

3. Section 1414(a)(2) of the Act, 42 U.S.C. § 300g-3(a)(2), provides that when the Administrator finds that a public water system is not in compliance with an applicable requirement, where the state where the public water system is located doesn't have primary enforcement responsibility, the Administrator shall issue an order to the public water system requiring compliance. Section 1414(i) of the Act, 42 U.S.C. § 300g-3(i), defines "applicable requirements," to include requirements under Section 1433 of the Act, 42 U.S.C. § 300i-2, and any regulation, schedule, or requirement promulgated or imposed pursuant to that section.

4. A "public water system" ("PWS") is defined in the Act 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." Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4).

5. A "community water system" is defined in the Act as "a public water system that . . . serves at least 15 service connections used by year-round residents . . . or regularly serves at least 25 year-round residents." Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15).

6. Dickenson County Public Service Authority ("Respondent") is a municipality and as such is a "person" as defined by Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.

7. Respondent is a person who owns and operates a public water system and is a "supplier of water" as defined by Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2.

8. Respondent owns and/or operates the Big Caney Public Water System, located in Clintwood, Virginia, within the meaning of the Act.

9. Respondent provides water for human consumption to over 3,300 but less than 50,000 persons per year, year-round, and has a minimum of 15 service connections used by year-round residents or regularly serves at least 25 year-round residents, and is therefore a "community water system." Respondent is therefore subject to the requirements of Part B of the SDWA, 42 U.S.C. § 300g, and its implementing regulations found at 40 C.F.R. Part 141, including but not limited to sampling and analyzing the drinking water and reporting analytical results to the state.

10. On October 23, 2018, the SDWA was amended in accordance with the America's Water Infrastructure Act (AWIA) of 2018 (Public Law 115-270).

11. The Commonwealth of Virginia, acting through the Virginia Department of Health, has primary enforcement responsibility under Section 1413(a) of the SDWA, 42 U.S.C. § 300g-2(a). However, the AWIA requirements are requirements for which EPA retains primary enforcement authority as per Section 1433 of the SDWA, 42 U.S.C. §300i-2.

12. Section 1433(a) of the SDWA, 42 U.S.C. § 300i-2(a), requires community water systems (CWSs) serving a population of over 3,300 people to conduct a Risk and Resilience Assessment (RRA) of its system, which shall include an assessment of:

- a. the risk to the system from malevolent acts and natural hazards;

- b. the resilience of the pipes and constructed conveyances, physical barriers, source water, water collection and intake, pretreatment, treatment, storage and distribution facilities, electronic, computer, or other automated systems (including the security of such systems) which are utilized by the system;
- c. the monitoring practices of the system;
- d. the financial infrastructure of the system;
- e. the use, storage, or handling of various chemicals by the system; and
- f. the operation and maintenance of the system.

13. Section 1433(a)(3)(A)(iii) of the SDWA, 42 U.S.C. § 300i-2(a)(3)(A)(iii), requires CWSs serving over 3,300 but less than 50,000 to submit a certification, prior to June 30, 2021, to the EPA Administrator that it has conducted its RRA.

14. Section 1433(b) of the SDWA, 42 U.S.C. § 300i-2(b), requires CWSs serving 3,300 or more persons to prepare or revise, where necessary, an emergency response plan (ERP) that incorporates the findings of the RRA no later than six months after certifying completion of its RRA. Therefore, Respondent's deadline for submitting certification to the EPA Administrator that the ERP has been completed and/or revised is December 31, 2021.

15. Based on information available to EPA, the Respondent has failed to certify that it has conducted the RRA, as specified in Section 1433(a)(3)(A) of the SDWA, 42 U.S.C. § 300i-2(a)(3)(A), for the Dickenson County Public Service Authority – Big Caney, in violation of Section 1433(a) of the SDWA, 42 U.S.C. § 300i-2(a), an “applicable requirement” of the SDWA.

16. Based on information available to EPA, the Respondent has failed to prepare or revise its ERP by December 31, 2021, in violation of Section 1433(b) of the SDWA, 42 U.S.C. § 300i-2(b).

