

RESOLUTION NO. 4554

A RESOLUTION APPROVING A CONSENT ORDER WITH THE MONTANA DEQ

WHEREAS, the City of Miles City has received a Notice of Violation and Consent Order from the Montana Department of Environmental Quality (“DEQ”), related to certain violations determined by DEQ to have occurred at the City’s water treatment plant;

AND WHEREAS, the City finds it in the best interest of the community to approve and enter into said Consent Order, attached hereto as Exhibit “A”;

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:

1. The “Notice of Violation and Consent Order” attached hereto as Exhibit “A”, and made a part hereof, is hereby approved and adopted by the Council;
2. The Mayor (or acting Mayor) of the City of Miles City is hereby empowered and authorized to execute said Consent Order on behalf of the City of Miles City and to bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 12TH DAY OF MARCH, 2024.


Dwayne Andrews, Council President

ATTEST:


Mary Rowe, City Clerk



February 27, 2024

John Hollowell
City of Miles City
P.O. Box 910
Miles City, MT 59301

CERTIFIED MAIL # 9489 0090 0027 6327 8369 53

RE: Proposed Consent Order, Docket No. PWS-24-02 [PWSID MT0000291, FID 2893]

Dear Mayor Hollowell:

The Montana Department of Environmental Quality (DEQ) is proposing the enclosed Consent Order as a settlement offer to resolve violations of the Montana Public Water Supply Laws (PWSL) that occurred at the City of Miles City (Miles City) public water supply system.

Please review the enclosed Consent Order. To discuss any proposed changes to the Consent Order, please contact me. If Miles City agrees with the Consent Order as written, please sign the Consent Order and return the original signed document within three weeks of receipt of this letter to the address provided below. Alternatively, a signed copy of the signature page may be emailed to marley.held@mt.gov.

Marley Held-Wilson
Enforcement Program
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Upon receipt of the Consent Order signed by a representative of Miles City, DEQ will sign the document, and a copy of the executed Consent Order will be returned to Miles City.

John Hollowell
February 27, 2024
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If you have any questions, please contact me at the phone number or email address listed below.

Sincerely,



Marley Held-Wilson
Environmental Enforcement Specialist
Enforcement Program
(406) 444-1453
email: marley.held@mt.gov

Enclosure

cc via email: Aaron Pettis, DEQ Legal
DEQ Public Water Supply Bureau

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

IN THE MATTER OF:
VIOLATIONS OF THE PUBLIC WATER SUPPLY
LAWS BY THE CITY OF MILES CITY AT THE
MILES CITY PUBLIC WATER SUPPLY
SYSTEM, PWSID MT0000291, MILES CITY,
CUSTER COUNTY, MONTANA (FID 2893)

NOTICE OF VIOLATION
AND
CONSENT ORDER
Docket No. PWS-24-02

Notice of Violation

Pursuant to the authority of Section 75-6-109(1), Montana Code Annotate (MCA), the Montana Department of Environmental Quality (DEQ) hereby gives notice to the City of Miles City (Miles City) 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.

Findings of Fact and Conclusions of Law

Miles City owns and operates the public water supply system that serves the City of Miles City, PWSID MT0000291 (System), located at 67 Water Plant Rd., Miles City, Montana. The System is a community water supply system as defined by Section 75-6-102(4), MCA.

Miles City is supplied by surface water from the Yellowstone River and is subject to the surface water treatment rule (SWTR). See ARM 17.38.101-703 and 40 CFR 141.70-141.75. The System serves fewer than 10,000 people and is therefore required to meet the strengthened combined filter effluent turbidity limits requirements listed in 40 CFR 141.551. The System utilizes conventional surface water treatment and is therefore required to meet the disinfection requirements listed in 40 CFR 141.72(b).

Pursuant to ARM 17.38.208 and 40 CFR 141.72(b), as incorporated therein, the disinfection treatment must be sufficient to ensure that the total treatment processes of that system achieve at least 99.9 percent (3-log) inactivation and/or removal of *Giardia lamblia* cysts and at least 99.99 percent (4-log) inactivation and/or removal of viruses, as determined by the State. The residual disinfectant concentration in the water entering the distribution system cannot be less than 0.2 milligrams per liter (mg/L) for more than 4 hours.

