



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NORTHEAST REGIONAL OFFICE

205B Lowell Street, Wilmington, MA 01887 • (978) 694-3200

DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

IAN A. BOWLES  
Secretary

LAURIE BURT  
Commissioner

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mayor Michael J. Sullivan  
City of Lawrence  
200 Common Street  
Lawrence, MA 01840

Re: City of Lawrence- UAO-NE-08-5D013  
PAN-NE-08-5D001

THE ATTACHED DOCUMENT IS IMPORTANT. FAILURE TO TAKE ADEQUATE ACTION IN RESPONSE TO IT COULD RESULT IN SERIOUS LEGAL CONSEQUENCES.

Dear Mayor Sullivan:

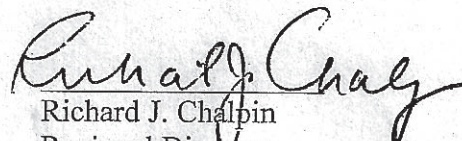
Attached is a Unilateral Administrative Order and Penalty Assessment Notice the Department of Environmental Protection is now issuing to you.

The Order contains a written description of (1) activities observed by the Department; (2) the statutory and regulatory requirements violated; (3) the action the Department now wants you to take to correct the violations; and (4) the deadline for taking such action.

If you fail to take any action the Department now wants you to take by the prescribed deadline, or if you otherwise fail to comply in the future with the requirements applicable to you, you may be subject to legal action. Such action may include criminal prosecution, court-imposed civil penalties, or civil administrative penalties, which may be assessed for every day from now on that you are in noncompliance with the requirements referred to above.

Very truly yours,

Date: 12/8/08

  
Richard J. Chalpin  
Regional Director

Cc: Heidi Zisch, DEP OGC  
Charles Boddy, Counsel



**COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

\_\_\_\_\_  
In the matter of: )  
)  
)

UNILATERAL ADMINISTRATIVE ORDER

City of Lawrence )  
\_\_\_\_\_) )

File No. UAO-NE-08-5D013

I. THE PARTIES

1. The Department of Environmental Protection (“the Department” or “MassDEP”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Northeast Regional Office at 205B Lowell Street, Wilmington, Massachusetts 01887.

2. The City of Lawrence is a Municipal Corporation in the Commonwealth of Massachusetts with a mailing address of 200 Common Street, Lawrence, MA 01840. The City is responsible for the operations of the Department of Public Works, including the Lawrence Water Department. The City, the Department of Public Works, and Lawrence Water Department are collectively referred to herein as “Respondent.” The Lawrence Water Department operates a Water Treatment Plant on Water Street, Lawrence, Massachusetts 01840.

II. STATEMENT OF FACTS AND LAW

3. MassDEP’s authority to issue this Unilateral Administrative Order (“Order”) and to set deadlines for compliance is conferred by M.G.L. c. 21A, §16 and the implementing regulations at 310 CMR 5.00. MassDEP’s authority to issue this Order is also conferred by M.G.L. c. 111, § 159 et seq., 42 U.S.C. §§300f – 300j (the Federal Safe Drinking Water Act), and the Drinking Water Regulations at 310 CMR 22.00.

4. The following facts have led MassDEP to issue this Order:

A. Respondent is a Public Water Supplier with the PWS ID number 3149000.

B. In a letter to MassDEP dated July 10, 2008, Respondent reported that it failed to collect the three sample distribution set for chlorite required for the month on May, as required by 310 CMR 22.07E(7)(b)2.

C. For the month of August 2008, Respondent again failed to collect the three sample distribution set for chlorite as required by 310 CMR 22.07E(7)(b)2.

5. Based upon the above, the Respondent has violated the following requirements:

A. The Drinking Water Regulations, specifically the provisions of 310 CMR 22.04(7), state:

Each supplier of water shall operate and maintain its system in a manner that ensures the delivery of safe drinking water to consumers. In determining whether a supplier of water is properly operating and maintaining a public water system, the Department will apply the standards for public water systems set forth in the Drinking Water Program's "Guidelines and Policies for Public Water Systems[.]"

