

**STATE OF KANSAS
DEPARTMENT OF HEALTH AND ENVIRONMENT**

In the Matter of:)
)
City of Linn Valley)
Cindy Smith, Mayor) Case No. 18-E-06 BOW
22412 E 2400 Rd)
Linn Valley, KS 66040)
)
Federal Water Supply ID No.: KS2010712)
Proceeding Under K.S.A. 65-163, *et seq.*)
Concerning Compliance with)
K.A.R. 28-15a-135)
)

CONSENT ORDER

Now on this 24th day of July, 2018, the Kansas Department of Health and Environment (“KDHE”) and the City of Linn Valley (“PWS”) (collectively, the “Parties”), having agreed that settlement of this matter is in the best interests of the Parties and conducive to protection of public health and the environment, hereby represent and state as follows:

The Parties acknowledge that this Consent Order (“CO”), upon execution by the Secretary of KDHE (“Secretary”), shall be a final agency order. The PWS shall not contest the authority of the Secretary to issue this CO or any action by KDHE to enforce this CO. The PWS voluntarily and knowingly waives the right to an appeal or review of matters leading up to the execution of the CO and execution of the CO under the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.* (“KAPA”), and the Kansas Judicial Review Act, K.S.A. 77-601, *et seq.* KAPA authorizes KDHE to enter into an informal settlement of this matter without the necessity of proceeding to a formal hearing. K.S.A. 77-505.

The Secretary and the PWS deems that the Findings of Fact and Conclusions of Law in this CO are true and correct.

Findings of Fact

1. The PWS operates a community public water supply system located in Linn County. The PWS serves a population of 813 individuals and has 88 service connections.

2. The PWS utilizes water from Linn Valley Lake, Site ID# 80002200 as the source of water for the public water supply system. The point of entry to the distribution system is identified as TP001, Site ID# 00136138.
3. Table 1, attached hereto and incorporated by reference, summarizes the quarterly Total Organic Carbon (“TOC”) removal ratio results from 4th Quarter 2016 to 1st Quarter 2018.
4. Table 2, attached hereto and incorporated by reference, summarizes the TOC running annual average (“RAA”) removal ratio results from January 2016 to March 2018.
5. The PWS has obtained the services of a professional engineer licensed by the Kansas State Board of Technical Professions (KSBTP) to practice in Kansas.

Conclusions of Law

6. The KDHE is a duly authorized agency of the state of Kansas, created by an act of the legislature. KDHE has general jurisdiction over matters involving public water supply and protection of public health under the authority of K.S.A. 65-163 *et seq.*
7. The PWS operates a public water supply system as defined by K.S.A. 65-162a. A public water supply system is defined as “a system for the provision to the public of piped water for human consumption, which has at least ten (10) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes any source, treatment, storage or distribution facilities under control of the operator of the system and used primarily in connection with the system, and any source, treatment, storage or distribution facilities not under such control but which are used in connection with such system.”
8. K.S.A. 65-163 states in part:

“(b)(2) Whenever an investigation of any public water supply system is undertaken by the Secretary, it shall be the duty of the supplier of water under investigation to furnish to the Secretary information to determine the sanitary quality of the water supplied to the public and to determine compliance with applicable state laws and rules and regulations. The Secretary may issue an order requiring changes in the source or sources of the public water supply system or in the manner of storage, purification or treatment utilized by the public water supply system before delivery to consumers, or distribution facilities, collectively or individually, as may in the Secretary’s judgment be necessary to safeguard the sanitary quality of the water and bring about compliance with applicable state law and rules and regulations. The supplier of water shall comply with the order of the Secretary.”

9. K.S.A. 65-171m states in part:

“The Secretary of Health and Environment shall adopt rules and regulations for the implementation of this act. In addition to procedural rules and regulations, the Secretary may adopt rules and regulations providing for but not limited to: (a) primary drinking water standards applicable to all public water supply systems in the state. The primary drinking water standards may (1) identify contaminants which may have an adverse effect on the health of persons; (2) specify for each contaminant either a maximum contaminant level that is acceptable in water for human consumption...; (b) establish the requirements for adequate monitoring, maintenance of records and submission of reports, sampling and analysis of water...”

