

White Sulphur Springs Water System

U.S. EPA Docket No. SDWA-03-2022-0106DS

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
Philadelphia, Pennsylvania 19103**

<b>In the Matter of:</b>	:	
	:	
White Sulphur Springs	:	<b>ADMINISTRATIVE ORDER</b>
589 Main Street West	:	
White Sulphur Springs, WV 24986	:	<b>U.S. EPA Docket No. SDWA-03-2022-0106DS</b>
	:	
<b>Respondent,</b>	:	<b>Proceeding under Section 1414(g) of the</b>
	:	<b>Safe Drinking Water Act, as amended,</b>
White Sulphur Springs Water System	:	<b>42 U.S.C. § 300g-3(g)</b>
	:	
<b>System.</b>	:	
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**I. STATUTORY AUTHORITY**

The United States Environmental Protection Agency, Region III (“EPA” or “Agency”) has made the following FINDINGS OF FACTS and issues this ADMINISTRATIVE ORDER (“the Order”) pursuant to Section 1414(g) of the Safe Drinking Water Act (“SDWA” or “the Act”), 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 re-delegated these authorities to the Director, Enforcement & Compliance Assurance Division, EPA Region III.

**II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW**

- Section 1414(i) of the Act, 42 U.S.C. § 300g-3(i), 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. “Applicable requirements,” as defined in Section 1414(a)(2) of the Act, 42 U.S.C. § 300g-3(a)(2), include requirements under Section 1433 of the Act, 42 U.S.C. § 300i-2.
- 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).
- 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.” 42 U.S.C. § 300f(15).

4. White Sulphur Springs (hereinafter “Respondent”) owns and/or operates the White Sulphur Springs public water system, located in White Sulphur Springs, WV, within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. §300f(4), and 40 C.F.R. §141.2.
5. 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.
6. 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.
7. Respondent’s public water system provides piped water for human consumption and regularly serves at least 15 service connections used by year-round residents, at least 25 year-round residents, 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. Respondent is therefore, subject to the requirements of Part B of the SDWA, 42 U.S.C. §300g et seq., and its implementing regulations.
8. Respondent serves a population of over 3,300 but less than 50,000 people.
9. On October 23, 2018, the SDWA was amended in accordance with the America’s Water Infrastructure Act (AWIA) of 2018 (Public Law 115-270).
10. The State of West Virginia, acting through the West Virginia Department of Health and Human Resources, 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.
11. 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, including:
  - a. an assessment of 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);
  - c. the monitoring practices of the system; the use, storage, or handling of various chemicals by the system; and
  - d. the operation and maintenance of the system.
12. Section 1433(a)(3)(A) of the SDWA, 42 U.S.C. §300i-2(a)(3)(A), requires CWSs serving over 3,300 but less than 50,000 to submit a certification to the EPA Administrator that it has conducted its RRA on or before June 30, 2021.
13. Section 1433(b) of the SDWA, 42 U.S.C. §300i-2(b), requires CWS 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.

14. 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 White Sulphur Springs public water system, in violation of Section 1433, the SDWA, 42 U.S.C. §300i-2(a), an "applicable requirement" of the SDWA.
15. Because Respondent has not completed the RRA it also has not been able to comply with the subsequent requirement to prepare or revise its ERP by June 30, 2021, in violation of Section 1433(b), the SDWA, 42 U.S.C. §300i-2(b), an "applicable requirement" of the SDWA.

