



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Southern Bureau of Water Compliance & Enforcement
2 Riverside Drive, Suite 201
Camden, New Jersey 08103-0137

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

Certified Mail
Return Receipt Requested
7007 2560 0002 3204 3755

June 15, 2011

Honorable Mayor Steve DiDonato and Council
Town of Hammonton
100 Central Avenue
Hammonton, NJ 08037

Re: Administrative Consent Order
Hammonton Public Community Water System
PWSID 0113001, NJEMS Document No. NEA110001
Town of Hammonton, Atlantic County

Dear Mayor and Council:

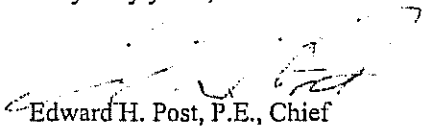
As discussed between representatives of Hammonton and this Department, attached is the Administrative Consent Order ("ACO") to address the Town of Hammonton's Gross Alpha Activity and Combined Radium Maximum Contaminant Level ("MCL") violations in the drinking water system and Hammonton's subsequent failure to issue timely public notification and failure to timely notify the Department of these MCL violations.

Pursuant to N.J.A.C. 7:10-5.7(c), if construction of new treatment is required, the Department may extend the deadline by which Hammonton must achieve compliance with the applicable MCL after a public hearing and its determination that the time extension will not pose an imminent threat to public health. The Department has determined that Hammonton must construct treatment facilities to comply with Gross Alpha and Combined Radium MCLs at Treatment Plant TP003010 and that an extension to the one year deadline to take action to comply with the MCLs will not pose an imminent threat to public health. In addition, on May 23, 2011, Hammonton held a public meeting which included a detailed presentation of the radiological contaminant issues, satisfying the requirement for a public hearing.

The ACO has already been signed by the Department. Both attached copies of the ACO should be executed by a duly authorized representative of Hammonton and one signed copy returned to this office at the letterhead address by no later than June 30, 2011. Should Hammonton not execute and return this ACO within the time specified, this settlement offer shall be null and void.

If you have any questions regarding this ACO, please contact Michael Pagano of my staff at (856) 614-3655.

Very truly yours,


Edward H. Post, P.E., Chief
Southern Bureau of Water
Compliance & Enforcement

Enclosures



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

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Commissioner

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Lt. Governor

IN THE MATTER OF : ADMINISTRATIVE
TOWN OF HAMMONTON : CONSENT ORDER
(HAMMONTON WATER DEPARTMENT)

EA ID # NEA110001

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., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. and the Safe Drinking Water Act regulations, N.J.A.C. 7:10-1 et seq., and duly delegated to the Bureau Chief of the Southern Bureau of Water Compliance and Enforcement, pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The Town of Hammonton ("Hammonton") owns and operates the Hammonton Water Department, a public community water system, PW ID No. 0113001 ("the System"), which serves approximately 4,000 connections and approximately 13,433 persons.
2. Pursuant to N.J.A.C. 7:10-5.1, the Department adopted and incorporated by reference the National Primary Drinking Water Regulations at 40 CFR 141, with certain modifications, as the New Jersey Primary Drinking Water Regulations, which are applicable to all public water systems.
3. Pursuant to the National Primary Drinking Water Regulations at 40 CFR 141.26, public community water systems are required to conduct routine monitoring for Radium 226 & 228 and for Gross Alpha Activity as specified therein.
4. Pursuant to 40 CFR 141.26(c)(3)(i), for systems monitoring more than once per year, compliance with the Maximum Contaminant Level ("MCL") for Radionuclides, including Radium 226 & 228 and Gross Alpha Activity, is determined by a running annual average at each sampling point. Pursuant to 40 CFR 141.26, Hammonton was required to collect four (4) consecutive quarterly samples at all sampling points.
5. Pursuant to 40 CFR 141.66, the MCL for combined Radium 226 & 228 is 5 picoCuries per Liter ("pCi/L"), and 15 pCi/L for Gross Alpha Activity.
6. Hammonton has submitted monitoring data to the Department for the monitoring periods from the 3rd calendar quarter of 2007 through the 1st calendar quarter of 2011 which indicated that Hammonton exceeded the MCLs for Gross Alpha Activity and Radium 226 & 228 at Treatment Plant TP003010, the point of entry for wells 5 and 7, as follows:

