



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

IN THE MATTER OF:

ARIZONA WINDSONG WATER COMPANY
WATER SYSTEM

PWS ID. No. AZ0401009

PWS-AO-2005-002
ADMINISTRATIVE ORDER

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, Water Division, Region 9, San Francisco, California.

FINDINGS

1. Pat Paulsell (hereinafter “Respondent”) owns and operates a public water system known as the Arizona Windsong Water Company (the “system”), located in the unincorporated community of Sanders, Apache County, Arizona.
2. Respondent’s system provides groundwater to the public for human consumption through pipes to at least 76 service connections and regularly serves at least 304 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. Respondent is a “supplier of water” as that term is defined in Section 1401(5) of the SDWA and 40 C.F.R. § 141.2.
4. Respondent is an “owner” and/or “operator” of the system within the meaning of the SDWA, 42 U.S.C. § 300f *et seq.*, and 40 C.F.R. Part 141.
5. 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. Respondent’s system is a “small water system” as defined by 40 C.F.R. § 141.2.
6. Respondent’s system 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, and 40 C.F.R. Part 141, Subparts C and I, because it regularly serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. The requirements of Subparts C and I constitute the national primary drinking water regulations (“NPDWRs”) for total coliforms, nitrates, and lead and copper. Subparts C and I apply to community water systems.

7. As a “public water system,” “supplier of water,” “owner,” “operator,” and “person,” Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g et seq., and all other applicable requirements of the SDWA as defined at 42 U.S.C. § 300g-3(i), including applicable requirements within Part B’s implementing regulations at 40 C.F.R. Part 141.
8. On August 24, 1990, EPA issued an Administrative Order to the Respondent for failures to monitor and report for total coliform, radionuclides and failures to notify the State and the persons served by the water system of Respondent’s monitoring and reporting violations. Respondent has not complied fully with the requirements of the August 24, 1990 Administrative Order. EPA is issuing this second Administrative Order to reflect additional violations that have occurred since issuance of the August 24, 1990 Order, and to set forth additional requirements for coming into compliance with the SDWA and its implementing regulations.

VIOLATIONS

Total Coliforms

9. 40 C.F.R. § 141.21(a)(2) requires community water systems serving 1,000 persons or fewer to sample for total coliform bacteria according to a written sample siting plan at least once a month unless the State has reduced the monitoring frequency (to no less than once per year).
10. **Failure to monitor.** Respondent violated 40 C.F.R. § 141.21(a) by failing to sample for total coliforms using a written sample siting plan for the following four (4) different months: December 2000; January 2001; February 2001 and February 2003.
11. Respondent collected total coliform-positive samples in October 2000, October 2001, and collected three total coliform-positive samples on August 6, 13 and 20, 2002.
12. 40 C.F.R. § 141.21(b) requires a public water system that takes one sample for total coliforms per month to collect at least one set of four (4) repeat samples within 24 hours of being notified that the original sample was positive for total coliforms.
13. **Failure to collect repeat samples within 24 hours.** Respondent violated 40 C.F.R. § 141.21(b) by failing to collect a set of four (4) repeat samples within 24 hours of each original sample that was found total coliform-positive in October 2000, October 2001 and August 2002.

14. 40 C.F.R. § 141.21(b)(5) requires that if a public water system which takes fewer than five routine samples per month has one or more total coliform-positive samples, the water system must collect at least five (5) routine samples during the next month that it provides water to the public.
15. **Failure to take five (5) routine samples.** Respondent violated 40 C.F.R. § 141.21(b)(5) by failing to collect at least five (5) routine samples in the following three (3) months after Respondent's water system's samples were found total coliform-positive: November 2000; November 2001 and September 2002.
16. 40 C.F.R. § 141.21(g)(1) requires public water systems which have exceeded the MCL for total coliforms in 40 C.F.R. § 141.63 to report the violation to the State no later than the end of the next business day after it learns of the violation, and notify the public in accordance with 40 C.F.R. subpart Q.
17. **Failure to report.** Respondent violated 40 C.F.R. § 141.21(g)(1) by failing to report ADEQ within the next business day when Respondent's water system exceeded the MCL for total coliforms on August 13 and 20, 2002 as described in Paragraph 11 above.
18. 40 C.F.R. § 141.21(g)(2) requires a public water system that has failed to comply with a total coliform monitoring requirement to report the monitoring violation to the State within ten (10) days after the system discovers the violation.
19. **Failure to notify the State of total coliform monitoring violations.** Respondent violated 40 C.F.R. § 141.21(g)(2) by failing to report to the State the system's total coliform monitoring and reporting violations, described in Paragraphs 10, 13, and 15 above, within ten (10) days after Respondent discovered the violations.

