

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

IN THE MATTER OF: )

Woodbine, Kansas )  
PWS Identification # KS2004117 )

Respondent )

Proceedings under Section 1414 of the )  
Safe Drinking Water Act, 42 U.S.C. § 300g-3 )

) Docket No. SDWA-07-2017-0162

)  
) FINDINGS OF VIOLATION,  
) ORDER FOR COMPLIANCE  
) ON CONSENT  
)

**I. STATUTORY AUTHORITY**

The following findings are made and Administrative Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 1414(g) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. Section 300g-3(g) (“the Act”), and duly delegated to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

**II. FINDINGS**

1. The city of Woodbine, Kansas (hereinafter “Respondent”) owns and/or operates the Woodbine 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 Dickinson County, Kansas. The PWS identification number is KS2004117.
2. 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.
3. Respondent is a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. §300f(12), 40 C.F.R. §141.2 and is subject to an Administrative Order (“Order”) issued under Section 1414(g)(1) of the SDWA, 42 U.S.C. §300g-3(g)(1).

4. On January 4, 2006, 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”). The Stage 2 DBPR requires that compliance with the maximum contaminant levels (“MCL”) for total trihalomethanes (“TTHM”) and haloacetic acids (“HAA5”), be based on the locational running annual average (“LRAA”) concentration of these DBPs. Respondent was required to begin complying with the compliance monitoring provisions of the Stage 2 DBPR beginning October 1, 2013.
5. 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 EPA to the KDHE was effective as of September 9, 1977. However, the KDHE has not yet obtained primary enforcement responsibility for the Stage 2 DBPR. Therefore, as of the date of this Order, the EPA has primary responsibility for enforcement of the Stage 2 DBPR.
6. The PWS consists of one source of purchased surface water - from the Herington PWS (PWSID – KS2004102) - a distribution system, and 93 service connections. The PWS serves a population of approximately 171 people.
  - a. The PWS is 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, which delivers surface water that is purchased from the Herington PWS, which treats its water with a chemical disinfectant prior to delivery to Respondent.
  - b. As Respondent’s PWS is a community water system that provides water which has been treated with a chemical disinfectant, the PWS is subject to requirements of the Stage 2 DBPR.
7. A “consecutive system” is a public water system that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems, as defined by 40 C.F.R. § 141.2.
8. 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. Pursuant to 40 C.F.R. § 141.621, Respondent is required to monitor for TTHMs and HAA5 at the locations with the highest TTHM and HAA5 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 HAA5 concentrations occur at the same location and month.
9. 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 HAA5 sample exceeds 0.060 mg/L at any location.

10. Pursuant to 40 C.F.R. §§141.64(b)(2), 141.620(d) and 141.625(b), Respondent must calculate LRAAs for TTHM and HAA5 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.
11. Pursuant to 40 C.F.R. §141.629(a), systems are required to report to the State within ten (10) days following the end of any quarter in which monitoring is required. The information that is to be reported includes the location, date and result of each sample taken during the monitoring period.
12. 40 C.F.R. §141.64(b)(2) establishes the MCLs for TTHMs of 0.080 mg/L and for HAA5s of 0.060 mg/L.
13. Based on information provided by KDHE, Respondent failed to comply with the MCL for TTHMs as follows:
  - 2015 – 3<sup>rd</sup> quarter
  - 2015 – 4<sup>th</sup> quarter
  - 2016 – 1<sup>st</sup> quarter
  - 2016 – 2<sup>nd</sup> quarter
  - 2016 – 3<sup>rd</sup> quarter
  - 2016 – 4<sup>th</sup> quarter
  - 2017 – 1<sup>st</sup> quarter

Respondent is therefore in violation of 40 C.F.R. §141.64(b)(2).

14. Pursuant to 40 C.F.R. §141.203, Respondent must conduct public notification of violations, including violations of the MCLs under the Stage 2 DBPR.
15. EPA is issuing this Order to place the Respondent on an enforceable schedule to comply with the monitoring, reporting and MCL requirements of 40 C.F.R. Part 141 Subpart V and the SDWA.

### **III. ORDER**

Based on the foregoing FINDINGS, and pursuant to the authority of Section 1414(g) of the SDWA, EPA hereby ORDERS and Respondent AGREES to perform the following actions upon the effective date of this Order:

16. Respondent shall conduct monitoring quarterly for TTHM and HAA5 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 HAA5 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.