| Monitoring period | Raw Data (picoCuries per Liter) | | Rolling Annual Average* (picoCuries per Liter) | |
|------------------------|------------------------------------|------------------|---|------------------|
| | Gross Alpha | Radium 226 & 228 | Gross Alpha | Radium 226 & 228 |
| 3 rd Q 2007 | 16.43 | 5.9 | 16.0* | 4.6 |
| 4 th Q 2007 | 13.70 | 8.0 | 15.2 | 5.6* |
| 1 st Q 2008 | 16.24 | 4.6 | 15.4 | 5.7* |
| 2 nd Q 2008 | 14.69 | 4.2 | 15.3 | 5.7* |
| 3 rd Q 2008 | 15.83 | 6.9 | 15.1 | 5.9* |
| 4 th Q 2008 | 19.51 | 6.1 | 16.6* | 5.4 |
| 1 st Q 2009 | 15.41 | 5.8 | 16.4* | 5.8* |
| 2 nd Q 2009 | 13.86 | 5.6 | 16.2* | 6.1* |
| 3 rd Q 2009 | 15.57 | 4.7 | 16.1* | 5.6* |
| 4 th Q 2009 | 13.48 | 4.2 | 14.6 | 5.1 |
| 1 st Q 2010 | 15.79 | 5.1 | 14.7 | 4.9 |
| 2 nd Q 2010 | 15.87 | 3.8 | 15.2 | 4.5 |
| 3 rd Q 2010 | 20.49 | 9.1 | 16.4* | 5.6* |
| 4 th Q 2010 | 13.72 | 5.6 | 16.5* | 5.9* |
| 1 st Q 2011 | 14.00 | 5.1 | 16.0* | 5.9* |

* MCL Violation

7. Hammonton has submitted monitoring data to the Department which indicated that Hammonton exceeded the MCL for Gross Alpha Activity at Treatment Plant TP001003, the point of entry for wells 1 and 3, for the 3rd calendar quarter of 2007 and the 1st through the 4th calendar quarters of 2008. However, the samples were collected at a point after it leaves a storage tank that is filled by all of Hammonton's wells so the results may not be representative of water supplied by just Wells 1 and 3. Subsequent monitoring data showed that this treatment plant returned to compliance for Gross Alpha Activity in the 1st calendar quarter of 2009. In addition, raw water samples collected in January 2009 indicated Gross Alpha Activity and combined Radium 226 & 228 levels below the MCLs at wells 1 and 3.
8. Hammonton has submitted monitoring data to the Department which indicated that Hammonton exceeded the MCL for Gross Alpha Activity at Treatment Plant TP002007, the point of entry for well 4, for the 1st and 2nd calendar quarters of 2008. Subsequent monitoring data showed that this treatment plant returned to compliance for Gross Alpha Activity in the 3rd calendar quarter of 2008.
9. In accordance with 40 CFR 141.203(b), Tier 2 Public Notice must be issued within thirty (30) days of a system's knowledge of a MCL violation and this Public Notice must be repeated quarterly as long as the MCL violation continues.
10. A review of Department records indicates that Hammonton did not issue Public Notice for the Gross Alpha Activity and Radium 226 & 228 MCL violations noted in paragraphs 6, 7 and 8, above within the required time frames.
11. Pursuant to N.J.A.C. 7:10-5.4(e) and 40 CFR 141.31, each supplier of water from a public community water system shall report a MCL violation to the Department's Bureau of Safe Drinking Water ("BSDW") by telephone within forty-eight (48) hours of becoming aware of the violation.