10. A TOC RAA removal ratio of at least 1.00 is required as identified in 40 CFR 141.135, adopted by reference by K.A.R. 28-15a-135. The results of drinking water analysis summarized in Table 1 and 2 indicate the PWS’s quarterly and running annual average TOC removal ratio. The PWS’s RAA was below the required 1.00 from the 2nd quarter of 2016 through 4th quarter of 2017 resulting in violations of K.A.R. 28-15a-135.

11. K.S.A. 65-171r prohibits the following acts:

“(e) the failure of a supplier of water to comply with a primary drinking water standard established under K.S.A. 65-171m, and amendments thereto, and rules and regulations adopted pursuant thereto unless a variance or exception has been granted;”

12. K.S.A. 65-171s states in part:

“(a) Any person who violates any provision of K.S.A. 65-171r... shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not more than \$5,000 per day for each day in which such violation occurs or failure to comply continues.”

13. The PWS is in violation of K.S.A. 65-171r by violating the provisions of K.A.R. 28-15a-135 for providing drinking water to the public that does not meet the running annual average removal rate of greater than 1.00 for TOC.

ORDER

14. Based upon the above-referenced Findings of Fact and Conclusions of Law and pursuant to the authority granted under K.S.A. 65-163, the Secretary hereby orders and the PWS consents to comply with the following Compliance Schedule.
15. The following required actions are necessary to protect public health during periods of non-compliance and shall be fulfilled as outlined below until full compliance is achieved.

16. The PWS shall continue to monitor the TOC removal rate at Linn Valley Lake, Site ID# 80002200, and TP001, site ID# 00136138, once a month. The PWS may use the KDHE laboratory or a private KDHE-certified laboratory for analysis. If a private laboratory is used, results for the previous month shall be submitted to the KDHE, Bureau of Water by the 10th day of the following month.
17. When the TOC RAA removal ratio is less than 1.00, the PWS shall distribute notice of the violation(s) to the public as required by K.A.R. 28-15a-201. Copies of the notice shall be furnished to all customers; area health care providers including medical doctors, clinics and hospitals; the county health department; and the KDHE. Notice of the violation(s) shall also be included in the annual Consumer Confidence Report (“CCR”) as required by K.A.R. 28-15a-153.
18. Within thirty (30) day of the effective date of this CO, the PWS shall submit to KDHE engineering plans, specifications, and a permit application for the addition of the unpermitted chemical being used in the treatment plant.
19. In order to rectify the violations referenced in this CO, the PWS shall comply with the following compliance schedule:
 - A. Within thirty (30) days of the effective date of this CO, the PWS shall contact KDHE to schedule a consultation regarding deliverables required pursuant to this CO. Please contact:

Amelia Springer
(785) 296-5523
amelia.springer@ks.gov
 - B. Within two hundred forty (240) days of KDHE approval of 19.A, the PWS shall submit to the KDHE an engineering report for review. The engineering report shall include options to bring the PWS into compliance.
 - C. Within thirty (30) days of the KDHE approval of 19.B, the PWS shall submit to the KDHE the option selected by the PWS to achieve compliance.
 - D. Upon receipt of 19.C, KDHE will amend the order to match the schedule of the option selected.
20. The PWS shall submit semi-annual status reports to the KDHE by January 1st and July 1st of every year while the PWS is in non-compliance for the TOC RAA Removal Ratios. The status reports shall summarize the PWS progress toward achieving compliance and shall include but not be limited to:
 - A. Progress on any projects or improvements being made to the water system;

- B. A summary of efforts being made to develop an annual budget, capital improvement plan, and an operation and maintenance plan;
 - C. Efforts made to comply with this CO; and
 - D. Any changes to the deadline for which the PWS anticipates to achieve full compliance.
21. All documentation required pursuant to this CO shall reference the case number (Case No. 18-E-06 BOW) and be mailed to:

Kansas Department of Health and Environment
Public Water Supply Section
Attn: Amelia Springer
1000 SW Jackson, Suite 420
Topeka, KS 66612-1367

Terms of Settlement

22. All actions required to be undertaken pursuant to this CO shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations.
23. This CO shall apply to and be binding upon the KDHE and the PWS, its agents, successors and assigns. No change in the ownership or corporate status of the PWS shall alter its responsibilities under this CO.
24. The PWS shall provide a copy of this CO to any subsequent owners or successors before ownership rights are transferred. The PWS shall provide a copy of this CO to all contractors, sub-contractors and consultants who are retained to conduct any work performed under this CO, within fourteen (14) days after the effective date of this CO or the date of retaining their services. Notwithstanding the terms of any contract, the PWS is responsible for compliance with, and for insuring that its contractors and agents comply with this CO.
25. The activities conducted under this CO are subject to approval by the KDHE, and the PWS shall provide all necessary information consistent with this CO requested by the KDHE.
26. The PWS agrees to meet every term and condition of this CO. Failure to meet the terms of the Compliance Schedule or any term or condition of, or scheduled date of performance in this CO or any report, work plan or other writing prepared pursuant to and incorporated into this CO, shall constitute a violation of this CO and may subject the

