

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2008 AUG 25 PM 3:44

IN THE MATTER OF )

Wapiti Lodge, LLC )  
Wapiti, Wyoming )

Respondent )

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

FILED  
EPA REGION VIII  
HEARING CLERK

) Docket No. **SDWA-08-2008-0094**

) **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 (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)(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. Wapiti Lodge, LLC (“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 Wapiti Lodge and Steakhouse Water System (the “System”), located in Park 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 an average of 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 a “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.
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 a well.
6. By letter dated May 23, 2005, EPA notified the Respondent that the System was a public water supply system subject to regulation under the public water supply protection

provisions of the Act. The EPA's letter included detailed information on the requirements to monitor for bacteriological contaminants and nitrate, to report results to EPA, and to notify the public of violations. On May 26, 2005, the Respondent's registered agent, Gina O'Connell, signed a return receipt card indicating receipt of this letter.

7. On July 31, 2007, 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-08-2007-0067 (the "Order") to Respondent, citing violations of the NPDWRs.
8. A copy of the Order is attached to this complaint (Complainant's Exhibit 2).
9. EPA mailed the Order to the Respondent by certified mail, return receipt requested. Although the United States Postal Service informs EPA that it attempted to deliver the Order and thereafter on three occasions notified Respondent that the Order was available for Respondent to claim, the Respondent did not claim the Order. Therefore, at EPA's request, a Park County Deputy Sheriff hand-delivered the Order to Gina O'Connell, Registered Agent for the Respondent, on October 17, 2007.
10. On November 16, 2007, EPA issued an Administrative Order Violation letter to the Respondent, stating that the Respondent had violated the Order by failing to return a completed information request included with the Order. The letter also reminded the Respondent of the Order's requirements to provide EPA with nitrate monitoring results no later than November 27, 2007, and to provide EPA with quarterly bacteriological monitoring results for the fourth quarter of 2007 no later than January 10, 2008.

11. A copy of the November 16, 2007 letter is attached to this complaint (Complainant's Exhibit 3).
12. Between 2002 and the date the Order was issued, the EPA mailed at least ten requests to Respondent for information regarding the System. On June 14, 2007, after Respondent had failed to reply to those requests, EPA issued another request for information, citing its authority under section 1445 of the Act, 42 U.S.C. §300j-4, to require suppliers of water to submit information that EPA may reasonably require. Respondent did not respond to the June 14, 2007, request.

### **COUNTS OF VIOLATION**

#### **Count I**

#### **Failure to Return Completed Information Request**

1. The Order (on page 4, in paragraph 1 of the "Order" section) required Respondent, within ten days of receipt of the Order, to complete and return an information request included with the Order.
2. Respondent violated the Order by failing to return the completed information request to EPA.

#### **Count II**

#### **Failure to Monitor for Nitrate**

1. The Order (on page 5, in paragraph 3 of the "Order" section) required Respondent to comply with the nitrate monitoring requirements of 40 C.F.R. §141.23(d).
2. Respondent violated the Order by failing to monitor the System's water for nitrate in 2007.

**Count III**  
**Failure to Monitor for Total Coliform**

1. The Order (on page 4, in paragraph 2 of the “Order” section) required Respondent to perform quarterly bacteriological monitoring, as required by 40 C.F.R. §141.21(a).
2. Respondent violated the Order by failing to monitor for total coliform bacteria during the fourth quarter of 2007 and the second quarter of 2008.

**Count IV**  
**Failure to Provide Public Notice of Violations**

1. The Order (on pages 5 and 6, in paragraph 4 of the “Order” section) required Respondent to provide public notice of its failures to monitor for total coliform and nitrate, as well as any post-Order failures to comply with NPDWRs.
2. The Respondent violated the Order by failing to provide public notice of its failures to monitor for nitrate in 2005 and 2006 and of its failures to monitor for total coliform bacteria in the second and third quarters of 2005, all four quarters of 2006, and the first and second quarters of 2007.