Monitoring and Reporting for Nitrate

20. 40 C.F.R. § 141.23(d) requires each community water system served by ground water to monitor for nitrate annually at each point of entry to the distribution system that is representative of each well after treatment (the "Sampling Point") starting with the initial compliance period beginning January 1, 1993 to December 31, 1995, and continuing thereafter.
21. **Failure to monitor (nitrate).** Respondent violated 40 C.F.R. § 141.23(d) by failing to monitor for nitrate annually at each Sampling Point in April 2000, April 2001, and April 2002.

Monitoring and Reporting for Lead and Copper

22. 40 C.F.R. § 141.86(d) requires community water systems to sample for lead and copper during the months of June, July, August, or September on an annual basis provided the

system has previously met the lead and copper action levels during each of two consecutive six-month monitoring periods. The initial six-month initial compliance period for lead and copper monitoring began July 1, 1993.

23. **Failure to monitor.** Respondent violated 40 C.F.R. § 141.86(d) by failing to monitor for lead and copper during the initial compliance period beginning July 1, 1993, as described above, or at any time thereafter.
24. 40 C.F.R. § 141.90(a) requires public water systems to report the following specified information to the State within the first ten (10) days following the end of an applicable lead and copper monitoring period:
 - a. the results of all tap samples, the location of each sampling site, and information regarding the selection criteria for the system's sampling pool; and
 - b. the 90th percentile concentrations measured from all samples collected during each monitoring period.
30. **Failure to report.** Respondent violated 40 C.F.R. § 141.90(a) by failing to report sampling results or other required tap sampling information at the end of the first six-month initial compliance period beginning July 1, 1993, or at any time thereafter.

Consumer Confidence Reports

31. Community water systems must prepare and distribute annually a Consumer Confidence Report (CCR) that contains a description of a community water system's drinking water sources, a summary of the system's compliance monitoring data for the previous year, and definitions of commonly used terms. The regulations at 40 C.F.R. §§ 141.153 and 141.154 contain a summary of the CCR Rule requirements. Pursuant to 40 C.F.R. §141.152(b), each community water system is required to prepare and distribute to its customers by July 1 of each year. The first CCR was required in 1999.
32. **Failure to prepare and distribute CCRs.** Respondent violated 40 C.F.R. § 141.152(b), 141.153, and 141.154 by failing to timely prepare and distribute its 2001, 2002, 2003, and 2004 CCRs to the persons served by the system.
33. 40 C.F.R. §141.155(c) requires community water systems to mail a copy of the CCR to the primacy agency no later than the date the system is required to distribute the CCR to its customers under 40 C.F.R. § 141.152(b).
30. 40 C.F.R. § 141.155(c) requires each community water system to mail a certification to the primacy agency within three (3) months of the date the community water system is required to distribute the CCR to its customers. The certification must indicate whether the CCR has been distributed to customers and whether the information is correct and consistent with data previously submitted to the primacy agency.

30. **Failure to certify CCRs.** Respondent violated 40 C.F.R. § 141.155(c) by failing to mail certifications to ADEQ for the 2001, 2002 and 2003 CCRs by the relevant deadlines, or anytime thereafter.

