



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
RETURN RECEIPT REQUESTED

AUG 11 2008

Joseph Duvall
Craig Bar
50 Craig Main Street
Wolf Creek, MT 59648

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. SDWA-08-2008-0088

Dear Mr. Duvall:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against Joseph Duvall ("Craig Bar") 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 Craig Bar failed to comply with an Administrative Order, Docket No. SDWA-08-2007-0053, issued on July 11, 2007, under section 1414(g) of the SDWA, 42 U.S.C. §300g-3(g). The violations are specifically set out in the complaint.

By law, Craig Bar 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 Craig Bar 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. In Craig Bar's answer it may request a hearing. Craig Bar has the right to be represented by an attorney at any stage of these proceedings.

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

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 Craig Bar's right to request a hearing on any matter to which it has stipulated in that agreement.



Printed on Recycled Paper

A request for an informal conference does not extend the 30-day period during which Craig Bar 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.

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 Jean Belille, Enforcement Attorney, who can be reached at 800/227-8917 extension 6556.

We urge your prompt attention to this matter.

Sincerely,

Michael T. Bisner

for

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

Enclosure

cc: John Arrigo, MT DEQ
Shelley Nolan, MT DEQ
Kristi Blazer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 AUG 11 PM 12:50

IN THE MATTER OF)

Joseph Duvall)
(Craig Bar))
Wolf Creek, Montana)

Respondent,)

Proceedings under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. §300g-3(g))

) Docket No. SDWA-08-2008-0088

) **COMPLAINT AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**

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. Joseph Duvall (“Respondent”) is an individual 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 Craig Bar 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 people 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 a “transient, non-community 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”).

5. The source of the System's water is ground water from one well. The System serves an average of approximately 80 persons per day through one service connection and is operational year-round.
6. On July 11, 2007, 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-08-2007-0053 (the "Order") to Respondent, citing violations of the NPDWRs.
7. A copy of the Order is attached to this complaint (Complainant's Exhibit 2).
8. By letter dated October 3, 2007, EPA notified the Respondent that the Respondent was in violation of the Order.
9. A copy of the October 3, 2007 letter is attached to this complaint (Complainant's Exhibit 3).
10. On November 5, 2007, in accordance with section 1414(g) of SDWA, 42 U.S.C. §§300g-3(g), the EPA issued an Administrative Order Addendum (the "Addendum") incorporating the treatment and modification plan and schedule as provided by the Respondent and approving and incorporating the schedule into the original Administrative Order. (Complaintant's Exhibit 4.)

COUNTS OF VIOLATION

Count I

Failure to Monitor for Nitrate

1. According to 40 C.F.R. § 141.23 (d)(2), public water systems are required to monitor their water quarterly for at least one year following any one sample in

which the nitrate monitoring results were greater than 50% of the Maximum Contaminant Level (MCL) as stated in 40 C.F.R. § 141.62(b).

2. Page 10 of the Order, in section 11, and the Addendum on Page 2, required Respondent to comply with the nitrate monitoring requirements of 40 C.F.R. § 141.23 (d)(2).
3. Respondent failed to monitor the System's water for nitrate within 30 days of the Order (by August 14, 2007) and during the 1st quarter in 2008, in violation of 40 C.F.R. § 141.23 (d)(2).

Count II
Failure to Monitor for Chlorine Residual

1. The Order on page 8 paragraph 6 and the Addendum on page 2 require the Respondent to monitor and record the chlorine residual each day and to submit the results to the State and EPA.
2. Respondent violated the Order by failing to monitor the chlorine residual on December 6, 2007 in violation of the Order dated July 11, 2007.

Count III
Failure to Maintain Chlorine Residual of at least 0.2 mg/L

1. The Order on page 8 paragraph 6 and the Addendum on page 2 require the Respondent to maintain a chlorine residual of at least 0.2 mg/L at all times at the system.

2. Respondent violated the Order by failing to maintain a chlorine residual of at least 0.2 mg/L on November 11, 12, 13, 14, 15, 16, 17, and 20, 2007; December 1, 3, 4, 5, 13, 18, 25, and 29, 2007; January 15 and 30, 2008; February 4, 12, 17, 22, 23, 24, 25, 26, 27, and 28, 2008; March 11, 18, 19, 23, 28, and 29, 2008; April 1, 6, 12, 17, 18, 19, 20, 23, 24, 25, and 26, 2008; and May 1, 3, 4, 7, 8, 9, 11, 17, 21, 24, 25, 26, and 29, 2008; in violation of the Order dated July 11, 2008.

Count IV

Failure to Submit Plans for Installing Continuous Disinfection System

1. The Order on Pages 7 and 8, paragraphs 3 and 4 and the Addendum on page 2 require the Respondent to submit plans and specifications for installation of the disinfection system for review and approval to the State and EPA within 30 days from the date of the order.
2. Respondent violated the Order by failing to submit plans and specifications for installation of the disinfection system for review and approval to the State or EPA by the deadline of August 14, 2007.

Count V

Failure to Provide Notice of Violations

1. The Order on Page 10, paragraph 12 and the Addendum on page 2, require that Respondent issue public notice of the violations according to 40 C.F.R. §141.201 et. seq.

2. Respondent violated the Order by failing to post public notices within 30 days of the Order.

Count VI

Failure to Report Violations

1. The Order on Page 11, paragraph 15 requires Respondent to report any new violations of NPDWRs to EPA and the State within 48 hours according to 40 C.F.R. § 141.31 (b).
2. Respondent violated the Order by failing to report nitrate monitoring violations during the 1st quarter in 2008 to EPA.

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 \$1,250.00 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. §§22.15 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 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 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.

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 11th day of August, 2008.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.

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

Jean Belille
Jean Belille,
Enforcement Attorney
Office of Enforcement, Compliance
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202
Telephone Number: (303) 312-6556
Facsimile Number: (303) 312-7519

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:

Joseph Duvall
Craig Bar
50 Main, Craig
Wolf Creek, MT 59648

Date: 8/11/05

By: Judith McTernan
Judith McTernan