**Count V**  
**Failure to Report Coliform Monitoring Violation to EPA**

1. The Order (on page 6, in paragraph 5 of the “Order” section) required Respondent to comply with 40 C.F.R. §141.21(g)(2) by reporting any total coliform monitoring violation to EPA within ten days after discovering the violation.
2. The Respondent violated the Order by failing to notify the EPA that the Respondent had failed to monitor for total coliform in the fourth quarter of 2007 and the second quarter of 2008

**Count VI**  
**Failure to Report NPDWR Violation to EPA**

1. The Order (on page 6, in paragraph 6 of the “Order” section) required Respondent to comply with 40 C.F.R. §141.31(b) by reporting any failure to comply with any NPDWR to EPA within 48 hours.
2. The Respondent violated the Order by failing to notify the EPA that the Respondent had failed to monitor for nitrate in 2007.

**PROPOSED ADMINISTRATIVE CIVIL PENALTY**

This complaint proposes that EPA assess an administrative penalty from Respondent. EPA is authorized to assess an administrative 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)(1) of the SDWA. The amount may be up to \$27,500.<sup>1</sup>

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, if any, and ability to pay, as known to EPA at this time, EPA proposes to assess an administrative civil penalty of \$2,000.00 against Respondent for its violations of the Order.

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

**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”). 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 the attorney listed below and the EPA Regional Hearing Clerk at the address below:

Tina Artemis  
Region 8 Hearing Clerk (8RC)  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, Colorado 80202

**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 which 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.**

**SETTLEMENT CONFERENCE**

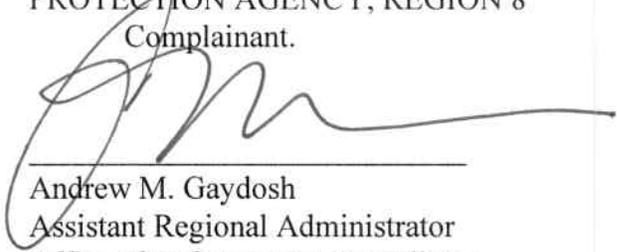
EPA encourages exploring settlement possibilities through an informal settlement conference. Filing an answer does not preclude settlement negotiations. **However, failing to**

**file a timely answer may lead to a default order, even if Respondent requests, schedules, or participates in a settlement conference.**

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

Dated this 17<sup>th</sup> day of August, 2008.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8  
Complainant.



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

Margaret J. ("Peggy") Livingston  
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) 312-7202

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 and by regular U.S. mail:

Gina O'Connell  
Registered Agent  
Wapiti Lodge, LLC  
3189 Yellowstone Hwy.  
Wapiti, WY 82450

and

Gina O'Connell  
Registered Agent  
Wapiti Lodge, LLC  
P.O. Box 206  
Wapiti, WY 82450

Date: 8/25/08

By: Judith McTernan  
Judith McTernan

shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with § 21.5, on any such statement.

(1) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(11) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in § 21.13(a).

(F) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§ 21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec. 22.31 Final order.

22.2 Use of number and gender.

22.3 Definitions.

22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

22.5 Filing, service, and form of all pleadings; business confidentiality claims.

22.6 Filing and service of rulings, orders and decisions.

22.7 Computation and extension of time.

22.8 Ex parte discussion of proceedings.

22.9 Examination of documents filed.

22.10 Appearances.

22.11 Intervention and non-party briefs.

22.12 Consolidation and severance.

22.13 Commencement of a proceeding.

22.14 Complaint.

22.15 Answer to the complaint.

22.16 Motions.

22.17 Default.

22.18 Quick resolution; settlement; alternative dispute resolution.

22.19 Prehearing; information exchange; prehearing conference; other discovery.

22.20 Accelerated decision; decision to dismiss.

22.21 Assignment of Presiding Officer; scheduling the hearing.

22.22 Evidence.

22.23 Objections and offers of proof.

22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.

22.25 Filing the transcript.

22.26 Proposed findings, conclusions, and order.

22.27 Initial decision.

22.28 Motion to reopen a hearing.

22.29 Appeal from or review of interlocutory orders or rulings.

22.30 Appeal from or review of initial decision.

22.31 Final order.

Environmental Protection Agency

Subpart H—Supplemental Rules

22.33 [Reserved]

22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

22.36 [Reserved]

22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

22.40 [Reserved]

22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substances Control Act, enacted as section 2 of the Abbestos Hazard Emergency Response Act (AHERA).

22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.

22.43 Supplemental rules governing the administrative assessment of civil penalties against a Federal agency under the Safe Drinking Water Act.

