

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029

IN THE MATTER OF:)

United States Department of the Navy)

Respondent.)

Joint Base Anacostia-Bolling)
Washington, DC)

System)

PWS ID No. DC0000004)

Proceedings Pursuant to)
Section 1414(g) of the Safe Drinking)
Water Act, as amended,)
42 U.S.C. § 300g-3(g))

FEB 21 2019

Docket No. SDWA-03-2019-0025-DS

ADMINISTRATIVE ORDER
ON CONSENT

U.S. EPA-REGION 3-RHC
FILED-21FEB2019pm2:21

I. STATUTORY AUTHORITY

The following FINDINGS are made and ORDER FOR COMPLIANCE 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. § 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 redelegated these authorities to the Director, Water Protection Division, EPA Region III.

II. EPA FINDINGS OF FACT and CONCLUSIONS OF LAW

1. At all times relevant to this Order, Respondent U.S. Department of the Navy (hereinafter, Navy) has owned the water at and/or operated the Joint Base Anacostia-Bolling “public

- water system” (PWS), located in Washington, D.C., which has the Public Water System (PWS) Identification Number DC0000004 (hereinafter, “JBAB PWS” or “the System”).
2. On November 2, 2005, EPA determined that the Anacostia Naval Air Station PWS is a “public water system” that provides water for human consumption and that regularly serves a population of at least 25 year-round residents. It 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.
 3. Prior to April 1, 2017, JBAB PWS was considered two separate water systems (JBAB-Anacostia, PWSID DC0000004, and JBAB-Bolling, PWSID DC0000007.) In a July 3, 2017 letter, EPA notified the Navy that EPA consolidated the two systems and deactivated identification number PWSID DC0000007. From November 2, 2005, to approximately October 2010, the System was known as Anacostia Naval Air Station PWS and from approximately October 2010 to April 1, 2017 was known as Joint Base Anacostia-Bolling – Anacostia PWS. Subsequent to April 1, 2017, the System is known as JBAB PWS.
 4. Respondent Navy is a federal agency as defined by Section 1401(11) of the SDWA, 42 U.S.C. § 300f (11), and therefore 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.
 5. Navy is a “supplier of water” as defined in Section 1401(5) of the SDWA, 42 U.S.C. §§ 300f (5), and 40 C.F.R. §141.2.
 6. In the District of Columbia (DC), EPA has primary enforcement responsibility, or primacy, for public water systems in the District, pursuant to section 1421 of the SDWA, 42 U.S.C. § 300h and 40 C.F.R. § 142.16.
 7. As part of EPA’s role as primacy agency in DC, EPA Region III routinely conducts sanitary surveys of regulated public water systems.
 8. Pursuant to Region III's practice of conducting routine sanitary surveys of regulated PWSs, in July 2010, September 2013, and June 2017, representatives of The Cadmus Group, a duly-authorized EPA representative, performed a Sanitary Survey of the System.
 9. Pursuant to 40 C.F.R. § 141.723(b), a "significant deficiency" includes “a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that EPA determines to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.”
 10. In November 2010, EPA transmitted a final Sanitary Survey Report to the Navy (hereinafter, “2010 Sanitary Survey Report”), which is incorporated herein. The 2010 Sanitary Survey Report identified untreated water in meter vaults (pits) as a significant deficiency at the System.

11. In November 2014, EPA transmitted a final Sanitary Survey Report to the Navy (hereinafter, “2013 Sanitary Survey Report”), which is incorporated herein. The 2013 Sanitary Survey Report identified two significant deficiencies at the System, including (1) an ongoing significant deficiency relating to water in meter vaults, and (2) two new significant deficiencies relating to cross-connection control identified as 2010SD1-ANA and 2013SD1-ANA and 2013SD2-ANA, respectively.
12. On October 11, 2017, EPA transmitted a Level 2 Assessment report as required by the Revised Total Coliform Rule that identified water in meter vaults as a sanitary defect. A proposed Corrective Action Plan to address the Level 2 Assessment findings was approved by EPA on April 27, 2018.
13. Pursuant to 40 C.F.R. § 141.723(d), systems must correct significant deficiencies identified in sanitary survey reports according to the schedule approved by EPA. EPA approved a schedule in a Corrective Plan for the significant deficiencies noted in paragraphs 10 and 11 above.
14. In August 2017, EPA transmitted a final Sanitary Survey Report to the Navy (hereinafter “2017 Sanitary Survey Report”), which is incorporated herein. The 2017 Sanitary Survey Report identified two ongoing significant deficiencies that had not been corrected according to the approved schedule in the Corrective Plan, 2010SD1-ANA and 2013SD2-ANA. Significant deficiency 2013-SD1-ANA, relating to repair of specific backflow prevention devices, was completed.
15. On September 15, 2017, EPA issued a Notice of Noncompliance to the Navy that included a violation of 40 C.F.R. §141.723 for failing to correct two significant deficiencies, Significant Deficiency 2010SD1-ANA relating to meter vaults and Significant Deficiency 2013SD2-ANA relating to cross-connection control.

