

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103



In the Matter of: :
 :
 : **ADMINISTRATIVE ORDER**
Smyrna Water Department :
220 Artesian Drive : **U.S. EPA Docket No. SDWA-03-2024-0105DS**
Smyrna, Delaware 19977 :
 :
 : **Proceeding under Section 1414(g) of the**
 : **Safe Drinking Water Act, as amended,**
 : **42 U.S.C. § 300g-3(g)**
 :
Respondent, :
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PWS ID DE0000657 :
Smyrna Water Department :
 :
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System. :
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I. STATUTORY AUTHORITY

1. The United States Environmental Protection Agency, Region 3 (“EPA” or “Agency”) has made the following findings of fact and issues this administrative order (“the Order”) pursuant to Section 1414(g) of the Safe Drinking Water Act (“SDWA” or “the Act”), 42 U.S.C. § 300g-3(g). The Administrator of the EPA has delegated the authority to take these actions, pursuant to EPA Delegation 9-32 (May 11, 1994), to the Regional Administrator of EPA, Region 3, who has redelegated these authorities, pursuant to EPA Region 3 Delegation 9-32 (April 19, 2019), to the Director, Enforcement and Compliance Assurance Division, EPA Region 3.

II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

2. Section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), provides that, “In any case in which the Administrator is authorized to bring a civil action under this section or under section 300j-4 of this title with respect to any applicable requirement, the Administrator also may issue an order to require compliance with such applicable requirement.”

3. Section 1414(a)(2) of the Act, 42 U.S.C. § 300g-3(a)(2), provides that when the Administrator finds that a public water system is not in compliance with an applicable requirement, where the state in which the public water system is located does not have primary enforcement responsibility, the Administrator shall issue an order to the public water system requiring compliance. Section 1414(i) of the Act, 42 U.S.C. § 300g-3(i), defines “applicable requirements,” to include requirements under Section 1433 of the Act, 42 U.S.C. § 300i-2, and any regulation, schedule, or requirement promulgated or imposed pursuant to that section.

4. A “public water system” (“PWS”) is defined in the Act as “a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals.” Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4).

5. A “community water system” (“CWS”) is defined in the Act as “a public water system that . . . serves at least 15 service connections used by year-round residents . . . or regularly serves at least 25 year-round residents.” Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15).

6. Respondent is a municipality and as such 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.

7. Respondent is a person who owns and operates a public water system and is a “supplier of water” as defined by Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2.

8. Respondent owns and/or operates the Smyrna Water Department water system, located in Smyrna, Delaware.

9. Respondent provides water for human consumption to over 3,300 persons but less than 50,000 persons per year, year-round, and has a minimum of 15 service connections used by year-round residents or regularly serves at least 25 year-round residents and is therefore a “community water system.” Respondent is therefore subject to the requirements of Part B of the SDWA, 42 U.S.C. § 300g, and its implementing regulations found at 40 C.F.R. Part 141, including but not limited to sampling and analyzing the drinking water and reporting analytical results to the state.

10. On October 23, 2018, the SDWA was amended in accordance with the America’s Water Infrastructure Act (“AWIA”) of 2018 (Public Law 115-270).

11. The Delaware Department of Health and Social Services (“DHSS”) has primary enforcement responsibility under Section 1413(a) of the SDWA, 42 U.S.C. § 300g-2(a). However, the AWIA requirements are requirements for which the EPA retains primary enforcement authority as per Section 1433 of the SDWA, 42 U.S.C. §300i-2.

12. Section 1433(a) of the SDWA, 42 U.S.C. § 300i-2(a), requires a CWS serving a population of over 3,300 persons to conduct a Risk and Resilience Assessment (“RRA”) of its system, which shall include an assessment of:

- a. the risk to the system from malevolent acts and natural hazards;
- b. the resilience of the pipes and constructed conveyances, physical barriers, source water, water collection and intake, pretreatment, treatment, storage and distribution facilities, electronic, computer, or other automated systems (including the security of such systems) which are utilized by the system;
- c. the monitoring practices of the system;
- d. the financial infrastructure of the system;
- e. the use, storage, or handling of various chemicals by the system; and
- f. the operation and maintenance of the system.

13. Section 1433(a)(3)(A)(iii) of the SDWA, 42 U.S.C. § 300i-2(a)(3)(A)(iii), requires CWSs serving a population over 3,300 but less than 50,000 to submit a certification, prior to June 30, 2021, to the EPA Administrator that it has conducted its RRA.

14. Section 1433(b) of the SDWA, 42 U.S.C. § 300i-2(b), requires CWSs serving 3,300 or more persons to prepare or revise, where necessary, an emergency response plan (“ERP”) that incorporates the findings of the RRA no later than six months after certifying completion of its RRA. Therefore, Respondent’s deadline for submitting certification to the EPA Administrator that the ERP has been completed and/or revised was December 31, 2021.

15. On August 13, 2021, the Respondent certified to the EPA that it had conducted the RRA, as specified in Section 1433(a)(3)(A) of the SDWA, 42 U.S.C. § 300i-2(a)(3)(A), for the Smyrna Water Department water system.

16. On October 29, 2021, the Respondent certified to the EPA that it had prepared the ERP, as specified in Section 1433(b) of the SDWA, 42 U.S.C. § 300i-2(b), for the Smyrna Water Department water system.

17. On February 21, 2024, the EPA conducted an announced Compliance Evaluation Inspection under Section 1445 of the SDWA, 42 U.S.C. §300j-4, of Smyrna Water Department to evaluate the Respondent’s compliance with the AWIA requirements.

18. At the time of inspection, the EPA reviewed a copy of the RRA that was last updated in September 2021.

19. At the time of inspection, the EPA reviewed a copy of the ERP that was last updated on March 22, 2019. The ERP pre-dates the RRA, and the most recent revision of the RRA.

