



State of New Jersey

JON S. CORZINE
Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Water Compliance and Enforcement
P.O. Box 422
401 East State Street
Trenton, New Jersey 08625-0422
Telephone (609) 984-5855 Fax (609) 292-9938

MARK N. MAURIELLO
Acting Commissioner

IN THE MATTER OF
PASSAIC VALLEY WATER COMMISSION

ADMINISTRATIVE
CONSENT ORDER

EA ID # NEA080001 – 1605002

This Administrative Consent Order (ACO) is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (Department) by N.J.S.A. 13:1D-1 et seq., and the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and duly delegated to the Administrator of Water Compliance and Enforcement pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The Passaic Valley Water Commission (PVWC) owns and operates a public community water system (system), as defined by N.J.A.C. 7:10-1.3, Public Water System Identification No. 1605002, located in the Cities of Paterson, Passaic and Clifton and Borough of Prospect Park, Passaic County, New Jersey.
2. The New Jersey Safe Drinking Water Act regulations, specifically N.J.A.C. 7:10-5.1, adopt in total, with specific limited exceptions, the most current National Primary Drinking Water Regulations at 40 CFR 141. Subpart W of the National Primary Drinking Water Regulations, Enhanced Treatment for Cryptosporidium, 40 CFR 141.714, requires that systems must meet the conditions of paragraph (c)(1) or (c)(2) of this section for each uncovered finished water storage facility or be in compliance with a State-approved schedule to meet these conditions no later than April 1, 2009. CFR 141.714(c)(1) requires that systems must cover any uncovered finished water storage facility. 40 CFR 141.714(c)(2) requires that systems must treat the discharge from the uncovered finished water storage facility to the distribution system to achieve inactivation and/or removal of at least 4-log virus, 3-log *Giardia lamblia*, and 2-log *Cryptosporidium* using a protocol approved by the State, such as a combination of ultraviolet disinfection and chlorination.

3. PVWC owns and operates three (3) uncovered finished water storage facilities within its system.
4. PVWC cannot meet the requirements of 40 CFR 141.714 (c)(1) and (c)(2) on or before April 1, 2009.
5. Based on the facts set forth in these FINDINGS, the Department has determined that PVWC will violate the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the regulations promulgated pursuant thereto, specifically N.J.A.C. 7:10-5.1 et seq.
6. In order to resolve this matter without trial or adjudication, PVWC has agreed to entry of this ACO and to be bound by its terms and conditions.

ORDER

A. ENFORCEMENT COMPLIANCE SCHEDULE

7. PVWC shall take whatever actions are necessary to achieve and maintain compliance with N.J.A.C. 7:10-5.1 and 40 CFR 141.714 including but not limited to the following:

A. On or before April 15, 2009, PVWC shall submit a scope of work to the Department for review. The scope of work will be for a detailed feasibility study of options to comply with the statutes and regulations cited in the FINDINGS. The feasibility study will examine, at a minimum, elimination of the existing uncovered finished water storage facilities and/or covering of the existing uncovered finished water storage facilities. If the Department does not approve the submittal, PVWC shall make required changes within the timeframe specified by the Department in its written response to the submission.

B. Within one hundred-eighty (180) days of the Department's approval of the submitted scope of work, PVWC shall execute a contract with a consultant to conduct a feasibility study.

C. Within three hundred (300) days of contract execution, PVWC shall submit to the Department a final report detailing the results of the feasibility study referenced above. The feasibility study report will include at least one recommendation to achieve compliance for each of the existing uncovered finished water storage facilities. If more than one recommendation is presented, a preferred recommendation will be identified for each option presented. Each recommendation will identify the benefits and potential limitations of that recommendation. Each recommendation will include an estimated cost. If the Department does not accept the recommendations of the feasibility study report, PVWC shall submit additional required data by the timeframe specified by the Department in its written response to the submission.

8. If this Administrative Consent Order is not executed before April 1, 2009, because PVWC is not in full compliance with 40 CFR 141.714(c)(1) and (c)(2), PVWC shall comply with the public notification requirements for a Tier 2 violation. PVWC shall mail, as a separate notice or

included with the bill, and publish in a local newspaper, the following information by April 30, 2009:

Uncovered Finished Water Reservoir Violation at *System*

Our water system recently violated a drinking water standard. Although this situation is not an emergency, as our customers, you have a right to know what happened and what we did (are doing) to correct this situation. Water systems with uncovered finished water reservoirs are required to eliminate or cover these reservoirs, treat the discharge from these reservoirs, or be in compliance with a state-approved schedule to cover the reservoirs or provide treatment by April 1, 2009. We have failed to meet this requirement.

