REGION 4
ATLANTA, GA 30303

ELECTRONIC MAIL
CONFIRMATION OF EMAIL RECEIPT REQUESTED

The Honorable Dexter Hinton
Mayor of City of Marion
P.O. Box 959
Marion, Alabama 36756
dexterhinton2@gmail.com

Re: Notice of Noncompliance and Concerns Pursuant to Section 1414(a)(1)(A) and Request for Information Pursuant to Section 1445(a)(1) of the Safe Drinking Water Act, 42 U.S.C. §§ 300g-3(a)(1)(A) and 300j-4(a)(1), City of Marion Public Water System in Marion, Perry County, Alabama. PWS ID Number: AL0001097. Docket Number: SDWA 1414-2024-02

Dear Mayor Hinton:

The U.S. Environmental Protection Agency is responsible for assuring public water systems (PWS) provide safe drinking water in accordance with the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f et seq., and the regulations promulgated thereunder, and comply with the requirements of Section 1433 of the SDWA, 42 U.S.C. § 300i-2, to produce and certify both a Risk and Resilience Assessment (RRA) and Emergency Response Plan (ERP) for the System. According to the information in the EPA's Safe Drinking Water Information System, the City of Marion Public Water System (System) serves a population of approximately 4,188, with 1,396 service connections. Pursuant to Section 1401(15) of the SDWA, 42 U.S.C. § 300f (15), it is therefore a community water system. A community water system is subject to the requirements of the National Primary Drinking Water Regulations (NPDWRs), 40 C.F.R. Part 141, and Alabama Primary Drinking Water Regulations (APDWR), promulgated pursuant to the Alabama Safe Drinking Water Act of 1977, Code of Alabama § 22-23-33 et seq.

Pursuant to SDWA Section 1413, 42 U.S.C. § 300g-2, the Alabama Department of Environmental Management (ADEM) is the primary agency responsible for implementing and enforcing the Public Water Supply Supervision Program for Alabama. See Code of Alabama § 22-23-32. Although ADEM administers the Public Water Supply Supervision Program for Alabama, the EPA has retained primary enforcement authority over Section 1433 of the SDWA. See 42 U.S.C. § 300g-3(g)(1) (granting the EPA administrative enforcement authority over "applicable requirements," as defined at Section 1414(i), 42 U.S.C. § 300g-3(i)).

March 20, 2024, the EPA conducted a drinking water inspection to evaluate the System's compliance with the NPDWRs, the APDWRs, and Section 1433's ERP and RRA requirements. An inspection report was subsequently issued to the System on April 18, 2024 (Inspection Report), based on information supplied to the EPA by System representatives through interviews and written statements, observations made by the EPA inspection team, and records and reports maintained by the System. A copy of this Inspection Report was also provided to ADEM.

Notice of Noncompliance

Based on information observed during the inspection, the EPA alleges that the System is in noncompliance with the SDWA, the NPDWRs, and the APDWRs, as described below:

1. Pursuant ADEM's Water Division- Water Supply Program, Division (ADEM Admin. Code) § 335-7-10-.05(a), operational records on which all required water quality control tests are recorded shall be maintained by the water system for review by the Department during sanitary surveys for no less than three years or until the next sanitary survey, whichever is longer.

   At the time of inspection, an operator daily logbook was not present or any other operational records demonstrating what water quality control tests were performed daily, the results of tests, and any chemical dosage adjustments.

   Therefore, the System is in noncompliance with ADEM Admin. Code § 335-7-10-.05 (a), for failure to provide operational records at the time of inspection.

2. Pursuant to 40 C.F.R. § 141.33, any owner or operator of a public water system subject to the provisions of this part shall retain on its premises or at a convenient location near its premises the records required by subsections (a-f).

   Pursuant to 40 C.F.R. § 141.91, any system subject to the requirements of this subpart shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, State determinations, and any other information required by 40 C.F.R. §§ 141.81 through 141.88, 141.90, 141.92, and 141.93. Each water system shall retain the records required by this section for no fewer than 12 years.

   At the time of the inspection, the System was not adhering to the required retention policy for records. Most records were not available for review during the inspection, and the inspection team had to rely on ADEMS's online record retention following the inspection.

