

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Agency of Natural Resources,)
Petitioner,)
)
v.)
)
Suntec Condominium Owners)
Association, Inc.,)
Respondent.)

Docket # 4-1-20 Vtec

FINDINGS

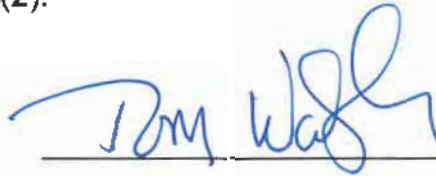
PURSUANT TO 10 V.S.A. §8008(d) THE COURT FINDS AS FOLLOWS:

1. The Administrative Order in this matter has been properly served on the Respondent(s) in accordance with 10 V.S.A. §8008(a).
2. The Respondent(s) has/have not timely requested a hearing in this matter in accordance with 10 V.S.A. §8008(b).
3. The order otherwise meets the requirements of 10 V.S.A. Chapter 201.

***CORRECTED ORDER**

By the Court's signature below, the Administrative Order in this matter, filed with the Superior Court, Environmental Division, on January 8, 2020, has become a final Judicial Order pursuant to 10 V.S.A. §8008(d)(2).

Dated this 24 day of January 2020.



Thomas G. Walsh, Judge
Vermont Superior Court
Environmental Division

*The spelling of the Defendant's name has been corrected.

STATE OF VERMONT

SUPERIOR COURT

**ENVIRONMENTAL DIVISION
Docket No.**

**SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff**

v.

**SUNTEC CONDOMINIUM OWNERS ASSOCIATION, INC.,
Respondent**

ADMINISTRATIVE ORDER

Having found that Suntec Condominium Owners Association, Inc. (Respondent) has committed violations defined in 10 V.S.A. § 8002(9), the Secretary (Secretary) of the Agency of Natural Resources (Agency), pursuant to the authority set forth in 10 V.S.A. § 8008, hereby issues the following Administrative Order:

VIOLATIONS

1. Water Supply Rule, Section 6.5: failure to install corrosion control treatment and failure to provide, and submit certification of providing, consumer notices of lead tap results.

STATEMENT OF FACTS

1. Respondent is a non-profit corporation registered with the Vermont Secretary of State.
2. Respondent operates a public community water system located in the Town of West Dover, Vermont (the System).
3. Section 6.5 of the Water Supply Rule, both the version effective on December 1, 2010 and the version effective on April 12, 2019, (the WSR) requires public water systems to comply with the provisions of 40 C.F.R. Part 141, Subpart I, *Control of Lead and Copper*.
4. 40 C.F.R. § 141.81(a)(2) identifies a small community water system as one serving less than or equal to 3,300 persons.

5. 40 C.F.R. § 141.80(c) states that the lead action level is exceeded when the concentrations of lead in more than ten percent of tap water samples collected during a monitoring period are greater than 0.015 mg/L.
6. 40 C.F.R. § 141.86(d) requires small community water systems to conduct monitoring for lead in six-month monitoring periods until the lead action level is met during each of two consecutive monitoring periods, allowing for less frequent monitoring.
7. 40 C.F.R. § 141.86(d)(vi) requires a small community water system to return to monitoring in six-month monitoring periods when the lead action level is exceeded.
8. 40 C.F.R. § 141.81 and § 141.82 identify corrosion control treatment steps for small community water systems.
9. 40 C.F.R. § 141.81(e)(1) and § 141.82(a) requires small community water systems with sampling results exceeding the lead action level to recommend the installation of one or more corrosion control treatments.
10. 40 C.F.R. § 141.81(e)(2) and § 141.82(d) requires the State to approve the corrosion control treatment recommendation from the small community water system or designate an alternative corrosion control treatment.
11. 40 C.F.R. § 141.81(e)(5) and § 141.82(e) requires small community water systems to install the optimal corrosion control treatment designated by the State within 24 months after the State's designation.
12. 40 C.F.R. § 141.81(c) allows a small community water system to cease completing a corrosion control treatment steps when the lead action level is met during each of two consecutive monitoring periods but requires the system to recommence completing the step if the lead action level is thereafter exceeded.
13. 40 C.F.R. § 141.85(d) requires public water systems to provide notices of individual tap results from lead tap monitoring to sites from which samples were taken no later than 30 days after the public water systems learns of the results.
14. 40 C.F.R. § 141.85(f)(2) requires public water systems, no later than three months following the end of each monitoring period, to send written documentation to the state demonstrating delivery of consumer notices of lead tap results that meet the requirements of 40 C.F.R. § 141.85.

15. Since on or before July 24, 2008, the System has been a small community water system as that term is used in 40 C.F.R. § 141.81(a)(2).
16. On July 24, 2008, the System conducted sampling for lead and the results exceeded the lead action level of 0.015 mg/L.
17. Between March 11, 2009 and July 22, 2014, the System conducted sampling for lead and the results did not exceed the lead action level.
18. On September 28, 2015, the System conducted sampling for lead and the results exceeded the lead action level of 0.015 mg/L.
19. On June 16, 2016, the System conducted sampling for lead and the results exceeded the lead action level of 0.015 mg/L.
20. On December 15, 2016, the System conducted sampling for lead and the results exceeded the lead action level of 0.015 mg/L.
21. On March 28, 2017, the System conducted sampling for lead and the results did not exceed lead action level.
22. On December 21, 2017, the System conducted sampling for lead and the results exceeded the lead action level of 0.015 mg/L.
23. In a letter dated October 29, 2015, the Agency designated soda ash injection, operated to achieve a target pH of 7.5 (or higher), as the corrosion control treatment the System was required to install and established a deadline of October 28, 2017 for installation of the treatment.
24. Pursuant to 40 C.F.R. § 141.81(c), the System was able to cease installation of soda ash injection following the lead sampling taken on March 28, 2017. Pursuant to 40 C.F.R. § 141.81(d), the System was required to re-commence installation following the lead sampling taken on December 21, 2017.
25. In letters dated October 29, 2015, July 20, 2016, January 13, 2017, and April 10, 2018, and a NOAVs issued on April 13, 2018, the Agency notified Respondent of its responsibility to install corrosion control treatment.
26. In letters dated July 20, 2016, January 13, 2017, April 10, 2018, and a NOAV issued on August 23, 2018, the Agency notified Respondent of its responsibility to issue consumer notices of lead tap results and to submit certification of providing consumer notices of lead tap results, including a copy of one of the notices.