What should I do?

There is nothing you need to do unless you have a severely compromised immune system, have an infant, or are elderly. These people may be at increased risk and should seek advice about drinking water from their health care providers. General guidelines on ways to lessen the risk of infection by microbes are available from EPA's Safe Drinking Water Hotline at 1-800-426-4791. If you have specific health concerns, consult your doctor.

You do not need to boil your water or take other corrective actions. If a situation arises where the water is no longer safe to drink, you will be notified with 24 hours.

What does this mean?

This situation does not require that you take immediate action. If it had been, you would have been notified immediately.

Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches. These symptoms, however, are not caused only by organisms in drinking water, but also by other factors. If you experience any of these symptoms and they persist, you may want to seek medical advice.

What is being done?

Describe corrective action. We anticipate resolving the problem within *estimated time frame*.

For more information, please contact *name of contact* at *phone number* or *mailing address*.

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

This notice is being sent to you by *system*. State Water System ID#: _____. Date distributed: _____

If this Administrative Consent Order is executed before April 1, 2009, PVWC shall include the following statement in their annual Consumer Confidence Reports (CCR). The CCR is a brief annual water quality report required by 40 CFR 141 Subpart O which summarizes information regarding source, detected contaminants, compliance, and educational information. This statement shall be included effective with the CCR required to be provided on or before July 1, 2009:

Water systems with uncovered finished water reservoirs are required to eliminate or cover these reservoirs, treat the discharge from these reservoirs, or be in compliance with a state-approved schedule to eliminate or cover the reservoirs or provide treatment by April 1, 2009. We have executed an Administrative Consent Order with the New Jersey Department of Environmental Protection wherein PVWC is required to develop a plan and implementation schedule to eliminate, cover or provide treatment for our uncovered reservoirs.

Regardless of which of these notice requirements apply, PVWC shall provide proof of provision and publication to the Department.

9. PVWC agrees, in concept, to meet three (3) times with the Department during the effective period of this ACO. The consultant hired for the feasibility study will attend these meetings as well. Meetings are anticipated to be scheduled at roughly the 30%, 80% and 100% completion points after PVWC executes a contract with a consultant to conduct a feasibility study. At the middle meeting, PVWC, and its consultant, shall provide a draft copy of the feasibility study report. The Department will initiate the scheduling of, and supply proposed agendas for, all meetings. The stipulated penalty provisions of this ACO do not apply to this paragraph.

10. PVWC agrees to execute an amendment of this ACO which shall include the design and construction of the alternative(s) recommended in order for PVWC to achieve compliance with N.J.A.C. 7:10-5.1 and 40 CFR 141.714, or other actions agreed to between the Department and PVWC. The amendment of this ACO shall be executed by all parties within a reasonable amount of time, as determined by the Department. If progress towards amending this ACO does not occur, or the ACO is not amended within a reasonable amount of time, the Department intends to take additional enforcement action in order to bring about compliance with N.J.A.C. 7:10-5.1 and 40 CFR 141.714.

11. If PVWC is not able to achieve compliance by taking the above actions, PVWC is responsible for taking whatever additional actions are necessary in order to comply with all applicable federal, state and local permits as well as all applicable statutes, codes, rules, regulations and orders, including but not limited to the statutes and regulations cited herein.

B. PROGRESS REPORTS

12. PVWC shall submit quarterly progress reports to the Department, at the addresses listed in paragraph twenty-seven (27). The quarters shall be January to March, April to June, July to September, and October to December of each calendar year. Each progress report shall be submitted no later than the last day of the month following the end of the quarter being reported, except when such day falls on a holiday or a weekend, in which case the progress report shall be submitted on the next available business day. The first progress report shall be due on July 30, 2009 for the second calendar quarter of 2009. Each progress report shall explain the status of PVWC's compliance with this ACO and shall include, but not be limited to, the following:

A. identification of site and reference to this ACO;

- B. status of permitting and planning approvals and any work at the site and progress to date;
- C. difficulties or problems encountered during reporting period and actions taken to rectify;
- D. activities planned for the next reporting period;
- E. required and actual completion date for each item required by this ACO;
- F. an explanation of any non-compliance with the compliance schedule; and
- G. evaluation of all corrective measures implemented to date.

