

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

In the Matter of:)	Case No.: PWS-AO-2005-005
)	
)	
City of Vallejo,)	ADMINISTRATIVE ORDER
Vallejo Lakes Water System)	
(Cal. PWS I.D. No. 4810021))	
)	
)	
Respondent.)	
_____)	

STATUTORY AUTHORITY

This 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 Safe Drinking Water Act (“SDWA” or “Act”), 42 U.S.C. § 300g-3(g), and duly delegated to the Manager of the Drinking Water Office of Region 9.

FINDINGS OF FACT

1. The matter involves the City of Vallejo’s failure to meet the requirements of the “Disinfectants and Disinfection Byproducts Rule” (“Stage 1 DBPR”), 40 C.F.R. §§ 141.130 through 135, and “Public Notification Rule”, 40 C.F.R. § 141.201 through 210, of the SDWA.
2. The City of Vallejo (hereinafter the “City” or “Respondent”), located in Solano

County, California, owns and operates a public water system referred to as the Vallejo Lakes System (the “System”), and further identified by its Public Water System I.D. No. 4810021, which provides the public with water for human consumption through pipes or other constructed conveyances.

3. The City’s System serves approximately 2,800 people in the communities of Gordon Valley, Old Cordelia, Green Valley, and parts of American Canyon, located in Solano County, California.

4. The City’s System is served by a conventional drinking water treatment facility known as the Green Valley Water Treatment Plant located on Green Valley Road in Solano County, California.

5. The City obtains surface water for its System from Lake Berryessa via the Putah South Canal. The City also obtains surface water from Lake Frey and Lake Madigan.

6. The City uses chlorine at its Green Valley Water Treatment Plant to disinfect the surface water it receives from Lakes Berryessa, Frey and Madigan.

7. The City, through the System, serves at least 15 service connections and a population of at least 25 year-round residents.

8. “Public water systems” and “water suppliers” are subject to the regulations promulgated by EPA pursuant to Section 1412 of the Act, 42 U.S.C. § 300g-1, entitled “National Primary Drinking Water Regulations,” including the Stage 1 DBPR, 40 C.F.R. §§ 130 through 135, and “Public Notification Rule”, 40 C.F.R. §§ 141.201 through 210.

9. The Stage 1 DBPR is the first of two stages of rulemaking by EPA intended to protect public health by regulating potentially harmful disinfectant byproducts (“DBPs”), such as total trihalomethanes (“TTHM”) and haloacetic acids (“HAA5”), which are formed when chlorine reacts with naturally occurring DBP precursor organic matter in drinking water called total organic carbon (“TOC”).

The City must comply with the maximum contaminant levels (“MCLs”) and other requirements of the Stage 1 DBPR beginning January 1, 2004. 40 C.F.R. §§ 141.64, 141.130(b)(1).

10. An MCL is the highest level of a contaminant that EPA allows in drinking water.

40 C.F.R. § 141.2. Pursuant to 40 C.F.R. § 141.64, the MCL for TTHM is **0.080 mg/l**.

11. Pursuant to 40 C.F.R. § 141.132(b), the City must routinely monitor the surface water in its distribution system for TTHM by taking at least one water sample per quarter at its Green Valley Water Treatment Plant.

12. Pursuant to 40 C.F.R. § 141.132(d), the City is required to monitor and take at least one sample per month for TOC in the source water prior to any treatment at the Green Valley Water Treatment Plant at the same time the City monitors for TOC in the treated water. These samples are referred to as paired samples and must be taken at a time representative of normal operating conditions and influent water quality.

13. Pursuant to 40 C.F.R. § 141.132(f), the City must monitor TTHM and TOC

pursuant to a monitoring plan that the City develops and implements. The City developed a monitoring plan dated December, 2003.

14. Pursuant to 40 C.F.R. § 141.133(a), if, during the first year of monitoring under the Stage 1 DBPR, any individual quarter's average will cause the running annual average of that system to exceed the MCL, the system is out of compliance at the end of that quarter.

15. Pursuant to 40 C.F.R. § 141.133(b), compliance with the TTHM MCL is based on the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period.

16. Pursuant to 40 C.F.R. § 141.133(d), compliance with the TOC percent removal requirement is based on whether the value calculated under 40 C.F.R. § 141.135(c) is less than 1.00. If the arithmetic average of monthly paired TOC samples for any consecutive four-quarter period results in a treated water to untreated water ratio of less than 1.00, as calculated pursuant to 40 C.F.R. § 141.135(c), the system is not in compliance with the TOC percent removal treatment technique requirement.

17. Pursuant to 40 C.F.R. § 141.134, systems subject to the DBPR must report monitoring results to the State within 10 days after the end of each quarter in which samples were collected.

18. Pursuant to 40 C.F.R. § 141.203, public water systems in violation of the TTHM MCL must notify the public of the violation as soon as practicable and no later than 30 days of learning of the violation.

19. On May 13, 2005, EPA received from the State a copy of the monitoring results that the City had reported to the State for the TTHM and TOC monitoring performed between January 1, 2004 and March 31, 2005 at the City's System.

