



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

JUN 24 2008

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hon. Dennis Hacklin
Mayor, Town of LaBarge
P.O. Box 327
LaBarge, WY 82123

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. **SDWA-08-2008-0070**

Dear Mayor Hacklin:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (Complaint) filed against the Town of LaBarge (Town) under section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C §300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that the Town failed to comply with an Administrative Order, Docket No. SDWA-08-2005-0011, issued on March 10, 2005, under section 1414(g) of the SDWA, 42 U.S.C. §300g-3(g). The violations are specifically set out in the complaint.

As you are aware, less than a year ago, EPA issued (1) another administrative penalty complaint against the Town for violations of the same order and (2) another administrative order for additional violations of EPA's drinking water regulations. Because of the apparent pattern of noncompliance, today's order has proposed a penalty substantially greater than what EPA proposed with the earlier penalty complaint.

By law, the Town has the right to request a hearing regarding the matters set forth in the complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If the Town does not respond to this complaint within 30 days of receipt, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. The Town may negotiate a hearing in its answer. The Town has the right to be represented by an attorney at any stage of these proceedings.

Whether or not the Town requests a hearing, its representatives may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty.



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EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. The issuance of a consent agreement shall constitute a waiver of the Town's right to request a hearing on any matter to which the Town has stipulated in that agreement.

A request for an informal conference does not extend the 30-day period during which the Town must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing. Please note that if the Town does not file an answer, it may be subject to a default order requiring it to pay the full penalty proposed in the complaint, even if it has requested an informal conference.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kimberly Pardue-Welch, who can be reached at 800-227-8917 extension 6983, or Peggy Livingston, Enforcement Attorney, who can be reached at 800-227-8917 extension 6858.

We urge your prompt attention to this matter.

Sincerely,

Eddie A. Seria
for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc: WY DEQ (via email)
WY DOH (via email)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 JUN 26 10:20:27

IN THE MATTER OF)
)
Town of LaBarge)
LaBarge, Wyoming)
Respondent) Docket No. **SDWA-08-2008-0070**
)
) **COMPLAINT AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**
Proceeding under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. §300g-3(g))
)

COMPLAINT

This civil administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by section 1414(g)(3) of the Safe Drinking Water Act, as amended (the “SDWA”), 42 U.S.C. §300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes the Administrator of the EPA to assess an administrative civil penalty against any person who violates, or fails or refuses to comply with, an order issued under section 1414(g)(1) of the SDWA.

The complainant in this action is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is subject to EPA’s “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or

Suspension of Permits,” 40 C.F.R. part 22 (“Consolidated Rules of Practice”)(Complainant’s Exhibit 1).

GENERAL ALLEGATIONS

The following general allegations apply to each count of this complaint:

1. The Respondent, the Town of LaBarge, Wyoming, is a municipality and therefore a “person” as that term is defined in section 1401(12) of the SDWA, 42 U.S.C. §300f(12), and 40 C.F.R. §141.2.
2. Respondent owns and/or operates a system, the Town of LaBarge Water System (the “System”), located in Lincoln County, Wyoming, for the provision to the public of piped water for human consumption.
3. The System has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents and is therefore a “public water system” and a “community water system” as those terms are defined in 40 C.F.R. §141.2 and section 1401 of the SDWA, 42 U.S.C. §300f.
4. As an owner and/or operator of a public water system, the Respondent is a “supplier of water” as that term is defined in section 1401(5) of the SDWA, 42 U.S.C. §300f(5), and 40 C.F.R. §141.2. The Respondent is therefore subject to the requirements of part B of the SDWA, 42 U.S.C. §300g *et seq.*, and its implementing regulations, 40 C.F.R. part 141 (also known as the “National Primary Drinking Water Regulations” or “NPDWRs”).

5. The source of the System's water is ground water, from an infiltration gallery, which is under the influence of surface water. The System serves an average of approximately 500 persons daily through approximately 200 service connections year-round.
6. On March 10, 2005, in accordance with sections 1414(a)(2) and (g)(1) of the SDWA, 42 U.S.C. §§300g-3(a)(2) and (g)(1), the EPA issued an Administrative Order, Docket No. SDWA-08-2005-0011 (the "2005 Order") to the Respondent, citing various violations of the NPDWRs, including, but not limited to failing to take required steps after exceeding an action level for copper, failing to monitor for nitrate, and failing to notify the public and EPA of its violations.
7. A copy of the Order is attached to this complaint (Complainant's Exhibit 2).
8. On October 21, 2005, EPA issued an Administrative Order Violation letter, noting that the Respondent was in violation of various requirements in the 2005 Order, including but not limited to requirements to monitor for nitrate and to provide public notice of its violations.
9. A copy of EPA's October 21, 2005 letter is attached to this Complaint (Complainant's Exhibit 3).
10. EPA has made multiple efforts to ensure that the Town is aware of the applicable monitoring and reporting requirements for lead and copper and nitrate. For example, in August of 2007, EPA provided Respondent with an itemized list of monitoring and reporting requirements for calendar year 2007, which stated that

the Town had exceeded the lead or copper action level and was required to perform water quality parameter and source water testing and to submit an optimal corrosion control recommendation. EPA's letter provided the name and telephone number of an EPA employee who could provide more details on the Town's lead and copper sampling schedule. On July 31, 2007, EPA representatives met in person with Town representatives to review pertinent requirements, including those for monitoring the Town's water for nitrate and for lead and copper.

