



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

IN THE MATTER OF:)
)
City of Fallon, Nevada)
Office of the Mayor)
55 West Williams Avenue) Docket No. PWS-AO-2000-207
Fallon, NV 89406)
) AMENDED ADMINISTRATIVE ORDER
PWS ID NO. NV0000045)
)
PROCEEDINGS PURSUANT TO)
SECTION 1414(g) OF THE FEDERAL)
SAFE DRINKING WATER ACT,)
42 U.S.C. § 300g-3(g))
)

The following Amended Administrative Order (“Order”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 1414(g) of the Federal Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300g-3(g). The authority to take these actions has been duly redelegated to the undersigned Chief, Drinking Water Office, Water Division, EPA Region IX.

FINDINGS

1. The City of Fallon (“Respondent”) owns and operates a community public water system known as the City of Fallon water system (the “System”). The System is located in the City of Fallon, Churchill County, Nevada.
2. Respondent provides water to the public for human consumption through a piped system to approximately 2,397 service connections and regularly serves approximately 8,200 year-round residents.
3. Respondent is a “person” within the meaning of Section 1401(12) of the SDWA and 40 C.F.R. § 141.2 and a “supplier of water” as that term is defined in Section 1401(5) of the SDWA and 40 C.F.R. § 141.2. Respondent owns and operates a “public water system” as defined by Section 1401(4) of the SDWA and 40 C.F.R. § 141.2, and a “community water system” as defined by Section 1401(15) of the SDWA and 40 C.F.R. § 141.2.

4. Respondent's public water system utilizes a ground water source.
5. Respondent is subject to Part B of the SDWA, 42 U.S.C. § 300g *et seq.*, and the regulations promulgated thereunder at 40 C.F.R. Part 141.
6. 40 C.F.R. § 141.2 defines "maximum contaminant level" ("MCL") as the maximum permissible level of a contaminant in water which is delivered to any user of a public water system. 40 C.F.R. § 141.11(b) sets the MCL for arsenic for community water systems at 0.05 milligrams per liter (hereinafter referred to as the "Arsenic MCL"). The Arsenic MCL was promulgated on December 24, 1975 and became effective on June 24, 1977.
7. Respondent has violated 40 C.F.R. § 141.11(b) from 1977 until the present, as the System's sampling results from 1977 until the present for the water the System serves for human consumption demonstrate that the water has consistently exceeded the Arsenic MCL. The System's water sampling results have consistently shown arsenic at levels of approximately 0.1 milligrams per liter, twice the Arsenic MCL.
8. On February 21, 1978, pursuant to section 1413 of the SDWA, 42 U.S.C. § 300g-2, EPA determined that the State of Nevada met the requirements for primary enforcement authority for public water systems. The State of Nevada ("State"), acting through the Bureau of Health Protection Services of the Nevada State Health Division, 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 Nevada comply with the requirements of the SDWA.
9. By a Notice of Violation dated November 23, 1999, EPA notified the State and Respondent pursuant to Section 1414(a)(1)(A) of the SDWA, 42 U.S.C. § 300g-3(a)(1)(A), of Respondent's noncompliance with the applicable requirement of the SDWA described in Paragraph 7 above.
10. Based on the nature of Respondent's violations of 40 C.F.R. § 141.11(b), and based upon the available remedies for these violations, the number of days set forth in this Order for Respondent to achieve compliance is reasonable.

ORDER

Based on the foregoing Findings and pursuant to the authority granted to EPA by Section 1414(g) of the SDWA, I HEREBY ORDER:

11. **Letter of Intent:** Within 15 days of receipt of this Order, Respondent shall transmit to EPA a letter describing its intention to comply with this Order and summarizing any

steps that have already been taken by Respondent to comply with the Arsenic MCL.