   Therefore, the System is in noncompliance with 40 C.F.R. § 141.33 and 40 C.F.R. § 141.91, for failure to abide by the require record retention policies.

3. Pursuant to 40 C.F.R.§ 141.853(a)(1), systems must develop a written sample siting plan that identifies sampling sites and a sample collection schedule that are representative of water throughout the distribution system. These plans are subject to State review and revision.

At the time of inspection, the System was unable to provide a Stage 2 Disinfection Byproduct (DBP) sampling plan. The System was able to provide a bacteriological sampling plan, however it did not contain a date of approval and/or implementation. The EPA is unable to determine the last time the sampling plan has been updated to confirm the schedule is an accurate representative of water throughout the distribution system.

Therefore, the System is in noncompliance with 40 C.F.R. § 141.853(a)(1), for failure to provide a DBP sampling plan and failure to confirm an up-to-date bacteriological sampling plan at the time of inspection.

4. Pursuant to ADEM Admin. Code § 335-7-9-.04, community systems must have a formally adopted written cross-connection control policy. This policy must meet the provisions of this chapter and shall be provided to customers on request. This policy shall include an inspection program, with records of health hazards found and corrective action taken kept at the water office for a minimum of five years. These records shall be made available upon request.

   At the time of inspection, the System was unable to provide a cross-connection control policy.

   Therefore, the System is in noncompliance with ADEM Admin. Code § 335-7-9-.04(1) for failure to provide a cross-connection control policy at the time of inspection.

5. Pursuant to ADEM Admin. Code § 335-7-5-.22 (3)(i)(I), a ground water system that serves greater than 3,300 people must continuously monitor the residual disinfectant concentration using approved EPA methodology found in 40 C.F.R. § 141.74(a)(2) at a location approved by ADEM and must record the lowest residual disinfectant concentration each day that water from the ground water source is served to the public. The ground water system must maintain the ADEM-determined residual disinfectant concentration every day the ground water system serves water from the ground water source to the public. If there is a failure in the continuous monitoring equipment, the ground water system must conduct grab sampling every four hours until the continuous monitoring equipment is returned to service. The system must resume continuous residual disinfectant monitoring within 14 days.

   At the time of inspection, there were no in-line chlorine monitors installed at the water treatment plant (WTP). Staff relies on hourly grab sampling to check chlorine levels entering the distribution system. If the operator is unavailable, samples are not taken.

   Therefore, the System is in noncompliance with ADEM Admin. Code § 335-7-5-.22 (3)(i)(I), for failure to have continuous chlorine residual monitors at the WTP.

6. Pursuant to ADEM Water Supply Operating Permit No. 2022-631, Part II, General Condition (6), water facilities must be maintained in a safe, clean, and operable condition.
   At the time of inspection, the EPA inspectors observed the following:

   a. All WTP influent, backwash, and effluent flow meters were inoperable.

b. The Supervisory Control and Data Acquisition (SCADA) system used by the System has been working improperly since at least 2019. System staff cannot rely on SCADA's flow meter readings, chemical analysis, or finished water tank level readings, resulting in necessary manual operation of the WTP.
c. The alum dosing system was inoperable.
d. There was a leak located on the side of sedimentation basin #3. There was a large crack where the leak was originating, and the integrity of the concrete was questionable.
e. The rapid mix system was inoperable and has been missing the motor since at least 2019. This system ensures chemicals for treatment are properly dispersed in the raw water.
f. During a filter backwash, the EPA noted that the air scours were inoperable. Additionally, the filter was not backwashing evenly. Some parts of the filter did not fully backwash and precipitated iron was still settled on the filter media. System personnel stated that the filter media has not been inspected or replaced in over 20 years.
g. The automatic sludge removal system for the settling basins was inoperable and have not been working for some time. This results in the System manually removing the sludge when it can rent the necessary equipment.
h. The blowers of the aeration system were inoperable. This results in the water cascading through the aeration tower via gravity instead of forced draft aeration as designed.
i. All WTP filter turbidimeters were inoperable.
j. There was standing water in the filter gallery below filter #3.
k. One of the high service pumps was spraying excessive water.
l. Some 150-lb chlorine cylinders were not properly chained.
m. The overflow at "Little tank" was detached from the structural support of the tank, where it was originally welded to.
n. The valve used to empty "Little tank" was leaking.
o. The gate at the far end of the WTP was broken and left open.
p. The gate surrounding the WTP was deteriorating, allowing for access into the WTP.
q. The fencing surrounding the "Big tank" finished water storage tank was deteriorating.
r. The gate surrounding the "Little tank" finished water storage tank was broken and left open.
s. The permanganate storage barrel was missing a lid, resulting in spillage.
t. The backup power generators were inoperable.
u. There was a significant amount of rust on many WTP assets.