C. STIPULATED PENALTIES

13. PVWC shall pay stipulated penalties to the Department, as set forth below, upon the Department's written demand, for PVWC's failure to comply with the Enforcement Compliance Schedule provisions of this ACO and/or the progress report submission deadlines of this ACO unless the Department has notified PVWC in writing that a stipulated penalty will not be assessed for violations of the Enforcement Compliance Schedule pursuant to the force majeure provisions of this ACO.

- a. For all violations of the Enforcement Compliance Schedule set forth in paragraph seven (7) of this ACO:

Calendar Days After Due Date	Stipulated Penalties
1 st through 7 th calendar day of failure to comply with the schedule	\$100 per calendar day
8 th through 14 th day	\$200 per calendar day
15 th day and beyond	\$500 per calendar day

- b. For all violations of the progress report submission deadlines:

Days Past Compliance Date	Stipulated Penalties
Each calendar day that PVWC fails to submit a report	\$50 per calendar day

14. Within sixty (60) calendar days after PVWC's receipt of written demands from the Department for stipulated penalties, PVWC shall submit payment by suitable financial instrument, made payable to "Treasurer, State of New Jersey" in the amount of the stipulated penalties demanded by the Department pursuant to paragraph thirteen (13) above. Payment shall

be mailed with the bottom portion of the Penalty Invoice Form supplied with the written demand. Payment shall be made to the following address:

New Jersey Department of Treasury
Division of Revenue
P.O. Box 417
Trenton, New Jersey 08646-0417

15. If PVWC fails to pay stipulated penalties pursuant to the preceding paragraphs, the Department may take action to collect same, including, but not limited to, instituting civil proceedings to collect such penalties pursuant to R. 4:67 and R. 4:70, or assess civil administrative penalties for violations of this ACO.

16. The payment of stipulated penalties does not alter PVWC's responsibility to complete all requirements of this ACO.

D. FORCE MAJEURE

17. If any event occurs which PVWC believes will or may cause delay in the achievement of the compliance schedule provisions of this ACO, PVWC shall notify the Department in writing or by E-mail sent to the addresses indicated in paragraph twenty-seven (27) below, within 7 calendar days of becoming aware of the delay or anticipated delay, as appropriate. In the notification, PVWC shall reference this paragraph, describe the anticipated length of the delay, the precise cause or causes of the delay, and any measures taken or to be taken to minimize the delay. PVWC shall take all necessary action to prevent or minimize any such delay.

18. The Department may adjust the deadlines in the Enforcement Compliance Schedule of this ACO for a period no longer than the delay if the Department finds that:

- A. PVWC has complied with the notice requirements of the preceding paragraph;
- B. any delay or anticipated delay has been or will be caused by fire, flood, riot, strike, or other circumstances beyond the control of PVWC; and
- C. PVWC has taken all necessary actions to prevent or minimize the delay.

19. If the Department denies PVWC's force majeure request, PVWC may be subject to stipulated penalties and other civil and/or administrative enforcement actions. The burden of proving that it complied with the preceding paragraphs shall rest with PVWC. The burden of proving that any delay is caused by circumstances beyond the control of PVWC and the length of any such delay attributable to those circumstances shall rest with PVWC. Increases in the cost or expenses incurred by PVWC in fulfilling the requirements of this ACO shall not be a basis for an extension of time. Delay in an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements. Contractor's breach shall not automatically constitute force majeure. No force majeure adjustments will be granted for failure to timely submit progress reports.

E. GENERAL PROVISIONS

20. Nothing contained in this ACO restricts the ability of the Department to raise the above Findings in any other proceeding, specifically including, but not limited to, proceedings pursuant to N.J.S.A. 13:1E-126 et seq., (commonly referred to as A-901).

21. This ACO settles and resolves only the violation noted above, and is not a settlement of any other action rising from those violations. Nothing in this ACO shall resolve or preclude prosecution of criminal actions against PVWC, if any.

22. This ACO shall be binding on PVWC, its agents, successors, assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. Additionally, this ACO shall be binding on any PVWC officials, employees, principals, directors, and officers to the extent that any such individual is a responsible corporate official within the meaning of N.J.S.A. 58:10A-31.

23. This ACO shall be fully enforceable as a final Administrative Order in the New Jersey Superior Court.

24. PVWC agrees not to contest the terms or conditions of this ACO except that PVWC may contest the Department's interpretation or application of such terms or conditions in any action brought by the Department to enforce this ACO's provisions.

25. This ACO shall not relieve PVWC from obtaining and complying with all applicable federal, state and local permits as well as all applicable statutes, codes, rule, regulations and orders, including but not limited to the statutes and regulations cited herein.

