



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: ENF-L

JUL 30 2013

CERTIFIED MAIL NO. 7009 3410 0000 2598 4709
RETURN RECEIPT REQUESTED

The Honorable Richard Schroeder, Mayor
Town of Manville
P.O. Box 107
Manville, WY 82227

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. **SDWA-08-2013-0047**

Dear Mayor Schroeder:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (Complaint) filed against the Town of Manville (Town) under section 1414(g)(3) of the Safe Drinking Water Act (SDWA), 42 U.S.C § 300g-3(g)(3). The U.S. Environmental Protection Agency (EPA) alleges in the Complaint that the Town failed to comply with an administrative order issued by the EPA on August 26, 2010. The violations are described in the 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 file an answer to the Complaint within 30 days of receipt, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In its answer the Town may request a hearing. The Town has the right to be represented by an attorney at any stage of these proceedings.

The EPA encourages all parties against whom it files any 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. If a representative of the Town signs a consent agreement that is finalized by a final order, the Town will waive its right to request a hearing on any matter to which it has stipulated in that agreement.

Whether or not the Town requests a hearing, its representative(s) may confer informally with the EPA concerning the alleged violation and/or the amount of the proposed penalty. However, an informal settlement conference does **not** substitute for filing a written answer and requesting a hearing. A request for an informal conference also does not extend the 30-day period during which the Town must submit a written answer and a request for a hearing. The Town may pursue settlement and have an informal conference even if it is also litigating the case.

For any questions specific to the violations or penalty, the most knowledgeable people at the EPA regarding this matter are Mario Mérida, Environmental Protection Specialist, who can be reached at 1-800-227-8917, extension 6297, and, for questions from counsel, if any, Peggy Livingston, Enforcement Attorney, who can be reached at 1-800-227-8917, extension 6858.

We urge your prompt attention to this matter.

Sincerely,

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

Enclosure

cc: Tina Artemis, EPA Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2013 JUL 30 PM 2: 20

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)

Town of Manville, WY,)

Respondent.)

) Docket No. SDWA-08-2013-0047
)
) **COMPLAINT AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**
)

In this Complaint and Notice of Opportunity for Hearing (Complaint), the United States Environmental Protection Agency (EPA) proposes to assess a civil administrative penalty against the Town of Manville, Wyoming (Respondent).

JURISDICTIONAL ALLEGATIONS

This Complaint is issued under the authority vested in the Administrator of the EPA by section 1414(g)(3)(B) of the Safe Drinking Water Act (the SDWA), 42 U.S.C.

§ 300g-3(g)(3)(B). The undersigned EPA official has been duly authorized to institute this action.

This proceeding is subject to the 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, a copy of which is attached to this Complaint as Complainant's Exhibit 1.

GENERAL ALLEGATIONS

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

1. Respondent is a municipality as defined in section 1401(10) of the SDWA, 42 U.S.C. § 300f(10), and, therefore, a “person” as 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 Manville public water system (the System), located in Niobrara County, Wyoming, for the provision of water for human consumption to the public through pipes or other constructed conveyances.
3. The source of the System’s water is ground water from three wells. The water is treated with an injected hypochlorite solution. The System serves an average of approximately 97 year-round residents per day through approximately 60 service connections. It is operational year-round.
4. Because the System has at least 15 service connections used by year-round residents and/or regularly serves at least 25 year-round residents, the System is 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.
5. As an owner and/or operator of a public water system, Respondent is a “supplier of water” as 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 40 C.F.R. part 141 (also known as the National Primary Drinking Water Regulations or NPDWRs), each of which is an “applicable requirement” as defined in section 1414(i) of the SDWA, 42 U.S.C. § 300g-3(i).

6. On August 26, 2010, 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-08-2010-0071 (the Order) to Respondent, citing violations of the NPDWRs, including but not limited to violations of requirements to monitor the System's water for uranium, to report monitoring results to the EPA, and to notify the public of certain violations of the NPDWRs.
7. The Order also made findings that Respondent had violated the Maximum Contaminant Level (MCL) for uranium in 40 C.F.R. § 141.66(e) and directed Respondent to submit a plan and schedule for coming into compliance with the uranium MCL.
8. On May 9, 2011, the EPA approved a schedule for Respondent to come into compliance with the uranium MCL. The EPA subsequently modified this schedule by letters dated December 19, 2011, and November 13, 2012. According to the November 13, 2012, letter, Respondent is to meet a deadline of September 30, 2015, or December 31, 2014, depending upon the approach ultimately chosen, for completing the necessary actions to comply with the uranium MCL.
9. By letters dated November 21, 2011, and November 7, 2012, the EPA notified Respondent that Respondent had violated various reporting, monitoring, and public notification requirements of the Order.

10. Because Wyoming has not sought primary authority for enforcing the public water supply supervision program, the EPA directly implements this program in Wyoming. Consequently, as provided by the definition of “state” in 40 C.F.R. § 141.2, the EPA is the “state” for purposes of enforcing the NPDWRs in Wyoming.
11. On June 24, 2013, the EPA issued a second administrative order (Docket No. SDWA-08-2013-0039) to the Town. This Complaint does not allege violations of the 2013 order. References in this Complaint to the “Order” are to the order dated August 26, 2010.

VIOLATIONS

Count 1 - Failure to Monitor for Uranium

12. According to 40 C.F.R. § 141.26(a)(3)(v), the System is required to monitor its water at least quarterly for uranium. The EPA notified Respondent of this requirement (i) in a letter dated August 3, 2006, which indicated that a sample of the System’s water from December 12, 2004, had exceeded the MCL for uranium, thus triggering the quarterly monitoring requirement and (ii) in annual notifications from 2008 through 2013. Paragraph 11 of the Order directed Respondent to perform quarterly uranium monitoring as required by 40 C.F.R. § 141.26(a)(3)(v).
13. Respondent failed to monitor the System’s water for uranium during the second quarter of 2012, in violation of the Order and 40 C.F.R. § 141.26(a)(3)(v). (Upon

being notified of this failure, Respondent monitored for uranium on July 23, 2012.)

