

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

IN THE MATTER OF:
VIOLATIONS OF THE PUBLIC WATER
SUPPLY LAWS BY BLUE SKY HEIGHTS
WATER USERS ASSOCIATION AT BLUE SKY
HEIGHTS WUA, PWSID #MT0000030, CLANCY,
JEFFERSON COUNTY, MONTANA. (FID #2007)

NOTICE OF VIOLATION
AND
ADMINISTRATIVE COMPLIANCE
ORDER

Docket No. PWS-11-06

I. NOTICE OF VIOLATION

Pursuant to the authority of Section 75-6-109(1), Montana Code Annotated (MCA), the Department of Environmental Quality (Department) hereby gives notice to Blue Sky Heights Water Users Association (Respondent) of the following Findings of Fact and Conclusions of Law with respect to violations of the Public Water Supply Laws (PWSL) (Title 75, chapter 6, part 1, MCA) and Administrative Rules of Montana (ARM) (Title 17, chapter 38) adopted thereunder.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Department hereby makes the following Findings of Fact and Conclusions of Law:

1. The Department is an agency of the executive branch of government of the State of Montana, created and existing under the authority of Section 2-15-3501, MCA.
2. The Department administers the PWSL.
3. Respondent is a corporation registered with the State of Montana, and is therefore a "person" as defined in Section 75-6-102(11), MCA.
4. Respondent owns and operates the public water supply system that serves the customers of Blue Sky Heights WUA (System), PWSID #MT0000030, Clancy, Montana. The System regularly serves water to at least 25 persons daily for any 60 or more days in a calendar year. Respondent is therefore a "supplier of water" and subject to the requirements of the PWSL

1 and the rules adopted thereunder. See ARM 17.38.202 and 40 CFR 141.2 as incorporated
2 therein.

3 5. The System regularly serves water to at least 25 year-round residents. Therefore,
4 the System is a "community water system" within the meaning of Section 75-6-102(3), MCA.

5 6. The System is supplied by ground water.

6 ***Total coliform bacteria maximum contaminant level (MCL) non-acute violation***

7 7. The maximum contaminant level (MCL) for total coliform bacteria is based on
8 the presence or absence of total coliform bacteria in a sample, rather than coliform density. See
9 ARM 17.38.207 and 40 CFR 141.63(a) as incorporated therein. "For a system which collects
10 fewer than 40 samples per month, if no more than one sample collected during a month is total
11 coliform-positive, the system is in compliance with the MCL for total coliforms." See ARM
12 17.38.207(1) and 40 CFR 141.63(a)(2) as incorporated therein.

13 8. Respondent was required to collect only one routine sample during the month of
14 September 2010.

15 9. Respondent collected a total coliform-positive sample on September 13, 2010.

16 10. Systems are required to collect at least four repeat samples within 24 hours of
17 receiving the results of a total coliform-positive sample. See ARM 17.38.215(2) and 40 CFR
18 141.21(b)(1) as incorporated therein.

19 11. On September 15, 2010, Respondent collected five repeat samples. Three of the
20 five repeat samples were total coliform-positive. Therefore, Respondent exceeded the non-acute
21 total coliform MCL by having more than one total coliform-positive sample result within the
22 same month during September 2010.

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12. On September 17, 2010, the Department notified Respondent in writing that the System had exceeded the total coliform MCL and, therefore, had failed to comply with the MCL for total coliform bacteria.

13. Respondent violated ARM 17.38.207(1) one time by exceeding the MCL for total coliform bacteria during September 2010 because it collected more than one total coliform-positive sample during that month.

Uranium MCL violation

14. The MCL for uranium is 30 micrograms per liter ($\mu\text{g/L}$). Community water systems must comply with the uranium MCL beginning December 3, 2003. See ARM 17.38.206 and 40 CFR 141.66 as incorporated therein.

15. For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. See ARM 17.38.216(3)(c) and 40 CFR 141.26 as incorporated therein.

16. For systems monitoring more than once per year, if any sample result will cause the running average to exceed the MCL at any sample point, the system is out of compliance with the MCL immediately. See ARM 17.38.216(3)(c) and 40 CFR 141.26(c)(3)(ii) as incorporated therein.

17. Uranium samples collected by Respondent on April 20, 2010 revealed an average uranium level of 135 $\mu\text{g/L}$.

18. On July 29, 2010, the Department notified Respondent in writing (July 29, 2010 Letter) that the results of the April 20, 2010 uranium samples resulted in an immediate violation of the uranium MCL because the sample result would cause the running annual average to exceed the MCL. The July 29, 2010 Letter also notified Respondent that it was required to increase its uranium monitoring frequency in accordance with ARM 17.38.216, provide public

1 notification in accordance with ARM 17.38.239, and select and implement a corrective action in
2 order to reduce the uranium level below the MCL.