12. **Identification of Alternatives for Pilot Treatment Testing:** By October 31, 2000, Respondent shall select and identify the arsenic treatment method(s) it intends to test on a small scale to determine which treatment process is best suited for complying with the Arsenic MCL for all water that it serves to its customers for human consumption.
13. **Begin Pilot Treatment Testing:** By November 30, 2000, Respondent shall begin the testing of the treatment method(s) identified in Paragraph 12 above.
14. **Complete Pilot Treatment Testing:** By May 31, 2001, Respondent shall complete the testing of the treatment method(s) identified in Paragraph 12 above.
15. **Selection of Preferred Treatment Method and Begin Design of Treatment Plant:** By September 30, 2001, Respondent shall (a) select and identify the treatment method it will implement in order to comply with the Arsenic MCL ("Selected Treatment Method"); and (b) begin design of all equipment and facilities necessary to implement the Selected Treatment Method, including but not limited to any treatment plant(s), and related housing, pumps and pipelines.
16. **Complete Design of Treatment Plant:** By June 30, 2002, Respondent shall (a) complete design of all equipment and facilities necessary to implement the Selected Treatment Method, and (b) obtain approval by the Bureau of Health Protection Services of the Nevada State Health Division ("Bureau") of Respondent's plans for construction of such equipment and facilities. During the period in which Respondent proceeds with design, Respondent shall keep the Bureau regularly apprised of its progress and shall submit to the Bureau any information on design requested by the Bureau.
17. **Begin Construction of Treatment Plant:** By September 30, 2002, Respondent shall begin construction of the treatment equipment and facilities necessary to implement the Selected Treatment Method.
18. **Complete Construction of Treatment Plant:** By December 31, 2003, Respondent shall complete construction of the treatment equipment and facilities necessary to implement the Selected Treatment Method.
19. **Startup and Testing of New Treatment Plant:** By January 15, 2004, Respondent shall start up and begin testing the treatment equipment and facilities necessary to implement the Selected Treatment Method to identify any operational adjustments necessary to meet the Arsenic MCL.
20. **Initial Attainment of Compliance With the Arsenic MCL:** By April 15, 2004,

Respondent shall attain full compliance with the Arsenic MCL for the water the System serves to all its customers for human consumption. Respondent shall provide written notification to EPA of the date on which Respondent has met this requirement within three business days of meeting this requirement. This notification shall include the laboratory reports showing the results of the arsenic analyses conducted on samples of the water served by the System pursuant to Paragraph 25 below that indicate that Respondent has attained this requirement.

21. **Continuous Compliance With the Arsenic MCL:** Following Respondent's initial attainment of compliance with the Arsenic MCL pursuant to Paragraph 20 above, Respondent shall maintain continuous compliance with the Arsenic MCL for all water the System serves to its customers for human consumption.
22. **Monthly Progress Reports:** Respondent shall submit to EPA detailed, written, monthly reports describing the progress made by Respondent in complying with the requirements and schedule set forth in Paragraphs 12 through 21 above, as follows:
 - a. The first monthly report must be submitted no later than November 15, 2000, and additional reports must be submitted by the 15th of every subsequent month until EPA has informed Respondent in writing that the terms of this Order have been fulfilled pursuant to Paragraph 35 below.
 - b. The monthly report shall include a detailed description of the accomplishments made each month as Respondent progresses toward compliance with each of the requirements in Paragraphs 12 through 21 above, including the dates on which compliance with these requirements occurred.
 - c. Information to be provided in the monthly reports shall include, but is not limited to, the arsenic treatment method(s) selected to undergo pilot testing; descriptions of treatment facility site selection efforts, financing efforts, and contractor selection efforts; the results of Respondent's pilot testing efforts; the basis for selection of the Selected Treatment Method; a description of and estimate of the percentage of design work completed; a description of and estimate of the percentage of construction work completed; a description of the testing performed on the arsenic treatment equipment and facilities during and following construction; and any modifications to the arsenic treatment equipment and facilities following Respondent's initial attainment of compliance with the Arsenic MCL pursuant to Paragraph 20 above.
23. **Immediate Notice of Delay:** If any event occurs that causes or is likely to cause delay in the achievement of any requirement of this Order within any timeframe specified in this Order, Respondent shall notify EPA in writing, within three business days of learning of the actual or likely delay, of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which Respondent intends to implement these measures and achieve the requirement.

Respondent shall adopt all reasonable measures to avoid or minimize delay. Submittal of the notice to EPA required by this Paragraph does not extend any deadline or timeframe in this Order.