22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

22.45 Supplemental rules governing notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(i) of the Clean Water Act and section 1429(c) of the Safe Drinking Water Act.

22.46-22.49 [Reserved]

22.50 Scope of this subpart.

22.51 Presiding Officer.

22.52 Information exchange and discovery.

22.53 [Reserved]

22.54 [Reserved]

22.55 [Reserved]

22.56 [Reserved]

22.57 [Reserved]

22.58 [Reserved]

22.59 [Reserved]

22.60 [Reserved]

22.61 [Reserved]

22.62 [Reserved]

22.63 [Reserved]

SOURCE: 64 FR 40176, July 23, 1999, unless otherwise noted.

Subpart A—General

§ 22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 1361(a));

(2) The assessment of any administrative civil penalty under sections 113(d), 206(e), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(e), 7545(d) and 7547(d));

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4) The issuance of a compliance order or the issuance of a corrective action order; the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3006(f), or the assessment of any civil penalty under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6925(e), 6928, 6991e, and 6992(d)), except as provided in part 24 of this chapter;

(5) The assessment of any administrative civil penalty under section 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);

(6) The assessment of any civil penalty under sections 308(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the Clean Water Act, as amended (33 U.S.C. 1319(g), 1321(b)(6), and 1342(a));

(7) The assessment of any administrative civil penalty under section 10 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609);

(8) The assessment of any administrative civil penalty under section 3 of the Emergency Planning and Community Right-To-Know Act of 1991 ("EPCRA") (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under section

11045;

11045;

11045;



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, COLORADO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

COMPLAINANT'S  
EXHIBIT NO. 2

Ref: 8ENF-W

JUL 3 1 2007

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Gina L. O'Connell, Registered Agent  
Wapiti Lodge, LLC  
3189 Yellowstone Hwy  
Wapiti, WY 82450

Re: Administrative Order  
Docket No. **SDWA-08-2007-0067**  
PWS ID #5600460

Dear Ms. O'Connell:

Enclosed you will find an Administrative Order (Order), which the Environmental Protection Agency (EPA) has issued under the authority of the Safe Drinking Water Act (SDWA), 42 U.S.C. Section 300f *et seq.*, and its implementing regulations. Among other things, the Administrative Order finds that Wapiti Lodge, LLC ("the Lodge") is the owner and/or operator of the Wapiti Lodge and Steakhouse Water System and a supplier of water as defined by the SDWA and has violated the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. §§ 141.21, 141.23(d), 141.201, 141.21(g)(2), and 141.31(b) for failure to monitor for total coliform (routine) and nitrate, and failure to notify the public and EPA of the violations.

If the Lodge complies with the enclosed Order for a period of at least twelve months, EPA may choose to close the Order. Violating the enclosed Order may lead to (1) a penalty of up to \$32,500 per day of violation of the Order, (2) a separate such penalty for violating the regulations themselves, and/or (3) a court injunction ordering compliance.

Enclosed is a Small Business Regulatory Enforcement and Fairness Act (SBREFA) Section 22 information sheet. The SBREFA sheet notifies small businesses of their right to comment on regulatory enforcement activities, and provides information on compliance assistance. Dissemination of this information sheet does not constitute an admission or determination by EPA that the business, organization or governmental jurisdiction is a small entity as defined by SBREFA.

Please note that the effective date of the enclosed Order is the date of issuance. Within the next 10 days, please provide EPA with any new information that you believe the Agency is not aware of relating to the alleged violations in the Order. The information should be sent to Kathelene Brainich at the address on the letterhead and include the mailcode 8ENF-W, or call (800) 227-8917, extension 6481 or (303) 312-6481. If you wish to have in informal conference with EPA, you may also call or write Ms. Brainich. If you are represented by an attorney, please

ask your attorney to direct any legal questions to Peggy Livingston, Enforcement Attorney, at the above 800 number, extension 6858, or at (303) 312-6858.

We urge your prompt attention to this matter.