III. FINDINGS OF VIOLATIONS

Count 1: Failure to Correct Significant Deficiency 2010SD1-ANA: Meter Vaults

16. The National Primary Drinking Water Regulations require public water systems to correct significant deficiencies identified in sanitary survey reports including, *inter alia*, the schedule approved by EPA. 40 C.F.R. §141.723(d).
17. The 2010 Sanitary Survey Report identified, *inter alia*, the significant deficiency at JBAB regarding water in meter vaults (previously known as meter pits). This deficiency constitutes a defect in operation and maintenance of the JBAB-Anacostia PWS distribution system which has the potential for causing the introduction of contamination into the water delivered to consumers, and is therefore a “significant deficiency” as defined at 40 C.F.R. § 141.723(b).

18. In the 2013 Sanitary Survey, EPA determined that the System failed to correct the meter vault significant deficiency (2010SD1-ANA) contained in Paragraph 17 as of the time of the 2013 Sanitary Survey.
19. The Navy's failure to correct a significant deficiency identified in the sanitary survey reports according to an EPA-approved schedule constitutes a violation of the Safe Drinking Water Act, and its implementing regulations at 40 C.F.R. §141.723(d).

Count 2: Failure to Correct Significant Deficiency: Cross Connection Control

20. The National Primary Drinking Water Regulations require public water systems to correct significant deficiencies identified in sanitary survey reports according to, *inter alia*, the schedule approved by EPA. 40 C.F.R. §141.723(d).
21. The 2013 Sanitary Survey Report identified, *inter alia*, the following new significant deficiencies at JBAB: (2013SD1) failure to repair backflow prevention assemblies (BFPs) following repeat retesting after failed inspections and (2013SD2) failure to repair BFPs within 10 days of test date.
22. In the 2017 Sanitary Survey, EPA determined that the System failed to correct the cross-connection control significant deficiency (2013SD2-ANA) contained in Paragraph 21 as of the time of the 2013 Sanitary Survey.
23. The deficiency identified in Paragraph 21 constitutes a defect in operation and maintenance of the JBAB-Anacostia PWS distribution system which has the potential for causing the introduction of contamination into the water delivered to consumers, and is therefore a "significant deficiency" as defined at 40 C.F.R. § 141.723(b).
24. The Navy's failure to correct the significant deficiencies identified in the sanitary survey reports according to an EPA-approved schedule constitutes a violation of the Safe Drinking Water Act, and its implementing regulations at 40 C.F.R. §141.723(d).

IV. ORDER FOR COMPLIANCE

Based on the foregoing FINDINGS, and pursuant to the authority of Section 1414(g) of the SDWA, EPA hereby ORDERS:

25. Navy shall implement the Corrective Plan for Response to Significant Deficiencies (Corrective Plan) dated November 27, 2018, incorporated by reference into the Order as Appendix A, in accordance with the milestone completion dates listed in the Corrective Plan.
26. Navy's implementation of the Corrective Plan for 2010SD1-ANA relating to meter vaults shall be considered concurrent implementation of a Corrective Plan to resolve the meter vault issue identified in the Level 2 Assessment, as noted in EPA's April 27, 2018 approval of Navy's Corrective Action Plan under the Revised Total Coliform Rule.