12. A review of Department's records indicates that Hammonton failed to notify the Department within forty - eight (48) hours following the receipt of samples indicating the MCL violations noted in paragraphs 6, 7 and 8, above.
13. Pursuant to N.J.S.A. 58:12A-15 and N.J.A.C. 7:10-5.7(a), the owner or operator of a public community water system that has been determined to exceed an MCL shall, within a year after receipt of the test results, take any action required to bring the system into compliance with the MCL.
14. To date, Hammonton has not completed action to bring the system into compliance with the MCLs for Gross Alpha and Radium 226 & 228 at Treatment Plant TP003010, and therefore is in violation of N.J.S.A. 58:12A-15 and N.J.A.C. 7:10-5.7(a).
15. On April 1, 2011, representatives from the Department and Hammonton met to discuss the MCL violations noted above. During this meeting, Hammonton was advised that they must take action to bring the system back into compliance with the MCLs for Gross Alpha and Radium 226 & 228.
16. On May 11, 2011, Hammonton issued Public Notice for the Gross Alpha Activity and Radium 226 & 228 MCL violations noted in paragraphs 6, 7 and 8, above. In addition, on May 23, 2011, Hammonton held a public hearing regarding Gross Alpha Activity and Radium 226 & 228 MCL compliance and also provided notice that a local water emergency exists and that water use restrictions had to be implemented.
17. Pursuant to N.J.A.C. 7:10-5.7(c), the Department may extend the deadline by which a supplier of water must achieve compliance with the applicable MCL after a public hearing and its determination that the extension shall not pose an imminent threat to public health, if new construction of a treatment plant is required. The Department has determined that Hammonton must construct treatment facilities to comply with Gross Alpha and Radium 226 & 228 MCLs at Treatment Plant TP003010 and that an extension to the one year deadline to take action to comply with the MCLs will not pose an imminent threat to public health.
18. Based on the facts set forth in these FINDINGS, the Department has determined that Hammonton has violated the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the regulations promulgated pursuant to N.J.A.C. 7:10-1 et seq., specifically, N.J.A.C. 7:10-5 et seq. In order to resolve these violations, the Department and Hammonton enter into this ACO without trial or adjudication and without any admission of law or fact by either party. However, nothing in this ACO shall preclude the Department from considering the violations listed herein when assessing penalties for any future violations.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED AND AGREED THAT:

19. Hammonton shall construct treatment facilities designed to meet Gross Alpha and Radium 226 & 228 MCLs at Treatment Plant TP003010 in accordance with the schedule set forth below:
 - a) Submit to the Department's Bureau of Water Systems and Well Permitting an administratively complete permit application for construction of treatment facilities: no later than September 1, 2011;
 - b) Begin Construction of treatment facilities: no later than December 1, 2011;

- c) Complete construction and commence operation of treatment facilities: no later than December 1, 2012;
 - d) Comply with Gross Alpha and Radium 226 & 228 MCLs: no later than January 1, 2013.
20. As a condition of the extension set forth in paragraph 22, below, and to limit to the extent possible the use of TP003010, Hammonton will operate its system as follows:
- a. Hammonton shall impose and enforce mandatory water use restrictions;
 - b. Hammonton will use Treatment Plant TP003010, the point of entry for wells 5 and 7, for a proportionally lesser amount of its total water supply until the construction of the treatment facilities are complete, operational and the water distributed meets applicable MCLs;
 - c. Hammonton shall conduct public notification pursuant to 40 CFR 141.203(b) for every instance that TP003010 is used; and
 - d. Hammonton shall submit to the Department copies of its monthly treatment plant operator's reports, reports of any mandatory water restriction violations and proof of enforcement of the restrictions by Hammonton along with its quarterly progress reports required in paragraph 25 below.
21. Hammonton will pursue installation of an additional new source well.
22. The Department hereby grants an extension to the deadline by which Hammonton must achieve compliance with the Gross Alpha and Radium 226 & 228 MCLs at Treatment Plant TP003010.
23. Hammonton shall take whatever actions are necessary to achieve and maintain compliance with the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the Safe Drinking Water Regulations, N.J.A.C. 7:10-1 et seq., on or before January 1, 2013.
24. If Hammonton is not able to achieve compliance by taking the above actions, Hammonton 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.