Miles City committed the following violations of the administrative rules adopted under the PWSL:

1. Failure to maintain microbial disinfection in January 2021, June, August and September 2022, and July and August 2023, in violation of ARM 17.38.208. On September 2, 2022, September 27, 2022, and August 22, 2023, DEQ notified Miles City in writing of the violations that occurred in August 2022, September 2022, and August 2023, respectively. The violation letters also included

corrective action and public notification requirements for failing to maintain a chlorine residual above 0.2 mg/L and 3-log removal and/or inactivation of *Giardia lamblia* cysts.

2. Failure to report to DEQ as soon as possible, but no later than by the end of the next business day, when the chlorine residual at the point of entry fell below 0.2 mg/L in June and August 2022, and July 2023, in violation of ARM 17.38.234. On September 2, 2022, DEQ notified Miles City in writing of the violation of the August 2022 violation. The violation letter included corrective action and public notification requirements for failing to notify DEQ by the end of the next business day after the chlorine residual at the point of entry to the distribution system fell below 0.2 mg/L during the August monitoring period.
3. Failure to monitor chlorine residuals continuously during the months of August and December 2022, in violation of ARM 17.38.225. On September 2, 2022, and February 16, 2023, DEQ notified Miles City in writing of the August and December 2022 violations, respectively. The violation letters also included corrective action and public notification requirements for failing to monitor disinfectant residuals at the point of entry to the distribution system continuously with a calibrated analyzer.
4. Failure to report monthly compliance data in May 2022, and March and May 2023, in violation of ARM 17.38.234. Specifically, all combined filter effluent turbidity data was not reported for May 2022, distribution system chlorine residual monitoring data was not reported for March 2023, and point of entry continuous chlorine analyzer logs were not reported for May 2023.
5. Failure to retain records of chemical analysis for not less than 10 years, in violation of ARM 17.38.234. During a sanitary survey of the System conducted on August 30, 2022, DEQ inspectors documented that System operators were only able to retrieve six weeks of data from continuous analyzers and thus were unable to retain records for the required ten years. Miles City was notified of the failure to maintain records for ten years in an October 5, 2022, sanitary survey inspection report.
6. Failure to calibrate analytical instruments, in violation of ARM 17.28.225. During a sanitary survey of the System conducted on August 30, 2022, DEQ inspectors documented that the required calibration of the online chlorine analyzer at the point of entry to the distribution system was not being performed. Miles City was notified of the failure to calibrate the chlorine analyzer in an October 5, 2022, sanitary survey inspection report.

Miles City thus committed 16 violations of Section 75-6-112(3), MCA, which prohibits a person from violating any provision of the PWSL or rules adopted under those laws.

Order

To address these violations, DEQ and Miles City agree that Miles City must do the following:

- A. No later than 30 days from the effective date of this Consent Order, Miles City must designate an individual in responsible charge at the System or on call at all times who can respond in a timely manner to threats to public or environmental health, as required by ARM 17.40.208. The individual in responsible charge of a system must be a fully certified operator for that class or a

more complex class of system. In addition, Miles City must ensure that an operator is present while the treatment plant is in operation.

