
**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY**

IN THE MATTER OF:

**REGENCE BLUECROSS BLUESHIELD
OF UTAH**
**2890 East Cottonwood Parkway
Salt Lake City, UT 84121**

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER OF
CONSENT**

Docket No. **UIC20-01**

This Administrative Settlement Agreement and Order on Consent (“Agreement” or “Order”) is entered into voluntarily by and between the Director of the Utah Division of Water Quality (“Director”), under the Director’s legal authorities described below and Regence Blue Cross Blue Shield of Utah (“RBCBS”), in its capacity as the “Operator” who is legally responsible for the operation of the RBCBS Building located 2890 East Cottonwood Parkway (“Facility”), jointly referred to hereafter as “the Parties.” By entering into this Agreement, the parties wish, without further administrative or judicial proceedings, to resolve the issues arising out of alleged violations of the Utah Water Quality Act, Utah Code Section 19-5-101 *et seq.* (the “Act”), and corresponding regulations in the Utah Administrative Code R305-7 *et seq.*

STATUTORY AND REGULATORY AUTHORITY

1. The Director has authority to administer the Act pursuant to Utah Code Section 19-1-105(1)(e), and to enforce the Utah Water Quality Rules, Utah Administrative Code R317 through the issuance of orders, as specified in Utah Code Sections 19-5-106(2)(d) and Section 19-5-111. The Director also has authority to settle any civil action initiated to compel compliance with the Act and implementing regulations pursuant to Utah Code Section 19-5-106(2)(k).

FACTS AND FINDINGS

The Director relies upon the following Facts and Findings from the NOV/CO for purposes of this Agreement:

1. On or about November 7, 2019, the Department of Environmental Quality (DEQ) received a report from an anonymous resident of a discharge to Big Cottonwood Creek. DEQ reported the discharge to the Salt Lake County Health Department, which conducted an investigation and found that the discharge was caused by a contractor responsible for

winterizing a cooling tower at the RBCBS Building. Salt Lake County Health Department conducted an enforcement action against the contractor related to the surface water discharge.

2. On or about November 19, 2019, an inspector from the Utah Division of Water Quality (“Division”) visited the RBCBS building and found a drain located below the cooling tower of the Facility and determined that it was an Underground Injection Control (UIC), Class V well. According to Utah Administrative Code R317-7-2: “Well” means a bored, drilled or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or an improved sinkhole; or a subsurface fluid distribution system. Because the drain is not sealed to prevent movement of fluids into the subsurface it was determined by the Division to be a well by this definition, as the Division concluded it is used as a subsurface fluid distribution system.
3. The Division inspector discovered that the cooling tower system was being used to dispose of descaling wash water during routine winter maintenance activities that occur in the fall of each year. The maintenance includes rinsing the interior of the cooling tower system with a mixture of water and Nalco 41, via the Class V well. The Class V well has never been inventoried or otherwise registered with the Division.
4. The Director issued a Notice of Violation and Order, Docket Number UIC20-01 (“NOV/CO”) to Operator on (May 29, 2020).
5. The MSDS sheet for Nalco 41 states as an environmental precaution “do not allow contact with soil, surface or ground water.”
6. RBCBS requested an extension to respond to the NOV/CO, which was granted, and a response was provided within the extended timeframe on July 28, 2020.
7. RBCBS’ response complied with the terms of the NOV/CO by explaining the cause of the discharge and how future compliance would be achieved. The response also explained, to the Division’s satisfaction, that minimal amounts of Nalco 41 were used in cleaning the cooling tower. Given that, the Division is not requiring the Groundwater Contamination Investigation or the Corrective Action originally required by the NOV/CO.

ORDER

Based upon the foregoing Facts and Findings, the Agreement of Operator, and good cause appearing, IT IS HEREBY ORDERED as follows:

1. Operator shall pay a penalty in the amount of \$ 1,169 and administrative costs in the amount of \$1,600 which was calculated and adjusted for circumstances in conformance with the penalty policy outlined in Utah Administrative Code R317-1-8.

2. Operator will cease and desist all un-permitted discharges at the Facility which violate Utah Water Quality standards. Inspections will be conducted during annual Facility maintenance events and randomly by Division inspectors to determine if these requirements are being met.
3. The Director waives the NOV/CO's requirement to submit a Groundwater Contamination Investigation Report and Corrective Action Plan as outlined in items 4 and 5 of the Order section of the NOV/CO.

GENERAL PROVISIONS

1. The Parties recognize that this Agreement has been negotiated in good faith and nothing herein constitutes an admission of any liability. Operator does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the facts and violations alleged in the NOV/CO. Operator further agrees it will not contest the basis or validity of this Order or its terms.
2. Operator agrees to the terms, conditions and requirements of this Order. By signing this Order, Operator understands, acknowledges and agrees that it waives: (1) the opportunity for an administrative hearing pursuant to Utah Code Section 19-1-301; (2) the right to contest the finding(s) in the NOV/CO; and (3) the opportunity for judicial review.
3. Compliance will be conditioned upon Operator adherence to the requirements of this Order, the Act, and the applicable Water Quality Rules.
4. The Date of Issuance shall be the date this Order is executed by the Director ("Effective Date"). The Director will not sign the Consent Order until after the Division has provided public notice of the proposed Order and has solicited and reviewed any public comments received.
5. The dates set forth in the Order section of this Order may be extended in writing by the Director, in the Director's sole discretion, based on the Operator's showing of good cause. Good cause for an extension generally means events outside of the reasonable control of the Operator, such as force majeure, inclement weather, contractor or supplier delays, and similar circumstances. However, the Director expects the Operator to employ reasonable means to limit foreseeable causes of delay. The timeliness of the Operator's request for an extension shall constitute an important factor in the Director's evaluation.
6. Nothing in this Order shall preclude the Director from taking actions to include additional penalties against the Operator for future violations of State or Federal law.
7. The Parties acknowledge that neither the Director nor the Board has jurisdiction regarding natural resource damage claims, causes of action, or demands. Therefore, such matters are outside the scope of this Order.

8. The person signing this Order on behalf of the Operator represents to the Director that he or she has the full legal authorization to do so and agrees that the Director may rely on that representation.
9. This Order may be amended in writing if signed by both Parties.

COMPLIANCE AND PENALTY NOTICE

As of the date of Issuance, this Order shall constitute a final administrative order. Compliance with the provisions of the Consent Order is mandatory. All violations of the Utah Water Quality Act, the Water Quality Rules, and this Consent Order will be strictly enforced during the time that this Consent Order remains in effect. The Utah Water Quality Act, Utah Code Section 19-5-115, provides that any person who violates a rule or order made or issued pursuant to the Act may be subject, in a civil proceeding, to a state district judge imposing a civil penalty per day of violation.

[SIGNATURE PAGE FOLLOWS]

IT IS SO AGREED AND ORDERED:

FOR THE DIVISION OF WATER QUALITY

By: John K. Mackey
John K. Mackey (Mar 31, 2021 18:02 MDT)
John K Mackey, P.E.
Acting Director

Date: 03/31/2021 (Effective Date)

FOR (OPERATOR)

By: Senka Linn
DocuSigned by:
98C3217B929943F...
Title: Director Real Estate & Facilities
Date: 12/10/2020 | 3:23 PM PST

Regence Bluecross Blueshield of Utah

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