Sincerely,



Diane L. Sipe, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures

Order  
Information Request  
SBREFA

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2007 JUL 31 PM 2:34

EPA REGION VIII  
HEARING CLERK

\_\_\_\_\_) )  
 IN THE MATTER OF ) )  
 ) )  
 Wapiti Lodge, LLC ) )  
 Wapiti, Wyoming ) )  
 ) )  
 Respondent ) )  
 ) )  
 Proceedings under Section 1414(g) ) )  
 of the Safe Drinking Water Act, ) )  
 42 U.S.C. § 300g-3(g) ) )

ADMINISTRATIVE ORDER

Docket No. SDWA-08-2007-0067

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 1414(g) of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300g-3(g) and its implementing regulations, as properly delegated to the Supervisors of the Technical and Legal Enforcement Programs of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

FINDINGS

1. Wapiti Lodge, LLC (Respondent) is a corporation under the laws of the State of Wyoming as of October 18, 2002 and therefore a "person" within the meaning of 40 C.F.R. § 141.2.
2. Respondent owns and/or operates a system, the Wapiti Lodge and Steakhouse Water System (the System), located in Park 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 an average of at least 25 individuals daily at least 60 days out of the year 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.

4. 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 et seq., and its implementing regulations, 40 C.F.R. Part 141.
5. The System was notified by EPA on May 23, 2005 that it was a public water system and is required to monitor the drinking water it provides to the public. EPA made numerous attempts, including the mailing of 11 survey requests since 2002, to obtain information from the owner regarding the System. According to EPA records, the System is supplied by one well with no treatment, has 2 service connections and serves an average daily population of at least 25 people per day of operation year round. According to the System's telephone recorded message, it is open after 4:00 p.m. for dinner Wednesday through Sunday.

#### FINDINGS OF VIOLATION

##### I.

1. 40 C.F.R. § 141.21 requires any non-community public water system with an average daily population of less than 1,001 and having a groundwater source to monitor its 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.



2. Respondent failed to monitor the System's water for contamination by total coliform bacteria during the 1<sup>st</sup> (January-March) and second (April-June) quarters of 2007, all four quarters of 2006, and the 2<sup>nd</sup> (April-June) and 3<sup>rd</sup> (July-September) quarters of 2005, in violation of 40 C.F.R. § 141.21.

II.

1. 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.
2. Respondent failed to monitor for nitrate in 2005 and 2006, in violation of 40 C.F.R. § 141.23(d).

III.

1. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any NPDWR violations, including violations of any MCL, maximum residual disinfection level, treatment technique, monitoring requirements, and testing procedures in 40 C.F.R. part 141.
2. Respondent has not provided public notice of the 2<sup>nd</sup> and 3<sup>rd</sup> quarter 2005 and 1<sup>st</sup> and 2<sup>nd</sup> quarter 2006 total coliform monitoring violations and the 2005 nitrate monitoring violation, detailed in the preceding Sections I and II, in violation of 40 C.F.R. § 141.201. Public notice is not yet past due for the 1<sup>st</sup> and 2<sup>nd</sup> quarter 2007 and 3<sup>rd</sup> and 4<sup>th</sup> quarter 2006 total coliform monitoring violations or the 2006 nitrate monitoring violation.



IV.

1. 40 C.F.R. § 141.21(g)(2) requires any public water system that has failed to comply with a coliform monitoring requirement under 40 C.F.R. § 141.21 to report the violation to EPA within ten days after the system discovers the violation.
2. Respondent failed to report to EPA the noncompliance detailed in Section I, in violation of 40 C.F.R. § 141.21(g)(2).

V.

1. 40 C.F.R. § 141.31(b) requires any public water system to report any failure to comply with any NPDWR (40 C.F.R. Part 141) to EPA within 48 hours.
2. Respondent failed to report to EPA the noncompliance detailed in Sections II and III above, in violation of 40 C.F.R. § 141.31(b).

ORDER

Based on the foregoing Findings, and pursuant to Section 1414(g) of the Act, IT IS

ORDERED:

1. Within 10 days of receipt of this Order, Respondent shall complete and return to EPA the attached information request.
2. Upon the effective date of this Order, Respondent shall comply with the requirement of 40 C.F.R. § 141.21(a) to perform quarterly bacteriological monitoring to determine compliance with the MCLs as stated in 40 C.F.R. § 141.63. Respondent shall 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).



3. Within 30 days of the date of this Order, Respondent shall 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). Respondent shall report analytical results to the State and EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).
  