20. From January 1, 2004 through September 30, 2004, the running annual average of three quarters of TTHM sampling data for the City's System was **0.087 mg/l**. The City's Acting Laboratory Chemist became aware of these results on August 26, 2004.

21. From January 1, 2004 through December 31, 2004, the running annual arithmetic average of four quarters of TTHM sampling data for the City's System was **0.113 mg/l**.

22. From January 1, 2004 through December 31, 2004, the TOC percent removal ratio was **0.70** at the City's System.

23. From April 1, 2004 through March 31, 2005, the running annual arithmetic average of the four quarters of TTHM sampling data for the City's System was **0.118 mg/l**

24. From April 1, 2004 through March 31, 2005, the TOC percent removal ratio was **0.60** at the City's System.

25. On May 25, 2005, the City's Laboratory Chemist informed EPA that the public had not been provided notification by the System of the running annual average of 0.087 mg/l of TTHM derived from three quarters of TTHM sampling data for the City's System for the period January 1, 2004 through September 30, 2004.

CONCLUSIONS OF LAW

26. EPA has primary enforcement responsibility for the Stage 1 DBPR. The California Department of Health Services (“CDHS” or “State”) otherwise administers the Stage 1 DBPR under its Public Water Supply Supervision Program, pursuant to Section 1413 of the SDWA.

27. The City is a “public water system” and a “water supplier” within the meaning of Sections 1401(4) and (5) of the SDWA, 42 U.S.C. § 300f(4) and (5) and 40 C.F.R. § 141.2.

28. The City is an “owner” and an “operator” of the Vallejo Lakes water system within the meaning of the SDWA, including but not limited to Section 1414(c) of the SDWA, 42 U.S.C. § 300g-3(c), and 40 C.F.R. Part 141, Subpart Q.

29. The City 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.

30. The City is a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2, and is subject to an Administrative Order issued under Section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1).

31. Under Section 1411 of the SDWA, 42 U.S.C. § 300g, and as a “public water

system,” “water supplier,” “owner,” “operator,” and “person,” the City is subject to the regulations promulgated by EPA pursuant to Section 1412 of the Act, 42 U.S.C. §§ 300g-1, including the Stage 1 DBPR, and Public Notification Rule.

Under 40 C.F.R. § 141.130(b), and as a “community water system” subject to the requirements of 40 C.F.R. Part 141, Subpart H, the City was required to comply with the Stage 1 DBPR beginning January 1, 2004.

32. Under 40 C.F.R. §§ 141.203, and as a “community water system” subject to the requirements of 40 C.F.R. Part 141, Subpart Q, the City is required to comply with the Tier 2 public notice requirements of the Public Notification Rule for TTHM MCL violations.

33. The maximum contaminant levels, TOC percent removal ratios, and Stage 1 DBPR requirements set forth in 40 C.F.R. Part 141 are regulations promulgated pursuant to SDWA section 1412, and are “applicable requirements” as defined by Section 1414(i) of the Act, 42 U.S.C. § 300g-3(i) and as such, are enforceable under Sections 1414(a), (b), and (g) of the Act, 42 U.S.C. §§ 300g-3(a), 300g-3(b), 300g-3(g).

34. Respondent violated 40 C.F.R. § 141.64, and the associated requirements of 40 C.F.R. § 141.133(a), by exceeding the **0.080 mg/l** TTHM MCL for the third quarter of 2004. From January 1, 2004 through September 30, 2004, the running annual arithmetic average of three quarters of TTHM sampling data for the City’s System was **0.087 mg/l**.

35. Respondent violated 40 C.F.R. § 141.64, and the associated requirements of 40

C.F.R. § 141.133(b), by exceeding the **0.080 mg/l** TTHM MCL for the fourth quarter of 2004. From January 1, 2004 through December 31, 2004, the running annual arithmetic average of four quarters of TTHM sampling data for the City's System was **0.113 mg/l**.

36. Respondent violated 40 C.F.R. §141.64, and the associated requirements of 40

C.F.R. § 141.133(b), by exceeding the **0.080 mg/l** TTHM MCL in the first quarter of 2005. From April 1, 2004 through March 31, 2005, the running annual arithmetic average of the four quarters of TTHM sampling data for the City's System was **0.118 mg/l**.

Respondent violated 40 C.F.R. §§ 141.133(d) and 141.135(c) by failing to achieve the percent removal treatment technique ratio for TOC in the fourth quarter of 2004. From January 1, 2004 through December 31, 2004, the TOC percent removal ratio was **0.70** at the City's System.

37. Respondent violated 40 C.F.R. §§ 141.133(d) and 141.135(c) by failing to achieve

the percent removal treatment technique ratio for TOC in the first quarter of 2005. From April 1, 2004 through March 31, 2005, the TOC percent removal ratio was **0.60** at the City's System.

38. Respondent violated 40 C.F.R. § 141.203 by failing to provide Tier 2 public

notice to the public as soon as practicable or within 30 days of learning of the System's third quarter 2004 TTHM MCL violation.

