

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

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. SDWA-07-2023-0042
CITY OF DESOTO)	
PWS ID. No. KS2009102)	
)	ADMINISTRATIVE ORDER
Respondent,)	
)	
Proceedings pursuant to Section 1414(g))	
of the Safe Drinking Water Act,)	
42 U.S.C. Section 300g-3(g))	
_____)	

I. STATUTORY AUTHORITY

The following FINDINGS are made, and ORDER issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“USEPA”) 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 Enforcement and Compliance Assurance Division of Region 7.

II. FINDINGS

1. City of Desoto (hereinafter “Respondent”) owns and/or operates the City of Desoto “public water system,” located in Desoto, Kansas, within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2.
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) and is subject to an Administrative Order issued under Section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1).
4. The Respondent's public water system provides piped water for human consumption and serves at least 15 service connections used by year-round residents and/or regularly serves a population of at least 25 individuals, and is therefore a “community water system” (“CWS”) as defined by Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2. Respondent is, therefore, subject to the requirements of Part B of the SDWA, 42 U.S.C. § 300g, *et seq.*, and its implementing regulations.

5. On October 23, 2018, the SDWA was amended in accordance with the America's Water Infrastructure Act ("AWIA") of 2018 (Public Law 115-270). Among other things, AWIA amended SDWA Section 1433's CWS risk and resilience provisions, 42 U.S.C. § 300i-2.
6. Section 1433 of the SDWA is an "applicable requirement" as defined in Section 1414(i) of the SDWA, 42 U.S.C. § 300g-3(i).
7. The Kansas Department of Health and the Environment "KDHE" administers the Public Water Supply Supervision Program in Kansas pursuant to Section 1413 of the SDWA. However, the EPA has primary enforcement authority for Section 1433 of the SDWA.
8. Section 1433(a) of the SDWA, 42 U.S.C. § 300i-2(a), requires CWSs serving more than 3,300 persons to conduct a Risk and Resilience Assessment ("RRA") of its system, including 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);
 - c. the monitoring practices of the system;
 - d. the use, storage, or handling of various chemicals by the system; and
 - e. the operation and maintenance of the system.
9. Section 1433(a)(3)(A) of the SDWA, 42 U.S.C. § 300i-2(a)(3)(a), required a CWS serving 3,301 to 49,999 persons to submit its certification to the EPA Administrator that it has conducted its RRA on or before June 30, 2021.
10. Section 1433(b) of the SDWA, 42 U.S.C. § 300i-2(b), required CWS serving more than 3,30 persons to prepare or revise, where necessary, an emergency response plan ("ERP") that incorporates the findings of the RRA and submit certification to the EPA Administrator that the ERP has been completed and/or revised no later than six months after certifying completion of its RRA or not later than December 31, 2021.
11. Respondent's CWS directly and/or indirectly serves a population of over 3,300 people and, therefore, Respondent's CWS was required to conduct its RRA and submit its certification to the EPA Administrator by June 30, 2021, and to prepare or revise an ERP and submit a certification to EPA no later than December 31, 2021.
12. On June 10, 2022 the EPA issued a Notice of Violations to the Respondent requiring the system to submit its certification for the completion of its RRA and ERP within 30 days of the Notice of Violations, and Respondent failed to do so.
13. Based on information available to EPA, the Respondent has failed to certify that it has conducted the RRA and prepared or revised the ERP, as specified in Sections 1433(a)(3)(A)

and 1433(b) of the SDWA, 42 U.S.C. §§ 300i-2(a)(3)(A) and (b), for its water system, in violation of “applicable requirements” under Section 1414(i) of the SDWA.

14. EPA is issuing this Administrative Order to address the violations enumerated above and to place the Respondent on an enforceable schedule to comply with the requirements of Section 1433 of the SDWA.

IV. ORDER

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

15. Within 30 days of the Effective Date of this Order, Respondent must submit a plan to achieve compliance with the RRA and ERP requirements. The compliance plan must include a schedule for completion of the RRA and ERP and specify the dates by which the certification of completion for the RRA and ERP, as required by Section 1433(a) and (b) of the SDWA, will be submitted to EPA. Once approved by EPA, the compliance plan shall be incorporated into the terms of this Order and implemented according to the schedule in the compliance plan. Respondent shall submit the RRA and ERP certifications using the following link.:
<https://www.epa.gov/waterresilience/americas-water-infrastructure-act-risk-assessments-and-emergency-response-plans>.
16. If Respondent has already completed the RRA and/or ERP, Respondent must ensure that the certification of completion for the RRA and/or ERP has been submitted to EPA. For instruction see: <https://www.epa.gov/waterresilience/americas-water-infrastructure-act-risk-assessments-and-emergency-response-plans>.
17. All submittals and correspondence required by this AO shall be submitted electronically via email to:

Adam Hendrickson
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
hendrickson.adam@epa.gov
(913) 551-7253

V. GENERAL PROVISIONS

18. All notices, reports, or other submissions by Respondent shall contain the following certification:

“I certify, under penalty of law, that the information contained in or accompanying this submission is true, accurate and complete based upon representations as to accuracy and completeness made to me either orally or through submission of documentation by appropriate personnel with responsibility for the matters contained herein.”

19. This Administrative 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.
20. The Respondent may be subject to an administrative civil penalty of up to \$43,678 pursuant to Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B) as adjusted by 40 C.F.R. § 19.4, or a civil penalty assessed by an appropriate United States District Court that exceeds \$43,678 pursuant to Section 1414(g)(3)(C) of the Act, 42 U.S.C. § 300g-3(g)(3)(C) as adjusted by 40 C.F.R. § 19.4,. A violation of any term of this Order may also subject the Respondent to a judicial civil penalty of up to \$62,689 per day of violation pursuant to Section 1414(b) of the Act, 42 U.S.C. § 300g-3(b), as adjusted by 40 C.F.R. § 19.4.
21. Respondent may seek federal judicial review of the Order pursuant to Section 1448(a) of the Act, 42 U.S.C. § 300j-7(a), upon the Effective Date.
22. If any provision or authority of this Order, or the application of this Order to Respondents, is held by federal judicial authority to be invalid, the application to Respondents of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.
23. This Order does not relieve Respondent of any responsibilities or liabilities established pursuant to any applicable federal, State, or local law.
24. Effective Date. The terms of this Order shall be effective and enforceable against Respondents thirty (30) days after receipt of an executed copy of the Order.
25. Opportunity to Confer. Respondents have the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of this Order to the Respondents. Within ten days of receipt of this Order, Respondents may request a conference regarding the Order or to submit information to EPA. If Respondents requests a conference or wish to submit information, the conference or submission of information shall take place within twenty days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.
26. Termination. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA.

ORDERED,

David Cozad
Director
Enforcement and Compliance Assurance Division

Shane McCoin
Assistant Regional Counsel
Office of Regional Counsel

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 first class certified mail, return receipt requested, to:

City of Desoto
32905 West 84th Street
P.O. Box C
Desoto, Kansas 66018

Date
