



TANK  
C O N N E C T I O N  
FALL  
RIVER

# EPA Takes Enforcement Against the City of Fall River

**F**all River is located twelve miles northwest of Fredonia and has a population of approximately 150 persons. The city purchases water from Wilson Co. RWD 11 which purchases water from Public Wholesale Water Supply District 23 (PWWSO 23). Neither Fall River nor Wilson Co. RWD 11 chlorinate the water the systems provide to their customers or treat the water in any way.

United States Environmental Protection Agency (EPA) employees are taking enforcement action against the city of Fall River. This action is taken because the trihalomethanes (THMs) are higher than the maximum contaminant level (MCL). What makes this enforcement action very disturbing is that Fall River purchases drinking water from another water supplier and does not chlorinate the water.

The city of Fall River recently constructed this water storage tank and also replaced its distribution system. The city does not want to construct a water treatment plant to reduce trihalomethanes.

## Source of water

PWWSD 23 operates a water treatment plant just southwest of Fredonia. The plant treats water from the Fall River. PWWSD 23 produces water for more than 20 public water supplies in and around Wilson County.

PWWSD 23 purchased and upgraded the Fredonia water treatment plant in 2010 with the approval of the Kansas Department of Health & Environment (KDHE). The cost to the district was \$12.5 million in loan and \$5 million in grant from USDA Rural Development. PWWSD 23 is presently seeking an additional \$13.5 million in loan and \$11 million in grant from Rural Development to construct a new water treatment plant.

The improvements made in 2010 have not reduced the THMs to below the required MCL. One reason for constructing the new water treatment plant is to lower the THMs in the drinking water.

The THMs levels in the city of Fall River drinking water are caused by the free chlorine contact time at the PWWSD 23 water treatment plant. Last year PWWSD 23 proposed changes in reducing the contact time to lower the THMs in the drinking water. These changes would cost less than \$1,000 and take only one to two days to install. KDHE has not approved those proposed changes.

The high THMs in the water are caused by the long free chlorine contact time at the PWWSD 23 water treatment plant. See the nearby table for some recent information on THMs levels.

## Enforcement action

The city of Fall River received a letter and a proposed, 7-page Administrative Order on May 22 from the United States Environmental Protection Agency. The letter stated that the Agency would evaluate “other enforcement actions” if the city chose not to sign the proposed Order within 30 days. The city has been in violation with the MCL for THMs for the last two quarters of 2016 and the first two quarters of 2017.

Among other requirements, the proposed order states that the city must hire an engineer, submit a “Corrective Action Plan and Schedule”, and if chemical treatment/addition, construction or infrastructure improvements are proposed, then KDHE approval is required.

KDHE employees and EPA employees agree and are coordinating on this enforcement action because KDHE does not have enforcement authority or responsibility for the Stage 2

**One provision concerns waiving the city’s rights and another is a civil penalty (fine) of up to \$54,789 per day!**

Disinfectants and Disinfection By-Products Rule; thus, EPA has primary responsibility.

The proposed Administrative Order has several provisions that are disturbing and are shown in the sidebar at left. One provision concerns waiving the city's rights. Another provision concerns a possible civil penalty (fine) of up to \$54,789 per day! Together these provisions can be devastating. The \$54,789 is intimidating and is used to coerce the city into cooperating on terms of the federal regulatory employees.

Some Recent Monitoring Results From Systems Purchasing PWWSD 23 Water		
Water Supply	Date	THMs ug/l
City of Fredonia	April 3, 2017	72
City of Altoona	April 4, 2017	74
Neosho Co. RWD 6	April 9, 2017	71
Neosho Co. RWD 7	April 10, 2017	63
Neosho Co. RWD 9	April 10, 2017	63
Neosho Co. RWD 12	April 12, 2017	63
Woodson Co. RWD 1	April 17, 2017	96
City of Thayer	April 23, 2017	140
Wilson Co. RWD 1	April 24, 2017	130
Wilson Co. RWD 7	April 25, 2017	130
Wilson Co. RWD 13	April 25, 2017	82
City of Fall River	April 25, 2017	120
City of Buffalo	April 27, 2017	110
Wilson Co. RWD 10	May 1, 2017	86
Wilson Co. RWD 11	May 1, 2017	120
Wilson Co. RWD 5	May 2, 2017	110
PWWSD 23	May 2, 2017	100
Wilson Co. RWD 2	May 6, 2017	86
<b>MCL for THMs is 80 ug/l</b>		
City of Fall River Monitoring Results		
Date	THMs ug/l	LRAA*
July 7, 2014	100	
December 29, 2014	120	
January 5, 2015	60	
April 13, 2015	57	84
September 22, 2015	68	76
October 27, 2015	85	68
February 8, 2016	46	64
April 19, 2016	99	75
August 22, 2016	120	88
October 25, 2016	58	81
January 29, 2017	45	81
April 25, 2017	120	86
<b>* Locational Running Annual Average</b>		

**The following selected provisions are extracted from one EPA Administrative Order and are also contained in other such orders concerning compliance with disinfection byproducts.**

25. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order, except that Respondent admits the jurisdictional allegations herein. **Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.\***
26. This Order shall not prohibit, prevent, or otherwise preclude EPA from taking whatever action it deems appropriate to enforce the Act in any manner and shall not prohibit, prevent, or otherwise preclude EPA from using this Order in subsequent administrative or judicial proceedings. Nothing in this Order shall constitute a waiver, suspension or modification of the requirements of the Act, or the rules and regulations promulgated there under which remain in full force and effect. **Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Law.\***

\* *Emphasis added by KRWA.*

### Impact on other Kansas public water supplies

The enforcement action taken against the city of Fall River by EPA employees is very serious and can affect many other water supplies in Kansas. The regulatory employees are taking comprehensive enforcement action for high THMs in a consecutive system that does not chlorinate the water and does not cause the high THMs. EPA employees have not addressed the situation with PWWS 23.

The regulatory employees have not addressed the matter with the systems selling the water and have not approved proposals by the water supplier / seller to address the high THMs. Contracts between the sellers of water and the buyers of water state that the water supplier must provide water that meets drinking water standards. Thus, when consecutive systems are out of compliance with THMs, the water does not meet the producer's / seller's responsibility in the contracts.

Hopefully the regulatory authorities will reconsider their decision in taking enforcement action against this consecutive public water supply for high THMs and against other systems that are in this situation. High THMs produced at water treatment plants should be addressed at the treatment plant.

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*Pat McCool has worked as a consultant to KRWA since January 2004. He previously worked for KDHE for 30 years. Pat has a bachelor degree in Chemical Engineering and a masters degree in Environmental Engineering from the University of Kansas.*

**WHATEVER IT TAKES!**

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