B. The Drinking Water Regulations, specifically the provisions of 310 CMR 22.07E(7)(b)2, state:

Chlorite. An owner or operator of community and nontransient noncommunity water systems using chlorine dioxide, for disinfection or oxidation, shall conduct monitoring for chlorite.

a. Routine Monitoring.

i. Daily Monitoring. Each supplier of water shall take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite MCL, the supplier shall take additional samples in the distribution system the following day at the locations required by 310 CMR 22.07E(7)(b)2.b. in addition to the sample required at the entrance to the distribution system.

ii. Monthly Monitoring. Each supplier of water shall take a three-sample set each month in the distribution system. The supplier shall take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling shall be conducted in the same manner (as three-sample sets, at the specified locations). Each supplier of water may use the results of additional monitoring conducted under 310 CMR 22.07E(7)(b)2.b. to meet the requirement for monitoring in 310 CMR 22.07E(7)(b)2.a.ii.

C. The Drinking Water Regulations, specifically the provisions of 310 CMR 22.07E(9), state:

Reporting and Recordkeeping Requirements.

(a) Each supplier of water who is required to sample quarterly or more frequently shall report to the Department within ten days after the end of each quarter in which samples were collected, notwithstanding the provisions of 310



CMR 22.15. Each supplier of water who is required to sample less frequently than quarterly shall report to the Department within ten days after the end of each monitoring period in which samples were collected.

- D. By failing to collect the required chlorite samples for the months of May and August 2008, Respondent violated the Drinking Water Regulations, specifically the provisions of 310 CMR 22.04(7) and 310 CMR 22.07E(7)(b)2.

### III. ORDER

6. This Order shall be binding on Respondent and its successors and assigns. Respondent shall not violate this Order and shall not allow or suffer its officers, employees, agents, or contractors to violate this Order.

7. For the reasons stated above, MassDEP hereby orders Respondent to perform the following actions within the times frames set forth therein:

- a. From the issuance date of this Order and at all times thereafter, Respondent shall conduct the three sample set distribution sampling for chlorite as required by the Drinking Water Regulations, 310 CMR 22.07E(7)(b)2.

7. Respondent is notified that if it fails to comply with this Order, M.G.L. c. 21A, § 16 provides for civil administrative penalties of up to twenty-five thousand dollars (\$25,000) for each day after the issuance of this Order that a violation identified in this Order continues or is repeated and for each violation of this Order.

8. Respondent is notified that if it fails to comply with this Order, shall be punished by a fine of not more than twenty-five thousand dollars for each day such violation occurs or continues, or by imprisonment for not more than one year, or both such fine and imprisonment, or shall be subject to a civil penalty not to exceed twenty-five thousand dollars per day for each day that such violation occurs or continues.

9. Nothing in this Order shall be construed or operate as barring, diminishing, adjudicating, or in any way affecting any legal or equitable right of the MassDEP to issue any future order with respect to the subject matter covered by this Order or in any way affecting any other claim, action, or demand that the MassDEP may have with respect thereto. In particular, the MassDEP reserves the right to require additional actions to prevent the reoccurrence of that set forth in Section II of this order.

10. Notwithstanding the above, MassDEP reserves the right to exercise the full extent of its legal authority in order to obtain full compliance with all applicable requirements including but not limited to referring this case to the Office of the Attorney General for criminal prosecution or civil action including court imposed civil penalties, or administrative penalties imposed by MassDEP.