26. The obligations and penalties of this ACO are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of public health, safety, welfare and the environment and are not intended to constitute debt(s) which may be limited or discharged in a bankruptcy proceeding.

27. Unless otherwise specifically provided herein, PVWC shall submit all documents required by this ACO, except penalty payments, to the Department by certified mail or express mail service, return receipt requested, or by hand delivery with an acknowledgment of receipt form for the Department's signature to:

Stefan D. Sedlak, Section Chief
Northern Bureau of Water
Compliance and Enforcement
7 Ridgedale Ave.
Cedar Knolls, N. J. 07927

E-mail: stefan.sedlak@dep.state.nj.us

and

Michele Putnam, Administrator
Division of Water Supply
P.O. Box 426
Trenton, N. J. 08625-0426

E-Mail: michele.putnam@dep.state.nj.us

The date the Northern Bureau of Water Compliance and Enforcement receives the documents or executes the acknowledgment will be the date the Department uses to determine PVWC's compliance with this ACO.

28. Unless otherwise specifically provided herein, any communication made by the Department to PVWC pursuant to this ACO shall be sent to:

Joseph Bella, Executive Director
Passaic Valley Water Commission
1525 Main Ave.
Clifton, N. J. 07011

with a copy to

George T. Hanley, Esq.
Law Department
Passaic Valley Water Commission
1525 Main Ave.
Clifton, N. J. 07011

29. PVWC shall not construe any unwritten or informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving PVWC of its obligations under this ACO, the New Jersey Safe Drinking Water regulations, and/or the New Jersey Safe Drinking Water Act.

30. In addition to the Department's statutory and regulatory rights to enter and inspect, PVWC shall allow the Department and its authorized representatives access to the site at all times for the purpose of determining compliance with this ACO.

31. Nothing in this ACO shall preclude the Department from taking enforcement action against PVWC for matters not set forth in the findings of this ACO.

32. No obligations or penalties imposed by this ACO are intended to constitute debt(s) which may be limited or discharged in a bankruptcy proceeding. All obligations and penalties are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of public health, safety, welfare and the environment.

33. PVWC shall give written notice of this ACO to any successor in interest thirty (30) calendar days prior to transfer of ownership or control of the facility or facilities which are the subject of this ACO and shall simultaneously notify the Department that such notice has been given. This requirement shall be in addition to any other statutory or regulatory requirements arising from the transfer of ownership or control of PVWC's facility. In addition, the parties agree that any contract, lease, deed or any other agreement that PVWC enters into to convey the property/facility that is the subject of this ACO shall include a provision which states that the successor, assignee, tenant or purchaser has agreed to assume the obligations imposed by this ACO.

34. The Department reserves all statutory and common law rights to require PVWC to take additional action(s) if the Department determines that such actions are necessary to protect public health, safety, welfare and the environment. Nothing in this ACO shall constitute a waiver of any statutory or common law right of the Department to require such additional measures should the Department determine that such measures are necessary.

35. Performance of the terms of this ACO by PVWC is not conditioned in any way on the receipt by PVWC of any federal or state funds.

36. PVWC shall perform all work required by this ACO in accordance with prevailing professional standards.

37. This ACO shall be governed and interpreted under the laws of the State of New Jersey.

38. If any provision of this ACO is found invalid or unenforceable, the remainder of this ACO shall not be affected thereby and each provision shall be valid and enforced to the fullest extent permitted by law. The Department does, however, retain the right to terminate the remainder of this ACO if, after such finding, it determines that the remaining ACO does not serve the purpose for which it was intended.

39. This ACO represents the entire integrated agreement between the Department and PVWC on the matters contained herein.

40. The Department reserves the right to unilaterally terminate this ACO in the event PVWC violates its terms and to take any additional enforcement action it deems necessary.

41. This ACO shall terminate upon receipt by PVWC of written notice from the Department that all the requirements of this ACO have been satisfied. Termination of this ACO shall not relieve PVWC of any liabilities for unpaid penalties as previously demanded by the Department pursuant to the terms and conditions of this ACO, nor shall it affect in any way the Department's rights and abilities to collect said unpaid penalties.

42. This ACO shall become effective upon the execution hereof by all parties.

New Jersey Department of
Environmental Protection

DATE: 3-18-09

BY: 

James K. Hamilton, Administrator
Water Compliance and Enforcement

Passaic Valley Water Commission

DATED: March 30, 2009

BY: 

NAME: Alan C. Levine

TITLE: President

By this signature, I certify that I have full
authority to execute this document on behalf
of the Passaic Valley Water Commission