- B. Miles City must ensure that the treatment plant achieves at least 99.9 percent (3-log) removal and/or inactivation of *Giardia lamblia* cysts and at no time may the chlorine residual at the point of entry to the distribution system fall below 0.2 mg/L, as required by ARM 17.38.208. If the chlorine residual falls below 0.2 mg/L in the water entering the distribution system, Miles City must notify DEQ as soon as possible, but no later than by the end of the next business day.
- C. Miles City must monitor chlorine residual at four points in the distribution system daily. The data collected must be submitted to DEQ by the 10th of the month following the monitoring period.
- D. Miles City must monitor chlorine residuals continuously at the point of entry to the distribution system and must submit the analyzer logs for chlorine residuals to DEQ by the 10th of the month following each monthly monitoring period.
- E. Miles City must submit continuous analyzer data logs for turbidity for all filters and the combined filter effluent to DEQ by the 10th of the month following each monthly monitoring period.
- F. Miles City must submit all monthly compliance reports, as required by ARM 17.38.234, to DEQ by the 10th of the month following the monitoring period.
- G. Miles City must retain records of chemical analysis for not less than 10 years, as required by ARM 17.38.234.
- H. Miles City must calibrate analytical instruments, including turbidimeters and chlorine analyzers, as required by ARM 17.38.225 and 40 CFR 141.74. Documentation of the date, analyst performing the procedure, procedures used, and results of the calibration checks must be maintained by Miles City and reported to DEQ within ten days following the end of the month during which the calibration procedure took place.

Penalties

- J. Instead of DEQ calculating assessed penalties for the violations listed above, Miles City and DEQ agree to stipulated penalties under this Consent Order. If DEQ determines that good cause for any delay does not exist and a deadline is missed due to an unapproved delay, DEQ may demand the following stipulated penalties:
 - a. \$250 per day that the system is without a certified operator in direct responsible charge that meets the classification requirements of the System.
 - b. \$250 for each failure to comply with the requirements described in paragraphs B – H above.
- K. Miles City shall pay DEQ the full amount of any stipulated penalty within 30 days of being notified of the amount that is due. To pay by credit card, debit card, or electronic check, contact

the Enforcement Program at 406-444-0379. Checks or money orders must be made payable to the *Montana Department of Environmental Quality* and sent to:

Marley Held-Wilson
DEQ Enforcement Program
P.O. Box 200901
Helena, MT 59620-0901

- L. If DEQ assesses stipulated penalties under this Consent Order and notifies Miles City of the reason for and amount of the stipulated penalty, and Miles City refuses to pay the amount assessed, DEQ is entitled to a judgement for the stipulated penalty. In such an action, Miles City may dispute the occurrence of the violation; however, if it is determined that a violation has occurred, Miles City may not challenge the amount of the stipulated penalty.
- M. This Consent Order will remain in effect until Miles City has: (1) designated an individual in responsible charge at the System or on call at all times; (2) completed the corrective actions described in paragraphs B – H without further violations that are within Miles City’s control for a period of one year; and (3) has paid any assessed stipulated penalties. DEQ will notify Miles City in writing after the requirements of this Consent Order have been satisfied.

Reservation of Rights and Waiver

Each of the signatories to this Consent Order represents that he or she is authorized to enter into and to bind the parties represented by him or her to the terms of the Consent Order.

This Consent Order is the entire agreement between DEQ and Miles City with respect to the issues addressed herein notwithstanding any other oral or written agreements and understandings made or entered into between DEQ and Miles City before the effective date of this Consent Order.

No amendment, alteration, or addition to this Consent Order will be binding unless reduced to writing and signed by both parties.

Miles City waives its right to administrative appeal or judicial review of this Consent Order and agrees that this Consent Order is the final and binding resolution of the issues raised.

Any failure by Miles City to fulfill the requirements of this Consent Order is a violation of Title 75, chapter 6, part 1, Montana Code Annotated, and may result in DEQ seeking additional corrective action.

Miles City waives defenses based on the statute of limitations for the violations described in this Consent Order and may not challenge DEQ’s right to seek judicial relief if Miles City fails to comply fully with the terms of this Consent Order.

None of the requirements in this Consent Order relieve Miles City from its obligation to comply with all applicable statutes, rules, orders, or permits.

Each party will bear its own costs incurred in this action, including attorney fees.

This Consent Order becomes effective upon signature of DEQ and closes upon written notification from DEQ.

IT IS SO ORDERED:

IT IS SO AGREED:

STATE OF MONTANA, DEPARTMENT OF ENVIRONMENTAL QUALITY

CITY OF MILES CITY

CHAD W. ANDERSON, Program Manager
Enforcement

Dwayne Andrews
Name

Council President
Title

Date

3-12-24
Date