



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-T

MAR 9 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Fred Nelson, Registered Agent
The Kinnear Store, Inc.
PO Box 372, 11519 Hwy 26
Kinnear, WY 82516

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. **SDWA-08-2009-0040**

Dear Mr. Nelson:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against The Kinnear Store, Inc. (Kinnear Store) 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 Kinnear Store failed to comply with an Administrative Order, Docket No. SDWA-08-2007-0006, issued on November 8, 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, Kinnear Store 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 Kinnear Store 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 Kinnear Store's answer it may request a hearing. Kinnear Store has the right to be represented by an attorney at any stage of these proceedings.

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

A request for an informal conference does not extend the 30-day period during which Kinnear Store 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.

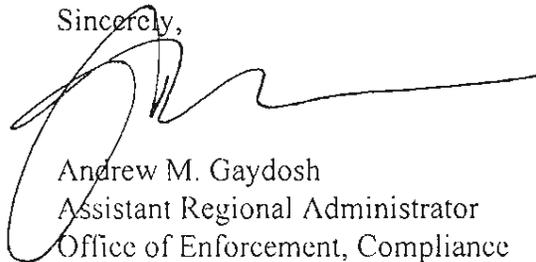


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For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kimberly Pardue Welch, Environmental Protection Specialist, who can be reached at 800/227-8917, extension 6983, or Peggy Livingston, 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: Don Aragon, Director, Wind River Environmental Quality Commission
Tina Artemis, Regional Hearing Clerk
Ivan Posey, Chairman, Shoshone Business Council
Harvey Spoonhunter, Chairman, Arapaho Business Council



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF)
)
)
The Kinnear Store, Inc.)
Kinnear, Wyoming)
) Docket No. **SDWA-08-2009-0040**
)
Respondent,) **COMPLAINT AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**
Proceedings under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. §300g-3(g))
)

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) 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. The Kinnear Store, Inc. (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 Kinnear Store Water System (the System), located in Fremont 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 section 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 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 one well. The System serves an average of approximately 25 persons per day through 8 service connections and is operational year-round.
6. On November 8, 2006, in accordance with section 1414(g) of the SDWA, 42 U.S.C. §300g-3(g), the EPA issued an Administrative Order, Docket No. SDWA-08-2007-0006 (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. By letter dated June 27, 2007, EPA notified the Respondent that the Respondent was in violation of the Order.
9. A copy of the June 27, 2007 letter is attached to this complaint (Complainant's Exhibit 3).

COUNTS OF VIOLATION

Count I

Failure to Monitor for Total Coliform Bacteria

1. According to 40 C.F.R. §141.21, non-community public water systems using ground water are required to monitor their water at least quarterly to determine compliance with the Maximum Contaminant Level (MCL) established for total coliform bacteria pursuant to 40 C.F.R. §141.63.
2. Page 3 of the Order, in paragraph 1 of the Order section, required Respondent to perform quarterly bacteriological monitoring as required by 40 C.F.R. §141.21.

3. Respondent failed to monitor the System's water for total coliform bacteria contamination during the 1st, 2nd and 4th quarters of 2007, and the 2nd, 3rd, and 4th quarters of 2008, in violation of the Order and 40 C.F.R. §141.21.

Count II
Failure to Report Total Coliform Monitoring Violations

1. According to 40 C.F.R. §141.21(g)(2), a public water system that has failed to comply with a coliform monitoring requirement must report the monitoring violation to the EPA within 10 days after the system discovers the violation.
2. Page 3 of the Order, in paragraph 2 of the Order section, required Respondent to report any failure to comply with the coliform monitoring requirements of 40 C.F.R. §141.21(g)(2) to EPA within ten days of discovering the violation.
3. Respondent failed to report to EPA that the total coliform bacteria monitoring requirements for the System's water had been violated during the 1st, 2nd and 4th quarters of 2007, and the 2nd, 3rd, and 4th quarters of 2008, in violation of the Order and 40 C.F.R. §141.21(g)(2).

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 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) of the SDWA. The amount may be up to \$27,500 for violations occurring after March 15, 2004, through January 12, 2009, and \$32,500 for violations occurring after January 12, 2009.

(The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19. (Sec 74 Fed. Reg. 626, January 7, 2009).)

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, and ability to pay, as known to EPA at this time, EPA proposes to assess an administrative civil penalty of \$4,000.00 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"). 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 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:

Tina Artemis
Region 8 Hearing Clerk (8RC)
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 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 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.

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), U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, CO, 80202.

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 section 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

Presiding Officer. Any request for settlement negotiations, or any questions that Respondent may have regarding this complaint, should be directed to the attorney named below.

Dated this 6th day of March, 2009.

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
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) 312-7519

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:

Fred Nelson, Registered Agent/President
The Kinnear Store, Inc.
PO Box 372, 11519 Hwy 26
Kinnear, WY 82516

Date: 3/9/09

By: Judith McTernan
Judith McTernan