39. Based on the nature of the City's violations and based on the available remedies

for these violations, the number of days set forth in this Order for the City to achieve compliance is reasonable.

40. EPA is issuing this Order to place the City on an enforceable schedule to comply with the DBPR requirements of the SDWA and 40 C.F.R. Part 141.

41. Pursuant to Section 1414(a)(2)(B) of the SDWA, 42 U.S.C. § 300g-3(a)(2)(B), a local elected official of the City was notified of this action on **June 1, 2005**.

ORDER

Based on the foregoing FINDINGS OF FACTS and CONCLUSIONS OF LAW, and pursuant to the authority of Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), EPA hereby ORDERS:

42. **COMPLIANCE PLAN:** Within **twenty-one (21) days** of receipt of this Order, the City shall submit to EPA a written plan that describes the steps the City will follow to return to compliance with the TTHM MCL and the TOC treatment technique and meet the TTHM and TOC Compliance Deadline set forth in Paragraph 46 of this Order.

43. **TTHM AND TOC COMPLIANCE DEADLINE:** The City shall achieve compliance with the TTHM MCL and TOC treatment technique for the water the City serves to its Vallejo Lakes customers no later than **September 30, 2006**.

44. **REPORTING OF TTHM and TOC SAMPLING RESULTS:** The City shall

report to EPA the results of all TTHM and TOC compliance monitoring within **ten (10) days** after the end of the month in which the City receives the sampling results from the laboratory.

45. **DELAY:** If any event occurs that causes or is likely to cause delay in the achievement of any requirement of this Order within any time frame specified in this Order, the City shall notify EPA in writing, within **three (3) 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 the City intends to implement these measures and achieve the requirement. The City 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 time frame in this Order.

46. **ADDITIONAL SAMPLING:** The City shall comply with additional and/or more frequent Stage 1 DBPR sampling and analysis if EPA determines in writing that these additional requirements are necessary for compliance with the Stage 1 DBPR.

47. **ADDITIONAL INFORMATION:** The City shall submit to EPA such additional documents and other information as EPA may reasonably request in writing in order to determine the City's compliance with this Order, the TTHM MCL, the TOC treatment technique and other provisions of the Stage 1 DBPR.

48. **CERTIFICATION STATEMENT:** All submittals to EPA required pursuant to this Order shall be accompanied by the following statement signed by a responsible officer of the

City:

“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 managed the system, or of 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.”

49. **SUBMITTALS TO EPA:** All information required to be submitted by this Order

to EPA shall be mailed to:

Jon Merkle, Environmental Scientist
Drinking Water Office (WTR-6)
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

50. **SUBMITTALS TO STATE:** A copy of all information required to be submitted

by this Order to EPA shall also be mailed to:

Betty Graham, District Engineer
San Francisco District
California Department of Health Services
Drinking Water Field Operations Branch
2151 Berkeley Way, Room 458
Berkeley, CA 94704

GENERAL PROVISIONS

51. Notwithstanding the City’s compliance with any requirement of this Order, the

City’s failure to comply with all of the requirements of the SDWA and Part 141 may subject the City to additional enforcement actions, including but not limited to, judicial and administrative actions.

52. This Order shall not prohibit, prevent, or otherwise preclude EPA from taking whatever action it deems appropriate to enforce the SDWA in any manner and shall not prohibit, prevent, or otherwise preclude EPA from using this Order in subsequent administrative or judicial proceedings.

53. Nothing in this Order shall constitute a waiver, suspension or modification of the requirements of the SDWA, or the rules and 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 law.

54. As owner and operator of the water system, the City is responsible for compliance with all requirements of the SDWA. The City's violation of SDWA requirements subjects the City to possible civil penalties of up to \$32,500 per day per violation under Section 1414(b) of the SDWA, 42 U.S.C. sections 300g-3(b), or an administrative penalty of up to \$27,500 for violations of the Order, after notice and opportunity for a hearing, under Section 1414(g)(3)(B) of the SDWA, 42 U.S.C. Section 300g-3(g)(3)(B); *see also* 40 C.F.R. § 19.4.

55. This Order does not relieve the City of any responsibilities or liabilities established pursuant to any applicable federal, state, or local law.

56. 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.

57. The provisions of this Order shall be binding upon the City, its officers, directors,

agents, servants, authorized representatives and successors or assigns.

58. This Order shall be effective on the date on which it is signed. This Order shall remain in effect until EPA notifies the City in writing that EPA has determined that the water provided by the City's water system for human consumption has met the TTHM MCL and the TOC treatment technique on a continuous basis for two years and that the terms of the Order have been fulfilled.

59. Providing false or misleading information may subject the City to civil and criminal enforcement.

60. This Order shall be binding upon the City, and the City's officers, agents, servants, employees, successors and assigns.

61. EPA may amend or modify this Order by providing to the City written notice of such amendment or modification.

ORDERED, this first day of June, 2005.

Corine Li
Manager, Drinking Water Office
United States Environmental Protection Agency, Region 9