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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2008 NOV 13 AM 5:12  
REGIONAL HEARING  
CLERK

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5930 1678

Wayne Bogert  
Bogert's Ranch Estates  
600 Pulis Avenue  
Mahwah, NJ 07430

RE: In the Matter of: Bogert's Ranch Estates Public Water System (PWS ID No. NJ0233005)  
Complaint for Penalty, Docket No. SDWA-02-2009-8402

Dear Mr. Bogert:

Enclosed you will find an Administrative Complaint ("the Complaint") which the United States Environmental Protection Agency ("EPA" or "Agency"), the Complainant, is issuing to Bogert's Ranch Estates (the "Respondent") as a result of EPA's determination that Respondent failed to comply with the requirements of the Stage 2 Disinfectants and Disinfection Byproducts Rule (Stage 2 DBPR) under the Safe Drinking Water Act ("SDWA"), as implemented by EPA's regulations at 40 C.F.R. §§ 141.600(c), 141.601, 141.602, and 141.603 and failed to comply with the Administrative Order ("AO") (Docket No. SDWA-02-2008-8049) issued by EPA on May 20, 2008. The Complainant requests that a penalty of \$6,500 be assessed against this public water system for these violations.

As the Respondent, you have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint.

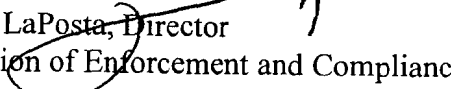
Enclosed is a copy of the "Consolidated Rules of Practice" ("CROP") (40 C.F.R. Part 22) which the EPA follows in cases of this kind. Please note the requirements for an Answer at §22.15 of the CROP. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:**

**Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway - 16<sup>th</sup> Floor  
New York, NY 10007-1866**

**You must also send a copy of your Answer to:**

EPA urges your prompt attention to this matter. If you have any questions or wish to discuss a settlement of this matter with EPA by an informal conference, please immediately contact Nadine Orrell, Esq., Assistant Regional Counsel, at (212) 637-3244.

Sincerely,

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. Consolidated Rules of Practice
3. Consent Agreement and Final Order
4. Administrative Order (Docket No. SDWA-02-2008-8049)

cc: Karen Maples, EPA Regional Hearing Clerk (w/Complaint and CA/FO)  
Barker Hamill, NJDEP  
James Hamilton, NJDEP

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 NOV 13 AM 5:11  
REGIONAL HEARING  
CLERK

IN THE MATTER OF:

Bogert's Ranch Estates  
600 Pulis Avenue  
Mahwah, NJ 07430  
PWS ID: NJ0233005

Respondent

Proceeding Pursuant to §1414(g)(3)(B) of the  
Safe Drinking Water Act, 42 U.S.C. §300g-  
3(g)(3)(B)

Proceeding to Assess Civil Penalty  
Under Section 1414(g)(3)(B) of the  
Safe Drinking Water Act

Docket No.  
SDWA-02-2009-8402

COMPLAINT,  
FINDINGS OF VIOLATION, NOTICE OF PROPOSED ASSESSMENT OF A CIVIL  
PENALTY AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING

I. Statutory Authority

1. This Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 1414(g)(3)(B) of the Safe Drinking Water Act ("SDWA" or "Act"), 42 U.S.C. §300g-3(g)(3)(B) and duly delegated to the Director of the Division of Enforcement and Compliance Assistance of EPA Region 2 ("Complainant").
2. Pursuant to Section 1414(g)(3)(B) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("CROP"), 40 C.F.R. Part 22, a copy of which is attached, Complainant hereby requests that a civil penalty be assessed against the Bogert's Ranch Estates ("Respondent") for the violation of an administrative order issued pursuant to Section 1414(g) of the SDWA requiring compliance with an applicable requirement of the Act at its Bogert's Ranch Estates' public water system, located in Mahwah, New Jersey.