24. **Summary Report:** No later than two months following Respondent's initial attainment of compliance with the Arsenic MCL pursuant to Paragraph 20 above, Respondent shall submit to EPA a written report summarizing the actions taken by Respondent pursuant to Paragraphs 12 through 20 above to comply with the arsenic MCL. This report may include, but need not be limited to, a summary of the information provided in the monthly reports previously prepared pursuant to Paragraph 22 above.
25. **Arsenic Sampling and Analysis:** To demonstrate Respondent's initial and continuous compliance with the Arsenic MCL pursuant to Paragraphs 20 and 21 above, Respondent shall collect samples of the water served by the System and submit such samples for analysis to determine compliance with the Arsenic MCL to a laboratory certified by the State and/or EPA, as follows:
 - a. Samples shall be taken at each point of entry to the distribution system that is representative of each well after treatment ("Sampling Point"). If the System draws water from more than one source and the sources are combined before distribution, the System must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).
 - b. Samples shall be analyzed in accordance with the requirements of 40 C.F.R. § 141.23(k).
 - c. Following Respondent's initial attainment of compliance with the Arsenic MCL pursuant to Paragraph 20 above, Respondent shall conduct sampling monthly or more frequently. The first such sampling event shall occur no later than the 15th of the first full month following Respondent's initial attainment of compliance with the Arsenic MCL pursuant to Paragraph 20 above. At least one sample must be taken no later than the 15th of each subsequent month. EPA may reduce the required frequency of arsenic sampling and analysis of the water served by the System at each Sampling Point from monthly to quarterly if EPA determines, and notifies Respondent in writing, that the water served by the System has continuously met the Arsenic MCL for at least one year.
26. **Increased Sampling and Analysis:** Respondent shall comply with any additional and/or more frequent arsenic sampling and analysis requirements determined necessary by EPA following written notice by EPA of any such requirements.
27. **Reporting of Analytical Results:** Respondent shall submit to EPA the laboratory reports showing the results of all arsenic analyses conducted on samples of the water served by the System pursuant to Paragraphs 25 and 26 above, including any additional

samples not required by this Order that Respondent may choose to collect following Respondent's initial attainment of compliance with the Arsenic MCL pursuant to Paragraph 20 above. Such reports shall be submitted to EPA within three business days of Respondent's receipt of such reports, or within 45 days of sampling, whichever is sooner.

28. **Submittal of Additional Information Requested By EPA:** Respondent shall submit to EPA such additional documents and other information as EPA may reasonably request in writing in order to determine Respondent's compliance with this Order and the Arsenic MCL. Such information shall be submitted within a reasonable timeframe specified by EPA for each such request.

29. **Certification for Submittals:** All submittals to EPA required pursuant to this Order shall be accompanied by the following statement signed by a responsible officer of Respondent:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel gather and evaluate the information submitted. Based on my inquiry of the person(s) who manage the system, or of the person(s) directly responsible for gathering the information, I certify that the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

30. **Address for Submittals to EPA:** All submittals required by this Order shall be mailed or faxed to EPA at the following address:

U.S. EPA, Region IX
75 Hawthorne Street (WTR-6)
San Francisco, CA 94105
Attn: Jon Merkle
Drinking Water Office
PWS-AO-2000-207

Fax: (415) 947-3549
Phone: (415) 972-3550

31. **Copy of Submittals to Bureau:** A copy of each submittal required by this Order shall be mailed or faxed to the Bureau at the following address on the date of each such submittal to EPA:

Galen Denio
Manager, Public Health Engineering
Bureau of Health Protection Services
Nevada State Health Division
1179 Fairview Drive, Suite 101
Carson City, NV 89701-5405

Fax: (775) 687-5699
Phone: (775) 687-4754 x 229

GENERAL PROVISIONS

32. This Order does not constitute a waiver, suspension or modification of the requirements of 40 C.F.R. § 141.11(b), or of any provision of the SDWA or any of the other 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.
33. Violations of applicable requirements of the SDWA may subject Respondent to a civil judicial penalty of up to \$27,500 per day per violation for each such day in which a violation occurs, as assessed by the United States District Court, under SDWA Section 1414(b), 42 U.S.C. § 300g-3(b). Violations of any term of this Order may also subject Respondent to (i) a civil judicial penalty of up to \$27,500 per day of violation for each such day in which a violation occurs, as assessed by the United States District Court, under SDWA Sections 1414(b) and 1414(g)(3), 42 U.S.C. §§ 300g-3(b) and 300g-3(g)(3), and 40 C.F.R. § 19.4, or (ii) an administrative penalty of up to \$25,000, after notice and opportunity for a hearing, under SDWA Section 1414(g)(3), 42 U.S.C. § 300g-3(g)(3).
34. 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.
35. This Order shall be effective on the date on which it is signed. This Order shall remain in effect until EPA notifies Respondent in writing that EPA has determined that the water provided by Respondent through the System for human consumption has continuously met the Arsenic MCL for two years and that the terms of the Order have been fulfilled.
36. This Order supersedes and replaces the Administrative Order (Docket No. PWS-AO-2000-207) issued by EPA to Respondent pursuant to the SDWA on August 30, 2000.

Dated this 28th day of August, 2002

Corine Li
Manager, Drinking Water Office
Water Division

fallon-cityaorev2.wpd