

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

August 11, 2023

In re: Venango Water Company

Docket No. M-2023-3042180

EX PARTE EMERGENCY ORDER

The Venango Water Company (VWC) is a jurisdictional water utility, certificated in 1961, at Utility Code 213110. VWC provides water service through approximately 234 service connections to a population of approximately 550 people in the unincorporated Village of Reno, Sugarcreek Borough, Venango County. VWC's main sources of water supply include the Shaffer Spring and Bellows Spring. The Commission understands that there is a potential dispute regarding the ownership of VWC, and that the certified operators of the VWC system are Kevin Rhodes and Randall Rhodes.

On July 20, 2023, Commission's Bureau of Technical Utility Services (TUS) received a notification from the Pennsylvania Emergency Management Agency (PEMA) that the Pennsylvania Department of Environmental Protection (DEP) required VWC to issue a "Do No Consume" Advisory for the VWC system due to possible contamination of the water supply impacting the Bellows Spring water source.

On July 26, 2023, pursuant to Sections 505 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 505, 1501, TUS issued a Bureau letter as well as Data Request Set 1 to VWC. Therein, TUS requested information regarding the status of VWC's general operations, details regarding corrective actions to be taken by VWC, information regarding a succession plan to ensure the continued operation and provision of water to VWC customers, and details regarding any consideration given by VWC to exiting the

provision of water service though the sale of VWC. TUS requested a response from VWC within five business days.

On August 4, 2023, the DEP issued a Notice of Violation (NOV) to VWC. DEP indicated that VWC's customers are experiencing water quality issues and have contacted VWC regarding those issues. DEP stated that it confirmed contamination and requested VWC to stop use of the Bellows Spring source, issue a Tier 1 public notice in the form of a "Do Not Consume" Advisory, issue a water conservation notice to all customers of the water system, and provide bottled water to all customers of the system.

DEP further noted that it conducted several inspections of the VWC water system and determined that VWC is in violation of the Safe Drinking Water Act and DEP's regulations. DEP found, among numerous other violations, that VWC failed to take the necessary steps to develop a plan for the provision of safe and adequate drinking water under emergency circumstances pursuant to 25 Pa. Code § 109.707(a), and to take whatever investigative or corrective actions necessary to assure that safe and potable drinking water is continuously supplied to users in accordance with 25 Pa. Code § 109.4(4). Additionally, DEP indicated that it had received a Request for Reserve Designation application for three well sources prior to the current incident, but that, to date, DEP had not received an updated application that addressed the previous application deficiencies from VWC. Appendix B.

On August 7, 2023, TUS received an untimely response to its Data Request Set 1 from VWC. The response failed to outline any remedial actions, or plans to provide safe and adequate service to VWC customers.

On August 9, 2023, TUS issued a second Bureau letter and Data Request Set 2. Therein, TUS requested information regarding the status of all sources of water supply, information regarding the VWC's response to the DEP's NOV, details regarding water

testing, information regarding a succession plan to ensure the continued operation and provision of water, and a response regarding whether VWC is requesting the Commission to direct a competent public utility to assume operational control of VWC. TUS sought a response from VWC by August 11, 2023.

On August 11, 2023, TUS received a response to Data Request Set 2. The response detailed issues of adequate water quality and quantity from water sources, and cost prohibitions, among other things. The response also indicated that the certified operators believe that a request should be filed by VWC for a competent public utility to assume operational control of VWC.

Also, on August 11, 2023, TUS received a Statement from certified operator of VWC, Kevin Rhodes, indicating that “due to the lack of utilizing EP 133 Bellows Spring, Venango Water company will be out of water to supply to its customers in seven to ten days.” The Statement further provided that “Venango Water Company does not have the resources to sustain any type of plan to operate in this situation” and that Kevin Rhodes “recommend[s] that the Public Utility Commission [] expedite[s] affirmative action under Section 529.” Appendix C.

Based on the matters described herein, the Commission believes that a receiver should act immediately to assess and correct conditions that would cause VWC to provide unsafe, inadequate, or unreasonable water service to its customers and the public. VWC should also appear before the Commission to demonstrate that it is capable of providing safe, reliable, and reasonably continuous water service in accordance with the requirements of the Public Utility Commission and the DEP. To this end, the Commission will initiate a proceeding pursuant to 66 Pa. C.S. § 529, where VWC shall appear before the Commission to address these matters and, if necessary, provide reasonable solutions thereto. In the interim the Commission will appoint a receiver pursuant to 66 Pa.C.S. § 529(g) to protect the interests of VWC’s customers and

members of the affected public. The responsibilities of the receiver are specified in the attached Appendix A.

