



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

Phone 800-227-8917

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

Ref: 8ENF-T

CERTIFIED MAIL
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DEC - 4 2008

Kim Harrison, Registered Agent
Lincoln Road RV Park, Inc.
850 West Lincoln Road
P.O. Box 9708
Helena, MT 59604

Re: Amended Complaint and Notice of
Opportunity for Hearing
Docket No. SDWA-08-2008-0038

Dear Ms. Harrison:

On April 3, 2008, the U.S. Environmental Protection Agency (EPA) issued a "Complaint and Notice of Opportunity for Hearing" (original complaint) against Lincoln Road RV Park, Inc. (Lincoln Road) under section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C §300g-3. The complaint alleged that Lincoln Road failed to comply with an Administrative Order, Docket No. SDWA-08-2006-0050, issued on September 20, 2006, under section 1414(g) of the SDWA, 42 U.S.C. §300g-3(g).

EPA has amended the complaint. Please see the enclosed "Amended Complaint and Notice of Opportunity for Hearing" (amended complaint). The alleged violations are the same as in the original complaint. The amended complaint adds references to numerous notices of violation that the Montana Department of Environmental Quality issued to Lincoln Road regarding Lincoln Road's failure to conduct monthly coliform monitoring as required by the Administrative Rules of Montana.

To date, Lincoln Road has not filed an answer to EPA's April 3, 2008, complaint. As EPA has indicated previously, failing to file an answer means that Lincoln Road may be subject to a default judgment for the entire \$3,000 proposed in the complaint. However, because EPA has amended the complaint, Lincoln Road will have an additional 20-day period after your receipt of the enclosed amended complaint in which to file an answer. If Lincoln Road does not do so, it may be subject to a default judgment for the entire \$3,000.

Aside from the deadline for filing an answer being 20 rather than 30 days, the process for filing an answer and requesting a hearing is the same as with the original complaint. Lincoln Road has the right to be represented by an attorney at any stage of these proceedings.



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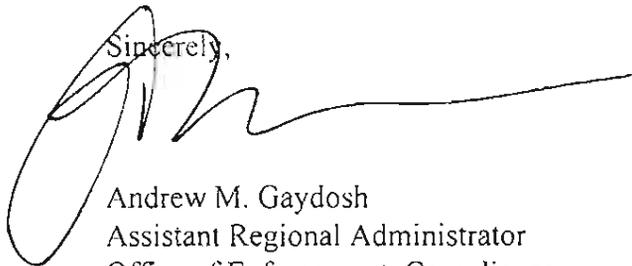
Regardless of whether Lincoln Road files an answer or requests a hearing, it may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. If Lincoln Road and EPA agree to settle this matter, the settlement would be finalized in a written consent agreement signed by Lincoln Road and EPA representatives, and the Regional Judicial Officer for EPA Region 8 would issue a final order incorporating the consent agreement.

Filing an answer and requesting a hearing would not prevent Lincoln Road from contacting EPA about settlement or otherwise conferring informally with EPA. Lincoln Road and EPA may discuss settlement informally among themselves even while pursuing the formal hearing process with the Regional Judicial Officer. However, requesting an informal conference with EPA would not extend Lincoln Road's 20-day deadline for filing a written answer and requesting a hearing, and it would not prevent EPA from filing a motion for default if no written answer is filed.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kimberly Pardue Welch, Environmental Protection Specialist, 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,

A handwritten signature in black ink, appearing to read 'Andrew M. Gaydosh', with a long horizontal flourish extending to the right.

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc: John Arrigo, MT DEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 DEC -4 11:54

IN THE MATTER OF)
)
Lincoln Road RV Park, Inc.)
Helena, Montana)
) Docket No. SDWA-08-2008-0038
)
Respondent) **AMENDED COMPLAINT**
) **AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**
)
Proceedings under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. §300g-3(g))
)

AMENDED COMPLAINT

This civil administrative Amended 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. Lincoln Road RV Park, Inc. (“Respondent”) is a Montana corporation 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 Lincoln Road RV Park Water System (the “System”), located in Lewis and Clark County, Montana, for the provision to the public of piped water for human consumption.
3. The System has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is therefore a “public water system” as that term is defined in section 1401(4) of the SDWA, 42 U.S.C. §300f(4) and 40 C.F.R. §141.2. It is also a “noncommunity water system” as that term is defined in section 1401(16) of the SDWA, 42 U.S.C. §300f(16), and 40 C.F.R. §141.2.
4. As an owner and/or operator of a public water system, 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. 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”) and chapter 28, subchapter 2 of the Administrative Rules of Montana (“ARM”).

