



COMMONWEALTH of VIRGINIA

M. Norman Oliver, MD, MA
State Health Commissioner

Department of Health
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RICHMOND, VA 23218

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**STATE BOARD OF HEALTH
ORDER BY CONSENT
ISSUED TO
Shenandoah Utility Services, Inc.
FOR
Shenandoah Utility Services Waterworks
PWSID No. VA2139017**

This is a Consent Order, issued under authority granted by Va. Code § 32.1-26, between the State Board of Health and Shenandoah Utility Services, Inc., for the Shenandoah Utility Services Waterworks for the purpose of resolving certain alleged 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 waterworks" 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. "LFO" means the ODW Lexington Field Office located in Lexington, Virginia.
6. "Mr. Mathews" means David Mathews, President of Shenandoah Utility Services, Inc.

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 VA2139017.
11. “Public Water Supplies law” or “PWSL” means Article 2, Chapter 6 of Title 32.1 of the Va. Code.
12. “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.
13. “PWSID” means Public Water System Identification.
14. “Regulations” means the Waterworks Regulations, 12VAC5-590-10, *et seq.*
15. “Shenandoah Utility” means Shenandoah Utility Services, Inc., a corporation that supplies or proposes to supply water to any person within this Commonwealth from or by means of any waterworks.
16. “Shenandoah Waterworks” means the Shenandoah Utility Services Waterworks located in Page County, Virginia, which serves piped water for human consumption to 18 service connections and approximately 55 individuals for at least 60 days out of the year.
17. “Va. Code” means the Code of Virginia (1950), as amended.
18. “VAC” means the Virginia Administrative Code.
19. “Warning Letter” means a type of notice of alleged violation.
20. “Waterworks” means a system that serves 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. Shenandoah Utility owns and operates the Shenandoah Waterworks. Shenandoah Waterworks is a community system consisting of one drilled well, a sandblast storage tank, one booster pump, four pre-pressurized storage tanks, chlorination treatment, and the distribution system.
2. On August 12, 2004, ODW issued the Permit to operate Shenandoah Waterworks in compliance with the PWSL and the Regulations.
3. On June 30, 2020, ODW staff performed a formal enforcement follow-up inspection of Shenandoah Waterworks. By letter dated July 22, 2020, ODW staff informed Mr. Mathews of ongoing noncompliance and recommended certain corrective actions necessary to operate Shenandoah Waterworks in compliance with the law and regulations. Based on the sanitary survey and a review of ODW records, the following are ODW staff's observations:
 - a. Shenandoah Utility failed to maintain conditions throughout the entirety of the water supply system in a manner that assures a high degree of capability and reliability. The 800-gallon modified sandblast tank is not an approvable storage tank, and the lid on top of the converted sandblast tank was unlocked. The booster pump shows considerable corrosion and deterioration. A compound pressure gauge was not installed on the suction side of the booster pump nor was a pressure gauge installed on the discharge line leaving the booster pump. A pre-pressurized bladder tank was waterlogged and the other three were valved off. Electrical wiring was exposed and not properly encased in the vault.
 - b. Shenandoah Utility failed to report water production during the August 2019 to April 2021 monthly monitoring periods. The current position of the water meter monitors treated water delivered to the distribution system and not the untreated water production of the well.
 - c. Shenandoah Utility failed to submit monthly operation reports by the 10th day of the month following the month during which the chlorine residual test results at the entry point should have been received for the August 2019 to April 2021 monitoring periods. Mr. Mathews failed to measure chlorine residuals at the entry point to the distribution system a minimum of 3 days per week and report chlorine residuals on the monthly operation reports.