Count 2 - Failure to Report Uranium Monitoring Results

14. According to 40 C.F.R. § 141.31(a), Respondent is required to report its monitoring results for uranium to the EPA within 10 days of the end of the month in which Respondent receives the sampling result.
15. Paragraph 11 of the Order required Respondent to report its monitoring results for uranium to the EPA within 10 days of the end of the month in which Respondent receives the sampling result.
16. Although Respondent monitored the System's water for uranium on August 24, 2011, Respondent did not submit the sample results to the EPA, in violation of Paragraph 11 of the Order and 40 C.F.R. § 141.31(a). The laboratory that analyzed the sample provided the results directly to the EPA on November 7, 2011.

Count 3 - Failure to Provide Public Notice

17. According to 40 C.F.R. part 141, subpart Q, Respondent is required to notify the public of certain violations of the NPDWRs. For example, under 40 C.F.R. § 141.203, Respondent must provide public notice of violations of the uranium MCL within learning of the violation and must repeat the public notice every three months as long as the violation continues. Pursuant to 40 C.F.R.

- § 141.201(c)(3), Respondent is required to provide the EPA with a copy of the public notice in accordance with the requirements of 40 C.F.R. § 141.31(d).
18. Paragraph 18 of the Order required Respondent to notify the public of violations of the uranium MCL, to repeat the notice every three months as long as the uranium MCL violations continued, and to provide the EPA with a copy of the public notice within 10 days of providing it.
 19. Despite repeated requests from the EPA, Respondent failed to provide the EPA with a copy of any public notice for the uranium MCL violations that occurred in the first and third quarters of 2011 and in the first, second, and third quarters of 2012.
 20. Respondent failed to provide public notices for the five MCL violations cited in the preceding paragraph, in violation of the Order and 40 C.F.R. § 141.203 (or, alternatively, Respondent failed to provide the EPA with copies of the public notices for these MCL violations, in violation of the Order and 40 C.F.R. §§ 141.31(d) and 141.201(c)(3)).

PROPOSED PENALTY

This Complaint proposes that the EPA assess an administrative penalty against Respondent. The EPA is authorized to assess an administrative civil penalty according to section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), for violation of an administrative order issued under section 1414(g) of the SDWA. The amount of the administrative penalty may not exceed \$32,500 for violations occurring after January 12, 2009. (The original statutory

amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19. See 74 Fed. Reg. 626, January 7, 2009.)

The 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, and ability to pay, as known to the EPA at this time, the EPA proposes to assess an administrative civil penalty of **\$1,200** against 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), 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. §§ 22.15 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 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). For Respondent 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 place new captions on 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:

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

A copy of the answer must also be sent to:

Peggy Livingston, 8ENF-L
Enforcement Attorney
Office of Enforcement, Compliance, and Environmental Justice
U.S. Environmental Protection Agency, Region 8
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 thirty (30) days of receipt of this Complaint, Respondent may be subject to a default order requiring payment of the full penalty proposed in this Complaint.

The 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 Respondent alleges to constitute grounds of defense, (2) any facts Respondent disputes, (3) whether and on what basis Respondent opposes the proposed penalty, and (4) whether 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.

QUICK RESOLUTION

Respondent may resolve this action by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, Respondent need not file an answer. Alternatively, as allowed by 40 C.F.R. § 22.18(b), Respondent may file a statement with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint agreeing to pay the full assessed penalty and may make the penalty payment within sixty (60) days of receiving this Complaint.

If made by check, the payment shall be made by remitting a cashier's or certified check, including the name and docket number of the case, referencing the Docket Number given on the first page of this Complaint and payable to "Treasurer, United States of America." The check shall be sent to the EPA in one of the following ways:

By first class US postal service mail:	U.S. Environmental Protection Agency, Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, Missouri 63197-9000
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By Federal Express, Airborne, or other commercial carrier:	US Bank 1005 Convention Plaza Mail Station SL-MO-C2GL St. Louis, Missouri 63101
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The payment may also be made by wire transfer or on-line via the internet, as follows:

Wire transfers: Federal Reserve Bank of New York
ABA = 021030004, Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D68010727 Environmental Protection Agency "

On-Line Payment: WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

At the time of payment, a copy of the check, wire transfer, or record of on-line payment shall also be sent to:

Mario Mérida, 8ENF-W
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

Payment of the penalty in this manner does not relieve Respondent of the obligation to comply with the requirements of the SDWA and its implementing regulations. Payment of the penalty in this manner does, however, constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

SETTLEMENT CONFERENCE

The EPA encourages exploring settlement possibilities through informal settlement negotiations. **However, failing to file an answer may lead to a default order, even if settlement negotiations occur.** The parties may simultaneously pursue settlement and proceed

with administrative litigation. If a settlement is reached, its terms shall be expressed in a written consent agreement to be signed by the parties and incorporated into a final order signed by the Presiding Officer. Any request for settlement negotiations should be directed to the attorney named above, who can also be reached by telephone at 303-312-6858.

Dated this 25th day of July, 2013.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING (without Complainant's Exhibit 1) were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with a full copy of Complainant's Exhibit 1 was sent to the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

The Honorable Richard Schroeder, Mayor

Town of Manville

P.O. Box 107

Manville, WY 82227

Cert. Mail. No. 7009 3410 0000 2598 4709

Date: 7/30/2013

By: Gayle Aldinger