



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

IN THE MATTER OF:

CITY OF SAN LUIS PUBLIC WATER
SYSTEM
YUMA COUNTY, ARIZONA

PWS ID. No. AZ0414005

PWS-AO-2005-003
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 of Region 9.

FINDINGS

1. The City of San Luis (hereinafter “Respondent”) owns and/or operates the City of San Luis Water System (the “System”), located in the City of San Luis, Yuma County, Arizona.
2. Respondent provides ground water to the public for human consumption through pipes to more than 10,000 persons. The System is a “public water system,” as that term is defined by Section 1401(4) of the SDWA and 40 C.F.R. § 141.2, and a “community water system” as defined in Section 1401(15) of the SDWA and 40 C.F.R. § 141.2.
3. Respondent is a municipality and thus a “person” within the meaning of Section 1401(12) of the SDWA and 40 C.F.R. § 141.2.
4. Respondent is a “person” who owns and/or operates a “public water system” and is thus a “supplier of water” as that term is defined by Section 1401(5) of the SDWA and 40 C.F.R. § 141.2
5. On September 17, 1999, EPA promulgated a final rule, effective in January 2001, requiring selected public water systems to monitor for unregulated contaminants in drinking water in accordance with the Unregulated Contaminant Monitoring Regulation (UCMR) codified at 40 C.F.R. Part 141. The purpose of the UCMR is to collect occurrence data for currently unregulated contaminants to support EPA decision making

regarding whether or not to regulate these contaminants to protect public health.

6. As a “public water system,” “owner,” “operator,” and “person,” and “supplier of water,” Respondent is therefore subject to the requirements of the UCMR at 40 C.F.R. Part 141, Subpart E, as well as Part B of the SDWA, 42 U.S.C. § 300g *et seq.*, and all other applicable requirements of the Act 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.
7. On August 25, 1978, pursuant to section 1413 of the SDWA, 42 U.S.C. § 300g-2, EPA determined that the State of Arizona (“the State”) met the requirements for primary enforcement authority for public water systems. The State, acting through the Arizona Department of Environmental Quality, 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 the State comply with the requirements of the SDWA. However, the UCMR is a regulation for which EPA will retain primary enforcement authority as per 40 C.F.R. Part 141, Subpart E.
8. Respondent’s public water system is a large system serving more than 10,000 persons and does not purchase its entire water supply from another system.
9. 40 C.F.R. § 141.40(a)(1)(ii) requires a large system serving more than 10,000 persons and not purchasing its entire water supply from another system to monitor for the unregulated contaminants on List 1 of “Table 1–Unregulated Contaminant Monitoring Regulation (1999) List” in 40 C.F.R. § 141.40(a)(3) (hereinafter referred to as the “Assessment Monitoring List 1”).
10. 40 C.F.R. § 141.40(a)(5)(ii) requires a large water system using surface and/or ground water to sample for the contaminants listed in the Assessment Monitoring List 1 beginning in 2001. Surface water systems must collect four (4) quarterly samples and ground water systems must collect two (2) rounds of samples during the timeframes specified in 40 C.F.R. § 141.40(a)(5)(ii)(Table 3).
11. 40 C.F.R. §§ 141.35(a), (b) and (e) provide that a water system required to monitor under 40 C.F.R. § 141.40 must report its Assessment Monitoring List 1 monitoring results to EPA with a copy to the State using EPA’s electronic reporting system. Under 40 C.F.R. § 141.35(e)(1), the water system is responsible for *reviewing* and *approving* its reporting after it has the Assessment Monitoring List 1 monitoring results entered into EPA’s electronic reporting system.
12. The State notified Respondent in writing in 2000 of the UCMR and its requirements, including the need to monitor for the contaminants listed in the Assessment Monitoring List 1 beginning in 2001 as required by 40 C.F.R. § 141.40(a), and the need to report UCMR monitoring data in the manner required by 40 C.F.R. § 141.35(e).

13. **Failure to report and/or monitor.** Based on the information available to EPA, Respondent failed to report the results of its second round of Assessment Monitoring List 1 monitoring results as required under 40 C.F.R. § 141.35(a) and (b), and in the manner provided under § 141.35(e). Based on the information available to EPA, Respondent may have also failed to conduct the second round of Assessment Monitoring List 1 monitoring as required under 40 C.F.R. § 141.40(a).
14. EPA is issuing this Order to address the violation(s) described in Paragraph 13 above and to place Respondent on an enforceable schedule to comply with the UCMR requirements of the SDWA and 40 C.F.R. Part 141.
15. Notification of a local elected official with jurisdiction over the Respondent's public water system has occurred in accordance with Section 1414(a)(2)(B) of the SDWA, 42 U.S.C. § 300g-3(a)(2)(B).
16. Based on the nature of Respondent's violations of SDWA Section 1412, 42 U.S.C. § 300g-1; and 40 C.F.R §§ 141.35(a), (b), and (e), and 40 C.F.R § 141.40(a), 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 of Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), EPA hereby ORDERS:

17. **Reporting and Monitoring.**
- a. Respondent shall complete all unfinished monitoring and all subsequent electronic reporting, including the entering, reviewing and approving of UCMR data in EPA's electronic reporting system, as required by 40 C.F.R. § 141.40(a) and § 141.35, by **June 1, 2005**.
- b. Respondent shall within ten (10) days of this Order's effective date, submit in writing to EPA the following:
- (1) The dates when any remaining UCMR sampling will occur (and whether the sampling will occur during the "vulnerable time"¹), the sample

¹ "Vulnerable time" means May 1 through July 31, unless the State or EPA has informed Respondent that it has selected a different time period for sampling the Respondent's public water

location, and whether the sampled source water is surface water and/or ground water.

- (2) The date(s) that Respondent will report, review and approve its UCMR monitoring results in the manner required under 40 C.F.R. § 141.35.

18. **Notification of completion of reporting.** No later than **ten (10)** days after Respondent enters, reviews, approves, and otherwise reports the results of a quarterly surface water sample and/or a round of ground water sampling into EPA's electronic reporting system, as required by 40 C.F.R. § 141.35(e), Respondent shall notify EPA in writing of the completion of reporting for that quarter of surface water monitoring and/or round of ground water monitoring.
19. **Certification.** All submittals to EPA required pursuant to this Order shall be accompanied by the following statement signed by a responsible officer of 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."

ADDRESSES FOR SUBMITTALS

20. All submittals required by the Order shall be mailed to EPA at the following address:

U.S. Environmental Protection Agency
75 Hawthorne Street (WTR-6)
San Francisco, CA 94105
Attn: Patrick Chan
Drinking Water Office

system's vulnerable time. See footnote "b" to 40 C.F.R. § 141.40(a)(5)(ii)(Table 3).

Phone No. (415) 972-3551

GENERAL PROVISIONS

21. Notwithstanding Respondent's compliance with any requirement of this Order, Respondent's failure to comply with all applicable requirements of the SDWA, or its implementing regulations at 40 C.F.R. Part 141, may subject the Respondent to additional enforcement actions including but not limited to judicial and administrative actions.
22. 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, Subpart E 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.
23. 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 also* 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).
24. This Order does not relieve the Respondent of any responsibilities or liabilities established pursuant to any applicable federal, state, or local law.
25. 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.
26. 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.

27. Providing false or misleading information may subject you to civil and criminal enforcement.
28. This Order shall be binding upon Respondent, and Respondent's officers, directors, agents, employees, successors and assigns.
29. EPA may amend or modify this Order by providing to the Respondent written notice of such amendment or modification.

ORDERED, this _____ day of April, 2005.

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