### IV. APPEAL RIGHTS

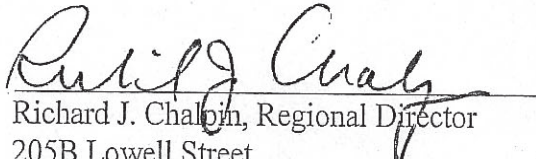
11. Respondent is hereby notified that it has a right to an appeal of this Order. Under M.G.L. c. 111, § 163, "[w]hoever is aggrieved by an order made [by MassDEP] under [M.G.L. c. 111, § 160],

. . . may appeal therefrom as provided in [M.G.L. c. 111, § 147]; but such notice as the court shall order shall also be given to the board of water commissioners and mayor, or chairman of the selectmen, or president or other officer of the water or ice company interested in such order.” Section 163 of Chapter 111 of the Massachusetts General Laws, also provides that “[w]hile the appeal is pending the order of the [MassDEP] shall be complied with, unless otherwise authorized by it.” M.G.L. c. 111, § 163. (emphasis added).

Under M.G.L. c. 111, § 147, “[w]hoever is aggrieved by an order made [by MassDEP] under [M.G.L. c. 111, § 160], . . . within three days after service of the order upon him, give written notice of appeal to . . . [MassDEP], and file a petition for a jury in the superior court in the county where the premises affected are located, and, after notice to . . . [MassDEP], may have a trial in the same manner as other civil cases are tried by jury. . . .”

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By:

  
Richard J. Chalpin, Regional Director  
205B Lowell Street  
Wilmington, Massachusetts 01887

Date: December 8, 2008





B. The Drinking Water Regulations, specifically the provisions of 310 CMR 22.04(7), state:

Each supplier of water shall operate and maintain its system in a manner that ensures the delivery of safe drinking water to consumers. In determining whether a supplier of water is properly operating and maintaining a public water system, the Department will apply the standards for public water systems set forth in the Drinking Water Program's "Guidelines and Policies for Public Water Systems[.]"

C. The Drinking Water Regulations, specifically the provisions of 310 CMR 22.07E(7)(b)2, state:

Chlorite. An owner or operator of community and nontransient noncommunity water systems using chlorine dioxide, for disinfection or oxidation, shall conduct monitoring for chlorite.

a. Routine Monitoring.

i. Daily Monitoring. Each supplier of water shall take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite MCL, the supplier shall take additional samples in the distribution system the following day at the locations required by 310 CMR 22.07E(7)(b)2.b. in addition to the sample required at the entrance to the distribution system.

ii. Monthly Monitoring. Each supplier of water shall take a three-sample set each month in the distribution system. The supplier shall take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling shall be conducted in the same manner (as three-sample sets, at the specified locations). Each supplier of water may use the results of additional monitoring conducted under 310 CMR 22.07E(7)(b)2.b. to meet the requirement for monitoring in 310 CMR 22.07E(7)(b)2.a.ii.

D. The Drinking Water Regulations, specifically the provisions of 310 CMR 22.07E(9), state:

Reporting and Recordkeeping Requirements.

(a) Each supplier of water who is required to sample quarterly or more frequently shall report to the Department within ten days after the end of each quarter in which samples were collected, notwithstanding the provisions of 310 CMR 22.15. Each supplier of water who is required to sample less frequently than quarterly shall report to the Department within ten days after the end of each monitoring period in which samples were collected.



- j. Respondent's financial condition; and
- k. The public interest.

7. As stated in Paragraph 4, MassDEP assesses a civil administrative penalty against Respondent in the amount of **Five Thousand Seven Hundred Fifty and 00/100 Dollars (\$5,750.00)** for violations of the Drinking Water Regulations, specifically the provisions of 310 CMR 22.04(7). Specifically, MassDEP assesses the following amounts for the following violations:

A. For violation of 310 CMR 22.04(7), MassDEP applied factors a., e., f., and k. from paragraph 6, above, and assessed \$5,750.00 for one instance of the violation as detailed in Paragraph 4.E, above.