Public Notice

31. Until May 6, 2002, 40 C.F.R. § 141.32(a) required the owner or operator of a public water system which failed to comply with an applicable MCL shall notify persons served by the system with the publication of a public notice in a daily newspaper of general circulation in the area served by the system, as soon as possible, but in no case later than 14 days after the violation or failure. No later than 45 days after the violation or failure, the owner or operator of the public water system must deliver by direct mail or hand delivery of the issued public notice to persons served by the water system.
32. **Failure to issue total coliform public notice.** Respondent violated 40 C.F.R. § 141.32(a) by failing to issue a public notice in a daily newspaper of general circulation in the area served by the system, and by failing to mail or hand deliver a public notice to persons served by the system, within 14 days of exceeding the MCL for total coliforms in the month of August 2002, as described in Paragraph 11 above.
33. Until May 6, 2002, 40 C.F.R. § 141.32(b) requires the owner or operator of a community water system that has failed to (1) perform monitoring required by Section 1445(a) of the SDWA (including monitoring required by the NPDWRs), or (2) failed to comply with a testing procedure under 40 C.F.R. Part 141, to notify persons served by the water system of such failure in accordance with the requirements of 40 C.F.R. § 141.32 and to provide continuous or repeat notification at least every three months for as long as the violation or failure exists.
34. **Failure to provide public notice.** Respondent violated 40 C.F.R. § 141.32(b) between April 2000 and May 5, 2002 by failing to notify persons served by the system at any time of Respondent's failure to (1) monitor for total coliforms (2) monitor for nitrates; and (3) monitor for lead and copper, as described respectively in Paragraphs 10, 13, 15, 21 and 23 above.
35. Effective May 6, 2002, 40 C.F.R. Part 141, Subpart Q, requires each owner or operator of a community water system to notify persons served by the water system of NPDWR violations, and to provide notice for other situations listed at 40 C.F.R. § 141.201, including variance and exemptions under Sections 1415 and 1416 of the SDWA, and special public notices. For purposes of Subpart Q, "NPDWR violations" include violations of MCLs, maximum residual disinfection levels ("MRDLs"), treatment techniques, and testing procedures, or failures to perform any monitoring required under 40 C.F.R. Part 141. Failure to monitor for total coliform, nitrate, and lead and copper, as required by 40 C.F.R. Part 141, including, but not limited to 40 C.F.R. §§ 141.21(a), 141.21(b), 141.21(b)(5), 141.21(g)(1), 141.21(g)(2), 141.23(d), 141.31(b), 141.32(b),

141.86, 141.90, 141.152(b) and 141.155(c), requires a public notice that satisfies the Tier 2 public notice requirements provided at 40 C.F.R. § 141.204. Tier 2 public notice requires notice to a person served by the system no later than one year of the system having learned of the violation.

36. **Failure to provide public notice for failure to monitor and report.** Respondent violated 40 C.F.R. Part 141, Subpart Q starting May 6, 2002 by failing to provide notice pursuant to the Tier 2 notice requirements of 40 C.F.R. § 141.204 within one year, or at any time thereafter, to persons served by the system of the system's failure to conduct the required sampling, analyses, and reporting as described in Paragraphs 10, 13, 15, 21 and 23 above.

Certification to State Regarding Public Notice

37. Until June 5, 2000, 40 C.F.R. § 141.31(d) required that a water supply system submit to the State a representative copy of each type of notice distributed, published, posted, and/or made available to the persons served by the system and/or to the media within ten (10) days of completion of each public notification required pursuant to 40 C.F.R. § 141.32(b).
38. As of June 5, 2000, 40 C.F.R. § 141.31(d) requires that a water supply system, within ten (10) days of completion of each public notification required pursuant to 40 C.F.R. Part 141, Subpart Q, submit to the primacy agency a certification that it fully complied with 40 C.F.R. Part 141, Subpart Q, and include with the certification a representative copy of each type of notice distributed, published, posted, and/or made available to the persons served by the system and/or to the media.
39. **Failure to certify.** Respondent violated 40 C.F.R. § 141.31(d) prior to June 5, 2000 by failing to submit to ADEQ a representative copy of each type of notice distributed . Respondent violated 40 C.F.R. § 141.31(d) after June 5, 2000 by failing to submit to ADEQ a certification that Respondent fully complied with 40 C.F.R. Part 141, Subpart Q.
40. Based on the nature of the Respondent's violations and based on the available remedies for these violations, the number of days set forth in this Order for the Respondent to achieve compliance is reasonable.

ORDER

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

Monthly Total Coliform Monitoring

41. Respondent shall immediately initiate its monthly monitoring of total coliforms and

submit sampling results to a certified laboratory within ten (10) days of the effective date of this Order.

