



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

Phone 800-227-8917

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

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EPA REGION VIII
HEARING CLERK

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7009 3410 0000 2592 7379

Rick Nelson
Fort Devils Tower
601 Highway 24
Devils Tower, WY 82714

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. **SDWA-08-2011-0021**

Dear Mr. Nelson:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against you under § 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 you failed to comply with an Administrative Order, Docket No. SDWA-08-2003-0062, issued on September 24, 2003, under § 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g). The violations are specifically set out in the complaint.

By law, you have 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 you do not file an answer 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 its answer you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings.

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 the right to request a hearing on any matter to which you have stipulated in that agreement.

Whether or not you request a hearing, you and/or your representative(s) may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. However, an informal settlement conference does **not** substitute for filing a written answer and requesting a hearing.



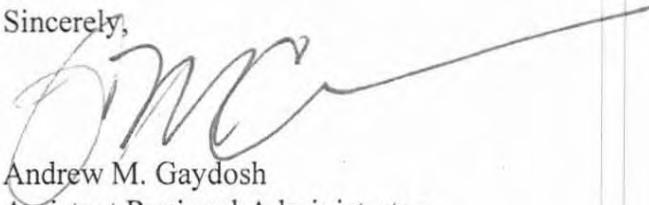
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A request for an informal conference also does not extend the 30-day period during which you must submit a written answer and a request for a hearing. You may pursue the informal conference procedure as an alternative to, and simultaneously with, the adjudicatory hearing process.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Mario Mérida, Environmental Protection Specialist, who can be reached at 800/227-8917, extension 6297, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917, extension 6858.

We urge your prompt attention to this matter.

Sincerely,



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

Enclosure

cc: Tina Artemis, Regional Hearing Clerk



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 FEB 14 AM 10:39

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)

Rick Nelson, Owner)
Fort Devils Tower)
601 Highway 24)
Devils Tower, Wyoming 82714)

Respondent,)

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

) Docket No. **SDWA-08-2011-0021**

) **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 § 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 EPA to assess an administrative civil penalty against any person who violates, or fails or refuses to comply with, an order issued under § 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g).

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. Rick Nelson (Respondent) is an individual and therefore a “person” as that term is defined in § 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. Respondent owns and/or operates the Fort Devils Tower public water system (the system), located in Crook County, Wyoming, for the provision to the public of piped water for human consumption.
3. The system has at least 15 service connections or regularly serves at least 25 individuals at least 60 days out of the year and is therefore a “public water system” as that term is defined in § 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2. The system is also a “transient, non-community water system” as that term is defined in 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 § 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 is open year-round. It serves an average of approximately 150 persons per day through 26 service connections from May to mid-September. It serves approximately 50 people per day in October and 30 per day in November. During January through March of each year, the system serves an average of only three people per day.
6. Respondent is required by 40 C.F.R. § 141.21 to monitor the system's water for total coliform bacteria at least once per quarter. EPA has notified the Respondent that he must take one sample each quarter during the second (April - June), third (July - September), and fourth (October - December) quarters of each year.
7. On September 24, 2003, in accordance with § 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), EPA issued an Administrative Order, Docket No. SDWA-08-2003-0062 (the Order) to Respondent, citing violations of the NPDWRs. A copy of the Order is attached to this complaint (Complainant's Exhibit 2).
8. By letter dated May 19, 2005, EPA mailed a letter to notify Respondent that he was in violation of the Order. Respondent refused delivery of that letter. A copy of that letter is attached to this complaint (Complainant's Exhibit 3).
9. In 2006, EPA was notified by Crook County that Respondent had sold the system.
10. In June of 2009, Respondent notified EPA that he had reacquired the system.

11. By letter dated April 6, 2010, EPA again notified Respondent that he was in violation of the Order. A copy of that letter is attached to this complaint (Complainant's Exhibit 4).
12. By letter dated September 27, 2010, EPA again notified Respondent that he was in violation of the Order. A copy of that letter is attached to this complaint (Complainant's Exhibit 5).
13. By letter dated November 22, 2010, EPA again notified Respondent that he was in violation of the Order. A copy of that letter is attached to this complaint (Complainant's Exhibit 6).

