

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029

IN THE MATTER OF:) Docket No. SDWA-03-2019-0076-DS

Twin Creeks LLC)
PO Box 39)
Armonk, New York 10504)

U.S. EPA-REGION 3-RHC
FILED-9MAY2019pm3:47

PWS ID No. WV9938083)

Proceedings Pursuant To) ADMINISTRATIVE ORDER
Section 1414(g) of the Safe Drinking)
Water Act, as amended,)
42 U.S.C. § 300g-3(g))
_____)

STATUTORY AUTHORITY

The following FINDINGS are made and ADMINISTRATIVE ORDER (“Order”) issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or “the Agency”) by Section 1414(g) of the Safe Drinking Water Act (“SDWA”), 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, Enforcement and Compliance Assurance Division.

FINDINGS

1. Twin Creeks LLC (“Respondent”) is the owner of a public water system, Camp Twin Creeks Public Water System Identification Number WV9938083 (“System”) located in Marlinton, West Virginia.
2. Respondent is a corporation organized and operating under the laws of West Virginia 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.

3. Respondent is a person who owns 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.
4. Respondent's water system is a "public water system" as defined by Section 1401(4) and Section 1401(15) of the SDWA, 42 U.S.C. §§ 300f(4) and 300f(15), and 40 C.F.R. § 141.2.
5. According to information provided by the West Virginia Department of Health and Human Resources (WVDHHR) the System has eight service connections and serves an average of at least 160 individuals daily at least sixty days out of the year, but it does not regularly serve at least 25 of the same persons over six months per year. Therefore, the Respondent's System is a "public water system" and a "transient non-community water system," as defined by 40 C.F.R. §141.2. The System operates during the months of June through August.
6. Respondent's water system is supplied by ground water under the direct influence of surface water (GWUDI).
7. The State of West Virginia, acting through WVDHHR, has primary enforcement responsibility under Section 1413(a) of the SDWA, 42 U.S.C. § 300g-2(a), where the state has primacy to ensure that public water systems within the State comply with the requirements of the SDWA. Respondent's system has been referred to EPA by WVDHHR for federal enforcement action, pursuant to section 1414(g) of the SDWA. The issuance of this Order has been coordinated with the WVDHHR, Office of Drinking Water.
8. The System operates seasonally from June through August each year. Under 40 C.F.R. §141.73, Respondent was required to provide adequate treatment consisting of both disinfection and filtration that reliably achieves 3-log removal and/or inactivation of *Giardia lamblia* and 4-log removal and/or inactivation of viruses by May 28, 2015. Respondent installed filtration treatment and commenced operating the filtration treatment in June 2018. Therefore, Respondent failed to provide treatment in a timely fashion.
9. Respondent failed to collect and report the required combined filter effluent turbidity samples as required by 40 C.F.R. §141.74, §141.175(a), and §141.570(a) during the monthly reporting periods of June through August 2016, June through August 2017, and June through August 2018.
10. Respondent failed to have qualified personnel who meet the requirements specified by the state (Class II operator) collect and report the daily residual disinfectant concentration of the water after filtration and disinfection treatment and prior to entering the distribution system as required by 40 C.F.R. §141.74 and §141.70(c) for the months of June through August 2018.

11. WVDHHR issued Administrative Order EE-17-24 (Order EE-17-24) to the Respondent on June 1, 2017, requiring Respondent to submit a Corrective Action Plan (“CAP”) to comply with the regulations listed in Paragraph 8 within 15 days of receipt of the Order EE-17-24; and to comply with the regulations listed in Paragraphs 9 and 10 within 30 days of receipt of Order EE-17-24.
12. WVDHHR referred the system to EPA for further enforcement on June 12, 2017.
13. WVDHHR issued a letter to Respondent dated August 9, 2017, notifying Respondent that, to date, the requirements of Order EE-17-24 had not been met and the System remained out of compliance. The letter also stated that based on the results of Microscopic Particulate Analysis (MPA) sampling on July 14, 2017, WVDHHR concluded that the System was confirmed to be GWUDI of surface water. The letter required the Respondent to submit a CAP within seven (7) days of receipt of the letter to comply with the requirements by either installing adequate filtration or seeking alternative solutions and notified Respondent that until an adequate solution was in place the System would remain on an indefinite boil water order.
14. Respondent submitted a response to the WVDHHR’s August 9, 2017 letter on August 15, 2017, providing a plan and schedule for treatment which would assure compliance with Order EE-17-24 by the June 2018 camp reopening.
15. EPA issued Respondent a Notice of Violation (“NOV”) on August 10, 2017, for the violations listed in Paragraphs 8, 9, and 10 of this Order requesting the Respondent submit specific combined filter effluent turbidity samples, daily residual disinfectant concentrations sampling results, and any existing plans and schedules for installation of adequate disinfection and filtration to achieve 3-log removal and/or inactivation of *Giardia lamblia* and 4-log removal and/or inactivation of viruses, or provide an alternative water source; as well as any monitoring, reporting and public notification within thirty (30) days of the date of the NOV.
16. EPA received a response to the NOV from Respondent on September 11, 2017 which provided, among other requested information, bacteriological and chlorine residual results, and statements that Respondent was in dialogue with WVDHHR to determine best filtration options considering the System location, and the need for a Class II operator licensed in West Virginia. The response also stated that the System was not required to test for turbidity in the past and not currently equipped to monitor for turbidity.
17. On May 8, 2018, EPA received an email from Respondent with a copy of the WVDHHR permit to install a filtration treatment unit at the System and a statement that treatment would be installed the week of June 13, 2018.
18. The West Virginia Title 64 Legislative Rule Bureau for Public Health Series 4 Public Water System Operators § 64-4-4.1.e.3. classifies a GWUDI system with a