PWS to further enforcement action including, but not limited to, the assessment of civil penalties not to exceed \$5,000 per day for each day in which such violation occurs or failure to comply continues. KDHE reserves the right to unilaterally withdraw this CO for substantial non-compliance.

27. This CO shall be terminated upon the PWS's receipt of written notice from KDHE that the PWS has demonstrated the terms of this CO to have been satisfactorily completed, including any additional tasks the KDHE has deemed necessary.
28. The PWS shall perform the requirements under this CO within the time limits set forth herein unless the performance is prevented or delayed solely by events which constitute a force majeure.
 - A. For purposes of this CO a force majeure is defined as any event beyond the control of the PWS which could not be overcome by due diligence and which delays or prevents performance by a date required by this CO. Such events do not include increased costs of performance or changed economic circumstances. Any delay caused in whole or in part by action or inaction by federal or state authorities shall be considered a force majeure and shall not be deemed a violation of any obligations required by this CO.
 - B. The PWS shall have the burden of proving all claims of force majeure. Failure to comply by reason of force majeure shall not be construed as a violation of this CO.
 - C. The PWS shall notify the KDHE in writing within seven (7) days after becoming aware of an event which the PWS knew, or should have known, constituted force majeure. Such notice shall estimate the anticipated length of delay, its cause, measures to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this section shall constitute a waiver of the PWS's right to assert a force majeure claim and shall be grounds for the KDHE to deny the PWS an extension of time for performance.
 - D. Within seven (7) days of the receipt of written notice from the PWS of a force majeure event, the KDHE shall notify the PWS of the extent to which modifications to this CO are necessary. In the event the KDHE and the PWS cannot agree that a force majeure event has occurred, or if there is no agreement on the length of the extension, the dispute shall be resolved by the Director of the Division of Environment, KDHE, under the Dispute Resolution Procedure provided herein.
 - E. Any modifications to any provision of this CO shall not alter the Schedule of Actions or completion of other tasks required by this CO unless specifically agreed to by the parties in writing and incorporated into this CO.

29. This CO may be amended by mutual agreement of the KDHE and the PWS. Such amendments shall be in writing, shall have as their effective date the date on which they are signed by both parties, and shall be incorporated into this CO.
30. Dispute Resolution Procedure:
- A. The parties recognize that a dispute may arise between them regarding implementation of the action to be taken as herein set forth or other terms or provisions of this CO. If such dispute arises, the parties will endeavor to settle it by informal negotiations between themselves. If the parties cannot resolve the issue informally within a reasonable period of time, either of the parties may notify the other in writing stating specifically:
 - i. that informal negotiations have failed,
 - ii. that formal dispute resolution under this paragraph has commenced, and
 - iii. the position with regard to the dispute and the reason therefore.
 - B. A party receiving such a notice of dispute will respond in writing within ten (10) working days stating its position. The parties shall have an additional ten (10) working day period to prepare written arguments and evidence for submission to the other party. Any settlement shall be reduced to writing, signed by representatives of each party and incorporated into this CO. If the parties are unable to reach an agreement following this procedure, the matter shall be referred to the Director of the Division of Environment, KDHE, who shall decide the matter and provide a written statement of his decision which shall be incorporated into this CO.
 - C. This dispute resolution procedure shall not preclude any party from having direct recourse to court if otherwise available by applicable law.
31. The requirements of this CO represent the best professional judgment of the KDHE at this time based on the available information. If circumstances change significantly so that data indicates an immediate threat of danger to the public health or safety, or the environment, or a significantly different threat other than the alleged deficiencies addressed herein, then the KDHE reserves the right to modify dates or requirements herein as is deemed reasonably necessary and the PWS reserves the right to appeal any such modifications or additional requirements.
32. Nothing contained in this CO shall affect any right, claim, interest, defense or cause of action of any party hereto with respect to any person or entity not a party to this CO. This CO does not constitute a waiver, suspension or modification of the requirements of applicable statutes or regulations which remain in full force and effect.