11. On January 9, 2008, EPA issued a Complaint and Notice of Opportunity for Hearing (the "January 2008 Complaint"), Docket No. SDWA-08-2008-0013, to the Respondent, alleging that the Respondent had violated the 2005 Order by failing to monitor for nitrate within the time specified by the Order, by failing to submit its lead and copper samples for the first six months of 2007 to a certified laboratory, and by failing to provide public notice of its violations. The January 2008 Complaint proposed that the Respondent pay an administrative civil penalty of \$1,000 for these violations.
12. In response to the January 2008 Complaint, the Respondent agreed to pay the full \$1,000 penalty EPA had proposed. The matter was resolved by a Final Order signed by EPA Region 8's Regional Judicial Office on February 19, 2008.
13. On April 17, 2008, the EPA issued another Administrative Order (the "2008 Order"), Docket No. SDWA-08-2008-0041 to the Respondent, alleging that the

Respondent had violated additional NPDWRs. The 2008 Order named the Town of LaBarge and Diamond Energy Services, Inc. as Respondents.

VIOLATIONS

Count I

Untimely Monitoring for Lead and Copper

1. The 2005 Order required the Respondent to monitor for lead and copper and to report results to EPA in accordance with the NPDWRs.
2. The Respondent violated the 2005 Order by failing to submit results of lead and copper samples for the second six months of 2007 to EPA.

Count II

Improper Monitoring for Nitrate

1. The 2005 Order required the Respondent to monitor for nitrate as required by the NPDWRs.
2. The Respondent violated the 2005 Order by failing to have its nitrate sample for 2007 analyzed by a certified laboratory.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

This complaint proposes that EPA assess an administrative penalty from the Respondent. EPA is authorized to assess an administrative penalty according to section 1414(g)(3) of the SDWA, 42 U.S.C. §300g-3(g)(3) for violation of an administrative order issued under section 1414(g)(1) of the SDWA. The amount may be up to \$27,500.¹

¹The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19.

EPA has determined the proposed penalty amount in accordance with section 1414 of the SDWA, 42 U.S.C. §300g-3. Taking into account the seriousness of the violation, the population at risk, and other appropriate factors, including the Respondent's degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay, as known to EPA at this time, EPA proposes to assess an administrative civil penalty of \$6,500.00 against the Respondent for its violations of the Order.

OPPORTUNITY TO REQUEST A HEARING

As provided in section 1414(g)(3)(B) of the SDWA, 42 U.S.C. §300g-3(g)(3)(B), the Respondent has the right to request a public hearing to contest any material fact alleged in this complaint, to contest the appropriateness of the proposed penalty and/or to assert that it is entitled to judgment as a matter of law.

If the Respondent wishes to request a hearing, the Respondent must file a written answer in accordance with 40 C.F.R. §§22.15 and 22.42 within thirty (30) calendar days after this complaint is served. If this complaint is served by mail, Respondent has an additional five (5) calendar days, pursuant to 40 C.F.R. §22.7(c), in which to file its answer.

If the Respondent requests a hearing in its answer, the procedures provided in 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, the Respondent has the right under the SDWA to elect a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. §§551 et seq. ("APA"). To exercise this right, the answer must include a specific request for a hearing on the record in accordance with 5 U.S.C. §554. Upon such request, the Regional Hearing Clerk will re-title the pleadings and documents in the record as necessary. (See 40 C.F.R. §22.42.)

Pursuant to such a request, subpart 1 will not apply to the proceedings and an Administrative Law Judge from Washington, D.C., will preside.

The answer must be in writing. An original and one copy of the answer must be sent to the attorney listed below and the EPA Regional Hearing Clerk at the address below:

Tina Artemis
Region 8 Hearing Clerk (8RC)
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202

FAILURE TO FILE AN ANSWER

If the Respondent does not file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this complaint, it may be subject to a default order requiring payment of the full penalty proposed in this complaint. If the Respondent does not answer, EPA may obtain a default order according to 40 C.F.R. §22.17 and the Respondent may be held liable for the full proposed penalty.

REQUIREMENTS FOR ANSWER

The answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this complaint with regard to which the Respondent has any knowledge. The answer must state (1) any circumstances or arguments which the Respondent alleges to constitute grounds of defense, (2) any facts the Respondent disputes, (3) whether and on what basis the Respondent opposes the proposed penalty, and (4) whether the Respondent requests a hearing. **Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of that allegation.**

SETTLEMENT CONFERENCE

EPA encourages exploring settlement possibilities through an informal settlement conference. Requesting, scheduling, or participating in a settlement conference does not substitute for an answer or extend the period mentioned above for filing an answer and a request for a hearing. Failing to file an answer may lead to a default order, even if a settlement conference occurs. The parties may simultaneously pursue settlement and proceed with administrative litigation under 40 C.F.R. part 22.

If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Presiding Officer. A request for a settlement conference, or any questions that Respondent may have regarding this complaint, should be directed to the attorney named below.

Dated this 24th day of June, 2008.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8, Complainant.

for Michael T. Bisner
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Margaret J. ("Peggy") Livingston
Margaret J. ("Peggy") Livingston, Enforcement Attorney
Office of Enforcement, Compliance
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202
Telephone Number: (303) 312-6858
Facsimile Number: (303) 312-7202

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with all Exhibits were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent to the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Hon. Dennis Hacklin, Mayor
Town of LaBarge
P.O. Box 327
LaBarge, WY 82123

Date: 6/24/08

By: Judith M. McTernan
Judith McTernan