17. Within thirty (30) days of receipt of this Order, Respondent must submit documentation that all public notice requirements specified in 40 C.F.R. Part 141, Subpart Q have been completed for the MCL violations noted in this Order. Thereafter, Respondent must continue to repeat public notice quarterly until the MCL violations have been resolved.
18. Respondent shall submit to EPA, in addition to routine reporting to KDHE, the results of the monitoring required pursuant to 40 C.F.R. §141.621 by the 10th 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 EPA until directed otherwise, or this Order is terminated.
19. In order to rectify the violations referenced in this Order, Respondent shall comply with the following compliance schedule:
  - a. Within sixty (60) days of the effective date of this Order, Respondent shall engage the services of a professional engineer licensed by the Kansas Board of Technical Professions to practice in Kansas to assist Respondent in fulfilling the terms of this Order.
  - b. Within thirty (30) days of the completion of paragraph 19(a), Respondent shall consult with the EPA in regards to deliverables required pursuant to this Order.
  - c. Upon completion of paragraph 19(b), Respondent shall immediately begin work to investigate causes of the ongoing DBP MCL exceedances in the PWS and implement corrective actions to comply with the DBP MCLs. Within one hundred twenty (120) days of completion of paragraph 19(b), Respondent shall submit a "Corrective Action Report" ("CAR") for EPA review and approval to document this work. The CAR shall present information, including relevant data, documenting results of Respondent's investigation of the causes of the DBP MCL exceedances, document actions Respondent implemented to comply with the DBP MCLs, and present an evaluation of and recommendations for any additional corrective actions that are necessary to comply with the DBP MCLs.
  - d. Within 30 days of EPA approval of the CAR, if additional corrective actions are necessary to comply with the DBP MCLs, Respondent shall submit a Corrective Action Plan and Schedule ("CAPS") for EPA review and approval. The CAPS shall outline a plan and schedule to implement any necessary corrective action(s) to attain the DBP MCLs as identified in the CAR, and shall include a deadline by which the DBP MCLs will be attained. Within 10 days of submittal of the CAPS, Respondent shall consult with EPA to discuss the CAPS. Upon approval by EPA, Respondent shall implement the CAPS. If the selected corrective action(s) in the CAPS entails chemical additions/treatment, construction activities or infrastructure improvements to the PWS, the CAPS shall also satisfy the deadlines for submittal of the documents or completion of the activities outlined below:
    - i. Within thirty (30) days of EPA approval of the CAPS, Respondent shall consult with KDHE in regards to deliverables required pursuant to this Order;

- ii. Within ninety (90) days of consulting with KDHE in paragraph 19(d)(i), Respondent shall submit to KDHE for review and approval a waste-stream summary and disposal method consensus process;
- iii. Within ninety (90) days of KDHE approval of the waste-stream summary and disposal method consensus process in subparagraph 19(d)(ii), Respondent shall submit to KDHE for review and acceptance as final an engineering report including the KDHE-approved consensus outcome of the waste stream review summary and disposal method consensus process;
- iv. Within thirty (30) days of KDHE acceptance of the engineering report as final in subparagraph 19(d)(iii), Respondent shall submit to KDHE a funding plan for implementing the approved corrective action from the CAPS;
- v. Within one hundred twenty (120) days of submitting the funding plan in subparagraph 19(d)(iv), Respondent shall submit to KDHE for review and approval project plans, specifications, public water supply permit application, and other information as may be required for implementing the approved corrective action from the CAPS;
- vi. Within thirty (30) days of KDHE approval of plans, specifications and other information in subparagraph 19(d)(v), Respondent shall advertise for bids to complete improvements to the water system necessary to comply with the DBP MCLs;
- vii. Within one hundred twenty (120) days of advertising for bids to complete improvements to the water system in subparagraph 19(d)(vi), Respondent shall accept and award the contract for improvements to the water system facilities;
- viii. Within one (1) year of completion of the contract award in subparagraph 19(d)(vii), upgrades and improvements of water system treatment facilities shall be substantially completed; and
- ix. Within thirty (30) days of completing water system upgrades in subparagraph 19(d)(viii), the PWS shall produce water that will achieve compliance with the DBP MCLs established for public drinking water.

- 20. If EPA or KDHE identify any deficiencies in Respondent's submittals as described above, Respondent shall correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, in accordance with the preceding Paragraphs within thirty (30) calendar days or such longer time as agreed to by the EPA in writing.
- 21. Respondent shall remain in compliance with all applicable requirements of the Stage 2 DBPR, including the TTHM and HAA5 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).
- 22. Respondent shall submit to EPA quarterly progress reports for the preceding quarter describing progress in implementing the requirements of the Order, including 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.

23. All information required to be submitted by this Order to EPA shall be mailed to:

Scott Marquess, or designate  
Water Enforcement Branch  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
(913) 551-7131

24. All information required to be submitted by this Order to KDHE shall be mailed to:

Cathy Tucker-Vogel, Section Chief  
Public Water Supply Section  
1000 SW Jackson St. Suite 420  
Topeka, Kansas 66612

#### **IV. GENERAL PROVISIONS**

25. 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) agrees to undertake all actions required by the terms and conditions of this Order, and (3) 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 Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
26. This Order shall not prohibit, prevent, or otherwise preclude EPA from taking whatever action it deems appropriate to enforce the Act in any manner and shall not prohibit, prevent, or otherwise preclude 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 EPA to forgo any civil or criminal action otherwise authorized under the Law.
27. Once approved by EPA or KDHE, all deliverables, including schedules contained therein, shall be incorporated into this Order.
28. Violation of any part of this Order or the drinking water regulations may subject Respondent to a civil penalty of up to \$54,789 (as adjusted for inflation) per day of violation. 42 U.S.C. § 300g-3; 40 C.F.R. Part 19.
29. This Order does not relieve Respondent of any responsibilities or liabilities established pursuant to any applicable federal, State or local law.
30. 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 EPA.

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

ORDERED, this 29<sup>th</sup> day of August, 2017.



Jeffery Robichaud  
Acting Director  
Water, Wetlands and Pesticides Division



Chris Muehlberger  
Office of Regional Counsel



**For the Respondent, Woodbine, Kansas Public Water System:**

MarySue Roller August 17, 2017  
Signature Date

MarySue Roller  
Name

Mayor, City of Woodbine  
Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

The Honorable Mary Sue Roller  
Mayor of Woodbine, Kansas  
1 South Broadway  
P.O. Box 11  
Woodbine, Kansas 67492

and via first class mail to:

Cathy Tucker-Vogel  
Kansas Department of Health and Environment  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612

9.15.17  
Date

  
Signature