## II. Findings of Violation

1. Bogert's Ranch Estates (hereinafter "Respondent") owns and operates the Bogert's Ranch Estates "public water system", located in Mahwah, NJ, within the meaning of Section 1401 of the SDWA, 42 U.S.C. §300f(4) and (5), and 40 C.F.R. §141.2.
2. Respondent is a "supplier of water" within the meaning of Section 1401(5) of the SDWA, 42 U.S.C. §300(f)(5), and 40 C.F.R. 141.2.
3. Respondent is a "person" within the meaning of Section 1401 of the SDWA, 42 U.S.C. §300f(12) and is subject to an Administrative Order issued under Section 1414(g)(1) of the SDWA, 42 U.S.C. §300(g)-3(1).
4. Respondent provides piped water for human consumption and regularly serves at least 25 individuals, and is therefore a "community water system" as defined by Section 1401(15) of the SDWA, 42 U.S.C. §300f(15) and 40 C.F.R. §141.2.
5. On January 4, 2006, USEPA promulgated the Stage 2 Disinfectants and Disinfection Byproducts Rule ("Stage 2 DBPR"), 40 C.F.R. Part 141, Subparts U and V, to provide for increased public health protection against the potential risks for cancer and reproductive and developmental health effects associated with disinfection byproducts ("DBPs"). The Stage 2 DBPR requires community water systems that use a primary or residual disinfectant other than ultraviolet light or deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light to conduct an Initial Distribution System Evaluation ("IDSE") to identify the locations with high disinfection byproduct concentrations. The locations identified in the IDSE are then to be used as the sampling sites for Stage 2 DBPR compliance monitoring. The Stage 2 DBPR introduces a new method for calculating compliance with the maximum contaminant levels for total trihalomethanes and haloacetic acids, referred to as the locational running annual average (LRAA).
6. The New Jersey Department of Environmental Protection ("NJDEP") administers the Public Water Supply Supervision Program in New Jersey pursuant to Section 1413 of the SDWA. The approval and delegation of primary enforcement responsibility from EPA to NJDEP was effective as of July 13, 1979. However, the NJDEP has not yet obtained primary enforcement responsibility for the Stage 2 DBPR. Therefore, as of the date of this Order, EPA has primary responsibility for enforcement of the Stage 2 DBPR.
7. Pursuant to 40 C.F.R. §141.600(b), community water systems that use a primary or residual disinfectant other than ultraviolet light or deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light are required to comply with 40 C.F.R. Part 141 Subpart U and V (Stage 2 DBPR).
8. Pursuant to 40 C.F.R. §141.600(c), community water systems serving fewer than 10,000 people were required to submit a standard monitoring plan in accordance with 40 C.F.R.

§141.601, a system specific study plan in accordance with 40 C.F.R. §141.602, or 40/30 certification in accordance with 40 C.F.R. §141.603 by April 1, 2008. Wholesale and consecutive systems that are part of a combined distribution system, as defined by 40 C.F.R. §141.2, are required to comply at the same time as the largest system within their combined distribution system.

9. Respondent adds a disinfectant other than ultraviolet light or delivers water that has been treated with a disinfectant other than ultraviolet light. Therefore, it is subject to the requirements of 40 C.F.R. Part 141 Subpart U and V (Stage 2 DBPR).
10. Respondent is a community water system that serves fewer than 10,000 people or consecutive community water system that is part of a combined distribution system that serves fewer than 10,000 people. Therefore, it was required to submit a standard monitoring plan in accordance with 40 C.F.R. §141.601, a system specific study plan in accordance with 40 C.F.R. §141.602, or 40/30 certification in accordance with 40 C.F.R. §141.603 by April 1, 2008.
11. Based on information available to EPA, Respondent failed to submit a standard monitoring plan in accordance with 40 C.F.R. §141.601, a system specific study plan in accordance with 40 C.F.R. §141.602, or 40/30 certification in accordance with 40 C.F.R. §141.603 by April 1, 2008, as required by 40 C.F.R. 141.600(c).
12. On May 20, 2008, EPA issued an Administrative Order (“AO”), Docket Number SDWA-02-2008-8049, requiring Respondent to submit a standard monitoring plan in accordance with 40 C.F.R. §141.601, system specific study plan in accordance with 40 C.F.R. §141.602, or 40/30 certification in accordance with 40 C.F.R. §141 within thirty (30) days of the effective date of the AO. EPA has documented evidence in the form of the certified mail return receipt (Article Number 7005 3110 0000 5930 0251) indicating that the Respondent received the AO on May 23, 2008.
13. Based on information available to EPA, Respondent has failed to demonstrate compliance with the requirements specified in 40 C.F.R. Part 141 Subpart U and V (Stage 2 DBPR) and violated Paragraphs 13 and 14 of the AO.