27. Navy shall send written progress reports to EPA no later than 10 calendar days following the end of every calendar quarter at the address listed below. Reports may be submitted electronically. Such reports shall document progress toward compliance with the requirements of the Order and Corrective Plan, and note any changes in responsible party. In addition, for events which may or will delay compliance with this Order, the report shall include:
 - (i) the cause and the anticipated length of the delay;
 - (ii) the efforts taken to prevent or minimize the delay; and
 - (iii) a description of any future deadlines which could be affected by the present or anticipated delay.
28. Navy shall, no later than 30 days from the effective date of this Order, issue Public Notice to its customers of the above violations, pursuant to 40 C.F.R. § 141.203.
29. Navy shall, within 10 days of completing the public notification requirements referenced above, submit to EPA a certification that it has fully complied with the public notice requirements, pursuant to 40 C.F.R. § 141.31(d). The certification must include a copy of each type of notice distributed, published, posted, and/or made available to the persons served by the system.
30. Regarding Navy's next Consumer Confidence Report for the System required by 40 C.F.R. §141.153(f) (due July 1, 2019 for Calendar Year 2018), such Report shall include the violations identified in this Order.
31. Respondent shall submit any documentation, plans, reports and analyses to:

Ms. Lisa Donahue
Ground Water and Enforcement Branch (3WP22)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029
donahue.lisa@epa.gov

V. GENERAL PROVISIONS

32. Notwithstanding Respondent's compliance with any requirements of this Order, 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 Respondents to additional enforcement action, including but not limited to administrative actions, as appropriate, for penalties and/or injunctive relief.
33. Respondent may request modifications to the Corrective Plan in writing to EPA. A revised Corrective Plan will be incorporated into this Order upon approval by EPA.
34. This Administrative Order shall not prohibit, prevent, or otherwise preclude EPA from whatever action it deems appropriate to enforce the Act in any matter and shall not

prohibit, prevent, or otherwise preclude EPA from using this Order in subsequent administrative proceedings.

35. 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 or criminal action otherwise authorized under the SDWA.
36. This Order does not relieve Respondents of any responsibilities or liabilities established pursuant to any applicable federal, state or local law.
37. Submission of reports shall not excuse the obligation of the Respondent to comply with this Order.
38. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law contained herein.
39. Issuance of this Order in no way alters EPA's primary SDWA enforcement responsibility for the District of Columbia.
40. 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.
41. Violation of any term of this Administrative Order may subject Respondent to a civil penalty of up to \$38,954 per day of violation under Section 1447(b) of the SDWA, 42 U.S.C. § 300j-6(b).
42. Any request for modification of this Administrative Order, including the Corrective Plan, must be in writing and must be approved by EPA.
43. Respondent shall not raise lack of funds as a defense to compliance with elements of the Corrective Plan. Nothing in this Order shall require the Respondents to violate the Anti-Deficiency Act, 13 U.S.C. § 1341.

VI. TERMINATION AND SATISFACTION

44. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, the terms of this Order have been satisfactorily completed and the written notice will state that this Order is terminated.

VII. EFFECTIVE DATE

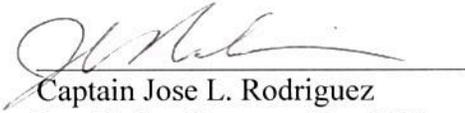
45. This Order shall become effective on the date on which it is filed with the Regional Hearing Clerk after the signature of the Director, EPA Region III Water Protection Division.

VIII. MULTIPLE COUNTERPARTS

46. This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

FOR THE RESPONDENT:

Date: 26 Feb 2018



Captain Jose L. Rodriguez
Installation Commanding Officer
Joint Base Anacostia-Bolling

SO ORDERED this 21st day of February, 2018.



Catherine A. Libertz
Director, Water Protection Division
U.S. EPA, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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Respondent.) Administrative Order on Consent
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Joint Base Anacostia-Bolling) Proceedings Pursuant to Section 1414(g) of
Washington, DC) the SDWA, as amended,
) 42 U.S.C. § 300g-3(g)

U.S. EPA-REGION 3-RHC
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CERTIFICATE OF SERVICE

I certify that on FEB 21 2019, the original and one (1) copy of foregoing *Consent Agreement and Final Order*, Docket No. SDWA-03-2019-0025-DS, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, to:

Mr. Paul D'Ornellas
Director, Installation Environmental Program
Department of the Navy
PWD – Joint Base Anacostia-Bolling
370 Brookley Avenue SW
Washington, DC 20032

Copy served via **Hand Delivery and via E-mail** (at Pugh.Bonnie@epa.gov) to:

Bonnie A. Pugh
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC20)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Dated: FEB 21 2019

Bevin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III