3 19. Analytical results for uranium samples collected by Respondent from the System
4 on July 26, 2010 (3rd Quarter), December 6, 2010 (4th Quarter) and March 11, 2011 (1st Quarter)
5 revealed average uranium levels of 102 µg/L, 115 µg/L and 62 µg/L, respectively.

6 20. On September 22, 2010, January 14, 2011 and April 19, 2011, the Department
7 notified Respondent in writing that the results of the 3rd and 4th Quarter 2010, and 1st Quarter
8 2011 sample results, respectively, exceeded the MCL for uranium and that the System was in
9 violation of the MCL. The letters further notified Respondent that it was required to provide
10 public notification in accordance with ARM 17.38.239, and select and implement a corrective
11 action in order to reduce the uranium level below the MCL.

12 21. Respondent violated ARM 17.38.206 four times by exceeding the MCL for
13 uranium during the second, third and fourth quarters of 2010, and first quarter of 2011.

14 ***Failure to give public notice of non-acute total coliform bacteria MCL violations***

15 22. Owners of public water supplies must provide public notice as soon as practical,
16 but no later than 30 days after the system learns of an MCL violation. See ARM 17.38.239(1)
17 and 40 CFR 141.203 as incorporated therein. Within 10 days of completing the public notice,
18 the owners or operators of a public water system must certify to the Department that they have
19 complied with the public notification regulations. See ARM 17.38.234(6)(a) and 40 CFR
20 141.31(d) as incorporated therein. Further, public water systems must repeat notice of the MCL
21 violation every three months as long as the MCL persists or until the Department notifies the
22 system in writing that it no longer is required to repeat public notice of the MCL violation. See
23 ARM 17.38.239(1) and 40 CFR 141.203(b)(2) as incorporated therein.

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1 23. On September 17, 2010, the Department notified Respondent in writing that its
2 System had exceeded the MCL for total coliform bacteria during September 2010. In addition,
3 the Department issued a Health Advisory for the MCL violation and required Respondent to give
4 public notice of the MCL violation.

5 24. Records maintained by the Department indicate Respondent did not certify to the
6 Department that it gave public notice of the September 2010 Health Advisory.

7 25. Respondent violated ARM 17.38.239(1) by failing to provide public notification
8 of the September 2010 total coliform MCL violation and by failing to certify to the Department
9 that public notice had been given.

10 ***Failure to give public notice of uranium MCL violations***

11 26. Owners of public water supplies must provide the public notice as soon as
12 practical, but no later than 30 days after the system learns of an MCL violation. If the public
13 notice is posted, the notice must remain in place for as long as the violation or situation persists,
14 but in no case for less than seven days, even if the violation or situation is resolved. See ARM
15 17.38.239(1) and 40 CFR 141.203 as incorporated therein. Within 10 days of completing the
16 public notice, the owners or operators of a public water system must certify to the Department
17 that they have complied with the public notification regulations. See ARM 17.38.234(6)(a) and
18 40 CFR 141.31(d) as incorporated therein.

19 27. On July 29, 2010, September 22, 2010, January 14, 2011, and April 19, 2011, the
20 Department notified Respondent in writing that the System had exceeded the MCL for uranium
21 during the second, third and fourth quarters of 2010, and first quarter of 2011, and that
22 Respondent was required to give public notice of the MCL violations.

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1 28. Records maintained by the Department indicate Respondent did not certify to the
2 Department that it gave public notice of the uranium MCL violations that occurred during the
3 second, third and fourth quarters of 2010, and first quarter of 2011.

4 III. ADMINISTRATIVE ORDER

5 This Notice of Violation and Administrative Compliance Order (Order) is issued to
6 Respondent pursuant to the authority vested in the State of Montana, acting by and through the
7 Department under the PWSL, Section 75-6-101, *et seq.*, MCA, and administrative rules adopted
8 thereunder, ARM Title 17, chapter 38. Based on the foregoing Findings of Fact and Conclusions
9 of Law and the authority cited above, the Department hereby ORDERS Respondent to take the
10 following actions to comply with the PWSL within the timeframes specified in this Order:

11 *Corrective action to address public notice requirements*

12 29. Within 30 days from receipt of this Order, Respondent shall provide public notice
13 for the September 2010 non-acute total coliform bacteria MCL violation alleged in Paragraph 13
14 and the uranium MCL violations that occurred during the second, third and fourth quarters of
15 2010, and first quarter of 2011. Any notice must meet the requirements of ARM 17.38.239(1).
16 Within 10 days after Respondent gives public notice, Respondent shall submit a copy of the
17 public notice that was given to the Department along with a certification that it has fully
18 complied with the public notice requirements of ARM 17.38.239(1). Further, until notified by
19 the Department in writing that the September 2010 Health Advisory has been rescinded and that
20 the System is no longer in violation of the uranium MCL, Respondent shall repeat notice of the
21 MCL violations every three months by issuing an updated notice. Within 10 days after
22 Respondent has given the repeat public notice, Respondent shall submit a copy of the public
23 notice to the Department along with a certification that it has fully complied with the public
24 notice requirements of ARM 17.38.239(1).