4. Within 30 days of the effective date of this Order, Respondent must comply with the public notice requirements set forth at 40 C.F.R. § 141.201 et seq. to return to compliance with 40 C.F.R. §§ 141.201, 141.204, and 141.205 for the violations specified under the Findings of Violation, Sections I and II, in this Order. Specifically, Respondent must provide public notice in accordance with 40 C.F.R. § 141.204. Public Notice must be given by any one of the following methods:  
(1) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system; (2) by mail or direct delivery to each customer and service connection; AND (3) any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the public notice described in (1) and (2), including publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations. Upon the effective date of this Order, Respondent shall comply with the public notification requirements at 40 C.F.R. § 141.201 et seq. following any future NPDWR violation. Respondent shall submit a copy of the public notice to EPA



within 10 days of completion of the public notice, as required by 40 C.F.R.

§ 141.31(d).

5. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R. § 141.21 to EPA within ten days after the system discovers the violation.
6. Upon the effective date of this Order Respondent shall comply with 40 C.F.R. § 141.31(b) by reporting any failure to comply with any NPDWR (40 C.F.R. Part 141) to EPA within 48 hours.
7. Reporting requirements specified in this Order shall be provided by certified mail to:

U. S. EPA Region 8 (8P-W-DW)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

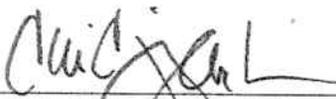
GENERAL PROVISIONS

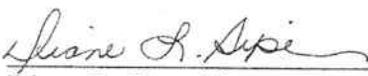
1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 *et seq.*, or the Safe Drinking Water Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
2. Violation of any term of this Order may subject the Respondent to an administrative civil penalty of up to \$27,500 under Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), or a civil penalty of not more than \$32,500 per



- day of violation assessed by an appropriate U.S. District Court under Section 1414(g)(3)(A) and (C) of the Act, 42 U.S.C. § 300g-3(g)(3)(A) and (C).
3. Violation of any requirement of the SDWA or its implementing regulations, may subject Respondent to a civil penalty of not more than \$32,500 per day of violation assessed by an appropriate U.S. District Court under Section 1414(b) of the Act, 42 U.S.C. § 300g-3(b).
  4. The effective date of this Order shall be the date of issuance of this Order.

Issued this 3<sup>rd</sup> day of July, 2007.

  
\_\_\_\_\_  
David J. Janik, Acting Director  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

  
\_\_\_\_\_  
Diane L. Sipe, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice



**PARK COUNTY SHERIFF'S OFFICE  
RETURN OF SERVICE**

The State of Wyoming  
County of Park

*In The Matter Of Wapiti Lodge, LLC Wapiti, Wyoming Proceedings Under  
Section 1414(g) Of The Safe Drinking Water Act 42 U.S.C. 300g-3(g)*

Date Received 10-16-2007 Time Received 13:18 Case # SDWA-08-2007-0067

*Document-Administrative Order SDWA-08-2007-0067*

Person to be served: Gina O'Connell – Registered Agent  
for Wapiti Lodge, LLC  
3189 Yellowstone Hwy  
Cody, WY 82414

I, Scott A. Steward, Sheriff in and for said County of Park, State of Wyoming, do hereby certify that I received the above referenced document on the date and time stated above and served the same as follows:

To GINA O'CONNELL, personally and in person at 3189 YELLOWSTONE HWY  
in Park County, Wyoming at 1809 hours on 17 OCTOBER, 2007.

After a due and diligent search we were unable to locate \_\_\_\_\_  
in Park County, Wyoming, as of \_\_\_\_\_, 2007.

Fees: 3500  
Receipt # \_\_\_\_\_

Scott A. Steward

-----  
Sheriff

Chad McEliz  
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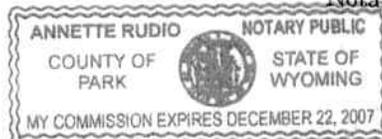
Deputy Sheriff

Subscribed and sworn to before me this 17 day of OCTOBER, 2007 Witness my hand  
and official seal:

My Commission Expires: 12-22-2007

Annette Rudio  
-----

Notary Public



**RECEIVED**

OCT 26 2007

TIP O'CONNOR



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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

JUN 14 2007

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

REF: 8P-W-DW

Wapiti Lodge and Steakhouse  
c/o Gina O'Connell  
3189 Yellowstone Hwy.  
Wapiti, WY 82450