Therefore, the System is in noncompliance with ADEM Water Supply Operating Permit No. 2022-631, Part II, Condition (6), for failure to maintain the above mentioned WTP components in safe, clean, and operable condition.

7. Pursuant to ADEM Admin. Code § 335-7-10-.06(1), the monthly operating report (MOR) shall be submitted to ADEM no later than the tenth of the following month in a format approved by ADEM. The report shall contain the results of all required water quality control tests specified in ADEM Admin. Code 335-7-10-.03, except where individual samples or longer averaging times are specified. The daily minimum disinfection levels shall be reported. As required by ADEM, the following shall be provided: (a) Maximum daily raw, clarified and individual filter effluent

turbidity; (b) The average of the carbon dioxide, color, iron, manganese, total alkalinity, pH and fluoride test results for each day; (c) Water production records; (d) Ground water level information; (e) Filter operation records; (f) Distribution pressure measurements; and (g) Water loss information.

At the time of the inspection, the System was unable to accurately report the gallons produced each day due to inoperable flow meters and SCADA. Raw water pumped, backwashed water, and finished water is estimated and recorded on the MORs. The System is also reporting pounds per day of alum used at the WTP, despite the alum dosing system being inoperable.

Therefore, the System is in noncompliance with ADEM Admin. Code § 335-7-10-.06 (1), for failure to report accurate data on MORs.

8. Pursuant to ADEM Admin. Code § 335-7-7-.03 (c)(1), an uncovered finished water storage reservoir used to store water that will undergo no further treatment except residual disinfection and is open to the atmosphere is prohibited. All finished water storage structures shall have suitable watertight roofs, hatches, and covers to exclude outside contamination. At the time of inspection, the hatch located below filter #3 was open. When asked, the operator verbally told the EPA that the hatch is always left open. Additionally, the hatch below filters #1 and #2 was disintegrating. Water below these hatches is filtered water traveling to the finished water clearwells.

   Therefore, the System is in noncompliance with ADEM Admin. Code § 335-7-7-.03 (c)(1), for failure to properly cover finished water from outside contamination.

9. Pursuant to ADEM Admin. Code § 355-7-5-.04 (1), community and non-transient, non-community (NTNC) water supply wells shall be constructed with a protective casing of sufficient size.

   At the time of inspection, the cap on the pipe accessing the casing shaft of the MMI well was missing.

   Therefore, the System is in noncompliance with ADEM Admin. Code § 355-7-5-.04 (1), for failure to provide proper well casing protection to prevent contaminants from entering the well field.

10. Pursuant to ADEM Admin. Code § 335-7-7-.04(4), no storage facility may be returned to service until all significant deficiencies have been repaired. A significant deficiency is any deficiency where there is a potential for the water to become contaminated. This includes, but is not limited to, overflow lines without proper protection which includes a screen and flap valve or another acceptable configuration.

    At the time of inspection, the overflow line of the “Little tank” finished water storage tank did not have a screen or flap.

Therefore, the System is in noncompliance with ADEM Admin. Code § 335-7-7-.04(4), for failure to provide proper finished water storage overflow protection.

11. Pursuant to ADEM Admin. Code § 335-7-7-.04(4)(b), no storage facility may be returned to service until all significant deficiencies have been repaired. A significant deficiency is any deficiency where there is a potential for the water to become contaminated. This includes, but is not limited to, missing or incorrectly sized screens on vent pipes.
    At the time of the inspection, multiple screens located on the rectangular clearwell were corroded and had vegetation growing within them.

    Therefore, the System is in noncompliance with ADEM Admin. Code § 335-7-7-.04 (4)(b), for failure to provide proper screen protection on the finished water storage clearwell.