17. Pursuant to Section 1414(g)(2) of the SDWA, 42 U.S.C. § 300g-3(g)(2), EPA has notified the Virginia Department of Health of this Order.

III. ORDER

18. Based on the foregoing FINDINGS, and pursuant to the authority of Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), EPA hereby ORDERS and Respondent agrees to undertake the action specified below.

19. No later than March 25, 2023, Respondent shall complete the RRA and submit its certification for the completion of the RRA, as required by Section 1433(a) of the SDWA, 42 U.S.C. § 300i-2(a), to the EPA Administrator. For instructions on how to submit your RRA certification, visit EPA's website. (<https://www.epa.gov/waterresilience/americas-water-infrastructure-act-risk-assessments-and-emergency-response-plans>)

20. No later than March 25, 2023, Respondent shall provide written confirmation to EPA that the requirements of Paragraph 19 have been met and that Respondent is in compliance with Section

1433(a)(3)(A)(iii) of the SDWA, 42 U.S.C. §300i-2(a)(3)(A)(iii), and the Order. **Do not submit the RRA to the below address**; submit only the above referenced confirmation, electronically via email to:

Andrea Lewis
U.S. Environmental Protection Agency Region 3
lewis.andrea@epa.gov
215-814-2074

21. No later than June 25, 2023, Respondent shall complete the ERP and submit its certification for the completion or revisions of the ERP, as required by Section 1433(b) of the SDWA, 42 U.S.C. § 300i-2(b), to the EPA Administrator. For instructions on how to submit the ERP certification, visit EPA's website. (<https://www.epa.gov/waterresilience/americas-water-infrastructure-act-risk-assessments-and-emergency-response-plans>)

22. No later than June 25, 2023, Respondent shall provide written confirmation to EPA that the requirements of Paragraph 21 have been met and that Respondent is in compliance with Section 1433(b) of the SDWA, 42 U.S.C. §300i-2(b), and the Order. **Do not submit the ERP to the below address**; submit only the above referenced confirmation, electronically via email to:

Andrea Lewis
U.S. Environmental Protection Agency Region 3
lewis.andrea@epa.gov
215-814-2074

IV. GENERAL PROVISIONS

23. The provisions of this Order shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns of the Respondent.

24. This Order does not waive, suspend, or modify the requirements of the SDWA, 42 U.S.C. §§ 300f - 300j-26, or its implementing regulations found in 40 C.F.R. Part 141, 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 SDWA. Respondent's failure to comply with all of the requirements of the Act, 40 C.F.R. Part 141, and milestones required under this Order, may subject Respondent to additional enforcement action, including but not limited to administrative actions, as appropriate, for penalties under Section 1414(g)(3)(A) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(A), and/or injunctive relief.

25. Any violation of the terms of this Order may result in further EPA enforcement action including the imposition of administrative 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 the 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.

26. 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.

27. Any request for modification of this Order must be in writing and must be approved by EPA.

28. 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.

29. This Order in no way relieves Respondent of the 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.

30. Pursuant to its authority under Section 1445(b)(1) of the SDWA, 42 U.S.C. § 300j-4(b)(1), 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 all existing inspection and information request authority.

31. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Order and to execute and legally bind the party. In addition, all reports and other documentation submitted under this Order shall be accompanied by the following certification:

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 the 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.

32. 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.

33. 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 the 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.

V. TERMINATION AND SATISFACTION

34. The provisions of this Order shall be deemed satisfied when Respondent receives written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Order have been satisfactorily completed and the written notice will state that this Order is terminated.

35. Respondent may submit to EPA a Certification of Compliance and Request for Termination of this Order, including documentation to demonstrate that it has met all requirements of this Order. If, following review of any 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 Paragraph 34.

VI. EFFECTIVE DATE

36. The Order shall become effective on the date on which it is filed with the Regional Hearing Clerk, EPA Region III.

VII. MULTIPLE COUNTERPARTS

37. This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

SO ORDERED

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

[Electronic Signature and Date]

Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA, Region III

AGREED TO: FOR THE RESPONDENT:

Tom Phillips 03/02/2023

[Signature and Date]

[Electronic Signature and Date]

Bevin Esposito

U.S. Environmental Protection Agency, Region III