



U.S. ENVIRONMENTAL PROTECTION AGENCY-REGION 6
COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING FILED

In the Matter of Public Water System (Dustin)

Owned/Operated by the Town of Dustin, Respondent 2010 MAY 19 AM 11:31

Docket No. SDWA-06-2010-1355

REGIONAL HEARING CLERK
EPA REGION VI

STATUTORY AUTHORITY

The following findings are made and Administrative Complaint ("Complaint") 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 ("Act"), 42 U.S.C. § 300g-3(g)(3). The Administrator has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6 who has further delegated such authority to the Director of the Compliance Assurance and Enforcement Division. This Complaint is issued in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, Revocation, Termination or Suspension of Permits," including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. §§ 22.50-22.52.

FINDINGS AND CONCLUSIONS

1. Respondent, Town of Dustin, is a "person" as defined by Section 1401(12) of the Act, 42 U.S.C. § 300f(12).
2. At all times relevant to the violations alleged herein, Respondent owned or operated a public water system ("PWS"), as defined by Section 1401(4) of the Act, 42 U.S.C. § 300f(4), located in Hughes County, Oklahoma ("facility"), designated as PWS number OK1020511.
3. At all times relevant to the violations alleged herein, Respondent's PWS was a "community water system" as defined by Section 1401(15) of the Act, 42 U.S.C. § 300f(15).
4. At all times relevant to the violations alleged herein, Respondent's PWS was subject to the requirements of the Stage 2 Disinfectants and Disinfection Byproducts Rule ("Stage 2 DBPR") as described by 40 C.F.R. § 141.600(b).
5. Pursuant to 40 C.F.R. § 141.600(d), Respondent was required to conduct standard monitoring that meets the requirements in Section 141.601. Based on the EPA approved Stage 2 DBPR monitoring plan, Respondent should have begun the annual monitoring on August 1, 2008, at Site 1 North 3rd Street (R. Ward) (Sample Code HAA5_01), and Site 2 North Seaman Street (J. King) (Sample Code TTHM_01).

6. Based on information available to EPA, Respondent failed to conduct standard monitoring in accordance with 40 C.F.R. § 141.601 and the EPA approved Stage 2 DBPR monitoring plan.

7. The Oklahoma Department of Environmental Quality ("ODEQ") administers the Public Water Supply Supervision Program in Oklahoma pursuant to Section 1413 of the Act. The ODEQ has not yet obtained primary enforcement responsibility for the Stage 2 DBPR; therefore, the EPA has primary responsibility for enforcement of the Stage 2 DBPR.

8. On June 3, 2009, the EPA issued Administrative Order Docket No. SDWA-06-2009-1324 ("Order") to Respondent, pursuant to EPA's authority under Section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), citing violation of the August 1, 2008 deadline, and requiring Respondent to conduct standard monitoring in accordance with 40 C.F.R. § 141.601 within thirty (30) days of receipt of the Order. The Order also required the Respondent to provide EPA with an Initial Distribution System Evaluation Report in accordance with the requirements contained in 40 C.F.R. § 141.601(c)(1) through (c)(4) within sixty (60) days of the effective date of the Order. A copy of the Order is enclosed and incorporated by reference.

9. Respondent violated the Order by not complying with any of the requirements specified in paragraph 8 above.

10. Pursuant to Section 1414(g) of the Act, 42 U.S.C. § 300f et seq., Respondent is liable for an administrative civil penalty in an amount not to exceed \$37,500 for violation of the Order.

PROPOSED PENALTY

11. Based on these Findings and Conclusions, having taken into account the serious nature of the violations, the population at risk, and other appropriate factors, including with respect to the violator, ability to pay, the past history of such violations, degree of culpability, and other matters as justice may require, and pursuant to the authority of Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), EPA proposes to assess against Respondent a penalty of five thousand dollars (\$5,000).

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

12. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B). The procedures for hearings are set out at 40 C.F.R. Part 22 (copy enclosed), including 40 C.F.R. §§ 22.50-22.52 and supplemental rules at 40 C.F.R. § 22.42.

FAILURE TO ANSWER

13. Respondent must file an Answer within thirty (30) days after service of this Complaint, whether or not Respondent requests a hearing, as discussed below.

14. Failure to file an Answer within thirty (30) days after service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing under 40 C.F.R. § 22.15(d).

15. Pursuant to 40 C.F.R. § 22.42(b), Respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. § 554. Respondent waives this right unless Respondent, in its Answer, requests a hearing in accordance with 5 U.S.C. § 554.

16. If Respondent does not file an Answer within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent, without further proceedings, sixty (60) days after a Final Order is issued upon default.

17. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

and a copy to the following EPA attorney assigned to this case:

Ms. Ellen Chang-Vaughan (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

18. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and

telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

SETTLEMENT

19. EPA encourages all parties against whom civil penalties are proposed, to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both.

20. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

21. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), including one relating to the violations alleged herein.

5/17/10

Date


John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Copy by certified mail, return receipt requested:

The Honorable Cleo Robison
Mayor, Town of Dustin
Box 487
Dustin, OK 73573

Carbon copy:

Ms. Shellie Chard-McClary, Director
Water Quality Programs
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677

Carbon copy hand-delivered:

Ms. Ellen Chang-Vaughan
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Dated: MAY 19 2010