33. The parties hereto have affixed their signatures on the dates inserted below to acknowledge their agreement to this CO. The signatories to this CO certify that they are authorized to execute and legally bind the parties they represent to this CO.

IT IS SO ORDERED AND AGREED.

Please sign and date.



Jeff Andersen
Secretary
Kansas Department of Health & Environment



Cindy Smith, Mayor
City of Linn Valley

Date: 07/24/2018

Date: 5 Jul 2018

TABLE 1
SUMMARY OF QUARTERLY TOC REMOVAL RATIO RESULTS
4th Quarter 2016 – Present

Quarter	Quarterly Removal Ratio Results	Required Removal Ratio >1.0
4th QTR 2016	1.10	1.0
1st QTR 2017	0.89	1.0
2nd QTR 2017	0.98	1.0
3rd QTR 2017	0.73	1.0
4th QTR 2017	1.35	1.0
1st QTR 2018	1.55	1.0

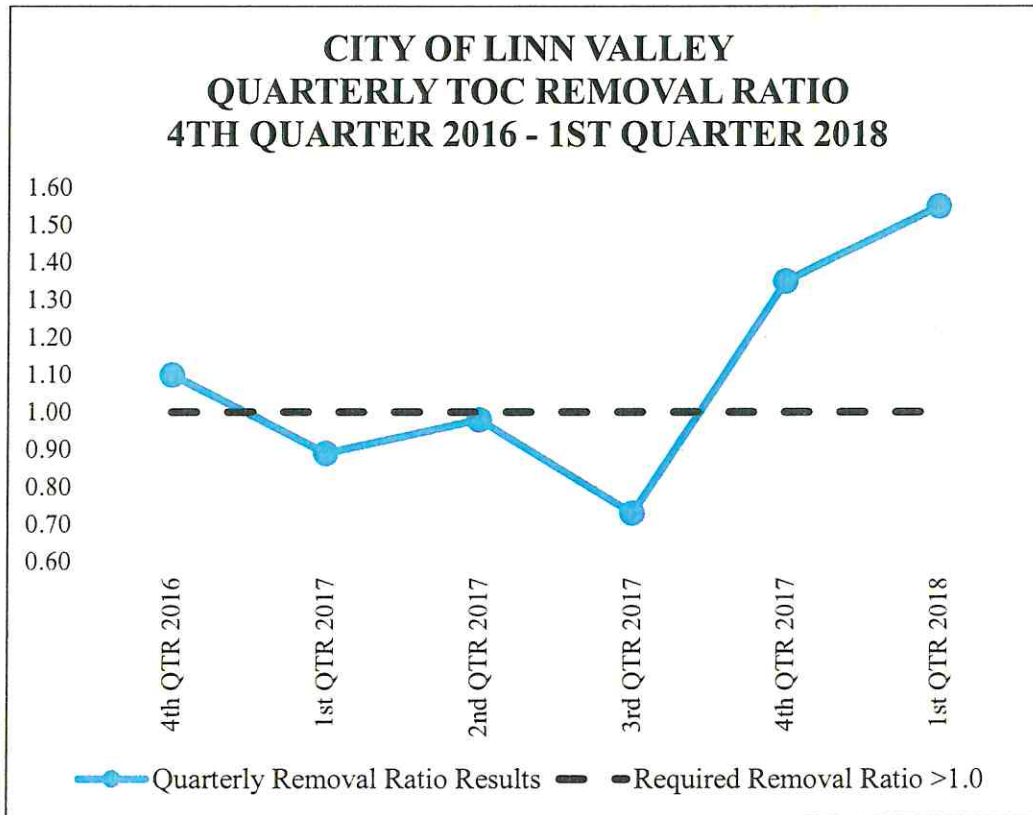


TABLE 2
 SUMMARY OF TOC RUNNING ANNUAL AVERAGE (RAA)
 REMOVAL RATIO RESULTS
 January 2016 – March 2018

Compliance Period	RAA Removal Ratio	Required Removal Ratio >1.0
Jan 2016 - Dec 2016	1.15	1.0
Apr 2016 - March 2017	0.98	1.0
July 2016 - June 2017	0.92	1.0
Oct 2016 - Sept 2017	0.92	1.0
Jan 2017 - Dec 2017	0.99	1.0
Apr 2017 - March 2018	1.15	1.0

