

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED

10/28/2024

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U.S. EPA REGION 8
HEARING CLERK

IN THE MATTER OF:

Stone Creek Homeowners Association,
Respondent

(PWS ID# WY5601586)

Docket No. SDWA-08-2024-0031

**AMENDED COMPLAINT
AND NOTICE OF
OPPORTUNITY FOR HEARING**

In this Amended Complaint and Notice of Opportunity for Hearing (Amended Complaint), the United States Environmental Protection Agency (EPA) proposes to assess a civil administrative penalty against Stone Creek Homeowners Association (Respondent).

JURISDICTIONAL ALLEGATIONS

1. This Amended Complaint is issued under the authority vested in the Administrator of the EPA by section 1414(g)(3) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300g-3(g)(3). The undersigned EPA official has been duly authorized to issue this complaint.
2. This proceeding is subject to the EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. part 22, a copy of which was provided to Respondent with the original Complaint filed in this proceeding.

GENERAL ALLEGATIONS

The following general allegations apply to each count of this Amended Complaint:

3. Respondent Stone Creek Homeowners Association is an association.
4. Respondent is a "person" as defined in section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
5. Respondent owns and/or operates a system, the Stone Creek Homeowners Association public water supply system (the System), located in Goshen County, Wyoming.
6. The System provides water for human consumption to the public through pipes or other constructed conveyances.

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7. The source of the System's water is ground water accessed via three wells. The water is untreated.
8. The System has approximately 38 service connections used by year-round residents.
9. The System regularly serves an average of approximately 91 year-round residents.
10. The System is a "public water system" and a "community water system" as these terms are defined in 40 C.F.R. § 141.2 and section 1401 of the SDWA, 42 U.S.C. § 300f.
11. As an owner and/or operator of a public water system, Respondent is a "supplier of water" as defined in section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2.
12. Respondent is subject to 40 C.F.R. part 141 (also known as the National Primary Drinking Water Regulations or NPDWRs). Each NPDWR is an "applicable requirement" as defined in section 1414(i) of the SDWA, 42 U.S.C. § 300g-3(i).
13. Among other things, the NPDWRs include maximum contaminant levels (MCLs) for various contaminants in drinking water, including an MCL of 10 milligrams/liter (mg/l) for nitrate. 40 C.F.R. § 141.62(b).
14. The EPA has found that infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome. 40 C.F.R. part 141, subpart Q, appendix B.
15. Compliance with the nitrate MCL is based on either (a) a single sample, if the result is below the MCL; or (b) an average of an initial sample and a confirmation sample, if the initial result is above the MCL. 40 C.F.R. § 141.23(f)(2), (f)(3), and (i)(3).
16. Because Wyoming has not sought primary authority for enforcing the public water supply supervision program, the EPA directly implements this program in Wyoming. Consequently, as provided by the definition of "state" in 40 C.F.R. § 141.2, the EPA is the "state" for purposes of applying the NPDWRs in Wyoming.

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17. On July 22, 2020, 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-08-2020-0034 (the Order) to Respondent,¹ finding that Respondent had violated the MCL for nitrate. This finding was based on an initial sample and a confirmation sample taken at the same location on July 6 and 16, 2020, with levels of 10.4 and 10.6 mg/l, respectively, averaging 10.5, in excess of the MCL.
18. The Order directed Respondent, within 30 days of receiving the Order, to submit a plan and schedule for bringing the System into compliance with the nitrate MCL.
19. The Order also directed Respondent to submit quarterly reports to the EPA on its progress in bringing the System into compliance with the nitrate MCL. Each quarterly report was to be submitted by the 10th calendar day of the month following the relevant calendar quarter (e.g., April 10th for the first calendar quarter).
20. On September 17, 2020, the EPA approved a schedule Respondent had submitted in response to the Order. The schedule was incorporated into the Order, with each milestone and deadline specified in the EPA's approval letter as an enforceable provision of the Order.
21. Under the schedule referenced in paragraph 20, above, the final deadline for achieving and maintaining compliance with the nitrate MCL was October 30, 2020.
22. On February 4, 2021, the EPA notified Respondent that Respondent was in violation of the Order, because it had failed to start the project described in the compliance schedule and thus had missed the interim deadlines in the EPA-approved schedule. The EPA's letter also noted that for the fourth quarter of 2020, the average of initial and confirmation sample levels for nitrate was 12.5 mg/l, indicating Respondent had failed to bring the System into compliance with the 10 mg/l nitrate MCL.
23. On March 5, 2021, Respondent submitted a revised compliance schedule to the EPA, with various interim deadlines and a deadline of September 2021 for completion of the treatment project.

¹ The Order also named the individual president of the Stone Creek Homeowners Association as a Respondent. That individual is not named as a Respondent in this Amended Complaint. Any references in this Amended Complaint to "Respondent" shall mean only the Stone Creek Homeowners Association.