5. The source of the System’s water is ground water from two wells. The System serves an average of approximately 134 persons daily through 66 service connections and is operational year-round.
6. On April 18, 2002, the Montana Department of Environmental Quality (“DEQ”) notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of March of 2002.
7. On July 19, 2002, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of June of 2002.
8. On September 11, 2002, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of July of 2002.
9. On December 23, 2002, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of November of 2002.
10. On February 20, 2003, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of January of 2003.

11. On March 14, 2003, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of February of 2003.
12. On June 19, 2003, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of May of 2003.
13. On September 30, 2003, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of August of 2003.
14. On February 25, 2004, and March 2, 2004, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of January of 2004.
15. On May 31, 2004, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of April of 2004.
16. On August 31, 2004, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of July of 2004.
17. On January 28, 2005, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of December of 2004.

18. On April 25, 2005, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of March of 2005.
19. On July 29, 2005, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of June of 2005.
20. On December 22, 2005, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of October of 2005.
21. On February 16, 2006, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of January of 2006.
22. On May 17, 2006, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of April of 2006.
23. On July 19, 2006, the Montana DEQ notified the Respondent that the System had not submitted results of coliform monitoring as required by ARM section 17.38.215 for the month of June of 2006.
24. Each of the notifications from the Montana DEQ mentioned above also notified the Respondent that it was required to provide public notice of failing to monitor for coliform.

25. On September 20, 2006, in accordance with section 1414(g) of the SDWA, 42 U.S.C. §§300g-3(g), the EPA issued an Administrative Order, Docket No. SDWA-08-2006-0050 (the "Order") to Respondent, citing violations of the NPDWRs and the ARMs, including but not limited to failing to monitor monthly for total coliform and failure to provide public notice of the failures to monitor.
26. A copy of the Order is attached to this complaint (Complainant's Exhibit 2).
27. By letter dated April 6, 2007, EPA notified the Respondent that the Respondent was in violation of the Order.
28. A copy of the April 6, 2007 letter is attached to this complaint (Complainant's Exhibit 3).

COUNTS OF VIOLATION

Count I

Failure to Monitor for Total Coliform

1. The Order (on page 5 and 6, in paragraph 1 of the "Order" section), as corrected by the April 6, 2007 letter, required Respondent to perform monthly bacteriological monitoring, as required by 40 C.F.R. §141.21(a) and ARM section 17.38.215.
2. Respondent violated the Order by failing to monitor for total coliform bacteria during December 2006, July 2007, August 2007, September 2007, and November 2007.

Count II
Failure to Provide Public Notice of Violations

1. The Order (on page 7, in paragraph 4 of the “Order” section) required Respondent to provide public notice of the failures to monitor for total coliform cited in the Order and of any post-Order failures to comply with NPDWRs.
2. The Respondent violated the Order by failing to provide public notice of its failures to monitor for total coliform cited in the Order or of the December 2006 failure to monitor cited above.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

This complaint proposes that EPA assess an administrative penalty from 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

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 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 \$3,000.00 against Respondent for its violations of the Order.

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

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), 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 Respondent wishes to request a hearing, Respondent must file a written answer in accordance with 40 C.F.R. §§22.14(c), 22.15 and 22.42 within twenty (20) 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 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, 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 recaption the pleadings and documents in the record as necessary. (See 40 C.F.R. §22.42.) Pursuant to such a request, subpart I 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 EPA Regional Hearing Clerk, whose name and address are listed below, and one copy must

be sent to the attorney whose name and address are provided in the signature block at the end of this complaint:

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

FAILURE TO FILE AN ANSWER

If Respondent does not file a written answer with the Regional Hearing Clerk at the address above within twenty (20) days of receipt of this complaint, Respondent may be subject to a default order requiring payment of the full penalty proposed in this complaint.

EPA may obtain a default order according to 40 C.F.R. §22.17.

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 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.**

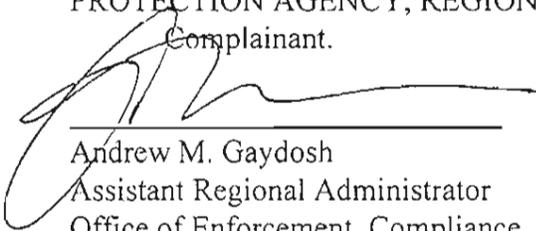
SETTLEMENT CONFERENCE

EPA encourages exploring settlement possibilities through an informal settlement conference. Filing an answer does not preclude settlement negotiations. **However, failing to file a timely answer may lead to a default order, even if Respondent requests, schedules, or participates in a settlement conference.**

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 14 day of December 2008.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice



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 AMENDED 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:

Kim Harrison
Registered Agent
Lincoln Road RV Park, Inc.
850 West Lincoln Road
P.O. Box 9708
Helena, MT 59604

Date: 12/4/08

By: Judith McTernan
Judith McTernan