The Commission takes immediate affirmative action here, subject to revision in a subsequent Ratification Order, to protect VWC's customers and all members of the public affected by the regulated utility service rendered by VWC, and to confirm VWC obligation to provide safe, reasonable, and adequate utility service. Based on its apparent lack of safe, reasonably continuous, and adequate service, present management and operating conditions at VWC appear to present a serious public health and safety threat that the Commission will not ignore.

Pursuant to the Public Utility Code, every public utility has a duty to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employes, and the public.” 66 Pa.C.S. § 1501. Additionally, “such service shall be reasonably continuous and without unreasonable interruptions or delay.” *Id.*

The Public Utility Code authorizes the Commission to regulate the conduct of public utilities in the Commonwealth. 66 Pa.C.S. § 501. The Commission is also authorized to “enforce obedience” to the Public Utility Code, Commission regulations, and Commission orders. 66 Pa.C.S. § 502. Moreover, Section 529 of the Public Utility Code, 66 Pa.C.S. § 529, authorizes the Commission to direct a competent public utility to assume operational control or to acquire a small water utility that has jeopardized public safety by failing to provide reasonable and adequate utility service.

Section 529 is an emergency provision that authorizes the Commission to take immediate action to protect the public interest. Pursuant to 66 Pa.C.S. § 529(a), the Commission may order a capable public utility to acquire a small water utility like VWC, if

the Commission determines, after notice and hearing, that: (1) VWC has violated statutory or regulatory standards, (2) VWC has failed to comply within a reasonable period of time with any Commission order concerning the safety, adequacy, efficiency, or reasonableness of service, (3) VWC cannot reasonably be expected to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in the future, (4) alternatives to acquisition are determined to be impractical or not economically feasible, (5) the acquiring utility is capable of operating VWC in compliance with statutory and regulatory standards, and (6) that the rates charged to VWC customers will not increase unreasonably because of the acquisition. In making these determinations, the Commission is to consider the factors enumerated in 66 Pa.C.S. § 529(c).

Additionally, 66 Pa.C.S. § 529(a)(4) requires the Commission to explore alternatives to acquisition, as outlined in 66 Pa. C.S. § 529(b). Finally, as the bureau with delegated prosecutory discretion under Section 308.2(a)(11) of the Public Utility Code, the Commission's Bureau of Investigation and Enforcement (BIE) shall be directed to participate in this matter to address fitness determinations, alternatives to acquisition, and factors for consideration required under Sections 529(a), (b), and (c) as it deems appropriate and before a final determination on acquisition can be rendered.

In addition to the above, 66 Pa. C.S. § 529(g) provides that the Commission may take action to ensure that customers of a small water utility and the affected public will receive safe and adequate service during the pendency of a Section 529 proceeding. Section 529 provides as follows:

- (g) Appointment of receiver.—The commission may, in its discretion, appoint a receiver to protect the interests of the customers of the small water or sewer utility. Any such appointment shall be by order of the commission, which order shall specify the duties and responsibilities of the receiver.

66 Pa. C.S. § 529(g). While Pennsylvania's two largest regulated water utilities, Pennsylvania American Water Company (PAWC) and Aqua Pennsylvania, Inc. (Aqua) would be suitable candidates to operate VWC, the Commission understands that that Aqua has been in contact with DEP and Venango County officials regarding VWC. Aqua has the resources and capabilities to operate the VWC system. Aqua has facilities in close proximity via its Emlenton system, which is approximately 15 miles from VWC.

This Order will appoint Aqua as the Receiver to manage and operate VWC during the pendency of the Section 529 proceeding ordered herein. The Commission appoints Aqua as the Receiver because of its expertise and experience in operating water utilities subject to regulation under the Public Utility Code, and because its familiarity and understanding of the circumstances will work to ensure safe, adequate, reliable, and reasonably continuous service to the public. Accordingly, the Commission has specified the duties and responsibilities of the Receiver in this Order and in Appendix A.