COUNTS OF VIOLATION

Count I

Failure to Monitor for Total Coliform Bacteria

1. The Order, on page 5, in Paragraph 2 of the "Order" section, required Respondent to monitor the system's water for total coliform as required by 40 C.F.R. § 141.21.
2. Respondent violated the Order by failing to monitor the system's water for total coliform bacteria during the fourth quarter of 2009.

Count II

Untimely Reporting of Monitoring Results

1. The Order, on page 5, in Paragraph 2 of the "Order" section, required Respondent to report all analytical results for total coliform to EPA within the first ten days following the month in which sample results were received, as required by 40 C.F.R. § 141.31(a).

2. Respondent violated the Order by failing to report the results of coliform monitoring for May of 2010, June of 2010, and September of 2010 by the tenth day of the following month. Respondent did not provide EPA with the results of monitoring for these months until December 27, 2010 (for the May of 2010 sample), November 15, 2010 (for the June of 2010 sample), and December 22, 2010 (for the September of 2010 sample).

Count III
Failure to Report Coliform Monitoring Violations to EPA

1. The Order, on page 7, in Paragraph 5 of the "Order" section, required Respondent to comply with 40 C.F.R. § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R. § 141.21 to EPA within ten days after the system's discovery of the violation.
2. Respondent violated the Order by failing to report to EPA that no total coliform sampling was done in the fourth quarter of 2009.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

This complaint proposes that EPA assess an administrative penalty against Respondent. EPA is authorized to assess an administrative civil penalty according to § 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), for violation of an administrative order issued under § 1414(g) of the SDWA. The amount may be up to \$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.)

EPA has determined the proposed penalty amount in accordance with § 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 EPA at this time, EPA proposes to assess an administrative civil penalty of \$2,000.00 against Respondent for his violations of the Order.

OPPORTUNITY TO REQUEST A HEARING

As provided in § 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 § 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 re-caption 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
Region 8 Hearing Clerk (8RC)
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202

A copy of the answer must also be sent to the attorney whose name and address are provided in the signature block at the end of this complaint.

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 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 proceeding at any time by paying the penalty amount proposed in this complaint. Respondent may make this payment by (1) sending a cashier's or certified check for this amount, including the name and docket number of this case, payable to "Treasurer, United States of America," to the address below to the U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO, 63197-9000, and (2) filing a copy of the check with Tina Artemis, Region 8 Hearing Clerk (8RC), at the address on the preceding page.

If Respondent makes this payment within 30 days of receiving this complaint, it need not file an answer. Such payment waives Respondent's right to contest the allegations and to appeal any final order resulting from this complaint. See § 22.18 of the Rules of Practice for more explanation of the quick resolution process.

SETTLEMENT CONFERENCE

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, signed by the parties and incorporated into a final order signed by the

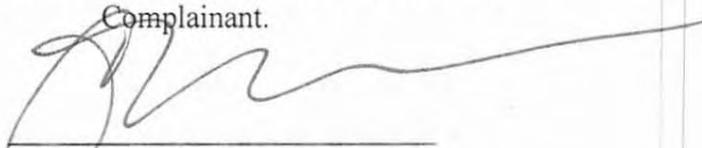
Rick Nelson / Fort Devils Tower
Complaint and Notice of Opportunity for Hearing
Page 9 of 9

Presiding Officer. Any request for settlement negotiations should be directed to the attorney named below.

Dated this 14 day of February, 2011.

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
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 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:

Rick Nelson
Fort Devils Tower
601 Highway 24
Devils Tower, WY 82714
Certified mail, return receipt requested
No. 7009 3410 0000 2592 7379

Date: 2/14/2011

By: Judith McTernan
Judith McTernan

§21.13

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.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

COMPLAINANT'S
EXHIBIT NO. 2

SECRET

IN THE MATTER OF)
Rick Nelson, Owner)
Fort Devils Tower)
601 Highway 24)
Devils Tower, Wyoming 82714)
)
Respondent)
)
Proceedings under Section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. §300g-3(g))

ADMINISTRATIVE ORDER

Docket No. SDWA-08-2003-0062

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 1414(g) of the Safe Drinking Water Act (the Act), 42 U.S.C. §300g-3(g), and its implementing regulations, as properly delegated to the Supervisors of the Technical and Legal Enforcement Programs of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

FINDINGS

1. Rick Nelson ("Respondent") is an individual and therefore a "person" within the meaning of 40 C.F.R. § 141.2.
2. Respondent owns and/or operates a system, Fort Devils Tower Water System (the "System"), located in Crook County, Wyoming for the provision to the public of piped water for human consumption.

