

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 MAR 31 AM 8:39

EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)
)
Town of Hartville, WY,)
)
)
)
Respondent.)
_____)

Docket No. **SDWA-08-2014-0012**

**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 Hartville, 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 Act), 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:

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1. Respondent is a “municipality” as defined in section 1401(10) of the Act and, therefore, a “person” as defined in section 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. Respondent owns and/or operates a system, the Town of Hartville public water system (the System), located in Platte 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 two wells. The System serves an average of approximately 86 individuals per day through approximately 46 service connections and 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 Act, 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 Act, 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 Act, 42 U.S.C. § 300g-3(i).

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6. The NPDWRs require, among other things, that public water systems monitor for various contaminants and report the results to the EPA.
7. For at least the years 2002 through 2013, the EPA has provided Respondent yearly summaries of monitoring and reporting requirements under the NPDWRs.
8. On September 27, 2012, in accordance with section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), the EPA issued an Administrative Order, Docket No. SDWA-08-2012-0059 (the Order) to Respondent, citing violations of the NPDWRs and directing that Respondent comply with these requirements.
9. By letter dated December 19, 2012, the EPA corrected the Order to indicate that the requirement to monitor residual disinfectant was quarterly, not monthly.
10. By letters dated April 30, 2013, September 12, 2013, and January 16, 2014, the EPA notified Respondent that it was in violation of the Order.
11. 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 the NPDWRs in Wyoming.

VIOLATIONS

Count I

Failure to Monitor for Total Coliform Bacteria

12. According to 40 C.F.R. § 141.21, Respondent is required to monitor the System’s water at least monthly to determine compliance with the Maximum Contaminant Level established for total coliform bacteria pursuant to 40 C.F.R. § 141.63.

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13. Paragraph 16 of the Order required Respondent to perform monthly bacteriological monitoring as required by 40 C.F.R. § 141.21.
14. Respondent failed to monitor the System's water for total coliform bacteria contamination during December of 2012 and February, May, and September of 2013, in violation of the Order and 40 C.F.R. § 141.21.

Count II

Failure to Report Total Coliform Monitoring Violations

15. According to 40 C.F.R. § 141.21(g)(2), if Respondent fails to comply with a coliform monitoring requirement, it must report the monitoring violation to the EPA within 10 days after discovering the violation.
16. Paragraph 16 of the Order required Respondent to report any failure to comply with coliform monitoring requirements to the EPA within 10 days of discovering the violation.
17. Respondent failed to report to the EPA that the total coliform bacteria monitoring requirements for the System's water had been violated during months cited in paragraph 14, above, in violation of the Order and 40 C.F.R. § 141.21(g)(2).

Count III

Failure to Make Timely Distribution of Consumer Confidence Report for 2012

18. According to 40 C.F.R. §§ 141.152(b) and 141.155, Respondent is required to prepare an annual Consumer Confidence Report (CCR) and provide the CCR to the System's customers by July 1st of each year. Because the System serves fewer than 500 persons, Respondent may, as an alternative to mailing or directly

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delivering the CCR to the System's customers, provide it to customers by posting a notice in an appropriate location that the CCR is available upon request.

40 C.F.R. § 141.155(g)(2).

19. Paragraph 18 of the Order required Respondent to prepare and distribute future annual CCRs as required by 40 C.F.R. §§ 141.151-141.155.
20. Respondent failed to prepare a CCR for 2012 and provide the CCR to its customers (through mail, direct delivery, or posting) by July 1, 2013, in violation of the Order and 40 C.F.R. §§ 141.152(b) and 141.155. Respondent first provided the 2012 CCR to its customers in late September of 2013.

Count IV
Failure to Report CCR Violation

21. According to 40 C.F.R. § 141.31(b), Respondent is required, within 48 hours, to report to the EPA any failure to provide an annual CCR to its customers by July 1st.
22. Paragraph 21 of the Order required Respondent to report any violation of the NPDWRs to the EPA within 48 hours of the violation occurring, as required by 40 C.F.R. § 141.31(b).
23. Respondent failed to report to the EPA within 48 hours after July 1, 2013, that it had failed to provide a CCR for 2012 to the System's customers by July 1, 2013, in violation of the Order and 40 C.F.R. § 141.31(b).

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 Act, 42 U.S.C. § 300g-3(g)(3)(B), for violation of an administrative order issued under section 1414(g) of the Act. The amount of the administrative penalty may not exceed \$27,500 for violations occurring after March 15, 2004, through January 12, 2009, and \$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 78 Fed. Reg. 66643-66648, November 6, 2013.)

The EPA has determined the proposed penalty amount in accordance with section 1414 of the Act, 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 **\$2,500** against Respondent for its violations of the Order.

OPPORTUNITY TO REQUEST A HEARING

As provided in section 1414(g)(3)(B) of the Act, 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.

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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 Act 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-I.
Enforcement Attorney
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

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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.

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If made by check, the check shall include 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:	US Environmental Protection Agency / Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, Missouri 63197-9000
By Federal Express, Airborne, or other commercial carrier:	US Bank 1005 Convention Plaza Mail Station SL-MO-C2GL St. Louis, Missouri 63101

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.

A copy of the check or record of wire transfer or other means of payment shall be simultaneously sent to:

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

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Payment of the penalty in this manner does not relieve Respondent of the obligation to comply with the requirements of the Act 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 31st day of March, 2014

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant

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

§21.13

40 CFR Ch. I (7-1-08 Edition)

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec.
- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 *Ex parte* discussion of proceeding.
- 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources, including workshops, training sessions, hotlines, websites and guides, to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

EPA's Small Business Websites

Small Business Environmental Homepage - www.smallbiz-enviroweb.org

Small Business Gateway - www.epa.gov/smallbusiness

EPA's Small Business Ombudsman - www.epa.gov/sbo or 1-800-368-5888

EPA's Compliance Assistance Homepage

[www.epa.gov/compliance/assistance/
business.html](http://www.epa.gov/compliance/assistance/business.html)

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

EPA's Compliance Assistance Centers

www.assistancecenters.net

EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

Agriculture

www.epa.gov/agriculture/

Automotive Recycling

www.ecarcenter.org

Automotive Service and Repair

www.ccar-greenlink.org or 1-888-GRN-LINK

Chemical Manufacturing

www.chemalliance.org

Construction

www.cicacenter.org or 1-734-995-4911

Education

www.campuserc.org

Food Processing

www.fpeac.org

Healthcare

www.hercenter.org

Local Government

www.lgean.org

Metal Finishing

www.nmfrc.org

Paints and Coatings

www.paintcenter.org

Printed Wiring Board Manufacturing

www.pwbrc.org

Printing

www.pneac.org

Ports

www.portcompliance.org

U.S. Border Compliance and Import/Export Issues

www.bordercenter.org

Hotlines, Helplines and Clearinghouses

www.epa.gov/epahome/hotline.htm

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

Antimicrobial Information Hotline

info-antimicrobial@epa.gov or
1-703-308-6411

Clean Air Technology Center (CATC) Info-line

www.epa.gov/ttn/catc or 1-919-541-0800

Emergency Planning and Community Right-To-Know Act

[www.epa.gov/superfund/resources/
infocenter/epcra.htm](http://www.epa.gov/superfund/resources/infocenter/epcra.htm) or 1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline

www.epa.gov/otaq/imports or
734-214-4100

National Pesticide Information Center

www.npic.orst.edu/ or 1-800-858-7378

National Response Center Hotline -

to report oil and hazardous substance spills
www.nrc.uscg.mil or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC)

www.epa.gov/opptintr/ppic or
1-202-566-0799

Safe Drinking Water Hotline

[www.epa.gov/safewater/hotline/index.
html](http://www.epa.gov/safewater/hotline/index.html) or 1-800-426-4791

Stratospheric Ozone Protection Hotline

www.epa.gov/ozone or 1-800-296-1996