

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

SEP 19 AM 10:00

LEGAL ATTORNEY
HEALTH & ENVIRONMENTAL

IN THE MATTER OF)
)
Town of Pinesdale)
Pinesdale, Montana)
PWS ID# MT0002926)
)
Respondent)
)
Proceedings under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))
_____)

ADMINISTRATIVE ORDER

Docket No. **SDWA-08-2008-0106**

The following Findings are made and 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 or the Act), 42 U.S.C. § 300g-3(g) and its implementing regulations, as properly delegated to the Supervisors of the Legal Enforcement Program of the Office of Enforcement, Compliance and Environmental Justice and the Director of the EPA Montana Office, EPA Region 8.

FINDINGS

1. The Town of Pinesdale (Respondent) is a municipality and therefore a "person" within the meaning of 40 C.F.R. § 141.2.
2. Respondent owns and/or operates the Town of Pinesdale Public Water System (the System), located in Ravalli County, Montana, for the provision of water to the public for human consumption.
3. According to records maintained by the Montana Department of Environmental Quality (MDEQ), the System has at least 15 service connections used by year-round residents or

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). The System is a "community water system" within the meaning of 40 C.F.R. § 141.2.

4. 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 subject to the requirements of Part B of the Act, 42 U.S.C. § 300g, and its implementing regulations found at 40 C.F.R. Part 141.
5. According to records maintained by MDEQ, the System is supplied by 3 ground water wells and a surface water source (Sheafman Creek); and serves approximately 800 year-round residents.
6. MDEQ has primary enforcement authority for the Act in the State of Montana. On March 11, 2008, EPA issued a Notice of Violation pursuant to section 1414(a) of the Act, 42 U.S.C. § 300g-3(a) to the MDEQ regarding the violations at the System. The MDEQ elected not to commence an appropriate enforcement action against the System for the violations within the thirty day time frame set forth in section 1414(a) of the Act, 42 U.S.C. § 300g-3(a).
7. EPA has provided the State, through MDEQ, with an opportunity to confer with EPA regarding this Order pursuant to section 1414(g)(2) of the SDWA, 42 U.S.C. § 300g-3(g)(2).
8. EPA has provided a copy of this Order to MDEQ pursuant to section 1414(g)(2) of the SDWA, 42 U.S.C. § 300g-3(g)(2).
9. EPA is issuing this Order requiring the System to comply with the "applicable

requirements” it violated pursuant to section 1414(g) of the Act, 42 U.S.C. § 300g-3(g).

10. An “applicable requirement” includes requirements of an applicable approved State program, such as Montana’s “Public Water Supply Requirements,” at Administrative Rules of Montana (ARM) 17.38.101 through 703. See 42 U.S.C. § 300g-3(l).

FINDINGS OF VIOLATION

I. Failure to sample for Nitrate.

- A. 40 C.F.R. § 141.23(d) requires the owner and/or operator of a public water system to collect one water sample per year to determine compliance with the Maximum Contaminant Level (MCL) for nitrate, as stated in 40 C.F.R. § 141.62.
- B. Respondent failed to sample for nitrate in calendar years 2004 and 2005, in violation of 40 C.F.R. § 141.23(d).

II. Failure to sample for total coliform bacteria.

- A. 40 C.F.R. § 141.21(a)(2) requires the owner and/or operator of a community public water system serving 1000 persons or fewer to collect at least one total coliform sample every month to determine compliance with the total coliform MCL, as stated in 40 C.F.R. § 141.63.
- B. Respondent failed to sample for total coliform bacteria during November 2006, in violation of 40 C.F.R. § 141.21(a)(2).

III. Failure to sample for Disinfection Byproduct concentrations.

- A. 40 C.F.R. § 141.132(b) requires water systems that use surface water, serve from 500 to 9,999 persons, and add a chemical disinfectant to the water, to collect one disinfection byproduct sample per quarter per treatment plant at a location

representing the maximum residence time to determine compliance with the disinfection byproduct MCLs at 40 C.F.R. § 141.64(a).

- B. Respondent failed to sample for disinfection byproducts during the 1st, 2nd, and 3rd quarters of 2005; 1st, 2nd, 3rd, and 4th quarters of 2006; 1st, 2nd, and 4th quarters of 2007; and 1st quarter of 2008; in violation of 40 C.F.R. § 141.132(b). [During the 3rd quarter of 2006, the System submitted results for total trihalomethanes, but not for halogenated acetic acids.]

