



COMMONWEALTH of VIRGINIA

M. Norman Oliver, MD, MA
State Health Commissioner

Department of Health
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RICHMOND, VA 23218

TTY 7-1-1 OR
1-800-828-1120

**STATE BOARD OF HEALTH
ORDER BY CONSENT
ISSUED TO
Rescue Waterworks
FOR THE
Rescue Waterworks
PWSID No. VA3093400**

This is a Consent Order issued under authority granted by Va. Code § 32.1-26 between the State Board of Health and Rescue Waterworks for the Waterworks for the purpose of resolving certain violations of the Public Water Supplies law and the applicable regulations.

Section A. Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned below:

1. "Board" means the State Board of Health, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code § 32.1-15.
2. "Commissioner" means the State Health Commissioner, who supervises and manages the Department, as described in Va. Code §§ 32.1-16 and 17.
3. "Community system" means a waterworks that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.
4. "Department" or "VDH" means the Department of Health, an agency of the Commonwealth of Virginia, as described in Va. Code § 32.1-16.
5. "EPA" means the U.S. Environmental Protection Agency.
6. "Intractable system" means a community system that serves fewer than 1,000 individuals, the owner or operator of which is unable to provide safe and adequate service to those individuals, and that is, as of the date of enactment of America's Water Infrastructure Act

of 2018 (“Act”), listed as having a history of significant noncompliance as described in § 1459C(a)(3)(B) of the Act.

7. “Notice of Violation” or “NOV” means a type of notice of alleged violation issued under 12VAC5-590-110 of the Regulations.
8. “ODW” means the VDH Office of Drinking Water.
9. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” which the Board is authorized to issue to require any person to comply with the provisions of any law administered by it, the Commissioner or the Department or any regulations promulgated by the Board or to comply with any case decision, as defined in § 2.2-4001, of the Board or Commissioner.
10. “Permit” means Waterworks Operation Permit VA3093400.
11. “PMCL” means primary maximum contaminant level.
12. “Public Water Supplies law” or “PWSL” means Article 2, Chapter 6 of Title 32.1 of the Va. Code.
13. “Pure water” means water fit for human consumption that is (i) sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts and (ii) adequate in quantity and quality for the minimum health requirements of the persons served.
14. “PWSID” means Public Water System Identification.
15. “Regulations” means the Waterworks Regulations, 12VAC5-590-10, *et seq.*
16. “Rescue” means the Rescue Waterworks, an individual, group of individuals, or partnership that supplies water to persons within the Commonwealth of Virginia from or by means of any waterworks.
17. “Va. Code” means the Code of Virginia (1950), as amended.
18. “VAC” means the Virginia Administrative Code.
19. “Waterworks” means Rescue Waterworks, a community system located on the south side of Route 704, approximately 1 mile west of its intersection with Route 665 in the Rescue-Battery Park area in Isle of Wight County. A waterworks means piped water for human

consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year. Waterworks includes all structures, equipment, and appurtenances used in storage, collection, purification, treatment, and distribution of pure water except the piping and fixtures inside the building where such water is delivered.

Section B. Findings of Fact and Conclusions of Law

1. Rescue owns and operates the Waterworks. The Waterworks serves a population of approximately 203 year-round residents with 83 service connections, and consists of two wells, each 4.5 inches in diameter with a 5 horsepower submersible pump, and a hydropneumatic pressure tank in series with 5,000 gallons storage capacity.
2. On June 24, 1977, ODW issued the Permit to Rescue Waterworks to operate the Waterworks in compliance with the PWSL and Regulations.
3. By letter dated January 27, 2012, the EPA determined that Rescue Waterworks had no viable options for resolving the fluoride PMCL violations. Subsequently, VDH and EPA agreed to classify the Rescue Waterworks as an intractable system because it is unable to provide safe and adequate service to its customers by complying with the fluoride PMCL. Fluoride is a naturally-occurring element in the groundwater for the geographical area in which the Rescue Waterworks is located. Based on similar projects in the same geographic area, it is estimated that fluoride treatment would cost at least \$25-35,000 (cost of engineering and construction, not including operation and maintenance); however, unlike similar waterworks in Isle of Wight County, Rescue does not have a viable discharge point to discharge treated wastewater to state waters.
4. ODW records indicate that Rescue reported laboratory results of quarterly fluoride samples taken at the entry point of the Waterworks as follows:

Analyte	Compliance Period	Compliance Period's Running Annual Average (RAA)	Primary Maximum Contaminant Level (PMCL)	Date NOV Issued
Fluoride	1/1/14 – 12/31/14	4.5 mg/L	4.0 mg/L	2/3/15
Fluoride	4/1/14 – 3/31/15	4.6 mg/L	4.0 mg/L	5/5/15
Fluoride	7/1/14 – 6/30/15	4.7 mg/L	4.0 mg/L	7/29/15
Fluoride	10/1/14 – 9/30/15	4.8 mg/L	4.0 mg/L	11/4/15
Fluoride	1/1/15 – 12/31/15	4.9 mg/L	4.0 mg/L	2/22/16
Fluoride	4/1/15 – 3/31/16	5.0 mg/L	4.0 mg/L	5/3/16
Fluoride	7/1/15 – 6/30/16	4.9 mg/L	4.0 mg/L	8/8/16
Fluoride	10/1/15 – 9/30/16	4.9 mg/L	4.0 mg/L	11/4/16
Fluoride	1/1/16 – 12/31/16	4.8 mg/L	4.0 mg/L	4/4/17

Analyte	Compliance Period	Compliance Period's Running Annual Average (RAA)	Primary Maximum Contaminant Level (PMCL)	Date NOV Issued
Fluoride	4/1/16 – 3/31/17	4.8 mg/L	4.0 mg/L	9/8/17
Fluoride	7/1/16 – 6/30/17	4.7 mg/L	4.0 mg/L	9/8/17
Fluoride	10/1/16 – 9/30/17	4.7 mg/L	4.0 mg/L	12/11/17
Fluoride	1/1/17 – 12/31/17	4.7 mg/L	4.0 mg/L	3/7/18
Fluoride	4/1/17 – 3/31/18	4.6 mg/L	4.0 mg/L	6/8/18
Fluoride	7/1/17 – 6/30/18	4.6 mg/L	4.0 mg/L	8/16/18
Fluoride	10/1/17 – 9/30/18	4.7 mg/L	4.0 mg/L	10/29/18
Fluoride	1/1/18 – 12/31/18	4.6 mg/L	4.0 mg/L	1/14/19
Fluoride	4/1/18 – 3/31/19	4.5 mg/L	4.0 mg/L	4/15/19
Fluoride	7/1/18 – 6/30/19	4.6 mg/L	4.0 mg/L	7/9/19
Fluoride	10/1/18 – 9/30/19	4.7 mg/L	4.0 mg/L	12/26/19
Fluoride	1/1/19 – 12/31/19	4.8 mg/L	4.0 mg/L	2/21/20
Fluoride	4/1/19 – 3/31/20	4.9 mg/L	4.0 mg/L	5/1/20
Fluoride	7/1/19 – 6/30/20	4.9 mg/L	4.0 mg/L	8/20/20
Fluoride	10/1/19 – 9/30/20	4.9 mg/L	4.0 mg/L	11/5/20

5. 12VAC5-590-370.B.1 (Sampling Frequency.) of the Regulations and Table 2.2 of 12VAC5-590-440, state, in part, that the PMCL for naturally-occurring fluoride is 4.0 mg/L.
6. 12VAC5-590-410.B.1.c (Determination of Compliance.) of the Regulations states, in part, “[c]ompliance with [the PMCL for]... fluoride...in Table 2.2 of 12VAC5-590-440 shall be determined based on the analytical result(s) obtained at each sampling point. (1) Owners that are conducting monitoring more frequently than annually, compliance with the PMCL for... fluoride... is determined by a running annual average at each sampling point.”
7. EPA and ODW are aware of the challenges to fluoride treatment for small systems. While Rescue has made reasonable efforts to explore options to comply with the fluoride PMCL, Rescue Waterworks remains non-compliant with the drinking water standards for fluoride in potable water. No viable options currently exist for Rescue Waterworks to achieve compliance with the fluoride PMCL.
8. Pursuant to Va. Code § 32.1-26, the Board may issue orders requiring compliance with any law or regulation administered by the Board.
9. Based on ODW records, the Board concludes that Rescue has violated 12VAC5-590-370.B.1 and 12VAC5-590-410.B.1.c of the Regulations, as described in paragraphs B(3) through B(6) above.

Section C. Agreement and Order

Accordingly, pursuant to Va. Code § 32.1-26, the Board orders Rescue, and Rescue agrees, to perform the actions described in Appendix A of this Order.