#### COUNT 1

14. Pursuant to 40 C.F.R. §141.600(c), Respondent was required to submit a standard monitoring plan in accordance with 40 C.F.R. §141.601, system specific study plan in accordance with 40 C.F.R. §141.602, or 40/30 certification in accordance with 40 C.F.R. §141.603 by April 1, 2008.
15. Pursuant to Paragraph 13 and 14 of AO Docket Number SDWA-02-2008-8049, Respondent was required to submit a standard monitoring plan in accordance with 40 C.F.R. §141.601, system specific study plan in accordance with 40 C.F.R. §141.602, or 40/30 certification in accordance with 40 C.F.R. §141.603 by June 19, 2008 (i.e. within 30 days of the effective date of the AO).

17. Respondent failed to demonstrate compliance with the requirements specified in 40 C.F.R. §141.600(c) by the date specified in the AO, and is therefore, in violation of Paragraph 13 and 14 of the AO.

### III. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 1414(g)(3)(b) of the Act, 42 U.S.C. §300g-3(g)(3)(B), EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a penalty of **Six Thousand Five Hundred Dollars (\$6,500.00)**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 1414(b) of the Act, 42 U.S.C. §300g-3(g)(b). EPA has taken into account the seriousness of the violation(s), the population at risk and other appropriate factors, in light of information currently available to it.

### IV. Procedures Governing This Administrative Litigation

The rules of procedure governing this civil administrative litigation have been set forth in 40 C.F.R. Part 22. This proceeding will be conducted in accordance with the CROP, including Subpart I thereof; unless, in your Answer, you request a hearing on the record in accordance with Section 554 of the Administrative Procedures Act, 5 U.S.C. §554, in which case Subpart I shall not apply.

#### A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action, 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus

intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

#### B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

#### C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

#### V. Informal Settlement Conference

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the

proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Nadine Orrell, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866  
(212) 637-3244

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.



## VI. Resolution of this Proceeding without Hearing or Conference

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on the previous page. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. §22.18(a)(3). In accordance with 40 C.F.R. §22.45(c)(3), no Final Order shall issue until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

## VII. Filing of Documents

1. The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway - 16th Floor  
New York, New York 10007-1866

2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

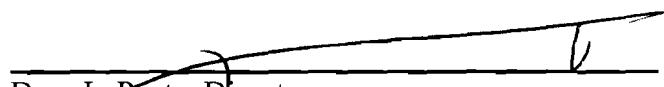
Nadine Orrell, Esq., Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2

290 Broadway, 16th floor  
New York, New York 10007-1866  
(212) 637-3244

VIII. General Provisions

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), will affect Respondent's continuing obligation to comply with the Act, and with regulations promulgated thereunder.

ISSUED THIS 7<sup>th</sup> DAY OF NOVEMBER 2008.

  
\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
United States Environmental Protection Agency – Region 2  
290 Broadway  
New York, New York 10007-1866

To: Wayne Bogert  
Bogert's Ranch Estates  
600 Pulis Avenue  
Mahwah, NJ 07430  
Docket No. SDWA-02-2009-8402