

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

MILFORD BOARD OF SELECTMEN)
)
 AND)
)
 MILFORD WATER COMPANY)
)

D.P.U. 09-70

**COMPLAINT OF THE SELECTMEN OF MILFORD
PURSUANT TO G.L. C.164, § 93**

Now comes the duly elected Board of Selectmen of the Town of Milford (hereafter “the Board”) upon their unanimous vote and by their attorney, and respectfully request that this Department hear their complaint pursuant to G.L. c. 164, § 93 and G.L. c. 165, § 2 as to the quality of the water and services of the Milford Water Company (hereafter “the Company) including and in relation to the events leading up to, during and after a recent contamination of water supplied by the Company and with particular reference to the propriety of actions taken by said Company and expenses incurred by said Company. By way of more detailed factual background the Milford Board of Selectmen states as follows:

1. On or about August 9, 2009 the Board learned that the Company had, on that date, been issued a verbal Boil Water Order by the Massachusetts Department of Environmental Protection (“MassDEP”) which was followed by a written Boil Water Order dated August 10, 2009. A copy of the cover letter to the Company from MassDEP dated August 10, 2009 is attached hereto as Exhibit “A”. A copy of the written Boil Water Order of August 10, 2009 is attached hereto as Exhibit “B”.

2. As indicated in said Boil Water Order routine bacteria samples collected on August 5, 2009 and again on August 7, 2009 were found positive for total coliform with one sample positive for E.coli.

3. As a result of the various findings as reflected in the August 10, 2009 order the Company was found to be in non-compliance with the monthly maximum contaminant level for microbiological contaminants. It was further determined that the violation could pose an acute risk to health as a result of short term exposure thus requiring immediate public notification including notification of all customers served by the Company to boil tap water for at least one minute before drinking.

4. Notwithstanding the requirements of the order, the notification given by the Company was inadequate and resulted in confusion and an inordinate level of fear in the public.

5. Shortly after the implementation of the Boil Water Order referred to above representatives of the Company did announce to the public that free bottled water would be available at the Company's Dilla Street headquarters. Pallets of water were apparently purchased by the Company, to be made available at the Dilla Street headquarters, with resulting chaotic traffic patterns and endangerment to public safety. As a result thereof the Milford Police Chief, Fire Chief and other town officials did arrange to move the Company's free water operation to better and safer facilities at Milford High School.

6. There was no chemical contamination in relation to the Milford Water supply and Mass DEP did not issue a Do Not Drink Order in relation to Milford's supply water but only the Boil Water Order. The Company began and continued the free water program through and including August 17, 2009. Over \$300,000 in costs for bottled water were incurred together with costs likely totaling another \$100,000 for police details, company overtime, food and facilities for employees and volunteers and other costs of the free water distribution program.

7. The Boil Water Order not only caused significant inconvenience and disturbance in the lives of residential customers of Milford but significant numbers of Milford businesses were

- B. Determine what other costs and/or expenses flowing from contamination and its aftermath should not now or in the future, directly or indirectly, be passed on to the rate payers of the Company; and
- C. Determine whether or not, and to what extent, the Company should be responsible for disruption and losses of Company customers and how such losses should be handled; and
- D. Determine, in conjunction with DEP and others as appropriate, what improvements must be made to the Milford Water system to insure adequate quality in the future and how the costs thereof shall be borne; and
- E. Hold public hearing(s) in the Town of Milford so that customers and rate payers may have input into the process.

THE MILFORD BOARD OF SELECTMEN
By their attorney,

/s/Gerald M. Moody, Town Counsel
Town Hall – 52 Main Street
Milford, MA 01757
Telephone 508-634-2302
BBO # 352380
gmoody@townofmilford.com



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Central Regional Office, 627 Main Street, Worcester, MA 01608

DEVAL L. PATRICK
Governor

IAN A. BOWLES
Secretary

TIMOTHY P. MURRAY
Lieutenant Governor

LAURIE BURT
Commissioner

August 10, 2009

Milford Water Company
66 Dilla Street
Milford, MA 01757

Re: MILFORD
PWS: Milford Water Company
PWS ID # 2185000
ENF # UAO-CE-09-5D006
BOIL WATER ORDER

Attn: Henry Papuga, Director and CEO

Dear Mr. Papuga,

The Massachusetts Department of Environmental Protection ("MassDEP") has determined that the water from your water system could pose an unacceptable risk to public health and issued a verbal Boil Water Order to the Milford Water Company on August 9, 2009. MassDEP is issuing the enclosed Boil Water Order to the Milford Water Company to ensure that the water provided to consumers is fit for human consumption. Each requirement contained in this Order will remain in effect until terminated by MassDEP in writing. MassDEP will terminate one or more such requirements after you demonstrate that the principal incident or reason for issuance of this Order has been corrected and that such action is no longer necessary.

If you fail to take any action set forth in this Order by the prescribed deadline, or if you otherwise fail to comply with the requirements of this Order, you could be subject to legal action, as described in this Order.

If you have any questions about the contents of this Order, please contact Paul Anderson, at 508-767-2802.