population of less than 10,000 people as a Class II system; Title 64 § 64-4-4.5.6.d. requires all Class II systems have an operator with certification equal to or greater than the system classification present in the primary treatment facility at all times when the plant is operational; and § 64-4-5.6.f. requires all Class II systems have at least one certified operator in addition to the Chief Operator.

19. On June 14, 2018, EPA sent Respondent a reminder of the SDWA regulations under 40 C.F.R. §141.70 (c) that require each public water system using a surface water source or a ground water source under the direct influence of surface water must be operated by qualified personnel who meet the requirements specified by the State.
20. On June 22, 2018, in anticipation of the System opening on June 24, 2018, WVDHHR issued Respondent an WV NOV for Inadequate Operator Coverage in violation of West Virginia Water System Regulation § 64-4-5.4 and § 64-3-10 and Safe Drinking Water Act regulations at 40 C.F.R. §141.70 (c) with notification that the System must be placed on boil water advisory until the services of a Class II operator are secured and a Class II operator is at the plant at all times of filtration and disinfection treatment. The WV NOV required the System, within 30 days of June 22, 2018, to:
 - a. Employ an adequate number of certified operators based on operating hours; and provide the name(s) of the certified operators; the operator certificate numbers; and the certification expiration dates.
 - b. Remain on boil water notice until a properly certified operator is maintained at the treatment plant while the plant is operational.
 - c. Provide public notification within 12 hours after becoming aware of the violation to persons served by the water system.
 - d. Maintain posting of public notice with boil water notice until a Class II operator is available at all times that the plant is operational.WVDHHR sent a copy of the WVDHHR NOV by email to Respondent and EPA on June 22, 2018.
21. On July 6, 2018, WVDHHR issued a WV NOV to the Respondent for failing to post public notification with boil water notice by June 23, 2018, as required by West Virginia Water System Regulations § 64-3-10 and 40 C.F.R. §141.202.
22. On August 13, and September 26, and 27, 2018, WVDHHR issued three NOV's to the Respondent for violations of the West Virginia Water System Regulations § 64-3-10 and the SDWA regulations at 40 C.F.R. §141.74(c)(2) for failure to submit valid treatment plant chlorine residual levels associated with the entry point to the distribution system due to a Class II operator not being present at all times during the operation between, June 1 through June 30, 2018; July 1 through July 31, 2018; and August 1 through August 31, 2018; respectively.
23. On August 13, September 26, and 27, 2018, WVDHHR issued three NOV's to the Respondent for violations of West Virginia Water System Regulations § 64-3-10

and the SDWA regulations at 40 C.F.R. §141.175 and 40 C.F.R. §141.570 for failure to submit valid Turbidity values due to a Class II operator not being present at all times during the operation between June 1 through June 30, 2018; July 1 through July 31, 2018; and August 1 through August 31, 2018; respectively.

24. As of the date of this Order, Respondent has not identified Class II operators who are onsite during all times the System is operating filtration and disinfection treatment; nor has Respondent provided the names of the certified operators, their certificate numbers, and their certification expiration dates to WVDHHR. Operators must submit EW-104 forms to the WVDHHR Training and Certification Unit when employed by a public water system. WVDHHR records indicate only one Class II operator is employed at the System. This is not adequate Class II operator coverage for the System which operates filtration and disinfection treatment 24 hours a day for seven days each week. Therefore, the System remains out of compliance with the statutory and regulatory requirements discussed in Paragraphs 9, 10, 18 and 20.