IV. Failure to sample for Residual Disinfectant Concentration.

- A. 40 C.F.R. § 141.132(c) requires systems that use chlorine or chloramine to measure residual disinfectant concentrations at the same time and same place in the distribution system as total coliforms are sampled.
- B. Respondent failed to sample for residual disinfectant concentrations during October and November 2005, and May 2007, in violation of 40 C.F.R. § 141.132(c).

V. Failure to report sample results for Turbidity.

- A. 40 C.F.R. § 141.75(b) requires systems using surface water and providing filtration to report turbidity data as required by 40 C.F.R. § § 141.74(c)(1) and 141.570(b) to the state within 10 days after the end of each month the system serves water to the public.
- B. Respondent failed to provide such reports to the State for the months of July, August, and September 2004; November 2005; April 2006; and May and December 2007; in violation of 40 C.F.R. § 141.75(b).

VI. Failure to sample for Lead and Copper.

- A. When initial monitoring has been completed, 40 C.F.R. § 141.86(d)(4)(iii) allows small and medium community water systems to sample for lead and copper once every three years, provided that the system meets the lead and copper action levels during three consecutive years of monitoring. Beginning January 1, 2002, Respondent met this requirement for reduced monitoring.
- B. 40 C.F.R. § 141.86(c) requires that water systems conducting reduced monitoring collect at least one sample from the number of sites specified in 40 C.F.R. § 141.86(c). Based on Respondent's population (between 501 and 3,300), this requirement equates to at least one sample from each of 10 sample sites during each monitoring period.
- C. Respondent failed to sample for lead and copper concentrations during the 2002-2004 monitoring period, in violation of 40 C.F.R. § 141.86(c).

VII. Failure to sample for Inorganic Chemicals.

- A. 40 C.F.R. § 141.23(c)(1) requires that community water systems conduct monitoring to determine compliance with the MCLs for inorganic chemicals as stated in 40 C.F.R. § 141.62(b)(1) through (16). Surface water systems (or combined surface/ground water systems) must sample annually at each sampling point.
- B. Respondent failed to sample for the inorganic chemicals arsenic, antimony, beryllium, cyanide, nickel, and thallium from the Sheafman Creek source during 2005, in violation of 40 C.F.R. § 141.23(c)(1).

VIII. Failure to sample for Synthetic Organic Chemicals.

- A. 40 C.F.R. § 141.24(h)(4)(i) requires community water systems to collect 4 consecutive quarterly samples for synthetic organic chemicals during each compliance period, beginning with the initial compliance period, to determine compliance with the MCL for synthetic organic contaminants.
- B. 40 C.F.R. § 141.24(h)(4)(iii) allows systems that do not detect contaminants in the initial compliance period and which serve 3300 persons or fewer to reduce sampling frequency to a minimum of one sample during each repeat compliance period at each sampling point.
- C. 40 C.F.R. § 141.24(h)(5) and (6) state that community water systems may apply to the State for a waiver from the requirements of 141.24(h)(4), and states may grant such waivers, provided the system meets certain criteria.
- D. Among other waivers it has received from the State, Respondent was issued a waiver for the Sheafman Creek and Main S Well 1 sources on January 1, 1999 and January 1, 2005, respectively, and must collect 1 sample from each of those sources every 3 years. Prior to January 1, 2005, Respondent was required to collect 1 sample from the Main S Well 1 source every year.
- E. Respondent failed to sample for synthetic organic chemicals from the Sheafman Creek source during the 2000-2002 compliance period, and at the Main S Well 1 source during the 2003 and 2004 compliance periods, in violation of 40 C.F.R. § 141.24(h).

IX. Failure to sample for Volatile Organic Chemicals.

- A. 40 C.F.R. § 141.24(f)(5) requires community water systems that do not detect contaminants in the initial compliance period to collect a minimum of one sample for volatile organic chemicals annually at each sampling point to determine compliance with the MCL for volatile organic contaminants. Accordingly, beginning January 1, 2000, Respondent was required to collect 1 sample for volatile organic chemicals each year from the Sheafman Creek source.
- B. After a minimum of 3 years of annual sampling with no previous detection of contaminants, groundwater systems may take one sample during each subsequent three-year compliance period (40 C.F.R. § 141.24(f)(6)). Prior to January 1, 2005 (when Respondent became eligible to collect 1 sample every 3 years), Respondent was required to collect 1 sample every year from the Main S Well 1 source.
- C. Respondent failed to sample for volatile organic chemicals from the Sheafman Creek source during the 2005 compliance period, and at the Main S Well 1 source during the 2003 and 2004 compliance periods, in violation of 40 C.F.R. § 141.24(f).