Very truly yours,

Martin Suuberg
Regional Director

Attachments: Boil Water Order
Tier 1 Public Notice and Boil Order Consumer Information
Staffing Plan

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

In the Matter of:

Milford Water Company

BOIL WATER ORDER
ENF# UAO-CE-09-5D006
PWS ID # 2185000

I. THE PARTIES

1. The Massachusetts Department of Environmental Protection ("MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21, § 7. MassDEP has its principal office located at One Winter Street, Boston, Massachusetts 02108, and a regional office located at 627 Main Street in Worcester, Massachusetts.

2. Milford Water Company (the "PWS") is a Supplier of Water, as defined in 310 CMR 22.02, and operates a Community Water System, which is a type of Public Water System, as defined in 310 CMR 22.02, in Milford, Massachusetts. The PWS's business address is 66 Dilla Street, Milford, Massachusetts 01757.

II. STATEMENT OF FACTS AND LAW

3. MassDEP has primary enforcement responsibility for the requirements of the Federal Safe Drinking Water Act, 42 U.S.C. §300f *et seq.* and the regulations promulgated thereunder by the United States Environmental Protection Agency ("EPA"). MassDEP implements and enforces statutes and regulations of the Commonwealth of Massachusetts for the protection of the public drinking water supply, including, without limitation, M.G.L. c.111, §5G and §160, and 310 CMR 22.00 ("the Massachusetts Drinking Water Regulations"). Pursuant to M.G.L. c.111, §160, MassDEP may issue such orders as it deems necessary to ensure the delivery of fit and pure drinking water by public water systems to all consumers. Pursuant to M.G.L. c. 111, §5G, MassDEP may require the provision and operation of such treatment facilities as it deems necessary to ensure the delivery of a safe water supply to all consumers.

4. The Massachusetts Drinking Water Regulations apply to all Public Water Systems in the Commonwealth. The regulations define a "Public Water System" as a system for the provision to the public of water for human consumption, through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days of the year. Public Water Systems include: (1) any collection, treatment, storage, and distribution facilities under control of the operator of such systems and used primarily in connection with such systems; and (2) any collection or pretreatment storage facilities not under such control that are used primarily in connection with such systems. *See* 310 CMR 22.02.

5. The following facts have led MassDEP to issue this Order:
- A. On August 5, 2009, two routine bacteria samples collected on August 5, 2009, were confirmed positive for total coliform and one sample was positive for *E. coli*. As a result, PWS collected six repeat samples on August 7, 2009.
 - B. On August 9, 2009, the PWS notified MassDEP that the six repeat samples collected on August 7, 2009, were total coliform positive but negative for *E. coli*. Total chlorine residuals measured in the distribution system on August 7, 2009, ranged from .05 to 0.10 ppm.
 - C. The Massachusetts Drinking Water Regulation at 310 CMR 22.05(8) defines the maximum contaminant level (MCL) for Microbiological Contaminants, and compliance with the MCL, as follows:
 - (a) The MCL is based on the presence or absence of total coliform in routine samples, rather than coliform density.
 - 1. For a system which collects at least 40 routine samples per month, if no more than 5.0% of the samples collected during a month are total coliform-positive, the system is in compliance with the MCL of total coliform.
 - 2. For a system which collects fewer than 40 routine samples/month, if no more than one sample collected during a month is total coliform-positive, the system is in compliance with the MCL for total coliform.
 - (b) Any fecal coliform-positive repeat sample or *E. coli*-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or *E. coli*-positive routine sample constitutes a violation of the MCL for total coliform. For purposes of the public notification requirements in 310 CMR 22.16, this is a violation that may pose an acute risk to health.
 - (c) A public water system must determine compliance with the MCL for total coliforms in accordance with 310 CMR 22.05(8)(a) and 310 CMR 22.05(8)(b) for each month in which it is required to monitor for total coliform.
 - D. The PWS is in noncompliance with the monthly MCL for total coliform in 310 CMR 22.05(8)(a) because more than 5.0% of the samples collected during the month of August 2009 were total coliform-positive.

- E. The PWS is in noncompliance with the acute MCL for total coliform in 310 CMR 22.05(8)(b) because a total coliform-positive repeat sample followed an *E. coli*-positive routine sample. This violation may pose an acute risk to health as a result of short-term exposure and requires immediate public notification in accordance with 310 CMR 22.16.
- F. On August 9, 2009, MassDEP verbally informed the PWS of the violation and directed the PWS to evaluate the cause of the total coliform present in the distribution system, take corrective action, and notify its consumers to either boil their tap water for at least one minute before consuming or to consume water from an alternative source approved by MassDEP until further notice. In addition, MassDEP informed the PWS that this written Order would be forthcoming.

III. DISPOSITION AND ORDER

For the reasons stated above, MassDEP hereby Orders the PWS to take the following actions pursuant to M.G.L. c. 111, §§5G and 160. This Order shall be binding on the PWS and on its successors, heirs, and assigns. The PWS shall not violate this Order, and shall not allow or suffer its employees, agents, or contractors to violate this Order. Pursuant to M.G.L. c. 21A, §16 and 310 CMR 5.00, MassDEP hereby determines that the deadlines set forth below constitute reasonable time for coming into compliance with the provisions cited above.