- a. total coliform sampling shall be performed pursuant to a written siting plan and submit the samples for analyses to a certified laboratory; and
 - b. copies of the laboratory analysis shall be submitted to the addresses listed in paragraph 52 of this Order.
42. If a routine sample is total coliform-positive, then pursuant to 40 C.F.R. § 141.21(b), Respondent must collect a set of no fewer than four repeat samples within 24 hours of being notified of the positive results. Copies of the analytical results of the repeat samples must be submitted to EPA and the State of Arizona in the addresses as listed in paragraph 52 below of this Order.
43. If a routine sample is total coliform-positive, then pursuant to 40 C.F.R. § 141.21(g)(2), the Respondent shall notify EPA and the State of Arizona no later than the end of the next business day. Contact information about EPA and the State of Arizona is listed in paragraph 52 below of this Order.
44. If one or more monthly water samples taken following the effective date of this Order is total coliform-positive, then Respondent shall submit a remedial plan to EPA no later than fifteen (15) days from the Respondent's receipt of the results showing the violation. The plan shall:
- a. Set forth specific actions and dates to remedy the coliform bacteria violation.
 - b. Include if necessary a description of actions taken by Respondent to temporarily eliminate the problem while a long-term solution is being assessed such as disinfection of the well (where applicable), disinfection of the pump and distribution system, flushing of various units in the system, chlorination, such as hand chlorination and direct in-line injection, or a change of water source to eliminate contamination coming from specific sources. The plan may also include dates for the purchase and installation of equipment and arrangements with analytical laboratories and consulting firms.

The plan shall be submitted to the addresses listed in Paragraph 52 of this Order.

**First Round of Lead and Copper Monitoring and
Submittal of Analytical Results**

45. By **May 31, 2005**, Respondent shall collect and have analyzed one round of tap samples for lead and copper in accordance with 40 C.F.R. § 141.86. By **June 10, 2005**, Respondent shall submit all specified monitoring information regarding sampling procedures and results, collected in accordance with §141.86, to EPA and the State at the addresses listed in Paragraph 52 of this Order, pursuant to 40 C.F.R. § 141.90. If the lead and/or copper results from the water system exceed the action levels of 0.015 mg/l for lead and/or 1.3 mg/l for copper as defined at 40 C.F.R. § 141.80(c), then Respondent is

required to:

- a. implement the corrosion control treatment requirements described in 40 C.F.R. § 141.82 by the deadlines established in 40 C.F.R. §§ 141.81(b) and/or 141.81(e); and
- b. complete lead and copper source water monitoring under 40 C.F.R. § 141.88(b) and make a treatment recommendation to the State as required by 40 C.F.R. § 141.83(b)(1); and
- c. Implement a public education program as required by 40 C.F.R. § 141.85; and
- d. continue to conduct tap sampling in accordance with 40 C.F.R. §§ 141.86(d)(1) and 141.87(b).

**Second Round of Lead and Copper Monitoring and
Submittal of Analytical Results**

46. If the analytical results obtained in compliance with Paragraph 45 do not exceed the applicable action levels for lead and/or copper, then during the period between **July 1, 2005** and **November 30, 2005**, Respondent shall collect and have analyzed a second round of tap samples for lead and copper in accordance with 40 C.F.R. § 141.86. By **December 10, 2005**, Respondent shall submit all specified monitoring information for the second round of tap samples for lead and copper, in accordance with 40 C.F.R. § 141.90, to EPA and the State at the addresses listed in Paragraph 52 of this Order. If Respondent's lead and/or copper results do not exceed the action levels set forth in 40 C.F.R. § 141.80(c) during each of the two consecutive six-month monitoring periods then Respondent shall continue to sample for lead and copper on an annual basis during the months of June, July, August, and September, in accordance with 40 C.F.R. § 141.86(d), and report results to EPA and the State in accordance with 40 C.F.R. § 141.90(a). If the lead and/or copper results from the water system exceed the action levels of 0.015 mg/l for lead and 1.3 mg/l for copper set forth in 40 C.F.R. § 141.80(c) then Respondent is required to:
 - a. implement the corrosion control treatment requirements described in 40 C.F.R. § 141.82 by the deadlines established in 40 C.F.R. §§ 141.81(b) and/or 141.81(e); and
 - b. complete lead and copper source water monitoring under 40 C.F.R. § 141.88(b) and make a treatment recommendation to the State as required by 40 C.F.R. § 141.83(b)(1); and
 - c. Implement a public education program as required by 40 C.F.R. § 141.85; and
 - d. continue to conduct tap sampling in accordance with 40 C.F.R. §§ 141.86(d)(1) and 141.87(b).

Reporting of Violations

47. Respondent shall comply immediately upon the effective date of this Order and at all times thereafter with the violation reporting requirements of 40 C.F.R. § 141.31(b) by

reporting to EPA and the State within 48 hours any failure to comply with the NPDWRs (including failure to comply with monitoring requirements) except where a different reporting period is specified by 40 C.F.R. Part 131. Contact information for EPA and the State is listed in Paragraph 52 below.

