 7<sup>th</sup> day of the month following the end of the calendar quarter in which construction of the system modification project is completed.
31. No later than January 1, 2011, Respondent shall achieve single sample results for both combined radium and Gross Alpha radiation that are at or below the MCL for each contaminant, respectively defined under the Radionuclides Rule at 40 C.F.R. §§ 141.66(b) and 141.66(c).
32. No later than January 1, 2012, Respondent shall achieve and maintain permanent compliance with the MCLs defined under the Radionuclides Rule at 40 C.F.R. § 141.66. By this date, Respondent shall have achieved running annual averages at or below the MCLs for both combined radium and Gross Alpha radiation.
33. In accordance with 40 C.F.R. § 141.26, Respondent shall conduct quarterly monitoring for the combined radium MCL until it has results from four consecutive quarters that are at or below the MCL by no later than the monitoring period ending June 30, 2012.
34. In accordance with 40 C.F.R. § 141.26, Respondent shall conduct quarterly monitoring for the gross alpha MCL until it has results from four consecutive quarters that are at or below the MCL by no later than the monitoring period ending June 30, 2012.
35. Respondent shall report all monitoring results to EPA and the State of Missouri Department of Natural Resources within ten days of receipt of the results.

36. As soon as practical, but no later than 30 days after the effective date of this Order, Respondent shall comply with the applicable public notice requirements of 40 C.F.R § 141.203. Respondent shall submit quarterly a copy of the public notice to EPA and the State, as long as the System is out of compliance with the Radionuclides MCL, or until Respondent is notified of an alternative public notice frequency by EPA. Along with the copy of the public notice submitted to EPA, Respondent shall submit a description of the form in which the notice is provided to the persons regularly served by the system.

37. The public notice required by 40 C.F.R § 141.203 shall be given by:

(a) mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(b) if a customer or other service connection would not normally be reached by the notice described in subparagraph (a), above, Respondent must use any other method reasonably calculated to reach other persons regularly served by the System, such as publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others; posting in public places served by the System or on the Internet; or delivery to community organizations. If the public notice is posted, the notice must remain in place for as long as the violation persists, but for no less than seven days.

If the public water supply serves a large proportion of non-English speaking consumers, the public notice must contain information in the appropriate language(s) regarding the importance of the notice. In the alternative, the notice must contain a telephone number or address by which non-English speaking consumers may contact the water system for a translated copy of the notice or request assistance in the appropriate language.

The public water system must repeat the notice every three months as long as the violation persists.

38. This Order shall be effective on the date on which it is signed. This Order shall remain in effect until EPA notifies Respondent in writing that EPA has determined that the water provided by Respondent through the System for human consumption has continuously met the combined radium MCL and gross alpha MCL for four consecutive quarters and that the terms of the Order have been fulfilled.

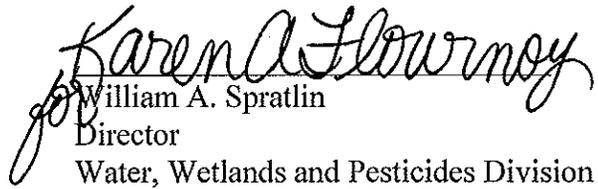
**Effect of Order**

39. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. §§ 141.1 et seq., or the Safe Drinking Water Act, 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 SDWA.
40. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect Respondent's Facility, and/or to request additional information from Respondent, pursuant to the authority of Section 1445 of the SDWA, 42 U.S.C. § 300j-4.
41. EPA may subsequently amend this Order in accordance with the authority of the SDWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by this original Order.
42. If any provision or authority of this Order or the application of this Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.
43. All submissions required by this Order shall be sent to:
- Mr. Scott Marquess  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101
- and a copy thereof shall also be sent to:
- Mr. Jim Macy  
Public Drinking Water Branch  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102.
44. Pursuant to 40 C.F.R §§ 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is

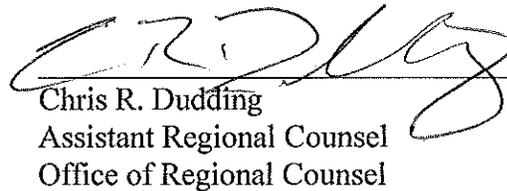
claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R § 2.203(b) allows EPA to release the submitted information to the public without further notice. EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations. Special rules governing information obtained under the Safe Drinking Water Act appear in 40 C.F.R § 2.304.

45. Violations of applicable requirements of the SDWA may subject Respondent to a civil judicial penalty of up to \$37,500 per day per violation for each such day in which a violation occurs, as assessed by the United States District Court, under SDWA Section 1414(b), 42 U.S.C. 300g-3(b) and 40 C.F.R § Part 19 (2004). Violation of any term of this order may also subject Respondent to (i) a civil judicial penalty of up to \$37,500 per day per violation for each such day in which a violation occurs, assessed by the United States District Court, under SDWA Sections 1414(b) and 1414(g)(3), 42 U.S.C. 300g-3(b) and 300g-3(g)(3), and 40 C.F.R § 19.4, or (ii) an administrative penalty of up to \$32,500, after notice and opportunity for a hearing, under SDWA Section 1414(g)(3), 42 U.S.C. 300g-3(g)(3) and 40 C.F.R Part 19.
46. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Date 2-22-10

  
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

Date 2/22/10

  
Chris R. Dudding  
Assistant Regional Counsel  
Office of Regional Counsel

CERTIFICATE OF SERVICE

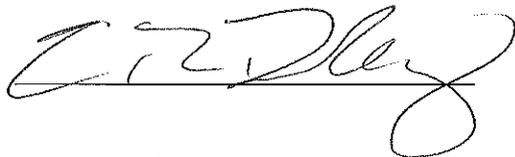
I certify that on the date noted below I filed the original and one true and correct copy of the signed original Findings of Violation and Amended Administrative Order with the Regional Hearing Clerk, Region 7.

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 Amended Administrative Order together with cover letter to the following registered agent for the Missouri Department of Corrections:

Larry Crawford  
Director  
Missouri Department of Corrections  
2729 Plaza Drive  
P.O. Box 236  
Jefferson City, Missouri 65102.

I further certify that on the date noted below, I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Amended Administrative Order to the following representative of the State of Missouri:

Scott Totten  
Director  
Water Pollution Control Branch  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102.



2/22/10  
Date