- d. Shenandoah Utility failed to certify that he distributed the 2018 consumer confidence report to customers served by the Shenandoah Waterworks within three months of distributing the report verifying that the report had been distributed to the customers in compliance with the requirements.
 - e. The chlorine feed system is not configured to operate at the same time as the well pump.
 - f. Only one booster pump has been installed and is in operation. The booster pump was short cycling, possibly due to the single waterlogged pressure tank and/or a faulty pressure switch.
 - g. Shenandoah Utility does not provide 48 hours of total effective storage volume based on water usage. There are four pressure tanks total; three were valved off and only one was in operation, which was waterlogged.
 - h. The well lot was not free and clear of potential sources of contamination. The area around the well was cluttered with various construction materials, storage buckets, and barrels.
 - i. Shenandoah Utility failed to certify in writing that it completed an emergency management plan for extended power outages.
4. The Regulations, at 12VAC5-590-360.A (Responsibility; owner.), state, in part, “The water utility owner... shall provide and maintain conditions through the entirety of the water supply system in a manner which will assure a high degree of capability and reliability... This requirement shall pertain to the source of supply, treatment, transmission, storage, and distribution facilities and the operation thereof.”
5. The Regulations, at 12VAC5-590-505 (Emergency management plan for extended power outages.), state, in part, “A. Each community waterworks... shall develop and maintain an emergency management plan for extended power outages....C. Each community waterworks shall certify in writing to the appropriate field office of [ODW]...that the waterworks has completed such plan.”
6. The Regulations, at 12VAC5-590-530.A (Reporting.), state, in part, “The results of any required monitoring activity shall be reported by the owner... to the ODW no later than... the 10th day of the month following the month during which the tests results were received...”
7. The Regulations, at 12VAC5-590-545.G.3 (Consumer confidence reports.), state, “No later than July 1 of each year community waterworks owners shall deliver a copy of the

report to the district engineer, followed within three months by a certification that the report has been distributed to customers and that the information in the report is correct and consistent with the compliance monitoring data previously submitted to the commissioner.”

8. The Regulations, at 12VAC5-590-690 (Capacity of waterworks.), state, “The design capacity of the waterworks shall exceed the maximum daily water demand of the system....A. [The annual daily water demand for dwellings, per person, is 100 gallon per day]....F. Waterworks serving less than 50 residential connections with wells as the source of supply shall provide or have access to an auxiliary pump stored or stocked locally or they shall provide 48 hours of total effective storage volume based on water usage.”
9. The Regulations, at 12VAC5-590-700 (Metering total water production.), state, “A. Waterworks providing chlorination only shall meter the water prior to treatment....E. All waterworks shall provide metering of total water production.”
10. The Regulations, at 12VAC5-590-840.A.2.a (Groundwater sources.), state, in part, “The horizontal distance from the well to... all surface runoff from actual or potential sources of contamination shall be at least 50 feet.”
11. The Regulations, 12VAC5-590-860.C.2.a (Chemical application.) state, “Feeders shall be able to supply at all times the necessary amounts of chemical at an accurate rate throughout the range of feed.”
12. The Regulations, at 12VAC 5-590-1050.A (Booster pumps.), state, “Booster pumps... shall be located or controlled so that:... 4. Automatic or remote control devices shall have a range between the start and cutoff pressure which will prevent excessive cycling.”
13. The Regulations, at 12VAC5-590-1090.E (Plant storage.), state, “Hydropneumatic (pressure) tanks may be acceptable in small water systems. When used, they shall comply with the requirements of state and local laws and regulations for the construction and installation of unfired pressure vessels...5. Tanks and pumps shall be designed to minimize pump cycling and shall have at least the following capacity:... b. When the hydropneumatic tank is fed directly from ground storage, the effective storage volume is the effective volume of the ground storage tank plus the effective volume of the hydropneumatic tank; and c. At least two booster or transfer pumps are required which have a combined capacity to meet the requirements of 12VAC5-590-690.C.
14. On December 30, 2019, VDH issued NOV's to Mr. Mathews for failing to distribute the annual 2018 CCR by July 1, 2019, and failing to return a Delivery Certification Statement to the district engineer by October 1, 2019.

