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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)
)
Bryan Pownell, Owner/Operator)
Bryan's Place Public Water System)
Campbell County, WY,)
)
Respondent)
)
Proceeding under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))
)

Docket No. SDWA-08-2011-0025

**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 (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. Respondent Bryan Pownell is an individual 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, for purposes of federal enforcement.
2. The Respondent owns and/or operates a system, Bryan's Place Public Water System (System), located in Campbell County, Wyoming, for the provision to the public of piped water for human consumption.
3. The System was reinstated as a public water system on May 13, 2009.
4. The System has approximately four (4) service connections and regularly serves 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 40 C.F.R. § 141.2, and a “transient, 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.
5. As the owner and/or operator of a public water system, the 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. The 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”).

6. The source of the System's water is ground water. Water is supplied from a single well to a bar and three residents.
7. On May 20, 2010, in accordance with sections 1414(a)(2) and (g)(1) of the SDWA, 42 U.S.C. §§ 300g-3(a)(2) and (g)(1), the EPA issued an Administrative Order, Docket No. SDWA-08-2010-0044 (Order), to the Respondent, citing various violations of the NPDWRs including, but not limited to: failing to monitor for bacteriological quality; failing to monitor for nitrate; and failing to notify EPA of these violations. A copy of the Order is attached to and incorporated in this Complaint as Complainant's Exhibit 2.
8. On October 5, 2010, EPA issued an Administrative Order Violation (AOV) letter to the Respondent, noting that he was in violation of the Order, the Act, and the NPDWRs for failing to monitor for nitrate within thirty (30) days of receipt of the Order after failing to monitor for nitrate in 2009. A copy of EPA's October 5, 2010, AOV letter is attached to and incorporated in this Complaint as Complainant's Exhibit 3.
9. On October 25, 2010, EPA issued the Respondent a second AOV letter, noting that he was in violation of the Order, the Act, and the NPDWRs for failing to monitor for total coliform bacteria for the 3rd quarter of 2010. A copy of EPA's October 25, 2010, AOV letter is attached to and incorporated in this Complaint as Complainant's Exhibit 4.

VIOLATIONS

Count I

Failure to Monitor for Total Coliform Bacteria

10. The Order (page 2, para. 10) requires the Respondent to monitor quarterly for total coliform bacteria, as required by 40 C.F.R. § 141.21(a)(3)(i)), to determine compliance with the total coliform maximum contaminant level (40 C.F.R. § 141.63).
11. The Respondent failed to monitor for total coliform bacteria during the 3rd (July, August, September) and 4th (October, November, December) quarters 2010, in violation of the Order, the Act, and the NPDWRs.

Count II

Failure to Monitor for Nitrate

12. The Order (page 2, para.11) requires the Respondent after failing to monitor for nitrate in 2009 within thirty (30) days of receipt and per 40 C.F.R. § 141.23 thereafter to monitor for nitrate and report analytical results to EPA within the first 10 days following the month in which sample results were received, as required by 40 C.F.R. § 141.31(a).
13. The Respondent failed to monitor for nitrate and/or submit nitrate analytical results to EPA within thirty days of receipt of the Order and as required by regulation for 2010, in violation of the Order, the Act, and the NPDWRs.

Count III
Failure to Report to EPA Noncompliance of the NPDWRs

14. The Order (page 2, paras. 10 and 11) requires the Respondent to report any violation of the total coliform monitoring requirements to EPA within ten days of discovery, as required by 40 C.F.R. § 141.21(g)(2)); and any violation of the nitrate monitoring requirements to EPA within 48 hours, as required by 40 C.F.R. § 141.31(b).
15. The Respondent failed to report to EPA within ten days after discovering the failure to monitor total coliform violation for 3rd and 4th quarters 2010; and within 48 hours of violating the nitrate monitoring requirement, in violation of the Order, the Act, and the NPDWRs.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), authorizes the Administrator to assess an administrative civil penalty of up to \$27,500 for violation of an administrative order issued under section 1414(g)(1) of the SDWA.¹ EPA has determined the proposed penalty amount in accordance with the applicable statutory factors in section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b). Taking into account the seriousness of the violation, the population at risk, and other appropriate factors, including the Respondent's degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay, EPA

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

proposes the assessment of an administrative civil penalty against the Respondent in the amount of \$1,200.

TERMS OF PAYMENT FOR QUICK RESOLUTION

If the 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, payable to "**Treasurer, United States of America,**" 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

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"

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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:

Kathelene Brainich (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 his obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by the 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; 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.

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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
U.S. EPA Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

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

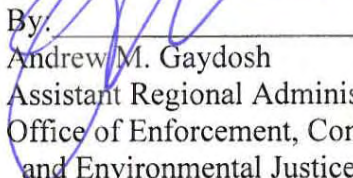
EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set forth above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. Part 22. 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 regional judicial officer. A request for a settlement

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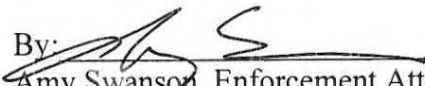
conference or any questions that you may have regarding this Complaint should be directed to the attorney listed below.

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

Date: 2-17-11

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

Date: 2-17-2011

By: 
Amy Swanson, Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop Street (8ENF-L)
Denver, Colorado 80202-1129
Telephone: (303) 312-6906
Facsimile: (303) 312-6953

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 delivered by PERSONAL SERVICE to:

Bryan Pownell
Bryan's Place
1416 Highway 51
Rozet, WY 82727

Date: ~~FEB 17 2011~~

By: Gayle Le Arvid