CONCLUSION

To protect the health, safety and welfare of the customers of Venango Water Company, the Commission will initiate a proceeding pursuant to 66 Pa. C.S. § 529, including the appointment of a receiver under Section 529(g). These actions will provide for the orderly transition of operation and perhaps ownership of Venango Water Company to a competent water provider and will protect the customers of Venango Water Company and the affected public; **THEREFORE,**

IT IS ORDERED:

1. That an investigation shall be instituted into whether the Commission should order a capable public utility to acquire Venango Water Company pursuant to 66 Pa. C.S. § 529 and as is consistent with this Order.

2. That the Bureau of Investigation and Enforcement is expected to participate in the investigation proceeding. Water utilities with an interest in this matter may petition to participate as appropriate.

3. That Venango Water Company shall provide notice to its customers of the imposition of the receivership and the initiation of a Section 529 proceeding in the same manner as a general rate increase and shall inform its customers to direct future payments for water service to the Receiver as appointed by the Commission.

4. That pursuant to 66 Pa. C.S. § 529(g), the Commission directs Aqua Pennsylvania, Inc. to act as the Receiver for Venango Water Company beginning August 12, 2023, and to continue during the pendency of the Section 529 proceeding ordered above and in accordance with Appendix A to this Order.

5. Aqua Pennsylvania, Inc. will continue to provide bottled water to The Venango Water Company customers as required in the interim between this Order and August 12, 2023.

6. The Receiver shall not assume any debt incurred by Venango Water Company unless such assumption is approved through an Order of this Commission.

7. The Receiver shall not be liable for preexisting conditions, defects, or regulatory or statutory violations occasioned by Venango Water Company.

8. That utilities serving Venango Water Company are permitted and directed to initiate service to the facilities that used to serve Venango Water Company customers in the name of the Receiver as appointed by the Commission and consistent with this Order.

9. That Venango Water Company shall preserve all hard copy or electronic records, files, bank statements, documents, papers, or any other materials related to its offering of utility water service, including records of all contracts, agreements, loans, payments, and other arrangements with affiliated companies or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

10. That Venango Water Company shall, no later than August 12, 2023, turn over copies or originals of all books, records, accounts, and any other information used and useful in the provision of utility water service to customers served by Venango Water Company to the Receiver as appointed by the Commission or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

11. That Venango Water Company shall, no later than August 12, 2023, turn over all operations and assets, including keys to locks securing facilities, buildings, and any other property, whether personal or real property, used and useful in the provision of utility water service to customers served by Venango Water Company to the Receiver as appointed by the Commission or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

12. That Venango Water Company, including its owners and employees, are directed to provide full and unconditional cooperation with the orderly transition of operations, management, and oversight to the Receiver as appointed by the Commission or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

13. That the Venango Water Company shall cease all billing and collections activity to its former customers as of August 12, 2023.

14. Effective immediately, Venango Water Company shall not engage in any purchase, sale, payment, lease, loan, or exchange of any service, property, money, security, right, or thing under contract, whether oral or written, or under any arrangement with an affiliated interest, the terms of which have not been approved by the Commission, subject to criminal and/or civil prosecution under Chapters 19, 21, and 33 of the Public Utility Code and any other applicable state or federal law.

15. That a copy of this Order be served on Venango Water Company, Aqua Pennsylvania, Inc., Pennsylvania American Water Company, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Northwest Regional Office of the Pennsylvania Department of Environmental Protection, and all proximate municipalities and authorities providing water service in an around Sugarcreek Borough, Venango County, Pennsylvania.

16. That a copy of this Order be posted on the Commission's website at www.puc.pa.gov.



Gladys Brown Dutrieuille, Chairman

DATE: August 11, 2023

APPENDIX A

Docket No. M-2023-3042180

1. That the Receiver, in its capacity as receiver of the Venango Company (VWC), shall have the following duties and responsibilities:
 - a. Operate the system in compliance with all State, Federal, and local laws and regulations.
 - b. Maintain any existing or necessary permits, licenses, approvals, authorizations, orders, consents, registrations, or filings.
 - c. Provide a listing of recommended capital improvements, identifying the capital improvements necessary to improve the performance of the system, to address or anticipate the obsolescence of portions of the system, to reduce the cost of operating the system, to provide cost savings or efficiency innovations to the system, or to comply with existing or anticipated changes to applicable laws and regulations.
 - d. Provide all supervision and personnel necessary to operate the system in a professional, efficient and economic manner, and in accordance with sound operating practices and prudent industry and utility standards.
 - e. Respond to system emergencies by taking necessary action to ensure the continued provision of adequate, efficient, safe and reasonable service.
 - f. Notify appropriate regulatory or governmental agencies regarding any emergency which, in the reasonable judgement of the receiver, is likely to result in material loss or damage to the system or constitute a material threat to human health or safety.
 - g. Provide for normal routine maintenance and the provision of supplies for the system.
 - h. Keep financial and accounting records and all pertinent operating data and information relating to the system as prudent industry and utility practices would require.
 - i. Assume VWC's billing and collection functions.
 - j. Provide VWC's customer service.