ORDER FOR COMPLIANCE

Based on the foregoing FINDINGS, and pursuant to the authority of Section 1414(a) and (g) of the SDWA, 42 U.S.C. § 300g-3(g), Respondent is HEREBY ORDERED to:

25. Comply with all provisions of the SDWA and its implementing regulations.
26. Starting on June 1, 2019 or no later than the first day of System operation, Respondent shall comply with 40 C.F.R. §141.175(a) and 141.570(a) by collecting and reporting on at least 95% of the required combined filter effluent turbidity samples during all times that the filtration treatment is operating at the System. Collection and reporting of turbidity samples must be performed by a qualified Class II operator as required by 40 C.F.R. §141.70(c) and the West Virginia Title 64 Legislative Rule Bureau for Public Health Series 4 Public Water System Operators. The turbidity monitoring results shall be documented in the Monthly Operating Reports (MORs) signed by the Class II operator on site during System operation and sample collection.
27. Starting on June 1, 2019, or no later than the first day of System operation, Respondent shall comply with 40 C.F.R. §141.74(c) by collecting and reporting on the daily residual disinfectant concentration of the water entering the distribution system. Collection and reporting of residual disinfectant samples must be performed by a qualified Class II operator as required by 40 C.F.R. §141.70 (c) and the West Virginia Title 64 Legislative Rule Bureau for Public Health Series 4 Public Water System Operators. The residual disinfectant results shall be documented in the MORs signed by the Class II operator on site during System operation and sample collection.

28. All MORs for the 2019 System operating season (June – August 2019) shall be submitted to EPA and WVDHHR at the addresses indicated in Paragraph 37 by the 10th day following the end of the monthly period of operation.
29. By June 1, 2019, Respondent shall comply with 40 C.F.R. §141.70(c) and the West Virginia Title 64 Legislative Rule Bureau for Public Health Series 4 Public Water System Operators § 64-4-4.5.6 d. and § 64-4-5.6.f. by ensuring a Class II operator is on site during all times the filtration treatment is operating at the System. Respondent shall:
 - a. Identify the West Virginia Class II operators, including identifying a Chief Operator and any other Class II operators employed by the Respondent based on the number of operating hours and the requirement to have a Class II operator onsite during all times of System filtration treatment operation. Respondent shall provide the names, certificate numbers and expiration dates for all certified operators hired by Respondent. All operators must submit form EW-104 to confirm employment by the System to WVDHHR at the address identified in Paragraph 37.
30. By June 1, 2019, Respondent shall submit a treatment operation schedule which includes proposed periods of treatment conducted by the specific Class II operator during the proposed periods of filtration treatment.
31. By June 1, 2019, Respondent shall submit to EPA a plan and process for providing boiled water, or an alternate source of water, for System users for drinking, making ice, washing dishes, brushing teeth and preparing food during the periods of time that treatment is not accomplished by a Class II operator present onsite.
32. By June 1, 2019, Respondent shall submit, if applicable, a schedule for modification to the System for installation of a storage tank for treated filtered water to be filled by a Class II operator for use by the System when a Class II operator is not present to perform System filtration operation. The design and installation of the storage tank shall be sufficient to meet the needs of the System and must be approved through the WVDHHR permitting process in consultation with EPA.
33. Upon approval, all submissions required herein shall be implemented by Respondent, incorporated into and become enforceable under this Order. Failure to provide an approvable plan that comports with the above-named regulations will be a violation of this Order. Failure to provide the required submissions in a timely fashion will be a violation of this Order.
34. Commencing when the System opens to serve water to the public, and as long as the System fails to comply with this Order or any of the National Drinking Water

Regulations, Respondent shall comply with the public notification requirements at 40 C.F.R §§141.201-211:

- a. Provide public notice maintaining the boil water notice to all persons served by the System, including staff, the parents and/or guardians of the campers enrolled at the camp during the time of violation by mail, email or hand delivery;
 - b. Continually post public notification in conspicuous locations, including, but not limited to, Camp Twin Creeks website, in order to inform new consumers of any continuing violations, pursuant to 40 C.F.R. § 141.206 (b).
 - c. Post notification of boil water notice and violations on the camp website and in public places such as restrooms, kitchen facilities and all facilities where persons will have access to water within the area served by the System;
 - d. Give subsequent notice to all persons served by the System, as described above, by mail or hand delivery at least one (1) time every three (3) months for as long as the violation or violations exist.
 - e. Send copies of the initial notice and any subsequent notice to EPA and WVDHHR with a certification of distribution, pursuant to 40 C.F.R. § 141.31(d), within 10 days of completing the public notice.
35. Seven (7) days from the first day of System operation, Respondent shall email a written progress report to EPA and WVDHHR at the addresses listed in paragraph 37. The progress report shall include:
- a. MORs documenting chlorine residual and turbidity levels for the System from start up through the first five (5) days of System operation.
 - b. A copy of the Public Notice and the plan for distribution and posting of Public Notice to be issued to System users as required in Paragraph 34.
 - c. Report on the progress of compliance, including schedules, as required in Paragraphs 29 through 34, as applicable, of this Order.
36. Monthly, and no later than July 10, 2019; August 10, 2019 and September 10, 2019, send written progress reports (Reports) to the EPA and to the WVDHHR at the addresses in Paragraph 37. Respondent shall continue to submit the Reports until the final Report is submitted by September 10, 2019. The Reports shall describe in detail:
- a. Respondent's progress toward complying with each of the requirements of this Order during the previous month including a MOR and a copy of any public notice issued; and
 - b. A narrative description of any event which may delay compliance with this Order, including:
 1. the cause and the anticipated length of the delay;

