

FILED

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**U.S. EPA REGION 7
HEARING CLERK**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:)
)
)
Elk City, Kansas) ADMINISTRATIVE
PWS Identification KS2012520) ORDER ON CONSENT
)
Respondent) Docket No. SDWA-07-2024-0007
)
)
Proceedings under Section 1414 of)
Safe Drinking Water Act,)
42 U.S.C. § 300g-3)

I. STATUTORY AUTHORITY

1. The following findings are made, and Administrative 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 Act), 42 U.S.C. Section 300g-3(g), 300i(a). The authority to take these actions has been delegated to the EPA Region 7 Enforcement and Compliance Assurance Division Director.

II. FINDINGS

2. The city of Elk City, Kansas (hereinafter "Respondent") owns and/or operates the Elk City Public Water System, a "public water system" within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2, located in Montgomery County, Kansas. The PWS identification number is KS2012520.

3. Respondent is a "supplier of water" within the meaning of Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2.

4. Respondent is a "person" within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12).

5. Respondent's PWS provides piped water for human consumption and regularly serves a population of at least 25 individuals year-round or has at least 15 service connections, 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.

6. On January 4, 2006, the EPA promulgated the Stage 2 Disinfectants and Disinfection Byproducts Rule ("Stage 2 DBPR"), regulated under 40 C.F.R. Part 141, Subparts U and V, to provide for increased public health protection against the potential risks for cancer and reproductive developmental health effects associated with disinfection byproducts ("DBPs").

7. The Stage 2 DBPR requires that compliance with the maximum contaminant levels ("MCL") for total trihalomethanes ("TTHM") and haloacetic acids ("HAAS") be based on the locational running annual average ("LRAA") concentration of these DBPs.

8. The Kansas Department of Health and Environment ("KDHE") administers the Public Water Supply Supervision Program in Kansas pursuant to Section 1413 of the SDWA. The approval of primary enforcement authority from the EPA to the KDHE was effective as of September 9, 1977. The KDHE received primacy on March 11, 2019, for the Stage 2 DBPR.

9. Respondent's PWS serves approximately 292 persons; therefore, Respondent was required to begin complying with the compliance monitoring provisions of the Stage 2 DBPR beginning on October 1, 2013.

10. Respondent's PWS uses a surface water source and adds chemical disinfectant(s) to the water as part of the drinking water treatment process. The PWS is required to monitor for disinfectant residuals at the location(s) and dates identified in its monitoring plan established pursuant to 40 C.F.R. §§ 141.132(f) and 141.622, as well as the schedule identified in 40 C.F.R. § 141.621.

11. Pursuant to 40 C.F.R. § 141.621, Respondent is required to monitor for TTHMs and HAAS at the locations with the highest TTHM and HAAS concentrations, respectively, once per year. For systems serving fewer than 500 people, only one location with a dual sample set per monitoring period is required if the highest TTHM and HAAS concentrations occur at the same location and month.

12. Pursuant to 40 C.F.R. §141.625, systems required to routinely monitor annually must increase monitoring to dual sample sets once per quarter at all monitoring locations if a TTHM sample exceeds 0.080 mg/L or a HAAS sample exceeds 0.060 mg/L at any location.

13. Pursuant to 40 C.F.R. §§141.64(b)(2), 141.620(d) and 141.625(b), Respondent must calculate LRAAs for TTHM and HAAS using monitoring results collected and determine whether each LRAA exceeds the MCL. If Respondent fails to complete four consecutive quarters of monitoring, Respondent must calculate compliance with the MCL based on the average of the available data from the most recent four quarters. If Respondent takes more than one sample per quarter at a monitoring location, Respondent must average all samples taken in the quarter at that location to determine a quarterly average to be used in the LRAA calculation.

14. Pursuant to 40 C.F.R. §141.64(b)(2), the MCL for TTHMs is 0.080 mg/L and the MCL for HAAS is 0.060 mg/L.

15. The EPA and Respondent entered into an Administrative Order on Consent (“AOC”) dated August 29, 2017 (SDWA-07-2017-0223), requiring the Respondent to take actions to address MCL violations for TTHMs and HAASs. The AOC cited MCL violations occurring from 2015 through 2017 and required Respondent to comply with the respective MCLs no later than January 1, 2020. The 2017 AOC also required the system to remain in compliance with all applicable Stage 2 DBPR requirements.