15. On January 2, January 3, February 5, March 5, April 8, May 5, June 5, July 8, August 13, September 4, October 16, November 13, and December 17 of 2020, and January 5, February 24, March 31, April 2, and May 26 of 2021, VDH issued NOVs to Mr. Mathews for failing to submit monthly operation reports each month by the 10th day of the following month.
16. By Warning Letter dated April 14, 2021, ODW notified Mr. Mathews that Shenandoah Waterworks had been identified as a “potential Serious Violator” under the Environmental Protection Agency (EPA) Enforcement Response Policy (ERP) for the above mentioned violations. The ERP helps VDH and EPA identify those systems with violations that present the most potential for harm to human health and prioritize an enforcement response.
17. Pursuant to Va. Code § 32.1-26, the Board may issue orders requiring compliance with any law or regulation administered by the Board.
18. Based on ODW records, the Board concludes that Shenandoah Utility has violated 12VAC5-590-360.A, 12VAC5-590-505, 12VAC5-590-530.A, 12VAC5-590-545.G.3, 12VAC5-590-690, 12VAC5-590-700, 12VAC5-590-840.A.2.a, 12VAC5-590-860.C.2.a, 12VAC 5-590-1050.A.4, and 12VAC5-590-1090.E of the Regulations, as described in paragraphs B(3) through B(13) above.

Section C. Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 32.1-26 and 32.1-27, the Board orders Shenandoah Utility, and Shenandoah Utility agrees, to:

1. Perform the corrective actions enumerated in Appendix A of this Order.

Section D. Administrative Provisions

1. This Order addresses and resolves only those violations specifically identified in Section C of this Order. 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.
2. This Order does not suspend, minimize, or otherwise alter Shenandoah Utility’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.

3. Shenandoah Utility agrees that it has received fair and due process under the Administrative Process Act and waives its right to any hearing or other administrative proceeding authorized or required by law or regulation.
4. To the fullest extent authorized by law, this Order is binding on Shenandoah Utility and any successors in interest, designees and assigns, jointly and severally.
5. The Board may modify, rewrite, or amend this Order with the consent of Shenandoah Utility, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000, *et seq.*, after notice and opportunity to be heard. Any request for modification of this Order shall be submitted to VDH by Shenandoah Utility in writing to be considered for approval by the Board or its designee.
6. Failure of Shenandoah Utility to comply with any terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or Department as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Any plans, reports, schedules, or specifications submitted by Shenandoah Utility and approved by the Department pursuant to this Order are incorporated into this Order, including the PER. Any non-compliance with such approved documents shall be considered a violation of this Order.
9. Shenandoah Utility shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Failure to notify the Department verbally within 24 hours and in writing within three business days shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
10. This Order shall become effective on the 15th day after a copy of it is mailed to Shenandoah Utility. Va. Code § 32.1-26.
11. This Order shall continue in effect until:

- a. The Commissioner or his designee terminates the Order after Shenandoah Utility has completed all of the requirements of this Order;
 - b. Shenandoah Utility petitions the Commissioner or his designee to terminate the Order after it has completed all of the requirements of the Order and the Commissioner or his designee approves the termination of the Order; or
 - c. The Commissioner or Board terminates the Order in their sole discretion upon 30 days' written notice to Shenandoah Utility.
12. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Shenandoah Utility from its obligation to comply with any statute, regulation, permit condition, other order, certificate, standard, or requirement otherwise applicable.
13. The undersigned representative of Shenandoah Utility certifies that they are a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Shenandoah Utility to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Shenandoah Utility.
14. By its signature below, Shenandoah Utility voluntarily agrees to the issuance of this Order.

It is SO ORDERED.

STATE BOARD OF HEALTH
Commonwealth of Virginia

DocuSigned by:

M. Norman Oliver, MD

9/25/2021 | 4:40:05 PM EDT

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M. Norman Oliver, MD, MA
State Health Commissioner

Shenandoah Utility Services, Inc. voluntarily agrees to the issuance of this Order.

Date: 9/20/2021 | 2:11:45 PM EDT By: David Mathews, owner
(Person) (Title)

Shenandoah Utility Services, Inc.

Appendix A

Correction Action Plan and Schedule

Shenandoah Utility 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 sets forth actions that Shenandoah Utility has taken or plans to take to comply with the PWSL and Regulations.
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. After initial approval of the CAP and Schedule by ODW, submit any proposed modifications to the approved CAP or Schedule to ODW in writing for review and approval prior to taking action.
4. Upon completion of the CAP, submit a final report verifying that the CAP has been completed in accordance with the terms of this Order.
5. Mail all requirements of Appendix A of this Order to:

Athena Van Lear, Environmental Health Compliance Specialist
VDH-ODW – Lexington Field Office
131 Walker Street
Lexington, VA 24450