- k. Have the authority to borrow money in the name of VWC necessary for the continued provision of adequate, efficient, safe and reasonable service to the customers of VWC.
- l. Have the authority to file a petition for bankruptcy and participate in such proceedings on behalf of VWC.
- m. Comply with VWC's effective tariff for VWC customers.
- n. Submit all necessary paperwork to regulatory agencies of the system on behalf of VWC.
- o. Submit an initial status report to the Commission within 60 days of assuming operations and then quarterly thereafter to detail any relevant updates pursuant to duties and responsibilities assigned through receivership.
- p. Participate in discussions with the Commission regarding alternatives to the acquisition of VWC, pursuant to 66 Pa. C.S. § 529(b).
- q. Submit testimony regarding each factor delineated under 66 Pa. C.S. § 529(c) in any future proceeding pursuant to 66 Pa. C.S. § 529(a) relating to the acquisition of VWC by a capable public utility.
- r. Make reasonable efforts to establish the financial position of VWC at the time the Receiver assumed receivership.
- s. Establish a deferred expense account for expenses incurred by VWC that are payable to the Receiver.
- t. Petition the Commission to add or remove any duties or responsibilities; however, the Receiver must continue to fulfill all duties and responsibilities until such duties or responsibilities are removed by Commission Order or by a court with competent jurisdiction.
- u. Be permitted to use existing Commission-approved affiliated entities to provide services to VWC, provided that the Receiver provides the Commission written notice identifying which affiliates are providing services for which approval under 66 Pa. C.S. § 2102 would typically be required.

- v. Satisfy the aforementioned duties and responsibilities either directly, through Commission-approved affiliates, or through competitive operation and maintenance agreements or any combination thereof.
 - w. Charge VWC reasonable rates for all services rendered to or for VWC on behalf of the receivership.
2. That the Receiver, in its own capacity, shall have the following duties and responsibilities:
- a. Should VWC be unable to obtain necessary financing for ensuring the continued provision of adequate, efficient, safe and reasonable service to the customers of VWC, the receiver, at its option, may either directly provide financing for VWC or file a petition for bankruptcy.
 - b. Establish a deferred expense account for expenses incurred by the receiver resulting from this order, including prudent and reasonable legal expenses.
3. The Receiver may petition the Commission for modification or termination of this receivership, or to appoint another, or an additional, entity as a receiver of VWC.

Appendix B



August 4, 2023

NOTICE OF VIOLATION

CERTIFIED MAIL NO. 9489 0090 0027 6506 3081 34

Venango Water Company
c/o Mr. Randall L. Rhodes, Secretary &
Mr. Kevin Rhodes, Treasurer
P.O. Box 397
Reno, PA 16343

Re: Safe Drinking Water Violations
Venango Water WTP
PWSID No. 6610014
Sugarcreek Borough, Venango County

Dear Mssr. Rhodes:

As you are aware, around July 14, 2023 the Venango Water Company's ("Venango Water") public water system began to experience water quality issues and customers began to contact the water company regarding water quality issues. On July 20, 2023, the Department of Environmental Protection ("Department") was officially notified by Venango Water of a suspected discharge from a tank battery located upgradient of the Bellow Spring source. The Department confirmed this contamination and requested Venango Water to: 1) no longer utilize the Bellows Spring as a source of supply until further notice from the Department; 2) issue a Tier 1 public notice in the form of a "Do Not Consume Advisory" to all customers of the water system ("Tier 1 PN"); 3) simultaneously issue a water conservation notice to all customers of the water system; and 4) provide bottled water to all customers of the Venango Water system.