PROGRESS REPORTS

25. Upon full execution of this ACO, Hammonton shall submit to the Department quarterly progress reports until notified by the Department that Hammonton has fully complied with the ACO. Each progress report shall be submitted on the 15th day of the month following the quarter being reported. Hammonton shall submit the first quarterly report to the Department on October 15, 2011. Each progress report shall detail the status of Hammonton's compliance with this ACO and shall include 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. an evaluation of all corrective measures implemented to date.

PENALTY

26. In settlement of the violations cited in the above findings, Hammonton shall pay a total penalty of \$2,000.00 by check made payable to the "Treasurer, State of New Jersey", and remitted to the Division of Revenue at the address stated on the enclosed invoice by no later than August 1, 2011.

STIPULATED PENALTIES

27. Hammonton shall pay stipulated penalties to the Department, as set forth below, for failure to comply with the provisions of this ACO unless the Department has notified Hammonton in writing that a stipulated penalty will not be assessed for violations of the compliance schedule pursuant to the force majeure provisions of this ACO.

| <u>Days Past Compliance Date</u> | <u>Stipulated Penalties</u> |
|---|-----------------------------|
| ▪ 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 |

For all violations of the progress reports submission deadlines:

| <u>Days Past Compliance Date</u> | <u>Stipulated Penalties</u> |
|---|-----------------------------|
| ▪ <u>Each calendar day that Hammonton fails to submit a Progress Report</u> | \$50 per calendar day |

Penalties for violations not specifically included in this paragraph shall be assessed by the Department either civilly or administratively pursuant to the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the New Jersey Safe Drinking Water Act Regulations, N.J.A.C. 7:10-1 et seq.

28. Within 45 calendar days after Hammonton's receipt of a written demand from the Department for stipulated penalties, Hammonton shall submit a check to the Department in the manner outlined in paragraph 26 above.
29. If Hammonton 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.
30. The payment of stipulated penalties does not alter Hammonton's responsibility to complete all requirements of this ACO.

FORCE MAJEURE

31. If any event occurs which is beyond the control of Hammonton and which Hammonton believes will or may cause delay in the achievement of the compliance schedule provisions of this ACO, Hammonton shall notify the Department in writing within 7 calendar days of becoming aware of the delay or anticipated delay, as appropriate. In the notification, Hammonton 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. Hammonton shall take all necessary action to prevent or minimize any such delay.

32. The Department may adjust the deadlines in the compliance schedule of this ACO for a period no longer than the delay if the Department finds that:
- a. Hammonton has complied with the notice requirements of paragraph 31 and;
 - b. That any delay or anticipated delay has been or will be caused by fire, flood, riot, strike, or other circumstances beyond the control of Hammonton and that Hammonton has taken all necessary actions to prevent or minimize the delay.
33. If the Department denies Hammonton's Force Majeure request, Hammonton may be subject to stipulated penalties. The burden of proving that any delay is caused by circumstances beyond the control of Hammonton and the length of any such delay attributable to those circumstances shall rest with Hammonton. Increases in the cost or expenses incurred by Hammonton 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.

GENERAL PROVISIONS

34. Hammonton shall submit two copies of all documents, except for any penalty payments, required by this ACO by certified mail, return receipt requested or by hand delivery with an acknowledgment of receipt form for the Department's signature to:

Edward H. Post, Chief
Southern Bureau of Water Compliance & Enforcement
2 Riverside Drive, Suite 201
Camden, New Jersey 08103

and

Terry Pilawski, Bureau of Safe Drinking Water Implementation
401 East State Street – Post Office Box 426
Trenton, New Jersey 08625-0426

Penalty or Stipulated Penalty payment shall be made in the manner indicated in paragraph 26, above.