16. Based on information provided by KDHE, Respondent failed to comply with the MCL for TTHMs under the Stage 2 DBPR in each of the first 3 quarters of 2023, in violation of 40 C.F.R. §141.64(b)(2).

17. The EPA issued a Notice of Violation under SDWA 1414(a)(1)(A) dated May 11, 2023, notifying the PWS of its noncompliance with applicable requirements of the SDWA and its implementing regulations. The PWS resolved all violations except the TTHMs MCL violations, which continued.

III. ORDER

18. Based on the findings and violations listed above, EPA is issuing this Order to place the Respondent on an enforceable schedule to comply with the requirements of the SDWA, its implementing regulations at 40 C.F.R. Part 141, and other applicable requirements, and to take actions as may be necessary to protect the health of persons.

19. Respondent shall continue to conduct monitoring quarterly for TTHMs and HAAS in accordance with 40 C.F.R. § 141.621(a) and its approved monitoring plan. Samples shall be analyzed in accordance with 40 C.F.R. § 141.621(b). Respondent must calculate the LRAAs for TTHM and HAAS using monitoring results collected, in accordance with 40 C.F.R. § 141.620(d). Specifically, Respondent must calculate compliance with the MCL based on the available data from the most recent four quarters.

20. Respondent shall submit to the EPA, in addition to routine reporting to KDHE, the results of the monitoring required pursuant to 40 C.F.R. § 141.621 quarterly, by the 14th of the month following the end of the calendar quarter within which the sample was collected in accordance with 40 C.F.R. § 141.629. Respondent shall report quarterly to the EPA until directed otherwise.

21. In order to rectify the violations referenced in this Order, Respondent shall comply with the following compliance schedule:

- a. Comprehensive System Evaluation. Within 75 days of the Effective Date of this Order, Respondent shall have an Evaluation done by a qualified entity to determine if the current drinking water system and operations can comply with the Stage 2 DBPR requirements, how the system can best

optimize operation and maintenance to comply with Stage 2 DBPR requirements, and the system's technical, managerial, and financial capacity to stay in compliance in the long term. Respondent shall submit the results of the Evaluation to EPA and KDHE.

b. DBP Compliance Plan. Within 45 days of the Evaluation in paragraph 21(a), Respondent shall submit to EPA and KDHE a detailed Plan and schedule, subject to EPA approval, for bringing the System into compliance with the TTHM MCL. This Plan shall include, but not be limited to, milestones with dates for operational changes with a complete operation and maintenance manual, planning for long term compliance, engineering/design if needed, obtaining funding if needed, construction/equipment installation if needed, and projected completion dates. To the extent that grant funding may be part of Respondent's Plan, the Plan should also include a contingency funding option in case the grant funds are not available.

c. Compliance Deadlines. No later than one year from the Effective Date of this order, the PWS shall produce water with DBP levels less than or equal to 0.080 mg/L for TTHM and 0.060 mg/L for HAA5 as measured at appropriate compliance sampling locations within the distribution system. No later than two years from the Effective Date of this order, the PWS shall have LRAA for both TTHMs and HAA5s below the MCL.

22. If EPA approves the DBP Compliance Plan outlined in paragraph 21(b), Respondent shall implement such Plan according to the details and schedule in the approved Plan. EPA may provide comments or changes for incorporation into a Plan prior to EPA approval. If EPA does not approve the Plan, Respondent shall address EPA's comments and resubmit the Plan for review within twenty (20) business days of receipt of EPA's disapproval in writing. Upon resubmission, EPA, in its sole discretion, may either approve the Plan, or if EPA determines that the Plan does not adequately address the comments provided by EPA, EPA may modify the Plan and provide Respondent with a copy of the Plan as modified. Respondent shall implement the Plan as modified by EPA. Once approved by EPA, the Plan shall be incorporated by reference and fully enforceable under the terms of this Order.