8. Respondent is hereby notified that:

a. Respondent has a right to an adjudicatory hearing on this civil administrative penalty assessment;

b. Effective twenty-one (21) days after the date of the issuance of this Notice, Respondent shall be deemed to have waived its right to an adjudicatory hearing on this civil administrative penalty assessment unless, within said twenty-one (21) days, Respondent files with MassDEP (i.e., MassDEP receives), a written statement that:

(1) does either or both of the following, and does so subject to and in compliance with the applicable provisions of MassDEP's Rules for Adjudicatory Proceedings, 310 CMR 1.00:

(i) denies what is set forth in Section II above;

(ii) asserts that the money amount of the civil administrative penalty, as set forth in Paragraph 7 above, is excessive; and

(2) clearly and concisely states every point of fact and law Respondent intends to raise in the adjudicatory hearing.

Said request for administrative hearing must include a copy of the document being appealed and must be addressed and mailed to:

Docket Clerk,  
Commonwealth of Massachusetts,  
MassDEP of Environmental Protection,  
Office of Appeals and Dispute Resolution,  
One Winter Street, 2<sup>nd</sup> Floor, Boston, MA 02108

With a copy sent to:



Heidi M. Zisch, Counsel  
MassDEP-OGC-NERO  
205 B Lowell Street  
Wilmington, MA 01887.

(3) Said request for administrative hearing must also be accompanied by a valid check made payable to Commonwealth of Massachusetts in the amount of \$100.00 for the required filing fee. The filing fee must be mailed to:

Commonwealth of Massachusetts  
Massachusetts Department of Environmental Protection  
P.O. Box 4062  
Boston, MA 02211-4062

The filing fee is not required if the appellant is a city, town, county, or district of the Commonwealth of Massachusetts or a municipal housing authority. Failure to pay the filing fee as required is grounds for dismissal of the request for hearing.

Waiver of filing fee: Upon a showing of undue financial hardship, MassDEP may waive the adjudicatory hearing filing fee. A person who believes that payment of the \$100 filing fee would be an undue financial hardship must file, together with the request for adjudicatory hearing as provided above, an affidavit setting forth the facts the appellant believes constitute the undue financial hardship.

9. If Respondent waives its right to an adjudicatory hearing, Respondent must pay the full amount of the civil administrative penalty no later than twenty-one (21) days after the date of issuance of this Notice. Payment must be made by certified check, cashiers check or money order, payable to the Commonwealth of Massachusetts. No other form of payment shall be accepted. Respondent shall clearly print the following on the face of Respondent's payment:
- a. the name "City of Lawrence";
  - b. the file number appearing on page 1 of this Notice; and
  - c. Respondent's Federal Employer Identification Number, and shall mail it to:

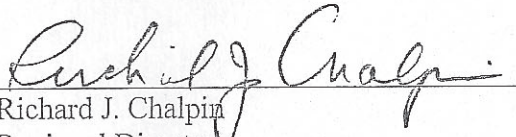
Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 3982  
Boston, Massachusetts 02241-3584

10. If Respondent waives its rights to an adjudicatory hearing, and if Respondent does not pay the full amount of the civil administrative penalty within twenty-one (21) days after the date of issuance of this Notice, Respondent shall be liable to the Commonwealth for up to three times the amount of the penalty, together with costs, plus interest from the time the penalty

became final, and attorneys' fees, including all costs and attorneys' fees incurred directly in the collection of the penalty.

11. If the noncompliance described in Section II above continues or is repeated after the date of issuance of this Notice, additional civil administrative penalties may be assessed for every day of such noncompliance from now on. Such additional civil administrative penalties may be assessed in the course of the adjudicatory hearing on this assessment of a civil administrative penalty, without issuance of any other penalty assessment notice to Respondent. If Respondent waives its rights to an adjudicatory hearing on this assessment of a civil administrative penalty, such additional civil administrative penalties may be assessed in as many additional penalty assessment notices as necessary.

**MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By:   
Richard J. Chalpin  
Regional Director  
Northeast Regional Office  
205B Lowell Street  
Wilmington, MA 01887

Date: December 8, 2008