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24. On June 24, 2021, the EPA approved the schedule referenced in paragraph 23, above, making the deadlines in the schedule enforceable provisions of the Order.
25. On November 15, 2021, the EPA issued an amendment to the Order (Amended Order). The Amended Order found that Respondent² had violated 40 C.F.R. § 141.23(f)(2) by failing to take a confirmation sample within 24 hours of being notified that a sample taken on August 31, 2021, had indicated a nitrate level of 12.1 mg/l.
26. The Amended Order directed Respondent to submit a plan and schedule for bringing the System into compliance with the nitrate MCL.
27. The Amended Order directed Respondent to submit quarterly reports to the EPA on Respondent's progress in bringing the System into compliance with the nitrate MCL. Each quarterly report was to be submitted by the 10th calendar day of the month following the relevant calendar quarter (e.g., April 10 for the first calendar quarter).
28. On December 2, 2021, Respondent submitted a revised plan and schedule to the EPA, under which the project completion deadline was to be September of 2022.
29. On February 3, 2022, the EPA approved the schedule referenced in paragraph 28, above.
30. On November 30, 2022, the EPA agreed to another extension of the project completion deadline, to April 30, 2023.
31. On May 24, 2023, the EPA asked representatives of the System for an update regarding the treatment system, noting that System representatives had previously indicated would be completed and operational by April 30, 2023.
32. On August 1, 2023, the EPA agreed to extend the final deadline under the Amended Order for Respondent's treatment system to be installed and functioning. The new deadline was December 31, 2023.

² Again, the Amended Order named both the Stone Creek Homeowners Association and the individual president as respondents, but references in this Amended Complaint to "Respondent" shall mean only the Stone Creek Homeowners Association.

33. For the third quarter of 2022 and the first and second quarters of 2023, Respondent failed to submit timely progress reports to the EPA within 10 days following the end of the quarter.
34. Since the issuance of the Order, nitrate levels at the System have exceeded the MCL during all four quarters of 2021, the first two quarters of 2022, and the third quarter of 2023. For the remaining quarters (*i.e.*, the third and fourth quarters of 2022 and the first and second quarters of 2023), nitrate levels were at or close to the MCL (9.7 mg/l the third quarter of 2022, 10 mg/l the fourth quarter of 2022, 9.2 mg/l the first quarter of 2023, and 9.7 mg/l the second quarter of 2023). Reported results are as follows, with seven results indicating an exceedance of the MCL:

1Q 2021	12.2 mg/l
2Q 2021	11.7 mg/l
3Q 2021	12.3mg/l
4Q 2021	11.4 mg/l
1Q 2022	11.5 mg/l
2Q 2022	10.8 mg/l
3Q 2022	9.7 mg/l
4Q 2022	10 mg/l
1Q 2023	9.2 mg/l
2Q 2023	9.7 mg/l
3Q 2023	11 mg/l
4Q 2023	5 mg/l
1Q 2024	10 mg/l

VIOLATIONS

Count One

Failure to Meet Final Deadline under Amended Order

35. Although the EPA repeatedly extended Respondent’s deadline for installing a treatment system and putting it into operation, setting the ultimate deadline as December 31, 2023, Respondent failed to meet this deadline.
36. Respondent’s failure to meet the deadline referenced in paragraph 35, above, is a violation of paragraph 12.a of the Amended Order.

Count Two
Failure to Submit Timely Progress Reports

37. Each instance cited in paragraph 33, above, in which Respondent failed to provide a progress report to the EPA by the 10th day following the end of a calendar quarter is a violation of paragraph 12.b of the Amended Order.

PROPOSED PENALTY

38. This Amended Complaint proposes that the EPA assess an administrative penalty against Respondent. The EPA is authorized to assess an administrative civil penalty according to section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), for violation of an administrative order issued under section 1414(g) of the SDWA. The amount of the administrative penalty may not exceed \$48,586 for violations occurring after November 2, 2015, where penalties are assessed on or after December 27, 2023. (The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19. See 88 Fed. Reg. 89309, 89312 (December 27, 2023).)
39. Taking into account the seriousness of the violations, 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 the EPA at this time, the EPA proposes to assess an administrative civil penalty of **\$2,000** against Respondent for Respondent's violations of the Order and the Amended Order, as described above.

ANSWER AND RIGHT TO REQUEST A HEARING

40. Respondent may file an answer in order to contest any material fact upon which this Amended Complaint is based, contend that the proposed penalty is inappropriate, or contend that Respondent is entitled to judgment as a matter of law.
41. Respondent must file any such answer to this Amended Complaint with the Regional Hearing Clerk within 20 days after service of this Amended Complaint. Note: For computing the number of days in a time period for purposes of 40 C.F.R. part 22, please see 40 C.F.R. § 22.7(a).

