

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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IN THE MATTER OF)
)
Ulm School District 85)
Ulm, Montana)
PWS ID# MT0000765,)
)
Respondent.)
)
Proceedings under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))
)

EPA REGION VIII
HEARING CLERK

ADMINISTRATIVE ORDER

Docket No. SDWA-08-2007-0026

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 (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 EPA Montana Office, EPA Region 8.

FINDINGS

1. The Ulm School District (Respondent) is a public corporation and subdivision of the State of Montana and therefore a "person" within the meaning of 40 C.F.R. § 141.2.
2. Respondent owns and/or operates the Ulm School District Public Water System (the System), located in Cascade 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 or regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is therefore a "public water system" within the meaning of section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "non-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 therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. Part 141.
5. According to a March 2001 sanitary survey by the City-County Health Department, the System is supplied solely by a groundwater source consisting of one well and serves approximately 130 persons daily while school is in session during September through May each year.
6. MDEQ has primary enforcement authority for the Act in the State of Montana. On September 15, 2006, 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. 42 U.S.C. § 300g-3(l).

FINDINGS OF VIOLATION

I. Failure to monitor/report Disinfection By-Products

- A. 40 C.F.R. § 141.132(b) requires the owner and/or operator of a public water system served only by a ground water source providing water to less than 10,000 persons and using chemical disinfectant to collect one water sample per year per treatment plant during month of warmest water temperature to determine compliance with the Maximum Contaminant Level (MCL) for disinfection byproducts, as stated in 40 C.F.R. § 141.64.
- B. Respondent failed to monitor for DBPs in calendar years 2004 (for halogenated acetic acids, HAA5), and 2005 (for HAA5 and total trihalomethanes, TTHM), in violation of 40 C.F.R. § 141.132(b). Respondent successfully monitored both HAA5 and TTHM in 2006.

II. Failure to Monitor/Report Repeat Coliform Samples

- A. 40 C.F.R. § 141.21(b) requires public water systems to collect a set of four repeat samples within 24 hours of being notified of a total coliform positive routine sample.
- B. The System tested positive for total coliform on July 9, 2003.
- C. Respondent failed to collect a set of four repeat samples after the July 2003 total coliform positive routine sample, in violation of 40 C.F.R. § 141.21(b).

III. Failure to Monitor/Report Total Coliform Additional Routine Samples

- A. 40 C.F.R. § 141.21(b)(5) requires public water systems that collect fewer than 5 routine samples per month and have one or more total coliform positive samples to collect at least 5 routine samples during the next month the system provides water to the public.
- B. Respondent failed to collect at least 5 routine samples in August 2003 after a total coliform positive sample in the preceding month, in violation of 40 C.F.R. § 141.21(b)(5).

IV. Failure to provide public notice of a violation

- A. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any violations of the national primary drinking water regulations (NPDWR), including violations of the MCL, maximum residual disinfection level (MRDL), treatment technique (TT), monitoring requirements, and testing procedures in 40 C.F.R. Part 141.
- B. Respondent has not provided public notice of the violations detailed in the

preceding Sections I and II, in violation of 40 C.F.R. § 141.201.

V. Failure to report a violation to the State

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

VI. Failure to report a coliform violation to the State

- A. 40 C.F.R. § 141.21(g)(2) requires public water systems that have failed to comply with a coliform monitoring requirement under 40 C.F.R. § 141.21 to report the violation to the State within ten days after the system discovers the violation.
- B. Respondent failed to report to the State the noncompliance detailed in Sections II and III above, in violation of 40 C.F.R. § 141.21(g)(2).

ORDER

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

IT IS ORDERED:

1. During the warmest month of 2007 (generally during July or August), and during the warmest month of each year thereafter, Respondent shall comply with the DBP monitoring requirements as stated in 40 C.F.R. § 141.132(b). Respondent shall collect one sample per year per treatment plant at a location that represents maximum residence time to be analyzed for total trihalomehtane (TTHM) and halocacetic acids (five)(HAA5) to determine compliance with the disinfection byproduct MCL appearing at 40 C.F.R. § 141.64(a). Respondent

shall report analytical results to EPA and MDEQ within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.134(a) and (b).

2. Upon the effective date of this Order, Respondent shall comply with all repeat sampling requirements specified in 40 C.F.R. § 141.21(b). This requires that Respondent take no fewer than four repeat samples within 24 hours of being notified of a total coliform positive routine sample. Each repeat sample is to be analyzed for total coliform bacteria. At least one repeat sample must be taken from each of the following: a) the tap where the original total coliform positive sample was taken, b) from a tap within five service connections upstream of the original total coliform positive tap, and c) from a tap within five service connections downstream from the original total coliform positive tap. The fourth repeat sample is to be taken from a tap anywhere within five service connections upstream or downstream of the original total coliform positive tap. Respondent shall report analytical results to EPA within the first 10 days following the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).
3. Upon the effective date of this Order, Respondent shall comply with all sampling requirements specified in 40 C.F.R. 141.21(b)(5) for additional routine samples. If Respondent's water system has one or more total coliform positive samples in a month, Respondent shall collect at least 5 routine samples during the next month the system provides water to the public. Respondent shall report analytical results to EPA and the State within the first 10 days following the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).

4. No later than 30 days from the effective date of this Order, Respondent shall return to compliance with 40 C.F.R. §§ 141.201, 141.204 and 141.205 by providing public notice of the violations specified under the Findings of Violation in this Order. 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. Respondent shall submit a copy of the public notice to EPA 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) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the System or by mail or direct delivery to each customer and service connection; 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 required above, 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. The System must repeat the notice annually for as long as the violation, variance, exemption, or other situation persists. If the public notice is posted, the notice must remain in place for as long as the violation, variance, exemption, or other situation persists, but in no case less than seven days. Respondent may use Consumer Confidence Reports (CCR) to provide public notice as long as (1) the CCR is provided to persons served no later than 12 months after the System learns of the violation or situation; (2) the public notice contained in the CCR follows the content requirements under 40 C.F.R. §

141.205; AND (3) The CCR is distributed following the delivery requirements under 40 C.F.R. § 141.204(c).

5. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R. § 141.21 to EPA and the State within ten days after the system discovers the violation.
6. Except where a different reporting period is specified in the paragraphs above, 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 NPDWR to EPA and the State within 48 hours.
7. Documents, certifications, analytical results, and public notices required by this Order shall be sent by certified mail to:

Eric Finke	and	Kate Miller, Chief
EPA Montana Office		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

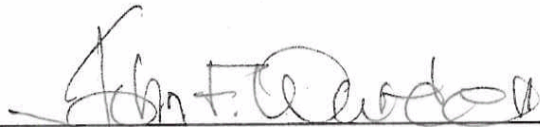
Act, 42 U.S.C. § 300g-3(g)(3)(B), or a civil penalty of not more than \$32,500 per day of violation assessed by an appropriate U.S. District Court under section 1414(g)(3)(C) of the Act, 42 U.S.C. § 300g-3(g)(3)(C).

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 6th day of February, 2007.



David J. Janik, Acting Director
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice



John F. Wardell, Director
EPA Montana Office