



6. Respondent's System utilizes a ground water source.
7. Respondent is subject to the Act and Part B of the SDWA, 42 U.S.C. §§ 300g-300g-9, and the regulations promulgated thereunder at 40 C.F.R. Part 141.
8. Pursuant to 40 C.F.R. § 141.2, a "maximum contaminant level" (MCL) is defined as the maximum permissible level of a contaminant in water which is delivered to any user of a public water system. Pursuant to 40 C.F.R. § 141.62, the MCL for nitrate is 10 milligrams per liter (mg/l).
9. A community water system must sample for nitrate in accordance with 40 C.F.R. § 141.23.
10. The state of Nebraska (State) has primary enforcement responsibility under Section 1413(a) of the SDWA, 42 U.S.C. § 300g-2(a), to ensure that suppliers of water in Nebraska comply with the requirements of the SDWA.
11. The Nebraska Department of Environment and Energy (NDEE) issued 28 Notice of Violations (NOVs) to the Respondent from 2013 to present for exceedances of the nitrate MCL.
12. The NDEE first issued an Administrative Order to the Respondent on May 20, 2013, requiring Respondent to take actions to address MCL violations for nitrate. This order was later rescinded.
13. The NDEE issued another Administrative Order to the Respondent on June 22, 2016, requiring the system to hire a professional engineer, provide a preliminary engineering report, and developing a Final Implementation Plan Schedule for installing point-of-use (POU) treatment devices in order to achieve compliance with the nitrate MCL.
14. On July 12, 2017 the Respondent entered into a POU treatment compliance agreement between the Respondent and the State. This Agreement outlines the responsibilities of the system while using POU devices as their source of nitrate treatment. This Agreement was updated and re-signed on March 30, 2022.
15. EPA issued a Notice of Violation under SDWA 1414(a)(1)(A) dated July 20, 2023, notifying the System of its noncompliance with applicable requirements of the SDWA. The NOV cited the following violations:
  - a. Since at least 2020, the PWS has been conducting compliance sampling for nitrate utilizing unapproved methods. According to both Federal Regulation 40 C.F.R. § 141.28 and Nebraska State Regulation Title 179 3-005.11C, nitrate samples used

for the purposes of determining compliance with a MCL must be analyzed by a state-certified lab.

- b. The following nitrate MCL violations have been identified by the State in the last 5 years;

Violation Number	Determination Date	Site of Violation
2019-204227	6/3/2019	POU4
2020-204230	5/14/2020	POU37
2020-204229	5/14/2020	POU10
2020-204231	6/25/2020	POU19
2021-204238	11/5/2020	POU4
2021-204240	4/29/2021	POU15
2021-204239	4/29/2021	POU7
2022-204297	2/23/2022	POU6
2022-204298	3/3/2022	POU4
2023-204364	5/12/2023	POU23
2023-204365	5/12/2023	POU22
2023-204366	5/15/2023	POU15
2023-204367	5/26/2023	POU3
2023-204368	6/8/2023	POU4

16. The nitrate present in the System are “contaminants” as defined in 40 C.F.R. § 141.2.

17. EPA has established the MCL of 10 mg/L to protect against the adverse effects of nitrate. Concentrations of nitrate that are above 10 mg/L may pose a health threat to the population in general, and may be an acute health threat to children less than 6 months of age. This level was based on human case studies in which fatal poisonings have occurred following the ingestion of groundwater containing nitrate concentrations greater than 10 mg/L. Therefore, above the concentration of 10 mg/L in drinking water, nitrate may present an imminent and substantial endangerment to the health of persons.

18. EPA has determined that the System’s ongoing noncompliance with the nitrate MCL has resulted in the presence of contaminants in the PWS which may present an imminent and substantial endangerment to the health of persons.

19. To the extent practicable, prior to issuing this Order, EPA consulted with the NDEE and local authorities to confirm the correctness of the information on which this action is proposed and to ascertain the actions which NDEE and local authorities are or will be taking.

20. Despite actions taken by NDEE and local authorities, these actions have not resulted in the protection of public health as the System continues to have MCL violations for nitrate.