Section D. Administrative Provisions

1. This Order does not suspend, minimize, or otherwise alter Rescue's obligation to comply with federal, state, and local laws and regulations. The Board waives no lawful means of enforcing the laws it administers, the regulations it has adopted, or this Order.
2. To the fullest extent allowed by law, this Order is binding on Rescue, its agents and legal representatives, heirs, devisees, executors, administrators, and successors in interest, jointly and severally as applicable.
3. This Order shall become effective on the 15th day after a hard copy is mailed to Rescue. Va. Code § 32.1-26. Any request for modification of this Order shall be submitted to VDH in writing to be considered for approval by the Board or its designee. The Board may revoke this Order in its discretion upon 30 days written notice to Rescue.
4. This Order addresses and resolves those violations specifically identified in Section B of this Order, as well as future fluoride PMCL violations so long as the Waterworks is considered an intractable system and no viable treatment or alternative options exist to address the fluoride PMCL violations. Future fluoride PMCL violations shall be subject to this Order and the Corrective Action Plan and associated schedule as required by Appendix A of this Order.
5. This Order shall not preclude VDH from taking any action authorized by law, including but not limited to taking any action authorized by law regarding additional, subsequent, or subsequently discovered violations or taking subsequent action to enforce this Order.
6. Rescue waives its rights to further hearings or challenges, whether civil or administrative, on this Order and specifically waives its right to a hearing under Va. Code §§ 2.2-4019 or 2.2-4020 as a predicate for this Order. Rescue consents to the issuance of this Order freely, voluntarily, and after an opportunity to consult counsel of its choice.
7. Failure of Rescue to comply with any terms of this Order shall constitute a violation of this Order. Nothing herein shall waive the initiation of appropriate enforcement action or issuance of additional orders as appropriate by VDH because of such violations. Nothing

herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

8. This Order shall remain in effect until: (1) the Commissioner or his designee terminates the Order after Rescue has completed all of the requirements of the Order; (2) EPA and VDH agree that a new future viable option for addressing elevated fluoride levels may be available; or (3) the Commissioner or Board terminates the Order in their sole discretion upon 30 days written notice to Rescue.
9. Termination of this Order, or any obligation imposed in it, shall not relieve Rescue from its obligation to comply with any statute, regulation, permit condition, other agreement, certificate, certification, standard, or requirement otherwise applicable.

It is SO ORDERED this 9th day of February, 2021.

STATE BOARD OF HEALTH
Commonwealth of Virginia

M. Norman Oliver MD
M. Norman Oliver, MD, MA
State Health Commissioner

Rescue Waterworks voluntarily agrees to the issuance of this Order.

Date: 12-28-2020 By: Linda S. Downing, SECRETARY / TREASURER
(Person) (Title)

Commonwealth of Virginia

City/County of Isle of Wight

The foregoing document was signed and acknowledged before me this 28th day of December, 2020 by Linda S. Downing who is SECRETARY / TREASURER of Rescue Waterworks signing on behalf of the partnership.

Suzanne E. Jones
Notary Public
7369554

Registration No.

My commission expires: 11/30/2023

Notary seal:



Appendix A

Corrective Action Plan and Schedule of Compliance

Rescue Waterworks shall:

1. Within 30 days of the effective date of this Order, submit to ODW for review and approval a corrective action plan (CAP) and Schedule that describes the actions that Rescue has taken or plans to take to comply consistently with the law and regulations. At a minimum, the CAP and Schedule shall address the following:
 - a. Complying with and remaining in compliance with the fluoride PMCL for four consecutive quarters.
 - b. To the extent that Rescue cannot immediately comply with the fluoride PMCL, include a plan and schedule for obtaining full compliance with the fluoride PMCL, or otherwise include the consideration of alternatives, such as connecting to another public water system or implementing a modification or replacement of the existing system.
 - c. Submitting quarterly progress reports for ODW review indicating the status of fluoride PMCL compliance.
 - d. Submitting an annual cost estimate to reduce the fluoride contaminant level below 4 mg/L.
 - e. Annually notifying customers of the Waterworks of the risks associated with drinking water with a fluoride contaminant level exceeding 4 mg/L.
2. Upon ODW approval of the CAP and Schedule, implement the CAP in accordance with the Schedule. The approved CAP and Schedule shall become a part of and enforceable under the terms of this Order.
3. VDH shall closely monitor and evaluate compliance with the fluoride PMCL quarterly to ensure that the system is still considered an intractable system and no viable treatment or alternative options exist to address the fluoride PMCL violations.
4. Upon completion of the CAP, by maintaining compliance with the fluoride PMCL for four consecutive quarters through modification/replacement of the existing system, or by connecting to another public water system, submit a final report, for review and verification by ODW, verifying that the CAP has been completed in accordance with the terms of this Order.
5. Submit all requirements of Appendix A of this Order to:

Holly Baumstark, Environmental Health Compliance Specialist

VDH-ODW – Southeast Virginia Field Office
830 Southampton Ave, Room 2058
Norfolk, VA 23510