



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

Phone 800-227-8917

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

NOV 11 2008

Ref: 8ENF-T

BY CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Monty Branson, Registered Agent
Cheyenne Shrine Club
224 Iowa Street
Cheyenne, WY 82003

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. **SDWA-08-2009-0011**

Dear Mr. Branson:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against Cheyenne Shrine Club (the Club) 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 the Club failed to comply with an Administrative Order, Docket No. SDWA-08-2006-0022, issued on March 22, 2006, 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, the Club has the right to request a hearing regarding the matters set forth in the complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If the Club 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 the Club's answer it may request a hearing. The Club has the right to be represented by an attorney at any stage of these proceedings.

Whether or not the Club 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 the Club's right to request a hearing on any matter to which it has stipulated in that agreement.



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A request for an informal conference does not extend the 30-day period during which the Club 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 Kathelene Brainich, Environmental Protection Specialist, who can be reached at 800/227-8917 extension 6481, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917 extension 6858.

We urge your prompt attention to this matter.

Sincerely,

Michael T. Baisner
for

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

Enclosure



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 NOV 10 12:10:58

IN THE MATTER OF

Cheyenne Shrine Club
Cheyenne, Wyoming

Respondent

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

)
)
)
)
) Docket No. **SDWA-08-2009-0011**

) **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. The Cheyenne Shrine Club (“Respondent”) is a Wyoming corporation 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 Cheyenne Shrine Club Water System (the “System”), located in Laramie County, Wyoming, for the provision to the public of water for human consumption through pipes or other constructed conveyances.
3. The 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” as that term is defined in section 1401(4) of the SDWA, 42 U.S.C. §300f(4), and a “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 a well.

6. On March 22, 2006, in accordance with section 1414 of the SDWA, 42 U.S.C. §§300g-3, the EPA issued an Administrative Order, Docket No. SDWA-08-2006-0022 (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. On November 8, 2006, EPA issued an Administrative Order Violation letter to the Respondent, stating that the Respondent had violated the Order by failing to follow up on a coliform-positive sample by taking five additional routine samples during the following month, by failing to provide public notice of prior violations and submit a copy of its public notification to EPA, and by failing to report to EPA that it (Respondent) had failed to take sufficient additional coliform samples in June of 2006 after a positive total coliform sample in May of 2006.
9. A copy of EPA's November 8, 2006, letter is attached to this complaint (Complainant's Exhibit 3).

COUNTS OF VIOLATION

Count I

Failure to Monitor for Total Coliform

1. The Order (on page 6, in paragraph 1 of the "Order" section) required Respondent to perform quarterly bacteriological monitoring, as required by 40 C.F.R. §141.21(a).
2. Respondent violated the Order by failing to monitor for total coliform bacteria during the fourth quarter of 2007.

Count II
Failure to Collect Additional Samples After Positive Result

1. The Order (on pages 6 and 7, in par. 2 of the "Order" section) required Respondent, in the event of at least one positive coliform sample, to collect at least five routine total coliform samples during the next month the System provided water to the public, as required by 40 C.F.R. §141.21(b)(5).
2. Respondent violated the Order by failing to collect at least five routine samples during June of 2006, after having had at least one positive coliform result in May of 2006.

Count III
Failure to Provide Timely Public Notice of Violation

1. The Order (on pages 7 and 8, in paragraph 4 of the "Order" section) required Respondent to provide public notice of the System having exceeded the Maximum Contaminant Level ("MCL") established by 40 C.F.R. §141.63 in October and November of 2002 and November of 2001. The deadline for providing that public notice was within 30 days of the effective date of the Order. The Order also required the Respondent to provide public notice as required by 40 C.F.R. §§141.201 et seq. after any future NPDWR violation and to provide EPA with a copy of each public notice within ten days of completing public notice.
2. The Respondent violated the Order by failing to provide public notice of the MCL violations mentioned in the preceding paragraph until December 11, 2006, over seven months after the deadline set by the Order.

Count IV
Failure to Report Coliform Monitoring Violation to EPA

1. The Order (on pages 8 and 9, in paragraph 5 of the "Order" section) required Respondent to comply with 40 C.F.R. §141.21(g)(2) by reporting to EPA any failure to comply with a requirement for monitor for total coliform. The deadline for reporting each violation to EPA was ten days after Respondent discovered the violation.
2. The Respondent violated the Order by failing to notify the EPA that the Respondent had failed (a) to monitor for total coliform in the fourth quarter of 2007 and (b) to conduct the additional monitoring in June of 2006 that was required due to the positive coliform result in May of 2006.

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,

¹The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19.

EPA proposes to assess an administrative civil penalty of \$1,200.00 against Respondent for its violations of the Order.

OPPORTUNITY TO REQUEST A HEARING

As provided in section 1414(g)(3)(B) of the SDWA, 42 U.S.C. §300g-3(g)(3)(B), Respondent has the right to request a public hearing to contest any material fact alleged in this complaint, to contest the appropriateness of the proposed penalty and/or to assert that it is entitled to judgment as a matter of law.

If Respondent wishes to request a hearing, Respondent must file a written answer in accordance with 40 C.F.R. §§22.15 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 attorney listed below and the EPA Regional Hearing Clerk at the address below:

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 6th day of November, 2008.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.

for Michael T. Bisner
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 and by regular U.S. mail:

Monty Branson
Registered Agent
Cheyenne Shrine Club
224 Iowa Street
Cheyenne, WY 82003

Date: 11/10/08

By: Judith McTernan
Judith McTernan