On July 21, 2023, Department staff conveyed to Venango Water that a complete version of the Tier 1 PN needed to be made available to all customers (as opposed to an abbreviated message). Department staff also began discussions of possible short-term and long-term options for Venango Water to utilize to ensure safe and potable water is continuously provided to the Venango Water customers. Additionally, the Department has conducted several inspections of the public water system and has determined that Venango Water is in violation of the Safe Drinking Water Act and its Regulations. Specifically, the Department has determined Venango Water's:

- Failure to review and update its Emergency Response Plan at least annually and as necessary to reflect changes to communication procedures and contact information pursuant to 25 Pa. Code § 109.707(c);
- Failure to develop a plan for the provision of safe and adequate drinking water under emergency circumstances pursuant to 25 Pa. Code § 109.707(a);

- Failure to develop an Emergency Response Plan that provides for corrective actions for probable emergency situations pursuant to 25 Pa. Code § 109.707(a)(6);
- Failure to implement Emergency Response Plan when necessary pursuant to 25 Pa. Code § 109.707(b);
- Failure to present the Emergency Response Plan to the Department upon request pursuant to 25 Pa. Code § 109.707(c)(2); and
- Failure to take whatever investigate or corrective action is necessary to assure that safe and potable water is continuously supplied to the users in accordance with 25 Pa. Code § 109.4(4).

Further, on July 9, 2021, the Department received a Request for Reserve Designation application for the following sources: Upper Well (Source 012); Lower Well (Source 013), and Lower Spring (014). On January 10, 2022, the Department returned the July 2021 Request for Reserve Designation application and identified six (6) deficiencies associated with the application. To date, the Department has not received an updated application, including \$50 application fee, for the reserve designation of these three (3) sources. Because the three (3) sources are not approved Reserve Sources, Venango Water's failure to conduct periodic monitoring of the water system which includes the raw water of these permitted sources violates 25 Pa. Code § 109.718.

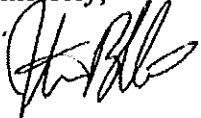
In order to return the public water system to compliance, the Department requests that Venango Water:

1. Within thirty (30) days, update the existing Emergency Response Plan to reflect changes to communication procedures and contact information. Additionally, one of the specific scenarios outlined in the Emergency Response Plan shall include the contamination of one or more sources, then both short-term and long-term measures that are anticipated to be implemented to ensure safe and potable water is continuously supplied to users of the Venango Water public water system;
2. On or before August 20, 2023, and continuing monthly thereafter until notified by the Department in writing, repeat the Tier I PN to all customers, including a water conservation notice;
3. Submit a certification that the Tier I PN requirements have been fulfilled, along with a copy of each notice, to this office within 10 days of issuing the public notice in accordance with 25 Pa. Code § 109.701(a)(4); and
4. Within thirty (30) days, complete one of the following options: 1) submit an updated Request for Reserve Designation application, including \$50 application fee, which addresses the six (6) items outlined in the January 10, 2022 return letter; 2) submit an updated Comprehensive Monitoring Plan which reflects that all permitted sources are included in future monitoring requirements for the water system; or 3) submit a permit application, including \$50 application fee, which requests the proper abandonment of any or all of the sources known as Upper Well (Source 012), Lower Well (Source 013), and Lower Spring (Source 014).

This Notice of Violation is neither an order nor any other final action of the Department. It neither imposes nor waives any enforcement action available to the Department under any of its statutes. If the Department determines that an enforcement action is appropriate, you will be notified of the action.

If you have any questions concerning this matter, please contact me by electronic mail at jblashaw@pa.gov or by telephone at 814.332.6304.

Sincerely,



Justin T. Blashaw
Environmental Group Manager
Safe Drinking Water Program

Enclosures

cc: Desiree Rhodes, Executrix of the Estate of Blaine E. Rhodes
D. Screven, PUC (pdf only)
J. Van Zant, PUC (pdf only)
P. Zander, PUC (pdf only)
P. Cicero, Office of Consumer Advocate (pdf only)
C. Hoover, Office of Consumer Advocate (pdf only)
C. Rupert thru R. Kirby (pdf only)
File

JTB:emr

Appendix C

I, Kevin S. Rhodes, as Head Certified Operator of Venango Water Company, do hereby state that it is my belief that due to the lack of utilizing EP 133 Bellows Spring, Venango Water Company will be out of water to supply to its customers in seven to ten days. Venango Water Company does not have the resources to sustain any type of plan to operate in this situation. I recommend that the Public Utility Commission to expedite affirmative action under section 529.

Kevin S. Rhodes

August 11, 2023