X. Exceeded Turbidity Limit (1 Nephelometric Turbidity Units, NTU).

- A. 40 C.F.R. § §141.73(d), 141.550, and 141.551 require that systems using “alternative filtration technologies” and serving fewer than 10,000 people must filter water to achieve turbidities of less than or equal to 1 NTU in at least 95% of the measurements taken each month.
- B. Respondent’s treatment system for the Sheafman Creek source consists of 20-micron pressurized, multimedia roughing filters followed by 1-micron canister

polishing filters, and is considered an “alternative filtration technology.”

Respondent’s filtered water exceeded 1 NTU in 95% of the measurements for the month of April 2006, in violation of 40 C.F.R. § §141.73(d),141.550, and 141.551.

XI. Failure to prepare Consumer Confidence Report.

- A. 40 C.F.R. § 141.152(b) requires that each community water system distribute a Consumer Confidence report (CCR) to its customers by July 1 each year.
- B. 40 C.F.R. § 141.155(c) requires that each community water system mail a copy of the report to the primacy agency by July 1 of each year, followed within 3 months by a certification that the report has been distributed to customers.
- C. Respondent failed to distribute CCRs and/or provide copies to MDEQ with the required certifications for the 2003, 2004, and 2007 calendar years, in violation of 40 C.F.R. § § 141.152(b) and 141.155(c).

XII. Failure to provide public notice of a violation

- A. 40 C.F.R. § 141.201 et seq. requires owners and/or operators of public water systems to notify the public of any violations of the national primary drinking water regulations (NPDWR).
- B. Respondent has not provided public notice of the violations detailed in Sections I through XI above, in violation of 40 C.F.R. § 141.201 et seq. Public notice for the disinfection by-product violations for 4th quarter 2007 and 1st quarter 2008 described in Section III B; the turbidity reporting violation for December 2007 described in Section V B; and the CCR violation for 2007 described in Section XI

C are not yet overdue.

XIII. Failure to report total coliform monitoring violations to the State

- A. 40 C.F.R. § 141.21(g)(2) requires public water systems to report any failure to comply with a coliform monitoring violation to the State within 10 days after the system discovers the violation.
- B. Respondent failed to report to MDEQ the violations detailed in Section II above, in violation of 40 C.F.R. § 141.21(g)(2).

XIV. Failure to report other NPDWR violations to the State.

- A. 40 C.F.R. § 141.31(b) requires public water systems to report any failure to comply with any other NPDWR to the State within 48 hours.
- B. Respondent failed to report to the State the violations described in Sections I and III through XII above, in violation of 40 C.F.R. § 141.31(b).

ORDER

Based on the foregoing Findings, and pursuant to section 1414(g) of the Act,

IT IS ORDERED:

1. Not later than 30 days from the effective date of this Order, Respondent shall comply with the nitrate sampling requirements, as stated in 40 C.F.R. § 141.23(d), for calendar year 2008. Thereafter, Respondent shall comply annually with the requirements to sample for nitrate.
2. Upon the effective date of this Order, Respondent shall comply with monthly total coliform monitoring requirements, as stated in 40 C.F.R. § 141.21(a)(2).

3. Upon the effective date of this Order, Respondent shall comply with the requirements of 40 C.F.R. § 141.132(b) by collecting one disinfection by-product sample per quarter per treatment plant.
4. Upon the effective date of this Order, Respondent shall comply with the requirements of 40 C.F.R. § 141.132(c) by monitoring for residual disinfectant concentration at the same time and place in the distribution system as total coliforms are sampled.
5. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.75(b) by reporting turbidity data required by 40 C.F.R. §§ 141.74(c)(1) and 141.570(b) to EPA and the State within 10 days after the end of each month the System serves water to the public.
6. Prior to September 30, 2008, Respondent shall comply with 40 C.F.R. § 141.86 for the 2008-2010 compliance period by sampling for lead and copper. Respondent shall monitor for lead and copper according to the regulations thereafter.
7. Not later than 30 days from the effective date of this Order, Respondent shall comply with the sampling requirements for the inorganic chemicals arsenic, antimony, beryllium, cyanide, nickel, and thallium, as required by 40 C.F.R. § 141.23(c), at all sources for the current compliance period. Thereafter, Respondent shall sample in accordance with the requirements of monitoring schedules for inorganic contaminants issued by the State.
8. Not later than 90 days from the effective date of this Order, Respondent shall comply with the sampling requirements for synthetic organic contaminants, as required by 40 C.F.R. § 141.24(h), at all sources for the 2008-2010 compliance period. Thereafter, Respondent shall sample in accordance with the requirements of monitoring schedules

for synthetic organic contaminants issued by the State.