3. The Fort Devils Tower Water 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" within the meaning of Section 1401(4) of the Act, 42 U.S.C. §300f(4), and a "non-community water system" within the meaning of 40 C.F.R. § 141.2.
4. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of Section 1401(5) of the Act, 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 Act, 42 U.S.C. §300g, and its implementing regulations, 40 C.F.R. Part 141.
5. According to a May 22, 2002 sanitary survey by an agent for EPA, Respondent operates a system that is supplied solely by a ground water source consisting of one well. The system serves approximately 25 persons daily, during its operational season, May-September, through 16 service connections.

FINDINGS OF VIOLATION

I.

1. 40 C.F.R. § 141.21 requires the owner and/or operators of non-community public water systems to monitor the water at least once per quarter that the system is serving water to the public to determine compliance with the maximum contaminant level (MCL) for total coliform bacteria as stated in 40 C.F.R. § 141.63.
2. Respondent failed to monitor the System's water for contamination by total coliform bacteria during the 2nd (April-June) quarter, and 3rd (July-September) quarter in 2002, in violation of 40 C.F.R. § 141.21.

II.

1. 40 C.F.R. § 141.23(d) requires public water systems to monitor their water annually for nitrate to determine compliance with the nitrate MCL as stated in 40 C.F.R. § 141.62.
2. Respondent failed to monitor for nitrate in 2002, in violation of 40 C.F.R. § 141.23(d).

III.

1. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any national primary drinking water regulation ("NPDWR")

violations, including violations of the maximum contaminant level ("MCL"), maximum residual disinfection level ("MRDL"), treatment technique ("TT"), monitoring requirements, and testing procedures in 40 C.F.R. Part 141.

2. Respondent has not provided public notice of the noncompliance detailed in the preceding Sections I and II, in violation of 40 C.F.R. § 141.201.

IV.

1. 40 C.F.R. § 141.31(b) requires that public water systems shall report any failure to comply with the National Primary Drinking Water Regulations to EPA within 48 hours.
2. Respondent failed to report to EPA within 48 hours the instances of noncompliance described in Findings of Violation Sections II and III, in violation of 40 C.F.R. § 141.31(b).

V.

1. 40 C.F.R. § 141.21(g)(2) requires any public water system that has failed to comply with a coliform monitoring requirement under 40 C.F.R. § 141.21 to report the monitoring violation to EPA within ten days after the system discovers the violation.

2. Respondent failed to report to EPA instances of noncompliance detailed in Section I in violation of 40 C.F.R. § 141.21(g) (2).

ORDER

Based on the foregoing Findings, and pursuant to Section 1414(g) of the Act, IT IS ORDERED:

1. Within 30 days of the effective date of this Order, and annually thereafter, Respondent shall comply with the nitrate monitoring requirements as stated in 40 C.F.R. § 141.23(d) to determine compliance with the nitrate MCL appearing at 40 C.F.R. § 141.62(b). Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).
2. Upon the effective date of this Order, Respondent shall comply with the total coliform monitoring requirements as stated in 40 C.F.R. § 141.21 to determine compliance with the total coliform MCL appearing at 40 C.F.R. § 141.63. Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).

3. No later than thirty days from the effective date of this Order, Respondent must comply with the public notice requirements set forth at 40 C.F.R. § 141.201 et seq. to return to compliance with 40 C.F.R. §§ 141.201, 141.204, and 141.205. Specifically, Respondent must provide public notice of the failure to monitor for nitrate and the failure to monitor for contamination by total coliform bacteria in accordance with 40 C.F.R. § 141.204. Public Notice must be given by any one of the following methods: (1) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system; (2) by mail or direct delivery to each customer and service connection; AND (3) any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the public notice described in (1) and (2), including publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations. Upon the effective date of this Order, Respondent shall comply with the public notification requirements at 40 C.F.R. § 141.201 et seq. following any future NPDWR violation. Respondent shall submit a

copy of the public notice to EPA within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d).

4. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.31(b) by reporting any failure to comply with any National Primary Drinking Water Regulation (40 C.F.R. Part 141) to EPA within 48 hours.
5. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R. § 141.21 to EPA within ten days after the system discovers the violation.
6. Reporting requirements specified in this Order shall be provided by certified mail to:

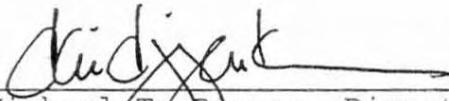
Jackson Naftel
U. S. EPA Region 8 (8ENF-T)
999 18th Street, Suite 300
Denver, Colorado 80202-2466

GENERAL PROVISIONS

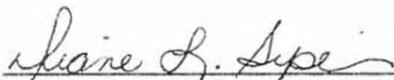
1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 et seq., or the Safe Drinking Water Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
2. Violation of any term of this Order, instituted under Section 1414(g)(3)(A) of the Act, 42 U.S.C. §300g-3(g)(3)(A), may subject Respondent to an administrative civil penalty of up to \$25,000 under Section 1414(g)(3)(B) of the Act, 42 U.S.C. §300g-3(g)(3)(B), or a civil penalty of not more than \$27,500 per day of violation, assessed by a U.S. District Court, under Section 1414(g)(3)(C) of the Act, 42 U.S.C. §300g-3(g)(3)(C).
3. Violation of any requirement of the SDWA or its implementing regulations, instituted under Section 1414(b) of the Act, 42 U.S.C. §300g-3(b), may subject Respondent to a civil penalty of not more than \$27,500 per day of violation, assessed by an appropriate U.S. District Court, under Section 1414(b) of the Act, 42 U.S.C. §300g-3(b).

4. The effective date of this Order shall be the date of issuance of this Order.

Issued this 24th day of September, 2003.



Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice



Dianne L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917

COMPLAINANT'S
EXHIBIT NO. 3

2005 MAY 24 AM 8:29

EPA REGION VIII
HEARING CLERK

MAY 19 2005

Ref: 8 ENF-W

CERTIFIED MAIL #7003 2260 0001 7791 5541
RETURN RECEIPT REQUESTED

Rick Nelson
Fort Devils Tower
601 Highway 24
Devils Tower, WY 82714

Re: Violation of Administrative Order
Docket No. SDWA-08-2003-0062
Fort Devils Tower
PWS ID # WY5601411

Dear Mr. Nelson:

On September 24, 2003, the US Environmental Protection Agency (EPA) issued an Administrative Order, Docket No. SDWA-08-2003-0062, ordering you to comply with the Safe Drinking Water Act (SDWA), 42 U.S.C. Section 300f *et seq.*, and its implementing regulations, the National Primary Drinking Water Regulations (NPDWRs) 40 C.F.R. Part 141.

Our records indicate that you are in violation of the Administrative Order (the Order). The Order requires you to:

1. Comply with the requirement of 40 C.F.R. § 141.21 to monitor the System's water at least once per quarter to determine compliance with the maximum contaminant level (MCL) for total coliform bacteria as stated in 40 C.F.R. § 141.63.

EPA has not received bacteriological sample results for the third (July-September) quarter in 2003 and 2004.

2. Comply with 40 C.F.R. § 141.23 (d) to monitor the System's water at least once annually for nitrate to determine compliance with the nitrate MCL as stated in 40 C.F.R. § 141.62.

EPA has not received nitrate sample results for 2003 or 2004.

3. Comply with 40 C.F.R. § 141.201 to provide public notice of the failure to monitor for contamination by total coliform bacteria and nitrate in accordance with 40 C.F.R. § 141.204.

EPA has not received a public notice for violations of failure to monitor total coliform during the second (April-June) quarter in 2002, the third (July-September) quarter in 2002, the third (July-September) quarter in 2003, and failure to monitor nitrate in 2002.

