



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

SEP 27 2007

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jack Vreeland, Registered Agent
Evanston Lodge No. 2588, Benevolent and Protective Order
of Elks of the United States of America
116 10th Street
Evanston, WY 82930

Re: In the Matter of Evanston Lodge No. 2588
Docket No. **SDWA_08-2007-0096**
Complaint and Notice of Opportunity for Hearing

Dear Mr. Vreeland:

Enclosed please find a Complaint and Notice of Opportunity for Hearing (Complaint) issued by the U.S. Environmental Protection Agency (EPA) to the Evanston Lodge No. 2588, Benevolent and Protective Order of Elks of the United States of America (Evanston Lodge), pursuant to its authority under section 1414(g)(3) of the Safe Drinking Water Act (Act), as amended, 42 U.S.C § 300g-3(g)(3). EPA is issuing the Complaint to Evanston Lodge, owner and operator of the Evanston Lodge No. 2588 public water system (System), based on the System's continuing violations of two administrative orders respectively dated January 14, 2004, and June 15, 2007, and underlying National Primary Drinking Water Regulations (NPDWRs).

EPA offered to expeditiously settle the violations associated with the first administrative order (Docket No. SDWA-08-2004-0011) by providing Evanston Lodge with a draft Combined Complaint and Consent Agreement (CCCA) on July 16, 2007. Despite receiving the return receipt on July 19, 2007, verifying that Evanston Lodge had accepted service for the document, Evanston did not sign and return the CCCA or otherwise respond to EPA. Evanston Lodge also has not monitored for nitrate as required by the administrative order issued June 15, 2007 (Docket No. SDWA-08-2007-0061). EPA to date has been unable to reach an Evanston Lodge representative. This unilateral action is taken in lieu of the parties filing a negotiated CCCA to fully resolve the violations. The Complaint proposes a penalty of \$500 based on Evanston Lodge's violations of the administrative orders.



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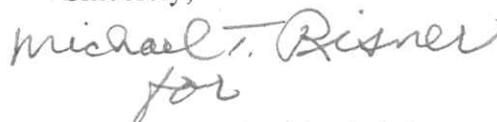
By law, you have the right to request a hearing regarding the matters set forth in the Complaint. Please pay particular attention to those parts of the Complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If you do not respond to this Complaint within 30 days of receipt, a Default Judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In your Answer you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings. Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You may appear at the conference yourself and/or be represented by your counsel.

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 your right to request a hearing on any matter to which you have stipulated therein. A request for an informal conference does not extend the 30 day period during which you must submit a written Answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneous with the adjudicatory hearing.

If you have any questions, the most knowledgeable people on my staff regarding this matter are Kimberly Pardue Welch and Amy Swanson. Ms. Pardue Welch is in our Water Technical Enforcement Program and can be reached at (303) 312-6983. Ms. Swanson is in our Legal Enforcement Program and can be reached at (303) 312-6906.

We urge your prompt attention to this matter.

Sincerely,

Handwritten signature of Michael T. Risner in cursive script.

Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc: WY DEQ (via email)
WY DOH (via email)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 2007 SEP 27 PM 2:00
REGION 8

EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)

) Docket No. **SDWA_08-2007-0096**

)
)
) Evanston Lodge No. 2588,
) Benevolent and Protective Order of
) Elks of the USA
)
) PWS ID #WY5601147
)

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

) Respondent.)

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

COMPLAINT

1. This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency (EPA) by section 1414(g)(3) of the Safe Drinking Water Act, as amended (Act), 42 U.S.C. § 300g-3(g)(3). The Administrator has properly delegated this authority to the undersigned EPA official. This proceeding is governed by 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 (Consolidated Rules) set forth at 40 C.F.R. part 22, a copy of which is enclosed.

GENERAL ALLEGATIONS

2. The following general allegations apply to and are incorporated into each of the counts alleged in this Complaint:

3. Respondent Evanston Lodge No. 2588, Benevolent and Protective Order of Elks of the United States of America (Respondent), is a corporation under the laws of the State of Wyoming as of December 1979, and therefore a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.

4. Respondent owns and/or operates a system, the Evanston Lodge No. 2588 Public Water System (System), located in Uinta County, Wyoming, for the provision to the public of piped water for human consumption.

5. 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" 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.

6. 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.

7. Respondent operates a system that is supplied solely by a ground water source consisting of one well. The system serves approximately 25 persons per day through one service connection, and is operational year-round.

8. On January 14, 2004, EPA issued an Administrative Order (First Order) (Docket No. SDWA-08-2004-0011) to the Respondent pursuant to section 1414(g)(1) of the Act, 42

U.S.C. § 300g-3(g)(1), citing violations of the National Primary Drinking Water Regulations (NPDWRs) (40 C.F.R. part 141).

9. The First Order required Respondent, among other things, to achieve compliance with the NPDWRs that Complainant alleged Respondent violated.

10. On March 18, 2005, and April 7, 2005, respectively, EPA sent Respondent "Violation of Administrative Order" letters citing Respondent's failure to comply with the Administrative Order and the NPDWRs.