SUBJ: Information Request Pursuant to  
Section 1445 of the Safe Drinking Water  
Act, 42 U.S.C. § 300j-4

Dear Ms. O'Connell:

Due to the fact you have not responded to our previous inquiries, the Environmental Protection Agency (EPA) is requesting pertinent information about the Wapiti Lodge and Steakhouse and its customers pursuant to Section 1445 of the Safe Drinking Water Act (Act), 42 U.S.C.A. §300j-4. Please note that it is mandatory to respond to this request for information. Under Section 1445(c) of the Act, noncompliance with this request may lead to civil penalties. Please furnish a written response to this request within thirty (30) days of receiving it. Please send your response to:

US EPA Region 8  
1595 Wynkoop St. (8P-W-DW)  
Denver, CO 80202-2466  
Attention: Tiffany Mifflin

0460Warren

## INSTRUCTIONS

In the following instructions, "you" means the Wapiti Lodge and Steakhouse.

- I. This request is directed to the Wapiti Lodge and Steakhouse, its officers, agents, employees, consultants, and/or assigns. Accordingly, any information in the possession of Wapiti Lodge and Steakhouse, its agents, employees, consultants, and/or assigns responsive to any part of this request must be provided.
- II. The terms "information," "document," and "data," include but are not limited to all memoranda, logs, letters, email messages, reports, notes, and any other written material in any form (including electronic storage formats such as disks, databases, or other recordings), and any audio and video recordings.
- III. If you do not now know or have available any requested information but learn of such information within a year of receiving this request, you must supplement your response to EPA. Moreover, should you find after the submission of your response that any portion of the submitted information is false or misrepresents the truth; you must notify EPA as soon as possible of the exact manner in which the information was false or misleading.
- IV. Where specific information has not been written in any document, but is nonetheless responsive to this request, please include it in your written response.
- V. If any information or document responsive to this request is not in your possession, custody or control, please identify the persons from whom such information or documents may be obtained and where such information or documents are located.
- VI. If you have reason to believe that there may be any person able to provide additional details or a more complete response to this request or who may be able to provide additional responsive documents, please identify each such person and the additional information or documents that this person or these persons may have.
- VII. In the request, the term "person" means any individual, corporation, company, association, partnership, municipality, or any state, federal, or tribal agency.
- VIII. In the request, the term "water system" means Wapiti Lodge and Steakhouse.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET  
DENVER, COLORADO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

COMPLAINANT'S  
EXHIBIT NO. 3

2007 NOV 16 AM 8:14

FILED  
EPA REGION VII  
HEARING CLERK

Ref: 8ENF-W

NOV 16 2007

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Gina L. O'Connell, Registered Agent  
Wapiti Lodge, LLC  
3189 Yellowstone Hwy  
Wapiti, WY 82450

Re: Administrative Order Violation  
Docket No. SDWA-08-2007-0067  
PWS ID #5600460

Dear Ms. O'Connell:

On October 17, 2007, the Park County Sheriff served you with an Administrative Order ("Order") issued by the U.S. Environmental Protection Agency (EPA), Docket No. SDWA-08-2007-0067, ordering Wapiti Lodge, LLC ("Wapiti") to comply with various drinking water regulations issued by the EPA under the Safe Drinking Water Act (SDWA), 42 U.S.C. section 300f et seq.

Our records indicate that Wapiti is in violation of the Order. Among other things, the Order included the following requirement (quoted from item 1 in the "Order" section on page 4 of the Order):

Within 10 days of receipt of this Order, [Wapiti] shall complete and return to EPA the attached information request.

EPA has not received a completed information request. Please complete and return the information request to EPA immediately via certified mail.

As a reminder, by November 27, 2007, Wapiti must provide EPA with nitrate monitoring results (see item 3 in the "Order" section on page 5 of the Order) and a completed and signed copy of a public notice of the violations outlined in the Order (see item 4 in the "Order" section on pages 5 and 6 of the Order). The first quarterly bacteriological monitoring results for the period October-December 2007 are due to EPA by January 10, 2008.

EPA is considering additional enforcement action as a result of non-compliance with the Order. Violating the Order may lead to (1) a penalty of up to \$32,500 per day per violation of the Order, and/or (2) a court injunction ordering compliance.