2. the efforts taken to prevent or minimize the delay; and a description of any future deadlines which could be affected by the present or anticipated delay.

Submission of progress Reports and/or delayed laboratory analyses shall not excuse the obligation of the Respondent to comply with this Order.

37. Monthly, and starting no later than July 1, Respondent shall submit any documentation, plans, reports and analyses to the following:

All submissions required by Order including Monthly Operating Reports and Public Notification:

Ms. Roberta Riccio
U.S. Environmental Protection Agency
Enforcement and Compliance Assurance Division (ECAD)
SDWA & Wetlands Section (3ED31)
1650 Arch Street
Philadelphia, PA 19103-2029
Riccio.roberta@epa.gov

and

All submissions required by Order including Monthly Operating Reports and Public Notification:

Mr. Walter M. Ivey
WV Department of Health and Human Resources
West Virginia Bureau of Public Health
Office of Environmental Health Services
350 Capitol Street, Room 319
Charleston, WV25301
Walter.M.Ivey@wv.gov

All Monthly Operating Reports and Public Notices with Certifications:

Mr. Don Goldsmith
WV Department of Health and Human Resources
Office of Environmental Health Services
Enforcement and Compliance
350 Capitol Street, Room 319
Charleston, WV25301
Donald.F.Goldsmith@wv.gov

All Form EW-104 for Operator Identification and Notification of Employment at Public Water System:

Mr. Patrick Marchio
WV Department of Health and Human Resources

Office of Environmental Health Services
Training/Certification
350 Capitol Street, Room 319
Charleston, WV25301
Patric.L.Marchio@wv.gov

GENERAL PROVISIONS

38. 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.
39. Any violation of the terms of this Order may result in further EPA enforcement action including the imposition of administrative 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, that allow for civil penalties of up to \$39,936 per day for each day of violation that occurs. Respondent may seek federal judicial review of the Order pursuant to section 1448(a) of the Safe Drinking Water Act, 42 U.S.C. § 300j-7(a).
40. This Administrative Order in no way relieves the Respondent of the duty to comply with any federal, state or local law, regulation, ordinance or permit. Compliance with this Administrative Order shall be no defense to any action commenced pursuant to such authorities.
41. Any request for modification of this Administrative Order must be in writing and must be approved by this Agency.
42. Respondent may seek federal judicial review of the Order pursuant to Section 1448(a) of the Safe Drinking Water Act, 42 U.S.C. §300j-7(a).

OPPORTUNITY TO CONFER

43. Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and about the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact EPA directly at the contact information provided in Paragraph 37, above, within five (5) business days of the effective date of the Order.

TERMINATION AND SATISFACTION

44. The provisions of this Order shall be deemed satisfied upon Respondents 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.

NOTICE OF INTENT TO COMPLY

45. Within seven (7) business days of the effective date of this Order, Respondents shall submit to EPA a Notice of Intent to Comply with the Order. The Notice shall be submitted to:

Ms. Roberta Riccio
U.S. Environmental Protection Agency
Enforcement and Compliance Assurance Division (ECAD)
SDWA & Wetlands Section (3ED31)
1650 Arch Street
Philadelphia, PA 19103-2029

EFFECTIVE DATE

46. This Order shall become effective five (5) business days after issuance.

Issued this 9th day of May, 2019.



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

CERTIFICATE OF SERVICE

I certify that on **MAY 09 2019** , the original and one (1) copy of the foregoing **Administrative Order**, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **Overnight Mail** to:

Mr. Gordon Josey
16 E Eagle Road
Havertown, PA 19083

Gordon Josey
9235 Huntersville Road
Marlinton, WV 24954

Copy served via **Certified Mail/Return Receipt Requested**:

Gordon Josey
Twin Creeks, LLC
P.O. Box 39
Armonk, New York 10504

Copy served via **Hand Delivery or Inter-Office Mail** to:

Roberta Riccio
Enforcement and Compliance Assurance Division
SDWA and Wetlands Branch (3ED31)
US EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Date: **MAY 09 2019**

 Bevin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III