11. On September 18, 2006, Region 8's Regional Judicial Officer issued a Final Order approving the Combined Complaint and Consent Agreement ("1st Consent Agreement") filed by EPA and the Respondent In the Matter of: Evanston Lodge No. 2588, Benevolent and Protective Order of Elks of the United States of America, Docket No. SDWA-08-2006-0060. The Respondent consented in the 1st Consent Agreement to pay a penalty to resolve the alleged violations.

12. On June 15, 2007, EPA issued a second Administrative Order (Second Order) (Docket No. SDWA-08-2007-0061) to the Respondent pursuant to section 1414(g)(1) of the Act, 42 U.S.C. § 300g-3(g)(1), for failure to monitor for nitrate and failure to notify EPA of the violations in violation of 40 C.F.R. §§ 141.23(d) and 141.31(b).

13. Pursuant to Section 1414(g)(3) of the Act, 42 U.S.C. § 300g-3(g)(3), and 40 C.F.R. part 19, the Administrator may assess an administrative civil penalty not to exceed \$32,500 for each day of violation occurring after March 15, 2004, whenever the Administrator determines that any person has violated, or fails or refuses to comply with, an order under section

1414(g) of the SDWA, 42 U.S.C. § 300g-3(g). This action addresses violations of the Order and underlying NPDWRs occurring after, and separate from, the violations included in the 1st Consent Agreement.

SPECIFIC ALLEGATIONS

Count I Failure to Monitor for Total Coliform Bacteria

14. 40 C.F.R. § 141.21 requires public water systems to monitor the 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.

15. Pages 5-6, paragraph 1 of the “Order” section of the First Order required Respondent to comply with the requirement of 40 C.F.R. § 141.21(a) to perform quarterly bacteriological monitoring to comply with the MCLs as stated in 40 C.F.R. § 141.63. The paragraph also required Respondent to report analytical results to EPA within the first 10 days of the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).

16. Respondent failed to monitor the System’s water for contamination by total coliform bacteria during the 4th Quarter (October – December) of 2006 and failed to report analytical results to EPA within the first 10 days of the end of the monitoring period, in violation of the First Order and 40 C.F.R. §§ 141.21(a) and 141.31(a).

Count II Failure to Monitor for Nitrate

17. 40 C.F.R. § 141.23(d) requires public water systems to monitor annually for nitrate to determine compliance with the nitrate MCL as stated in 40 C.F.R. § 141.62.

18. The Second Order required Respondent within thirty (30) days of its effective date to 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). The Order also required Respondent to report analytical results to EPA and the State within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).

19. Respondent failed to monitor the System's water for nitrate and failed to report analytical results to the EPA, in violation of the Second Order and 40 C.F.R. §§ 141.23(d) and 141.31(a).

Count III
Failure to Report Noncompliance
with NPDWRs to EPA

20. 40 C.F.R. § 141.21(g)(2) requires public water systems that have 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.

21. Page 9, paragraph 7 of the "Order" section of the First Order required Respondent to comply with 40 C.F.R. § 141.21(g)(2) by reporting to EPA any failure to comply with coliform monitoring requirements within 10 days after the system discovers the violation.

22. Respondent failed to report to EPA the instance of noncompliance detailed in Count I, as set forth above, in violation of the First Order and 40 C.F.R. § 141.21(g)(2).

PROPOSED PENALTY

Pursuant to section 1414(g)(3) of the Act, 42 U.S.C. § 300g-3(g)(3), and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the

violation continues, up to a maximum total of \$32,500 for violation of an order issued under section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1). Complainant proposes the assessment of administrative penalties against the Respondent in the amount of **\$500**. Complainant proposes this penalty after considering the applicable statutory penalty factors in section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b). These factors include the seriousness of the violation, the population at risk, and other appropriate factors such as Respondent's degree of willfulness and/or negligence, history of non-compliance, if any, and ability to pay.

TERMS OF PAYMENT FOR QUICK RESOLUTION

If Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within 30 calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt. Payment shall be made by remitting a cashier's or certified check, including the name and docket number of the case, for the amount, payable to the "**Environmental Protection Agency**" to:

**US checks by regular
US postal service mail:**

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

**Federal Express, Airborne,
Or other commercial carrier:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

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Wire transfers:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D
68010727 Environmental Protection Agency "

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

A copy of the check or wire transfer shall be simultaneously sent to:

Kimberly Pardue-Welch (8ENF-W)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

As provided in the Act, you have the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with sections 22.15 and 22.38 of the Consolidated Rules within 30 calendar days after receipt of this Complaint. Your Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis for opposing the proposed relief;

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and (5) specifically request an administrative hearing, if desired. Failure to admit, deny or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The Answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and a copy must be sent to the following attorney:

Amy Swanson, Enforcement Attorney (8ENF-L)
U.S. EPA Region 8, Legal Enforcement Program
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: (303) 312-6906

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 CFR §22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

SETTLEMENT CONFERENCE

The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Amy Swanson at (303) 312-6906. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request

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for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,**
Complainant.

Date:

9/27/07

By:

for Michael T. Bisher

Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice