

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

SARAH HAND,

Complainant,

v.

RAINIER VIEW WATER COMPANY, INC.,

Respondent.

DOCKET UW - 170924

**SARAH HAND’S ANSWER TO
RAINIER VIEW WATER COMPANY’S
PETITION FOR ADMINISTRATIVE
REVIEW**

**I. Judge Kopta’s Conclusion That Water Supplied By Rainier View Water Company
 (“RVWC”) Is “Impure” Is Soundly Based On The Law And The Facts**

RCW 80.28.030(1) states in pertinent part that:

Failure of a water company to comply with state board of health standards adopted under RCW 43.20.050(2)(a) or department standards adopted under chapter 70.116 RCW for purity, volume, and pressure is prima facie evidence that the water supplied is insufficient, impure, inadequate, or inefficient.

The relevant Washington State Department of Health Office of Drinking Water (ODW) regulations governing the purity of drinking water are set forth in WAC 246-290-310 which sets the Secondary Maximum Contaminant Level (SMCL) for manganese at 0.05 mg/l. The evidence presented at the hearing in this case is overwhelming that RVWC has supplied water to the Hand residence (and many others) with levels of manganese far in excess of the SMCL set forth in the WAC which makes the water impure as a matter of law. This evidence includes

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1 Sarah Hand's firsthand observations over three years, the multiple test results performed by
2 RVWC and others, and the similar water quality complaints submitted to RVWC by hundreds if
3 not thousands of other customers.¹

4 **A. The Finding Of Impurity Is Supported By Direct Testimony And First-Hand Observation**

5 Since the time she moved into her home, Ms. Hand has observed that the water which
6 runs through her faucets is regularly light to dark brown in color and has floating debris.²
7 The water also has an unpleasant, musty odor.³ These are all classic signs of excess manganese
8 according to RVWC and its own expert, Apex Engineering.⁴ Ms. Hand and her family refuse to
9 drink the water due to its dirty appearance and smell and fear of what it might do to their
10 bodies.⁵ Between May 2015 and the time of this brief, Ms. Hand has had to pay approximately
11 **\$3,520.00**⁶ to replace the water needed for drinking and cooking. RVWC's Operations
12 Manager, Robert Blackman, admits that Ms. Hand's refusal to drink the water is reasonable⁷
13 under the circumstances.

14 The Hands do not cook with the water unless it is boiled first.⁸ Showering or bathing in
15 the brown water is unpleasant but there is no practical alternative.⁹ Kitchen plates and utensils
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21 ¹ See HAND-Exh.-SH-9 for RVWC service orders. Complaints were not disclosed to the UTC, DOH or
22 the public until compelled by legal process. RVWC is required by law to keep and record customer
23 complaints for at least one year as required by WAC 480-110-385(4), but does whatever it wants under
24 its own honor system with virtually no oversight or accountability.

25 ² See SH-1T, pg. 4, lines 7-12

26 ³ See Id.

27 ⁴ See Evidentiary Hearing Transcript, Pg. 97, ln 20-25; and Pg. 98, ln 1-19

28 ⁵ See Id. lines 17-26.

⁶ Ms. Hand has bought eight cases of bottled water a month for drinking at a cost of \$3.00 per case or
\$24.00 per month and nine 5-gallon dispensers at \$7 per dispenser or \$64 per month since 2015
(calculating 40 months). See Id at lines 20-26.

⁷ See Blackman, TR. at 101:22-102:12

⁸ See SH-1T, Pg. 5, lines 1-3

1 often come out from the dishwasher dirty and spotted.¹⁰ Aside from going to a public
2 laundromat, the Hands have no practical alternative but to use the water to wash their clothes
3 even though it tends to stain clothing (especially whites) and leave an unpleasant odor.¹¹
4 Finally, the excessive levels of manganese in the water stains porcelain and corrodes metal,
5 pipes, plumbing and fixtures.¹² Mr. Blackman himself acknowledges these issues and concerns
6 and agrees that the Hands complaints are reasonable¹³ under the circumstances.¹⁴

8 **B. The Finding Of Impurity Is Supported By Similar Complaints From Many Others**

9 RVWC is arguing that Sarah Hand's testimony regarding water quality is unbelievable
10 because no one else had any similar complaints.¹⁵ RVWC has told the same lie to the
11 Commission before in order to secure rate increases and pay raises.¹⁶ For example, when he
12 appeared before the Board during an open meeting on December 22, 2016, RVWC
13 representative Richard Finnigan was asked about the number and timing of customer complaints
14 and he said: "The major problem I know arose this summer. That's about the best I can say is we started
15 getting customer complaints this summer, got a dozen, 18, something of that nature."¹⁷ The sad reality
16 proved to be very different, however. Mr. Blackman testified under oath at a deposition that RVWC
17 had hundreds of water quality complaints from customers within the past 5 years regarding
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22 ⁹ See Id at lines 3-7

23 ¹⁰ See Id, at lines 8-13

24 ¹¹ See Id, at lines 14-20

25 ¹² See SH-1T, pg. 5, lines 21-28; pg. 6, lines 1-5.

26 ¹³ See Blackman, TR. at 101:22-102:12.

27 ¹⁴ See RVWC is required to supply water which is fit for "human consumption" which means fit for
28 drinking, bathing, or showering, hand washing, food preparation, cooking or oral hygiene. See WAC
246-290-010 (133).

¹⁵ See RVWC Petition for Administrative Review, Pg, 2, ¶ 3 and 4.

¹⁶ See HAND-Exh-X-37

¹⁷ See HAND-Exh. SH-14, Pg. 6

1 discolored or dirty water,¹⁸ and in particular, 400 complaints requiring service orders between
2 June of 2015 and June of 2016.¹⁹ Customer complaints are also set forth on RVWC's own
3 webpage,²⁰ and Springwood estates own webpage,²¹ and a KIRO News ran a story on the water
4 quality issues in Springwood Estates on 10-21-2015 and again on 11-16-2016²² with no reported
5 improvement in the quality of water.
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7 **C. The Finding Of Impurity Is Supported By RVWC's Own Testing And Annual Reports**

8 RVWC is required by state law to regularly test the purity of water supplied to all of its
9 customers. In its annual reports to residents serviced by the Southwood water system, RVWC
10 reported having manganese levels far in excess of state SMCLs in 2015 as 0.16 mg/l²³, 2016 as
11 0.23 mg/l²⁴, and 2017 as 0.23 mg/l²⁵. In addition, testing performed by RVWC under the eye of
12 the DOH showed manganese levels of 0.11 mg/l in November of 2016.²⁶ The DOH asked
13 RVWC to perform this test after it was contacted by KIRO 7. DOH had no knowledge of any
14 customer complaints other than Sarah Hand's at the time and only had found 5-6 logged into the
15 DOH complaint tracking system over the course of 10 years.²⁷
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18 **D. The Finding of Impurity Is Supported By Third Party Testing**

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21 ¹⁸ See HAND-Exh-SH-37, Pg. 37, ln 19-25, and Pg. 38, ln 1-2
22 ¹⁹ See Id., Pg. 107, ln 2-5
23 ²⁰ See HAND-Exh-SH-8
24 ²¹ See HAND-Exh-SH-7
25 ²² See HAND-Exh-SH-23
26 ²³ See HAND-Exh-X-43, Bates No. RVWC000239
27 ²⁴ See HAND-Exh-SH-10, Pg. 6
²⁵ See HAND-Exh-X-44, Pg. 5
²⁶ See HAND-Exh-SH-19, Pg. 14, ln 4-7
²⁷ See Exh-SH-19, 57, ln 12-18

1 On April 6, 2017, an industrial engineer, Susan Evans, went to the Hand Residence and
2 took water samples which were then submitted for laboratory testing.²⁸ The results showed
3 excess levels of manganese, turbidity, and a dark color which was literally off the relevant
4 scale.²⁹ Sarah Hand's counsel considered Ms. Evan's report and findings to be confidential
5 work product and only turned it over to RVWC when ordered to do so by Judge Kopta. The
6 idea, therefore, that Ms. Hand or her counsel manipulated the methodology or the results to help
7 them at the UTC hearing is ridiculous.
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9 Any responsible water company in RVWC's shoes would have taken Sarah Hand up on
10 her offer to sample and test the water in her home at some point over the last three or more
11 years. RVWC obviously has the personnel, equipment, and resources to collect and test water
12 quickly and cheaply however and whenever it deems fit. But, RVWC made the conscious
13 decision not to test the water or do anything else to investigate Ms. Hand's concerns so all it can
14 do now is whine and complain. This strategy normally works very well for RVWC because it
15 knows its average customer does not have the time, resources, or perseverance necessary to ever
16 hold it accountable.
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19 The sampling and test protocol were handled by an industrial engineer, Susan Evans,
20 with outstanding credentials.³⁰ Water sampling methodology was listed on the test reports by
21 Spectra Laboratories in a column titled "Method/Analyst," and specifically to the testing method
22 of manganese, it is listed as using the Environmental Protection Agency (EPA) 200.8
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26 ²⁸ See Exh. SH Rply T – 3

²⁹ See *Id.*

27 ³⁰ See Exh. SH Rply T – 2

1 recommended method.³¹ Surely this is as reliable and trustworthy as the unverified test reports
2 submitted to the DOH with zero oversight.³²

3 RVWC’s own lab testing report produced as a bench request did not list any method or
4 analyst protocol nor did it identify the individual who obtained the samples, Candi Shelton, and
5 state their credentials to obtain and test water served to the public.³³

7 **II. The Remedies Ordered By Judge Kopta Are Reasonably Based On The Facts And**

8 **The Law**

9 **A. Sarah Hand did not fail to mitigate her damages**

10 The idea that Sarah Hand failed to mitigate her damages is preposterous. Ms. Hand
11 started by complaining to RVWC and when nothing was done, she complained to the UTC as
12 instructed on her water bill. When the UTC rejected Ms. Hand’s complaint and gave RVWC rate
13 hikes and pay raises despite the terrible water quality, Ms. Hand filed a lawsuit in Pierce County
14 Superior Court. When the lawsuit was dismissed as premature, Ms. Hand pursued the formal
15 complaint process through the UTC. At each step along the way, RVWC did nothing to help
16 Ms. Hand or to resolve any concern nor did they accept her offer to come sample the water
17 inside the home. RVWC simply said we are immune from lawsuit and you cannot make us do
18 anything other than flush your lines. What exactly was Ms. Hand supposed to do when she is
19 required by law to have running water supplied to her home and the only person she can buy it is
20 from RVWC?
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25 ³¹ See Exh. SH Rply T – 3

26 ³² RVWC’s own lab testing report produced in response to a bench request did not list any method or
27 analyst protocol nor did it identify the individual who obtained the samples or how they were collected.

28 ³³ See BRR-2 produced by RVWC

1 **B. Whether RVWC is liable to Sarah Hand for gross negligence, willful misconduct on**
2 **violation of RCW 19.122 must be determined by a court of law**

3 RVWC's argument that Ms. Hand is entitled to zero relief because she did not prove
4 RVWC committed acts of gross negligence or intentional or willful misconduct is total
5 hogwash. Ms. Hand was fully prepared to prove gross negligence and willful misconduct in her
6 Pierce County Superior Court action which is the only forum with jurisdiction to make that legal
7 determination. But, RVWC persuaded the court to dismiss Ms. Hand's lawsuit without
8 prejudice so that the UTC could develop the facts in the very process we just completed.
9

10 RVWC now argues that Ms. Hand had a duty to prove gross negligence or willful
11 misconduct at the UTC hearing is contrary to law and contrary to the prior position taken by
12 RVWC in Pierce County Superior Court.
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14 **C. RVWC has long abused its tariff protection to mislead consumers and engage in false**
15 **and deceptive marketing**

16 Sarah Hand, like all of RVWC's customers, is required by law to have running water
17 supplied to her home and is required under the terms of a state sanctioned monopoly to buy all
18 of it from RVWC regardless of price, quality or customer service.
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20 RVWC has made many false and deceptive statements³⁴ to promote its business
21 including but not limited to the following:
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- 23 1. *RVWC has "always and will continue to provide the safest possible water*
24 *to every last free flowing tap that we serve."*
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27 ³⁴ See SH-10, pg. 2