### III. ORDER FOR COMPLIANCE

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

16. No later than August 31, 2022, Respondent shall complete the RRA and submit its certification for the completion of the RRA, as required by Section 1433(a) of the SDWA, to the EPA Administrator. For instructions on how to submit your RRA certification, visit EPA's website by clicking [here](https://www.epa.gov/waterresilience/americas-water-infrastructure-act-risk-assessments-and-emergency-response-plans). (<https://www.epa.gov/waterresilience/americas-water-infrastructure-act-risk-assessments-and-emergency-response-plans>)
17. No later than August 31, 2022, Respondent shall provide written confirmation to EPA, that the Requirements of the above paragraph have been met and that the Respondent is in compliance with Section 1433(a) of the SDWA and the Order. **Do not submit the RRA to the below address**; submit only the above reference confirmation, electronically via email to: Renee Bryant, U.S. Environmental Protection Agency Region 3, at [bryant.renee@epa.gov](mailto:bryant.renee@epa.gov).
18. No later than November 27, 2022, Respondent shall submit its certification for the completion or revisions of its ERP, as required by Section 1433(b) of the SDWA, 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>)
19. No later than November 27, 2022, Respondent shall provide written confirmation to EPA, that the requirements of the paragraph 19 have been met and that the Respondent is in compliance with Section 1433(b) of the SDWA and the Order. **Do not submit the ERP to the below address**; submit only the above referenced confirmation, electronically via email to: Renee Bryant, U.S. Environmental Protection Agency Region 3, at [bryant.renee@epa.gov](mailto:bryant.renee@epa.gov).

### IV. GENERAL PROVISIONS

20. The following certification must accompany each submission by Respondent pursuant to this Order and must be signed by a Representative of Respondent authorized to sign on behalf of Respondent:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system

designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed:

Title:

Date:

21. 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 an administrative or a penalty or judicial actions, 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.
22. 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.
23. Any request for modification of this Order must be in writing and must be approved by EPA.
24. 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.
25. 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 action otherwise authorized under the SDWA.
26. This 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 Order shall be no defense to any action commenced pursuant to such authorities.
27. Pursuant to its authority under 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.
28. 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.

29. Respondent may seek federal judicial review of the Order pursuant to Section 1448(a) of the SDWA, 42 U.S.C. § 300j-7(a).
30. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of Section III of this Order is restitution, remediation, or required to come into compliance with the law.

#### **V. OPPORTUNITY TO CONFER**

31. Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order including the terms and conditions contained herein. Respondent's request for a conference must be in writing via e-mail within ten (10) days of receipt of this Order. Respondent must communicate with EPA representatives to schedule the conference no later than 20 days after receipt of this Order. If the requested conference is held, this Order shall become effective ten (10) days after the conference is held. If Respondent does not request a meeting within ten (10) days of receipt of this Order, Respondent waives its right to a conference, and this Order shall become effective ten (10) days from its receipt. Any request for a conference, or other inquiries concerning this Order, should be made in writing to: Renee Bryant.

#### **VI. TERMINATION AND SATISFACTION**

32. The provisions of this Order shall be deemed satisfied when Respondent completes the compliance tasks required by Section III of this Order. If, following receipt of confirmation that Respondent has complied with the requirements of Section III, EPA agrees that Respondent has adequately complied with all requirements of this AO, then EPA may provide written notification of termination of this AO.

#### **VII. EFFECTIVE DATE**

33. The effective date of this Order shall be ten (10) days from the date of receipt of this Order, or, if a conference is requested per Section V above, this Order shall become effective ten (10) days after the conference is held.

SO ORDERED.

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*[Electronic Signature and Date]*

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
Philadelphia, Pennsylvania 19103**

<b>In the Matter of:</b>	:	
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	:	<b>42 U.S.C. § 300g-3(g)</b>
<b>System.</b>	:	
	:	
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**CERTIFICATE OF SERVICE**

I certify that on the date stamped electronically, the foregoing Administrative Order was sent to the following person by UPS Overnight Mail, at the following address:

White Sulphur Springs  
589 Main Street West  
White Sulphur Springs, WV 24986

I certify that the enclosed Administrative Order was sent to the following person by electronic mail, at the following addresses.

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
Email: R3\_Hearing\_Clerk@epa.gov

I have also arranged for the Regional Hearing Clerk to distribute the Administrative Order by electronic mail to the persons listed above, and to the EPA staff listed below:

Renee Bryant  
U.S. Environmental Protection Agency Region 3  
bryant.renee@epa.gov  
215-814-2137

\_\_\_\_\_  
[Electronic Signature and Date]  
U.S. Environmental Protection Agency, Region III