EPA is considering additional enforcement action as a result of the System's non-compliance with the Order. Violating an Administrative Order may lead to (1) a penalty of up to \$32,500 per day per violation of the Order, and/or (2) a court injunction ordering you to comply.

If you have any questions or wish to have an informal conference with EPA, you may contact Peggy Livingston, Enforcement Attorney, at (303) 312-6858 or at the following address:

Peggy Livingston
Enforcement Attorney
U.S. EPA, Region VIII (8-ENF-L)
999 18th Street, Suite 300
Denver, Colorado 80202-246

We urge your prompt attention to this matter.

Sincerely,



Lisa Kahn, Team Leader
Drinking Water Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc: WDEQ (via email)
WDH (via email)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

2010 APR -6 AM 10: 08

FILED
EPA REGION VIII
HEARING CLERK

COMPLAINANT'S
EXHIBIT NO. 4

Ref: 8 ENF-W

APR 06 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rick Nelson
Fort Devils Tower
601 Highway 24
Devils Tower, WY 82714

Re: 2nd Violation of
Administrative Order
Docket No. SDWA-08-2003-0062
PWS ID # WY5601411

Dear Mr. Nelson:

On September 24, 2003, the US Environmental Protection Agency (EPA) issued an Administrative Order, Docket No. SDWA-08-2003-0062, ordering you, as owner and/or operator of the Fort Devils Tower public water system (system), to comply with various regulations issued by EPA under the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f et seq.

Our records indicate that you (Respondent) are in violation of the Administrative Order (the Order). Among other things, the Order included the following requirements (quoted from paragraphs 2 and 5 on pages 5 and 7, respectively, of the Order):

1. Upon the effective date of this Order, Respondent shall comply with the total coliform monitoring requirements as stated in 40 C.F.R. § 141.21 to determine compliance with the total coliform MCL [maximum contaminant level] appearing at 40 C.F.R. § 141.63. Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. 40 C.F.R. § 141.31(a).

Respondent failed to monitor the system's water for total coliform bacteria during the 4th quarter (October 1 - December 31) of 2009.

2. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R § 141.21 to EPA within ten days after the system discovers the violation.

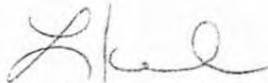
Respondent failed to report to EPA the failure to monitor the system's water for total coliform bacteria during the 4th quarter of 2009, cited above.

EPA is considering additional enforcement action, including assessment of penalties, as a result of the non-compliance with the Order detailed above. Violating an Administrative Order may lead to (1) a penalty of up to \$37,500 per day per violation of the Order, and/or (2) a court injunction ordering compliance.

If you have any questions or wish to have an informal conference with EPA, you may contact Mario Mérida at 1-800-227-8917, extension 6297 or (303) 312-6297. If you are represented by an attorney who has questions, please ask your attorney to contact Peggy Livingston, Enforcement Attorney, at 1-800-227-8917, extension 6858 or (303) 312-6858 or at the following address:

Peggy Livingston
Enforcement Attorney
U.S. EPA, Region 8 (8-ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge your prompt attention to this matter.



Lisa Kahn, Team Leader
Drinking Water Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc: Tina Artemis, EPA Regional Hearing Clerk
WY DEQ and DOH via e-mail



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

COMPLAINANT'S
EXHIBIT NO. 5
2010 SEP 27 AM 9:55

FILED
EPA REGION VIII
HEARING CLERK

Ref: 8 ENF-W

SEP 27 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rick Nelson
Fort Devils Tower
601 Highway 24
Devils Tower, WY 82714

Re: 3rd Violation of
Administrative Order
Docket No. SDWA-08-2003-0062
PWS ID # WY5601411

Dear Mr. Nelson:

On September 24, 2003, the US Environmental Protection Agency (EPA) issued an Administrative Order, Docket No. SDWA-08-2003-0062, ordering you, as owner and/or operator of the Fort Devils Tower public water system (system), to comply with various regulations issued by EPA under the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f et seq.