Consistent with Section 1414(a)(1)(A) of the SDWA, 42 U.S.C. § 300g-3(a)(1)(A), the EPA is hereby notifying the System of the noncompliance it observed during its Inspection. This Notice of Noncompliance shall not be construed as a final agency action subject to judicial review under Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g). The EPA reserves its rights to take any appropriate enforcement action, which may include issuance of administrative compliance orders under Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g) or commencement of civil judicial actions under Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b).

Notice of Concerns

During the March 2024 Inspection, the EPA inspectors also identified several "areas of concern." An area of concern may include a defect in design, operation, and/or maintenance; or a failure or malfunction of the sources, treatment, storage, and/or distribution system that is causing, or has the potential for causing, the introduction of contamination into the water delivered to consumers.

The following areas of concern were noted in the Inspection Report, which the EPA recommends the System take immediate action to address:

1. The city currently employs only one WTP operator who works 8–12-hour shifts, seven days per week; however, he is also the sole operator for the City's wastewater plant and distribution system. When the operator is not present, the WTP shuts down. According to ADEM, the current operator is current on his WTP operator license, but not with his wastewater operator license.

    It is recommended to hire at least one additional grade III or above certified operator to ensure operation of the WTP can occur if the current operator is not available.

2. At the time of inspection, the Grede and Chicken House wells were out of service.

    It is recommended that the System perform additional testing on both wells to determine if they can be utilized. Wells incapable of use should be properly abandoned per ADEM Admin. Code § 335-7-5-.14.

3. At the time of inspection, unused chlorine and phosphate was stored at the Grede well. Additionally, unused fluoride was stored in the fluoride house.

   It is recommended to remove all chemicals not in use to prevent possible spills.

4. At the time of inspection, the EPA inspectors observed threaded sample taps at the MMI and Perkins well.

   It is recommended to remove the threads or install a smooth-nosed sampling tap to prevent possible cross connections.

5. At the time of inspection, the EPA inspectors observed a significant amount of standing water around MMI well. The well was not running at the time so EPA could not identify where the water was originating.

   It is recommended for the System to inspect the MMI well to identify if a leak is present and make repairs if necessary.

6. At the time of inspection, an old unused diesel storage container was located uphill from the WTP concrete clearwell. The storage contains fuel and has previously leaked. Additionally, an old unused diesel storage container was located at the Chicken House well.

   It is recommended to remove the diesel containers from the WTP premises and Chicken House well to prevent possible leaks and contamination of finished and raw water.

7. At the time of inspection, the casing vent on the Perkins well was missing a screen.

   It is recommended for the System to install a screen on the vent to prevent insects and other organisms from entering the well field.

8. At the time of inspection, the EPA inspectors observed a looped water lubrication system at Perkins well that was connected to the sample tap.

   It is recommended to remove the looped system. The looped system allows for contaminants to possibly enter the well field.

9. At the time of inspection, the overflow at Little tank appeared to be leaking. Due to inoperable SCADA and flow meters, the operator was unable to determine if the tank was overfilled.

   It is recommended for the System to install a level indicator or replace the SCADA transducer so tank water levels can be monitored accurately.

10. At the time of inspection, the System did not have a written flushing program.

It is recommended that the System prepares a formal flushing program to ensure flushing is performed as necessary even in the event of a loss of institutional knowledge.

11. At the time of inspection, vegetation was growing on and around the MMI well.

    It is recommended that the System remove the vegetation to ensure the well continues to operate as intended.

12. At the time of inspection, vegetation was growing on and along the fence surrounding Big tank.

    It is recommended that the System remove the vegetation to protect the integrity of the fence and prevent unauthorized access.

Request for Information

Section 1445(a)(1) of the SDWA, 42 U.S.C. § 300j-4(a)(1), and 40 C.F.R. § 141.31 authorize the EPA to require the submittal of information to determine whether a public water system is in compliance with federal drinking water regulations. Pursuant to this authority, the EPA hereby requests that the System provide the EPA with documentation of any actions that the System has taken to address each instance of noncompliance alleged in this letter within 14 calendar days of receipt of this letter. Such documentation may include, but need not be limited to, contracts, scopes of work, additional capital improvement project plans and/or evidence of actions taken to address these observations.

The EPA encourages the submission of this information in electronic format to Brianna LaPapa at lapapa.brianna@epa.gov. If portions are too large or responsive documents are unavailable in electronic format, please notify Brianna LaPapa in your electronic submission that additional information needs to be sent and to make arrangements for an alternative submission method.