23. Respondent shall remain in compliance with all applicable requirements of the Stage 2 DBPR, including the TTHM and HAAS MCLs (40 C.F.R. § 141.64(b)(2)), monitoring requirements (40 C.F.R. §141.621), compliance determination requirements (40 C.F.R. § 141.620), and reporting requirements (40 C.F.R. § 141.629).

24. Quarterly Reports. Respondent shall submit to the EPA quarterly progress reports for the preceding quarter describing progress in implementing the requirements of the Order, including the monitoring results required by Paragraph 20 as well as any efforts to achieve compliance with the DBP MCLs. Quarterly progress reports shall be submitted within fourteen (14) days after the end of each quarter (i.e., by April 14, July 14, October 14, and January 14). The progress reports are required until the Order is terminated by EPA.

25. All information required to be submitted by this Order to the EPA shall be sent to:

hendrickson.adam@epa.gov
Adam Hendrickson
Enforcement and Compliance Assurance Division
Water Branch
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

26. All information required to be submitted by this Order to KDHE shall be sent to:

cathy.tucker-vogel@ks.gov
Cathy Tucker-Vogel
Section Chief
Public Water Supply Section
Kansas Department of Health and Environment
1000 SW Jackson St., Suite 420
Topeka, Kansas 66612

27. Electronic submissions to the EPA and KDHE will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard copy to the addresses provided above.

IV. GENERAL PROVISIONS

28. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Order, (2) consents to personal service by electronic mail, (3) agrees to undertake all actions required by the terms and conditions of this Order, and (4) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or findings of violation in this Order, except that Respondent admits the jurisdictional allegations herein. Respondent also 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 under SDWA section 1448, 42 U.S.C. Section 300j-7 jurisdictional allegations herein.

29. This Order shall not prohibit, prevent, or otherwise preclude the EPA or KDHE from taking whatever action deemed appropriate to enforce the Act in any manner and shall not prohibit, prevent, or otherwise preclude the EPA from using this Order in subsequent administrative or judicial proceedings. Nothing in this Order shall constitute a waiver, suspension or modification of the requirements of the Act, or the rules and regulations promulgated there under 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 Law.

30. Once approved by the EPA all deliverables, including schedules contained therein, shall be incorporated into this Order.

31. For violations of this Order, the Respondent may be subject to administrative and civil judicial penalties assessed by an appropriate United States District Court, under Sections 1414(b), 1414(g)(3)(A), 1414(g)(3)(C), and 1431(b) of the Act, 42 U.S.C. §§ 300g-3(g)(3)(A), 300g-3(g)(3)(C), and 300i(b).

32. This Order does not relieve Respondent of any responsibilities or liabilities established pursuant to any applicable federal, State, or local law.

33. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by the EPA.

34. At the EPA's sole discretion, extensions of the compliance schedule / deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. All other terms of this Order may be modified only by a subsequent written agreement signed by the Parties.

35. The provisions of this Order shall be severable. If any provision of this Order is found to be unenforceable, the remaining provisions shall remain in full force and effect.

36. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

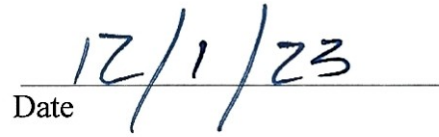
ORDERED, on the date shown in the signatures below.

David Cozad
Director
Enforcement and Compliance Assurance Division

Shane McCain
Office of Regional Counsel

For the Respondent, Elk City, Kansas Public Water System:


Signature


Date

CERTIFICATE OF SERVICE

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

I further certify that on the date noted below I sent a copy of the foregoing Administrative Order by electronic mail to:

elk_city@valnet.net
Honorable John McElwain
Elk City

cathy.tucker-vogel@ks.gov
Cathy Tucker-Vogel
Kansas Department of Health and Environment

hendrickson.adam@epa.gov
Adam Hendrickson
EPA Region 7 Enforcement and Compliance Assurance Division

mccoin.shane@epa.gov
Shane McCoin
EPA Region 7 Office of Regional Counsel

Date

Signature