1 ***Corrective action to address future total coliform MCL exceedances***

2 30. If additional total coliform MCL violations occur while this Order is in effect,
3 within 90 days of the date of the violation, Respondent shall submit a compliance plan and
4 schedule to come into compliance with the total coliform MCL to the Department at the address
5 listed in Paragraph 38. The compliance plan must include one of the following corrective
6 actions: identification and abatement of the contamination source, development of a new water
7 source, or the installation of full-time disinfection. The plan must include a timeline for
8 implementation of the chosen corrective action.

9 31. For purposes of this Order, Paragraph 30 shall remain in effect for two years from the
10 date of receipt of this Order unless the Department notifies Respondent in writing otherwise.

11 32. Respondent shall achieve and maintain compliance with the PWSL by the final
12 date specified in the approved corrective action plan, or no later than six (6) months after
13 receiving the Department's approval of the compliance plan and schedule required by Paragraph
14 30, whichever is earliest. If implementation of the plan fails to achieve permanent compliance,
15 the Department may order further steps and/or seek penalties for noncompliance.

16 ***Corrective action to address uranium MCL exceedances***

17 33. Within 90 days from receipt of this Order, Respondent shall submit plans and
18 specifications to the Department for a corrective action that will reduce the uranium
19 concentration in the System to below the MCL of 30 µg/L. The plans and specifications must be
20 prepared by a licensed professional engineer, must be submitted in conformance with ARM
21 17.38.101, *et seq*, and shall address the following:

22 a) Identification of a preferred corrective action to enable the System to meet
23 the uranium MCL. If treatment is proposed, the preferred corrective action may be one
24 of the best available technologies or small system compliance technologies set forth in

1 ARM 17.38.208(3)(f), which adopts and incorporates by reference 40 CFR 141.66(g) and
2 40 CFR 141.66(h);

3 b) A funding plan to implement the selected corrective action. The funding
4 plan shall identify potential funding sources and procedures, including a schedule that
5 Respondent will pursue to secure funding to implement the proposed project; and

6 c) A proposed project schedule for the completion of construction of the
7 corrective action.

8 34. The Department will provide a written review to Respondent on the adequacy of
9 the plans and specifications. Respondent shall respond to any deficiencies in the plans and
10 specifications within 30 days of receipt of the Department's review letter.

11 35. Respondent shall not commence with construction, installation or operation of
12 any corrective action project prior to receipt of written approval from the Department.

13 36. Within 60 days after the Department's written approval, Respondent shall
14 commence construction of the approved corrective action in accordance with the approved plans
15 and specifications.

16 37. Within 90 days after the completing the construction and/or installation of the
17 approved corrective action, Respondent shall provide to the Department, through its engineer, a
18 complete set of certified as-built drawings. See ARM 17.38.101(13).

19 38. All documents required by this Order shall be sent to:

20 John L. Arrigo, Administrator
21 Enforcement Division
22 Department of Environmental Quality
23 1520 East Sixth Avenue
24 P.O. Box 200901
Helena, MT 59620-0901

39. Failure to take the required corrective actions by the specified deadlines, as ordered herein, constitutes a violation of Title 75, chapter 6, part 1, MCA, and may result in the Department seeking a court order assessing civil penalties of up to \$10,000 per day of violation pursuant to Section 76-6-114, MCA.

40. None of the requirements in this Order are intended to relieve Respondent from complying with all applicable state, federal, and local statutes, rules, ordinances, orders, and permit conditions.

41. The Department may take any additional enforcement action against Respondent, including the right to seek injunctive relief, civil penalties, and other available relief for any violation of, or failure or refusal to comply with, this Order.

IV. NOTICE OF APPEAL RIGHTS

42. Respondent may appeal this Order under Section 75-6-109(3), MCA, by filing a written request for a hearing before the Montana Board of Environmental Review no later than 30 days after service of this Order. Any request for a hearing must be in writing and sent to:

Board Secretary
Board of Environmental Review
P.O. Box 200901
Helena, MT 59620-0901

43. Hearings are conducted as provided in the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA. Hearings are normally conducted in a manner similar to court proceedings, with witnesses being sworn and subject to cross-examination. Proceedings prior to the hearing may include formal discovery procedures, including interrogatories, requests for production of documents, and depositions. Because Respondent is not an individual, Respondent must be represented by an attorney in any contested case hearing. See ARM 1.3.231(2) and Section 37-61-201, MCA.

1 44. If a hearing is not requested within 30 days after service of this Order, the
2 opportunity for a contested case appeal is waived.

3 45. This Order becomes effective on the date of service. Service by mail is complete
4 on the date of mailing.

5 IT IS SO ORDERED:

6 DATED this 24th day of May, 2011.

7 STATE OF MONTANA
8 DEPARTMENT OF ENVIRONMENTAL QUALITY

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11 JOHN L. ARRIGO, Administrator
12 Enforcement Division
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