Please be advised that, under Section 1445(c) of the SDWA, 42 U.S.C. § 300j-4(c), as amended by 40 C.F.R. § 19.4, Table 2 (Adjustment of Civil Monetary Penalties for Inflation), failure to provide the information required by this letter may result in a civil penalty of up to $69,733. In addition, under SDWA Section 1414(g), 42 U.S.C. § 300g-3(g), failure to provide the information required by this letter may result in an order requiring compliance. Violation of such order may lead to sanctions under SDWA Section 1414, 42 U.S.C. § 300g-3(g)(3)(A) and 40 C.F.R. § 19.4, Table 2, which may include penalties of up to $67,544 per day of violation. The information provided in response to this letter may be used by the United States in any enforcement proceeding related to this matter.

The System may, if it so desires, assert a confidential business information (CBI) claim covering any, or all, the information furnished to the EPA in response to this letter. Every CBI claim must be made in a manner described in 40 C.F.R. § 2.203 and must be fully substantiated with documentary evidence which shows how the claim meets every criterion listed in 40 C.F.R. §§ 2.208 and 2.304. If no CBI claim accompanies the System's information when it is received by the EPA, it may be made available to the public by the EPA without further notice to the PWS. Further details, including how to make a business confidentiality claim, are included in Enclosure A.

Consistent with Sections 1414(a)(1) and 1445(a)(1)(B) of the SDWA, 42 U.S.C. §§ 300g-3(a)(1) and 300j-4(a)(1)(B), the EPA is also providing a copy of this Notice and Request for information to ADEM.

Next Steps

The EPA has spoken with ADEM about the agencies' respective enforcement roles moving forward on the issues outlined above. As to the noncompliance with Section 1433 of the SDWA and the City's inability to produce an RRA and ERP, the EPA retains primacy for this regulation and the City will receive additional correspondence from the EPA on how to address this noncompliance. For the remaining noncompliance and areas of concern, ADEM has agreed to take lead on enforcement and will work with the City of Marion. The EPA will provide ADEM the latest updates on the observations identified during the inspection and any corresponding corrective actions provided as a result of this Notice. The EPA will continue to monitor the status of improvements made at the system through regular communications with the State. ADEM taking the lead does not preclude the EPA from taking an enforcement action on this matter at a later date if necessary. The EPA thusly reserves its rights under the SDWA to pursue enforcement if the conditions, stability, and/or compliance status of the System warrant such intervention.

If you have any questions regarding this matter or would like to schedule a meeting to resolve any misunderstandings, please contact Brianna LaPapa, Drinking Water Enforcement Officer, at lapapa.brianna@epa.gov or (404) 562-8165. For legal inquiries, please have your attorney(s) contact Suzanne Armor, Associate Regional Counsel, at Armor.Suzanne@epa.gov or (404) 562-9701.

Sincerely,

KERIEMA NEWMAN

Digitally signed by KERIEMA NEWMAN
Date: 2024.06.05 16:23:46 -04'00'

Keriema S. Newman
Director
Enforcement and Compliance Assurance Division

Enclosures

cc: Aubrey White
ADEM
ahw@adem.alabama.gov

Laura Hinton
Office Manager
lwhinton@cityofmarional.org

ENCLOSURE A

RIGHT TO ASSERT BUSINESS CONFIDENTIALITY CLAIMS

(40 C.F.R. Part 2)

Except for information which deals with the existence, absence, or level of contaminants in drinking water, you may, if you desire, assert a business confidentiality claim as to any or all of the information that the EPA is requesting from you. Applicable EPA regulations relating to business confidentiality claims are at 40 C.F.R. Part 2 and 40 C.F.R. § 2.304(e).

If you assert such a claim for the requested information, the EPA will only disclose the information to the extent and under the procedures set out in the cited regulations. If no business confidentiality claim accompanies the information, the EPA may make the information available to the public without any further notice to you.

40 C.F.R. § 2.203(b). **Method and time of asserting business confidentiality claim.** A business which is submitting information to the EPA may assert a business confidentiality claim covering the information by placing on (or attaching to) the information, at the time it is submitted to the EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential.” Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the business and may be submitted separately to facilitate identification and handling by the EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state.