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42. Any answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Amended Complaint with regard to which Respondent has any knowledge. The answer must state (1) any circumstances or arguments Respondent alleges to constitute grounds of defense, (2) any facts Respondent disputes, (3) whether and on what basis Respondent opposes the proposed penalty, and (4) whether Respondent requests a hearing.
43. Respondent's failure to admit, deny, or explain any factual allegation in its answer constitutes an admission of that allegation. If, however, Respondent has no knowledge of a particular factual allegation and so states in its or his answer, that allegation will be deemed denied. For more details on the requirements for an answer, please see 40 C.F.R. § 22.15.
44. Even if Respondent does not explicitly request a hearing in its answer, the Presiding Officer assigned to this case may hold such a hearing if the answer raises issues appropriate for adjudication.
45. Any hearing in this proceeding shall be in accordance with 40 C.F.R. §§ 22.50-22.52, *i.e.*, 40 C.F.R. part 22, subpart I, unless Respondent's answer requests a hearing on the record in accordance with 5 U.S.C. § 554. If Respondent's request for a hearing does not state that it is a request for a hearing on the record in accordance with 5 U.S.C. § 554, then Respondent will have waived this right, and the hearing will be conducted by an EPA Regional Judicial Officer on the record under the procedures of subpart I of 40 C.F.R. part 22. The differences between a proceeding under subpart I and other part 22 proceedings are described in 40 C.F.R. §§ 22.50-22.52.

INSTRUCTIONS FOR FILING ANSWER AND OTHER DOCUMENTS

46. The answer and any other document filed in this proceeding may be submitted by email, in accordance with the May 8, 2020, Standing Order by Regional Judicial Officer Katherin E. Hall. The email address for the Regional Hearing Clerk is R8_Hearing_Clerk@epa.gov. Filing may also be accomplished by U.S. mail or hand delivery to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

47. Respondent must provide a copy of the answer and every other document filed in this proceeding to the EPA enforcement attorney named below. This can be accomplished via email, to livingston.peggy@epa.gov. It can also be accomplished by mail or hand delivery to the following:

Margaret J. (Peggy) Livingston, Enforcement Attorney
Legal Enforcement Program, 8ENF-L
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

FAILURE TO FILE AN ANSWER

48. **Unless otherwise provided by paragraphs 49-53, below, if Respondent does not file a written answer with the Regional Hearing Clerk at either the email or physical address specified above within twenty days after the date this Amended Complaint is served on that Respondent, Respondent may be subject to a default order requiring payment of the full penalty proposed in this Amended Complaint, pursuant to 40 C.F.R. § 22.17.**

QUICK RESOLUTION

49. Respondent may resolve this action at any time by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18(a)(1). If such payment is made within thirty days after Respondent receives this Amended Complaint, Respondent need not file an answer. Alternatively, as allowed by 40 C.F.R. § 22.18(a)(2), Respondent may file a statement with the Regional Hearing Clerk within 30 days of receipt of this Complaint and may make the penalty payment within 60 days after Respondent receives this Amended Complaint.
50. The payment shall be made in the amount stated in Paragraph 39, above. Payment shall be made by any method provided on the following EPA websites:
<https://www.epa.gov/financial/makepayment> and
<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

51. Concurrently or within 24 hours of making payment, Respondent shall email copies of the record of payment to each of the following:

Christina Carballal-Broome, Environmental Engineer
U.S. Environmental Protection Agency, Region 8
Via electronic mail to: carballal-broome.christina@epa.gov
[Complainant designates this individual for service of proof of payment]

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
Via electronic mail to: R8_Hearing_Clerk@epa.gov.

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to: CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the first page of this Amended Complaint.

52. The email transmitting the record of payment must include the case title and docket number of this proceeding, as indicated on the first page of this Amended Complaint.
53. Payment of the penalty in this manner does not relieve Respondent of the obligation to comply with the requirements of the SDWA and its implementing regulations. Payment of the penalty in this manner does, however, constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent’s right to a hearing on this matter. Such payment would waive Respondent’s rights to contest the allegations in this Amended Complaint and to appeal any final order in this proceeding.

SETTLEMENT CONFERENCE

54. The EPA encourages exploring settlement possibilities through informal settlement negotiations. However, failing to file an answer may lead to a default order, even if

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settlement negotiations occur. The parties may simultaneously pursue settlement and proceed with administrative litigation. Any request for settlement negotiations should be directed to the EPA enforcement attorney named above, who can also be reached by telephone at 303-312-6858.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

COLLEEN

RATHBONE

Digitally signed by
COLLEEN RATHBONE

Date: 2024.10.25
11:55:02 -06'00'

Colleen Rathbone, Manager
Water Enforcement Branch
Enforcement and Compliance Assistance Division
Region 8, U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202
Complainant

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below a copy of the AMENDED COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was emailed to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and to s_prusia@yahoo.com.

Date: _____ By: _____

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Date: 10.28.24

By: Margaret J Livingston