Our records indicate that you (Respondent) are in violation of the Administrative Order (the Order). Among other things, the Order included the following requirements (quoted from paragraphs 2 and 5 on pages 5 and 7, respectively, of the Order):

1. Upon the effective date of this Order, Respondent shall comply with the total coliform monitoring requirements as stated in 40 C.F.R. § 141.21 to determine compliance with the total coliform MCL [maximum contaminant level] appearing at 40 C.F.R. § 141.63. Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. 40 C.F.R. § 141.31(a).

Respondent failed to monitor the system's water for total coliform bacteria during the 2nd quarter (April 1 - June 30) of 2010.

2. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R § 141.21 to EPA within ten days after the system discovers the violation.

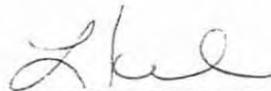
Respondent failed to report to EPA the failure to monitor the system's water for total coliform bacteria during the 2nd quarter of 2010, cited above.

EPA is considering additional enforcement action, including assessment of penalties, as a result of the non-compliance with the Order detailed above. Violating an Administrative Order may lead to (1) a penalty of up to \$37,500 per day per violation of the Order, and/or (2) a court injunction ordering compliance.

If you have any questions or wish to have an informal conference with EPA, you may contact Mario Mérida at 1-800-227-8917, extension 6297 or (303) 312-6297. If you are represented by an attorney who has questions, please ask your attorney to contact Peggy Livingston, Enforcement Attorney, at 1-800-227-8917, extension 6858 or (303) 312-6858 or at the following address:

Peggy Livingston
Enforcement Attorney
U.S. EPA, Region 8 (8-ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge your prompt attention to this matter.



Lisa Kahn, Team Leader
Drinking Water Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc: Tina Artemis, EPA Regional Hearing Clerk
WY DEQ and DOH via e-mail



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

COMPLAINANT'S
EXHIBIT NO. 6

2010 NOV 22 AM 8:48

EPA REGION VIII
HEARING CLERK

Ref: 8 ENF-W

NOV 22 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rick Nelson
Fort Devils Tower
601 Highway 24
Devils Tower, WY 82714

Re: Violation of Administrative Order
Docket No. SDWA-08-2003-0062
PWS ID # WY5601411

Dear Mr. Nelson:

On September 24, 2003, the US Environmental Protection Agency (EPA) issued an Administrative Order, Docket No. SDWA-08-2003-0062, ordering you, as owner and/or operator of the Fort Devils Tower public water system (system), to comply with various regulations issued by EPA under the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f et seq.

Our records indicate that you (Respondent) are in violation of the Administrative Order (the Order). Among other things, the Order included the following requirements (quoted from paragraphs 2 and 5 on pages 5 and 7, respectively, of the Order):

1. Upon the effective date of this Order, Respondent shall comply with the total coliform monitoring requirements as stated in 40 C.F.R. § 141.21 to determine compliance with the total coliform MCL [maximum contaminant level] appearing at 40 C.F.R. § 141.63. Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. 40 C.F.R. § 141.31(a).

Respondent failed to monitor the system's water for total coliform bacteria during the 3rd quarter (July 1, 2010 - September 30, 2010) of 2010.

2. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R § 141.21 to EPA within ten days after the system discovers the violation.

Respondent failed to report to EPA the failure to monitor the system's water for total coliform bacteria during the 3rd quarter of 2010, cited above.

EPA is considering additional enforcement action, including assessment of penalties, as a result of the non-compliance with the Order detailed above. Violating an Administrative Order may lead to (1) a penalty of up to \$37,500 per day per violation of the Order, and/or (2) a court injunction ordering compliance.

If you have any questions or wish to have an informal conference with EPA, you may contact Mario Mérida at 1-800-227-8917, extension 6297 or (303) 312-6297. If you are represented by an attorney who has questions, please ask your attorney to contact Peggy Livingston, Enforcement Attorney, at 1-800-227-8917, extension 6858 or (303) 312-6858 or at the following address:

Peggy Livingston
Enforcement Attorney
U.S. EPA, Region 8 (8-ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge your prompt attention to this matter.



Lisa Kahn, Team Leader
Drinking Water Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc: Tina Artemis, EPA Regional Hearing Clerk
WY DEQ and DOH via e-mail