9. Not later than 30 days from the effective date of this Order, Respondent shall comply with the sampling requirements of 40 C.F.R. § 141.24(f) for volatile organic chemicals at the Sheafman Creek source for the 2008 compliance period. Thereafter, Respondent shall sample in accordance with the requirements of monitoring schedules for volatile organic contaminants at the Sheafman Creek source issued by the State.
10. Not later than 90 days from the effective date of this Order, Respondent shall comply with the sampling requirements of 40 C.F.R. § 141.24(f) for volatile organic chemicals at the Main S Well 1 for the 2008-2010 compliance period. Thereafter, Respondent shall comply according to the requirements of waivers or other sampling schedules for volatile organic contaminants at the Main S Well 1 issued by the State.
11. Upon receipt of this Order, Respondent shall ensure that the turbidity of representative samples of the System's combined filter effluent at no time exceeds 1 NTU in at least 95% of the monthly samples. 40 C.F.R. §§ 141.73(d), 141.550 and 141.551.
12. Not later than 30 days from the effective date of this Order, Respondent shall comply with the requirements of 40 C.F.R. §§ 141.152(b) and 141.155 by distributing Consumer Confidence Reports (CCR) covering calendar years 2003, 2004, and 2007 to its customers; providing a copy of these reports to EPA and MDEQ; and submitting the certification required by 40 C.F.R. § 141.152(c) to EPA and MDEQ. Respondent shall submit CCRs and certifications annually thereafter.
13. Upon the effective date of this Order, Respondent shall comply with the public

notification requirements at 40 C.F.R. § 141.201, et seq., following any future NPDWR violation.

14. No later than 30 days from the effective date of this Order, Respondent shall return to compliance with 40 C.F.R. § 141.201 et seq. by providing public notice of the violations specified under the Findings of Violation sections I through XI of this Order.
Respondent shall submit a copy of the public notice to EPA and the State within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d). This notice shall be given by (1) mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the System; AND (2) any other method reasonably calculated to reach other persons served by the System if they would not normally be reached by the notice, 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 or on the Internet; or deliver to community organizations. Specific notice requirements can be found in the attached samples. Respondent must issue a repeat notice every three months for as long as the violation persists.
15. Upon the effective date of this Order, Respondent shall report any violation of the total coliform monitoring requirements to EPA and the State within 10 days after Respondent learns of the violation. 40 C.F.R. § 141.21(g)(2).
16. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.31(b) by reporting any failure to comply with any other NPDWR to EPA and the State within 48 hours.

17. Documents, certifications, analytical results, and public notices required by this Order shall be sent by certified mail to:


Eric Finke	and	Shelley Nolan, Chief
EPA Montana Office		PWS Compliance Section
10 West 15 th Street, Suite 3200		Public Water and Subdivisions Bureau
Helena, MT 59626		MT Dept. of Environmental Quality
		P.O. Box 200901
		Helena, MT 59620

GENERAL PROVISIONS

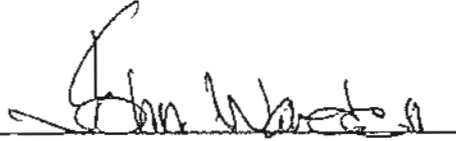
1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 et seq., or the Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
2. Violation of any term of this Order may subject the Respondent to an administrative civil penalty of up to \$27,500 under section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), or a civil penalty of not more than \$32,500 per day of violation assessed by an appropriate U.S. District Court under section 1414(g)(3)(C) of the Act, 42 U.S.C. § 300g-3(g)(3)(C).
3. Violation of any requirement of the SDWA or its implementing regulations may subject Respondent to a civil penalty of not more than \$32,500 per day of violation assessed by an appropriate U.S. District Court under section 1414(b) of the Act, 42 U.S.C. § 300g-3(b).

4. The effective date of this Order shall be the date of issuance of this Order.

Issued this 18 day of Sep, 2008.



David J. Janik, Director
Matthew Cohn, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice



John F. Wardell, Director
EPA Montana Office