35. Nothing in this ACO shall preclude the Department from taking enforcement action against Hammonton for matters not set forth in the findings of this ACO.
36. This ACO shall be binding on Hammonton, its successors, assignees, agents, any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
37. This ACO shall not relieve Hammonton from obtaining and complying with all applicable federal, state and local permits as well as all applicable statutes and regulations while carrying out the obligations imposed by this ACO.

38. 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 are not intended to constitute debt(s) which may be limited or discharged in a bankruptcy proceeding.
39. In addition to the Department's statutory and regulatory rights to enter and inspect, Hammonton shall allow the Department and its authorized representatives access to the site at all times for the purpose of determining compliance with this ACO.
40. The Department reserves the right under applicable statutory and common law to require Hammonton to take additional action should the Department determine that such actions are necessary to protect public health, or 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.
41. Hammonton shall not construe any unwritten advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving Hammonton of its obligations under its permit, this ACO, and/or the New Jersey Safe Drinking Water Act.
42. This ACO shall be governed and interpreted under the laws of the State of New Jersey.
43. Hammonton agrees not to contest the authority or jurisdiction of the Department to issue this ACO and agrees not to contest the terms of this ACO except that Hammonton may contest the Department's interpretation or application of the ACO's terms in any action brought by the Department to enforce the ACO's provisions.
44. Hammonton hereby consents to and agrees that this ACO is fully enforceable as a final administrative order in the New Jersey Superior Court upon the filing of a summary action for compliance pursuant to the New Jersey Safe Drinking Water Act.
45. All appendices referenced in this ACO and all reports, work plans and documents required under the terms of this ACO are, upon approval of the Department, incorporated in this ACO by reference and made apart hereof.
46. Hammonton shall give written notice of this ACO to any successor in interest prior to transfer of ownership of the facility which are the subject of this ACO and shall simultaneously verify to the Department that such notice has been given. Additionally, the parties agree that any contract, lease, deed or any other agreement that Hammonton enters into to convey the property/facility that is the subject matter 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.
47. If any provision of this ACO or application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this ACO or the application of such provision to persons or circumstance other than those as to which it held invalid or unenforceable, shall not be affected thereby and each provision of this ACO shall be valid and enforced to the fullest extent permitted by law.
48. When this ACO becomes effective, subject to the terms and conditions as set forth herein, Hammonton waives its right to a hearing on the matters contained in this ACO pursuant to N.J.S.A.

52:14B-1 et seq. and N.J.A.C. 7:10-3.5. However, in the event of any other Safe Drinking Water Act violations by Hammonton, the Department may consider the violations cited herein as having been cited in an Administrative Order and Notice of Civil Administrative Penalty Assessment and proven for purposes of calculating the appropriate penalty level and specifically for the purposes of determining whether a prior similar violation occurred per N.J.S.A. 52:14B-1 et seq., N.J.A.C. 7:10-1.3, N.J.A.C. 7:10-3.4(c), and N.J.A.C. 7:10-3.6.

49. This ACO represents the entire integrated agreement between the Department and Hammonton on the matters contained herein and supersedes all prior negotiations, representations or agreements either written or oral.
50. No modification or waiver of this ACO shall be valid except by written amendment duly executed by the Department and Hammonton or by the Department's modification in writing pursuant to the Force Majeure provisions herein above.
51. This ACO shall terminate upon receipt by Hammonton of written notice from the Department that the requirements of this ACO have been satisfied. Termination of this ACO shall not relieve Hammonton of any liabilities for unpaid penalties previously demanded by the Department pursuant to the terms and conditions of this ACO, nor shall it affect in any way the Department's right and abilities to collect said unpaid penalties.
52. This ACO shall become effective upon the execution hereof by all parties.

**New Jersey Department
of Environmental Protection**

DATED: 6/13/11

BY: _____

NAME:

Edward H. Post, P.E.

TITLE:

Bureau Chief
Southern Bureau of Water
Compliance and Enforcement

Town of Hammonton

DATED: 6/27/11

BY: _____

NAME:

STEPHEN M. DiDonato

TITLE:

Mayor

By this signature, I certify that I have full authority to execute this document on behalf of Hammonton.