6. **The PWS is hereby ORDERED to take the following actions:**

- A. **PROVIDE NOTIFICATION AND INFORMATION TO THE PUBLIC.** As soon as practical but no later than 24 hours after MassDEP verbally notified the PWS of the terms of this Order, which occurred on August 9, 2009, notify all consumers served by the Milford Water Company to boil their tap water for at least one minute before drinking or using for purposes of human consumption, such as cooking, ice-making, dishwashing, and maintaining oral hygiene (e.g., teeth brushing), until further notice. In addition, the notice shall instruct consumers to discard any ice, juice, formula, and uncooked foods that were prepared with water from the PWS's distribution system after August 5, 2009. The PWS may instruct consumers to use bottled water or water from a MassDEP-approved alternative source of supply in lieu of boiling. In addition, if the PWS sells or otherwise provides drinking water to other public water systems (i.e., to consecutive systems), then the PWS shall provide notice to the owner/operator of the consecutive system. The notification required by this paragraph shall conform to the requirements for Tier 1 Public Notice in 310 CMR 22.16(2)(a), (b) and (c) and 310 CMR 22.16(5).
- B. **PROVIDE NOTIFICATION AND INFORMATION TO LOCAL OFFICIALS.** As soon as practical but no later than 24 hours after learning of the violation cited above, notify the chief municipal officer(s), local board(s) of health, and other emergency personnel, as appropriate, in the PWS's service area

of the contamination and the planned response. The notification required by this paragraph shall conform to the requirements for Emergency Reporting in 310 CMR 22.15(9).

- C. **IMPLEMENT EMERGENCY RESPONSE PLAN.** Immediately begin to implement the PWS's Emergency Response Plan in accordance with 310 CMR 22.04(13).
- D. **PROVIDE ADDITIONAL DISINFECTION.** Immediately increase disinfection at all active sources and distribution locations, including storage tanks, and perform unidirectional flushing of the system in accordance with applicable laws and regulations. The PWS shall measure and record the free chlorine residual at each entry point and distribution sampling location to document disinfection.
- E. **CONDUCT REPEAT MONITORING FOR TOTAL COLIFORM.** As soon as practical but no later than 24 hours after MassDEP verbally notified the PWS of the terms of this Order, which occurred on August 9, 2009, collect repeat samples for total coliform analysis at the locations and frequency approved by MassDEP, including raw water, entry point, routine distribution system locations and storage tanks, in accordance with 310 CMR 22.03(2). Such sampling shall continue daily until MassDEP determines that the principal incident or reason for the violation has been corrected and the water no longer poses a risk to health. The PWS shall measure and record the free chlorine residual at each sampling location. The PWS shall immediately notify MassDEP after learning of the analytical results from the laboratory.
- F. **SUBMIT AN EMERGENCY RESPONSE REPORT.** The PWS shall complete and submit an Emergency Response Report (ER Report - Form 1) to MassDEP in accordance with 310 CMR 22.15(9)(c) and by the deadline specified therein.
- G. **WITHIN 30 DAYS** of the date of this Order, the PWS shall submit to MassDEP an updated water distribution map identifying the coliform sample locations, locations of water sources, water treatment plants, storage tanks, and distribution piping, in accordance with 310 CMR 22.04(5).
- H. **WITHIN 30 DAYS** of the date of this Order, the PWS shall submit to MassDEP an updated staffing plan, in accordance with 310 CMR 22.11B.

7. All notices, submittals, and other communications to MassDEP required by this Order shall be directed to:

Marielle Stone, Drinking Water Section Chief
MassDEP
627 Main Street
Worcester, Massachusetts 01608
Tel: (508) 767-2827 Fax: (508) 849-4035

8. The PWS is advised that, if it fails to comply with this Order, M.G.L. c. 111, §160 provides for fines and civil penalties of up to \$25,000 and by imprisonment for up to one year for each day during which each violation covered by this Order continues or is repeated. PWS is further advised that if it fails to comply with this Order, M.G.L. c. 21A, §16 provides for civil administrative penalties of up to \$25,000, plus the economic benefit realized for such noncompliance.

IV. APPEAL RIGHTS AND TIME LIMITS

9. Pursuant to M.G.L. c. 111, §§147 and 163, whoever is aggrieved by this Order may, within three (3) days after service of the Order upon him/her, 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. If by mistake of law or fact or by accident such person fails within said three (3) days to apply for a jury, and if it appears to the court that such failure was caused by such mistake or accident, and that such person has not, since the service of the Order upon him/her, violated it, such person may apply for a jury within thirty (30) days of such service. Pursuant to M.G.L. c. 111, §163, any such aggrieved person must comply with this Order while the appeal is pending, unless otherwise authorized in writing by MassDEP.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____

Paul Anderson

Jan Martin Suuberg, Regional Director
Central Regional Office
627 Main Street
Worcester, Massachusetts 01608
Telephone (508) 792-7650

Date: _____

8/10/09