20. At the time of inspection, the EPA found information included in the System’s ERP was outdated or otherwise not in conformance with the RRA.

21. Based on information available to the EPA, the Respondent has failed to prepare or revise its ERP to incorporate the findings of the RRA no later than six months after certifying completion of its RRA, in violation of Section 1433(b), the SDWA, 42 U.S.C. §300i-2(b).

22. Pursuant to Section 1414(g)(2) of the SDWA, 42 U.S.C. § 300g-3(g)(2), the EPA has notified DHSS of this Order.

III. ORDER

23. Based on the foregoing findings, and pursuant to the authority of Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), the EPA hereby orders Respondent to undertake the action specified below.

24. No later than 45 days from the effective date of this Order, Respondent shall complete or revise the ERP and submit its certification for the completion or revisions of the ERP, as required by Section 1433(b) of the SDWA, 42 U.S.C. § 300i-2(b), to the EPA Administrator. For instructions on how to submit the ERP certification, visit the EPA's website.

<https://www.epa.gov/waterresilience/americas-water-infrastructure-act-risk-assessments-and-emergency-response-plans>

25. No later than 45 days from the effective date of this Order, Respondent shall provide a photograph of the ERP cover page and table of contents to the EPA. **Do not submit the ERP to the below address**; submit only the above referenced confirmation, electronically via email to:

Andrea Lewis
U.S. Environmental Protection Agency Region 3
lewis.andrea@epa.gov
215-814-2074

26. No later than 45 days from the effective date of this Order, Respondent shall provide written confirmation that includes the certification language in Paragraph 27 to the EPA that the requirements of Paragraph 23 have been met and that Respondent is in compliance with Section 1433(b) of the SDWA, 42 U.S.C. §300i-2(b), and the Order. **Do not submit the ERP to the below address**; submit only the above referenced confirmation, electronically via email to:

Andrea Lewis
U.S. Environmental Protection Agency Region 3
lewis.andrea@epa.gov
215-814-2074

IV. GENERAL PROVISIONS

27. The following certification must accompany each submission by Respondent pursuant to this Order and must be signed by a Representative of Respondent authorized to sign on behalf of Respondent:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this response and that, based on my inquiry of those individuals immediately responsible for obtaining or compiling the information, I believe that the submitted information is true, accurate, and complete. I recognize that there are significant penalties for submitting false and/or misleading information, including the possibility of fine and/or imprisonment.”

Signed: _____

Title: _____

Date: _____

28. The provisions of this Order shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns.

29. This Order does not waive, suspend, or modify the requirements of the SDWA, 42 U.S.C. §§ 300f - 300j-27, 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. 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 Respondent to additional enforcement action, including but not limited to administrative actions, as appropriate, for penalties under Section 1414(g)(3)(A) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(A), and/or injunctive relief.

30. Any violation of the terms of this Order may result in further EPA enforcement action including the imposition of administrative penalties of up to \$69,733 per day for each day of violation that occurs, or a judicial action including the imposition of civil penalties, pursuant to Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), as modified by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 et seq., and subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

31. The EPA reserves the right to commence action against any person, including Respondent, in response to any condition which the EPA determines may present an imminent and substantial endangerment to the public health.

32. Any request for modification of this Order must be in writing and must be approved by the EPA.

33. This Order shall not prohibit, prevent, or otherwise preclude the EPA from taking whatever action it deems appropriate to enforce the Act in any matter and shall not prohibit, prevent, or otherwise preclude the EPA from relying on this Order in subsequent administrative proceedings.

34. This Order in no way relieves Respondent of the duty to comply with any federal, state, or local law, regulation, ordinance, or permit. Compliance with this Order shall be no defense to any action commenced pursuant to such authorities.

35. Pursuant to its authority under Section 1445(b)(1) of the SDWA, 42 U.S.C. § 300j-4(b)(1), the 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. The EPA reserves and does not waive all existing inspection and information request authority.

36. Respondent may seek federal judicial review of the Order pursuant to section 1448(a) of the Safe Drinking Water Act, 42 U.S.C. § 300j-7(a).

37. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of Section III of this Order is restitution, remediation, or required to come into compliance with the law.

V. TERMINATION AND SATISFACTION

38. The provisions of this Order shall be deemed satisfied when Respondent completes the compliance tasks required by Section III of this Order. If, following receipt of confirmation that Respondent has complied with the requirements of Section III (Order), the EPA agrees that Respondent has adequately complied with all requirements of this Order, then the EPA may provide written notification of the termination of this Order.

VI. OPPORTUNITY TO CONFER

39. Respondent is invited to confer with the EPA about the findings and conclusions reflected in this Order including the terms and conditions contained herein. Respondent's request for a conference must be in writing via e-mail within ten (10) days of receipt of this Order. Respondent must communicate with the EPA representatives to schedule the conference no later than 20 days after receipt of this Order. If the requested conference is held, this Order shall become effective ten (10) days after the conference is held. If Respondent does not request a meeting within ten (10) days of receipt of this Order, Respondent waives its right to a conference, and this Order shall become effective ten (10) days from its receipt. Any request for a conference, or other inquiries concerning this Order, should be made in writing to: Andrea Lewis, lewis.andrea@epa.gov.

VII. EFFECTIVE DATE

40. The effective date of this Order shall be ten (10) days from the date of receipt of this Order, or, if a conference is requested per Section VI (Opportunity to Confer) above, this Order shall become effective ten (10) days after the conference is held.

SO ORDERED.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

[Electronic Signature and Date]
Karen Melvin, Director
Enforcement and Compliance Assurance
Division
U.S. EPA, Region 3

[Electronic Signature and Date]

Bevin Esposito

Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 3