Issuance of a Consumer Confidence Report

48. No later than **July 1, 2005**, prepare a CCR summarizing drinking water information from January 1, 2000 through December 31, 2004 in accordance with 40 C.F.R. § §141.151-141.155 and distribute the report to your water customers in accordance with 40 C.F.R. § 141.155.
49. No later than **July 15, 2005**, provide a copy of the CCR to EPA and ADEQ along with certification of the distribution and content of the report in accordance with 40 C.F.R. § 141.155(c). Copies of CCR and certification should be sent to the addresses listed in Paragraph 52 below.

Submittal of Certification

52. All submittals to EPA and the State required pursuant to this Order shall be accompanied by the following statement signed by the 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.”

Public Notification

53. Within thirty (30) days of the effective date of this Order, and at all times thereafter, Respondent shall comply with the public notification requirements of 40 C.F.R. Part 141, Subpart Q. Within thirty (30) days of the effective date of this Order, Respondent shall issue all required public notices for Respondent’s failure to conduct the required monitoring for total coliforms, nitrate and lead and copper. Such public notice shall meet the Tier 2 notification procedures and content requirements at 40 C.F.R. § 141.203, including:
 - a. providing the public notice as soon as practical, but no later than 30 days after the system learns of the violation; and
 - b. repeating the notice every three months for as long as the violation or situation persists.

Respondent shall provide a copy of the notice to EPA and the State at the addresses listed below in Paragraph 52 of this Order.

Addresses For Submittals

52. All submittals required by this Order shall be mailed to the following addresses:

U.S. Environmental Protection Agency Region 9 75 Hawthorne Street (WTR-6) San Francisco, CA 94105	Arizona Department of Environmental Quality 1110 West Washington Street Phoenix, AZ 85007
Attn: Patrick Chan Drinking Water Office Phone No.: (415) 972-3551	Attn: John Calkins, Manager Water Quality Compliance Section Phone No.: (602) 771-4651

GENERAL PROVISIONS

53. Notwithstanding Respondent's compliance with any requirement of this Order, Respondent's failure to comply with all applicable requirements of the SDWA, including those in 40 C.F.R. Part 141, may subject the Respondent to additional enforcement actions including but not limited to judicial and administrative actions.
54. This Administrative 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. Nothing in this Order shall constitute a waiver, suspension or modification of the requirements of 40 C.F.R. Part 141, Subparts C, I or Q, or of any provision 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.
55. Violations of applicable requirements of the SDWA may subject the Respondent to a civil judicial penalty of up to \$32,500 per violation for each day in which such violation occurs, as assessed by an appropriate United States District Court, under SDWA Section 1414(b), U.S.C. § 300g-3(b), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 (effective January 31, 1997); *see* 40 C.F.R. § 19.4; *see also* 69 Fed. Reg. 7121 (Feb. 13, 2004). Violation of any term of this Order may also subject the Respondent to (a) a civil judicial penalty of up to \$32,500 per day per violation for each day in which such violation occurs, as assessed by the United States District Court, under SDWA Sections 1414(b) and 1414(g)(3)(A), 42 U.S.C. §§ 300g-3(b) and 300g-3(g)(3)(A), or (b) an administrative penalty of up to \$27,500, after Respondent is

provided notice and opportunity for a hearing, under SDWA Section 1414(g)(3)(B), 42 U.S.C. § 300g-3(g)(3)(B); *see also* 40 C.F.R. § 19.4; *see also* 69 Fed. Reg. 7121 (Feb. 13, 2004).

56. This Order does not relieve the Respondent of any responsibilities or liabilities established pursuant to any applicable federal, state, or local law.
57. The provisions of this Order shall be severable. If any provision of this Order is found to be unenforceable, the remaining provisions of this Order shall remain in full force and effect.
58. This Order shall be effective upon receipt of the Order by the Respondent. This Order shall remain in effect until such time as EPA notifies Respondent in writing that EPA has determined that Respondent's public water system is in compliance with all the terms of the Order.
59. Providing false or misleading information may subject you to civil and criminal enforcement.
60. This Order shall be binding upon Respondent, and Respondent's officers, directors, agents, servants, employees, heirs, successors and assigns.
61. EPA may amend or modify this Order by providing to the Respondent written notice of such amendment or modification.

ORDERED, this _____ day of March, 2005.

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