21. This Order is necessary to protect public health.

## **22. ORDER**

23. 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.

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

- a. Evaluation. Within 90 days of the effective date of this Order, the Respondent shall have the current system of POU devices and the relevant data evaluated by a qualified entity to determine if the current drinking water system can comply with the nitrate MCL requirements. If the system can comply, the evaluation must include how to best optimize the system's operation and maintenance to comply with the nitrate MCL. The evaluation shall also include an evaluation of the System's capabilities for long term compliance with the nitrate MCL. The Respondent shall submit the results of the Evaluation to EPA and NDEE.
- b. Nitrate Compliance Plan. Within 45 days of the Evaluation, the Respondent shall submit to EPA and NDEE a detailed plan and schedule (Nitrate Compliance Plan), subject to EPA approval, for bringing the System into compliance with the nitrate MCL and remaining in compliance with MCL. This Plan shall include, but not be limited to, detailed operations and maintenance procedures on when to change out POU devices to best ensure compliance with the nitrate MCL, sampling plan and procedures, POU and Performance Indication Device (PID) inspection schedule, filter replacement plan, and steps taken if a customer is not complying with the Respondent's POU ordinance. The Plan shall also include any planning for future improvements, 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. Alternate Drinking Water Plan. Within 30 days of the Effective Date of this Order, the Respondent shall submit to EPA and NDEE a detailed plan and schedule (Alternate Drinking Water Plan), subject to EPA approval, for providing alternate drinking water to all infants who are six months of age or less, for mothers who are nursing these infants, and for pregnant women at no cost to those consumers. Such drinking water shall comply with all MCLs established as NPDWRs and shall be provided until reliable compliance with the nitrate MCL is attained by the PWS and the Respondent is notified by EPA that they may discontinue such actions. The Alternate Drinking Water Plan shall provide for at least one gallon of potable water daily per person and include details of monthly progress reporting on the provision of alternate drinking water.
- d. No later than 1 year from the Effective Date of this order the PWS shall consistently produce water that will comply with the nitrate MCL, measured at all appropriate compliance sampling locations within the distribution system.

25. If EPA approves the Nitrate Compliance Plan and/or the Alternate Drinking Water Plan outlined in paragraph 24, the 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 a 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 the Respondent with a copy of the Plan as modified. The 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.

26. 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 any nitrate MCL monitoring as well as any efforts to achieve compliance with the nitrate MCL. 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.

27. All reports and submittals required by this Order shall be submitted by electronic mail to EPA and NDEE at the following addresses:

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  
Phone: (913) 551-7253

Cody.willnerd@nebraska.gov  
Cody Willnerd  
Region 5 Monitoring and Compliance Section  
Nebraska Department of Environment and Energy  
Phone: (402) 471-1008

28. Electronic submissions to the EPA and NDEE 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.

### **GENERAL PROVISIONS**

29. 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.

30. Complying with this Order only remedies the violations listed in this Order. Respondent must continue to sample its water as directed by NDEE and as required by the drinking water regulations to avoid future violations.

31. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. Part 141 or any provision of the SDWA or any of the regulations promulgated thereunder, 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 SDWA.

32. For violations of this Order, the Respondent may be subject to civil judicial penalties assessed by an appropriate United States District Court under Section 1431(b) of the Act, 42 U.S.C. § 300i(b).

33. 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.

34. This Order shall be effective on the date on which it is signed.

35. 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.

This Order shall remain in effect until EPA notifies Respondent in writing that EPA has determined that Respondent has completed all requirements outlined in paragraph 24, and that the terms of the Order have been fulfilled.

ORDERED, this \_\_\_\_ day of January, 2024.

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David Cozad  
Director  
Enforcement and Compliance Assurance Division

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Shane McCoin  
Office of Regional Counsel

**For the Respondent, Village of Prosser, Nebraska Public Water System:**



1/16/24  
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:

villageofprosser@gmail.com  
vsstruss@hotmail.com  
Village of Prosser

andy.kahle@nebraska.gov  
justin.nelsen@nebraska.gov  
laura.r.johnson@nebraska.gov  
Nebraska Department of Environment and Energy

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

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

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Signature