- 27. Respondent failed to install soda ash injection, in violation of WSR Section 6.5.
- 28. Respondent failed to provide, and submit certification of providing, consumer notices of lead tap results for June 16, 2016, December 15, 2016, and March 28, 2017, in violation of WSR Section 6.5.

ORDER

Upon receipt of this Administrative Order:

- A. Respondent shall pay a total penalty of \$ 9,000.00 no later than thirty (30) consecutive calendar days following the effective date of this Order. Payment shall be by check made payable to the “Treasurer, State of Vermont” and forwarded to:

Administrative Assistant
Agency of Natural Resources
Environmental Compliance Division
1 National Life Drive, Davis 2
Montpelier, VT 05620-3803

The Secretary reserves the right to augment the above stated penalty based upon the evidence adduced at the hearing in this matter. The penalty may be increased by the total costs incurred by the Secretary for the enforcement of this matter, by the total amount of economic benefit gained by the Respondent from the violations and by further consideration of any other component of penalty found in 10 V.S.A. §8010, each according to proof at hearing.

- B. No later than five (5) consecutive calendar days following the effective date of this Order, Respondent shall both provide consumer notices of lead tap results for June 16, 2016, December 15, 2016, and March 28, 2017 and submit a complete reporting form to Drinking Water and Groundwater Protection Division (the Division) certifying to delivery of the consumer tap notices.
- C. No later than sixty (60) consecutive calendar days following the effective date of this Order, Respondent shall submit to the Division a technically complete construction permit application for the installation of the selected corrosion control treatment.

- D. No later than one hundred and twenty (120) consecutive calendar days following the receipt of a construction permit, Respondent shall complete the installation of the corrosion control treatment.
- E. No later than one hundred and eighty (180) consecutive calendar days following the receipt of a construction permit, Respondent shall submit as-built record drawings to the Division and an updated Operation and Maintenance Manual for review and approval by the Division.

RESPONDENT'S RIGHT TO A HEARING
BEFORE THE ENVIRONMENTAL DIVISION

The Respondent has the right to request a hearing on this Administrative Order before the Superior Court, Environmental Division under 10 V.S.A. § 8012 by filing a Notice of Request for Hearing within fifteen (15) days of the date the Respondent receives this Administrative Order. The Respondent must timely file a Notice of Request for Hearing with both the Secretary and the Superior Court, Environmental Division at the following addresses:

1. Secretary, Agency of Natural Resources
c/o: Enforcement & Litigation Section
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

2. Clerk, Superior Court, Environmental Division
32 Cherry St. 2nd Floor, Suite 303
Burlington, VT 05401

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

This Administrative Order shall become effective on the date it is received by the Respondent unless the Respondent files a Notice of Request for Hearing within fifteen (15) days of receipt as provided for in the previous section hereof. The timely filing of a Notice of Request for Hearing by the Respondent shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Superior Court, Environmental Division. If the Respondent does not make a timely filing of a Notice of Request for Hearing, this Administrative Order shall become a final Judicial Order when filed with and signed by the Superior Court, Environmental Division.

COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

If the Respondent fails or refuses to comply with the conditions of a final Judicial Order, the Secretary shall have cause to initiate any further legal action against the Respondent, including but not necessarily limited to, those available to the Secretary pursuant to the provisions of 10 V.S.A., Chapters 201 and 211.

Dated at Montpelier Vermont, this 16, day of September 2019.

SECRETARY, AGENCY OF NATURAL RESOURCES

By: Emily Boedecker
Emily Boedecker, Commissioner
Department of Environmental Conservation

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No.

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

v.


SUNTEC CONDOMINIUM OWNERS ASSOCIATION, INC.,
Respondent

Affidavit of Benjamin Montross

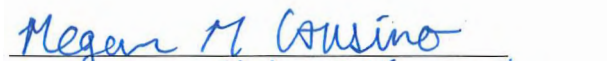
I, Benjamin Montross, being duly sworn do attest:

1. I am of legal age and a resident of the State of Vermont.
2. I am employed as an Environmental Program Manager in the Drinking Water and Groundwater Protection Division of the Agency of Natural Resources.
3. Based upon personal observations, review of the relevant Drinking Water and Groundwater Protection Division program file, and conversations with witnesses, the violations described in the Statement of Facts section of the above-entitled Administrative Order occurred during the time periods set forth therein.

Dated at Montpelier, Vermont this 15th day of August, 2019.


Benjamin Montross - Affiant

Subscribed and sworn before me on the 15th of August, 2019.


Notary Public, State of Vermont
Megan M. Cousino
My Commission Expires: 01/31/2021
Commission No.: 157.0004797