

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY REGION 2  
2011 SEP 14 P 12:26  
RECEIVED HEARING  
CLERK

**IN THE MATTER OF:**

Hanover Water District #1  
68 Hanover Street  
Silver Creek, NY 14136

PWS ID: NY0600393

Respondent

Proceeding Pursuant to § 1414(g)(3)(B) of the  
Safe Drinking Water Act, 42 U.S.C. § 300g-  
3(g)(3)(B)

Proceeding to Assess Civil  
Penalty Under Section 1414(g)(3)(B)  
of the  
Safe Drinking Water Act

Docket No.  
SDWA-02-2011-8402

COMPLAINT  
FINDINGS OF VIOLATION, NOTICE OF PROPOSED ASSESSMENT OF A CIVIL  
PENALTY AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING

I. Statutory Authority

1. This Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 1414(g)(3)(B) of the Safe Drinking Water Act ("SDWA" or "Act"), 42 U.S.C. § 300g-3(g)(3)(B) and duly delegated to the Director of the Division of Enforcement and Compliance Assistance of EPA Region 2 ("Complainant").
2. Pursuant to Section 1414(g)(3)(B) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("CROP"), 40 C.F.R. Part 22, a copy of which is attached, Complainant hereby requests that a civil penalty be assessed against the Hanover Water District #1 ("Respondent") for the violation of an administrative order issued pursuant to Section 1414(g) of the SDWA, requiring compliance with an applicable requirement of the Act at its public water system (Hanover Water District #1 public water system), located in Silver Creek, New York.

## II. Findings of Violation

1. Respondent owns and/or operates the Hanover Water District #1 “public water system,” within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2, located in Silver Creek, New York.
2. Respondent is a “supplier of water” within the meaning of Section 1401 (5) of the SDWA, 42 U.S.C. § 300f (5), and 40 C.F.R. § 141.2.
3. Respondent is a “person” as defined in Section 1401(12) of SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2, and is subject to an Administrative Order issued under Section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1).
4. Respondent’s public water system provides piped water for human consumption and regularly serves at least twenty-five (25) individuals, and is therefore a “community water system” as defined by Section 1401(15) of the SDWA, 42 U.S.C. § 300(f)(15) and 40 C.F.R. § 141.2.
5. On January 4, 2006, EPA promulgated the Stage 2 Disinfectants and Disinfection Byproducts Rule (“Stage 2 DBPR”), 40 C.F.R. Part 141, Subparts U and V, to provide for increased public health protection against the potential risks for cancer and reproductive and developmental health effects associated with disinfection byproducts (“DBPs”). The Stage 2 DBPR requires community water systems that use a primary or residual disinfectant other than ultraviolet light, or deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light, to conduct an Initial Distribution System Evaluation (“IDSE”) to identify the locations with high disinfection byproduct concentrations. The locations identified in the IDSE are then to be used as sampling sites for Stage 2 DBPR compliance monitoring. The Stage 2 DBPR introduces a new method for calculating compliance with the maximum contaminant levels for total trihalomethanes and haloacetic acids, referred to as the locational running annual average (“LRAA”).
6. The New York State Department of Health (“NYSDOH”) administers the Public Water Supply Supervision Program in New York pursuant to Section 1413 of the SDWA. The approval and delegation of primary enforcement responsibility from EPA to NYSDOH was effective as of September 9, 1977. However, the NYSDOH has not yet obtained primary enforcement responsibility for the Stage 2 DBPR. Therefore, as of the date of this Complaint, EPA has primary responsibility for enforcement of the Stage 2 DBPR.
7. Pursuant to 40 C.F.R. § 141.600(b), community water systems that use a primary or residual disinfectant other than ultraviolet light, or deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light, are required to comply with 40 C.F.R. Part 141 Subparts U and V (Stage 2 DBPR).

8. Respondent's public water system adds a disinfectant other than ultraviolet light, or delivers water that has been treated with a disinfectant other than ultraviolet light. Therefore, it is subject to the requirements of 40 C.F.R. Part 141 Subparts U and V (Stage 2 DBPR).
9. Pursuant to 40 C.F.R. § 141.600(c), community water systems serving between 10,000 and 49,999 people were required to submit a standard monitoring plan in accordance with 40 C.F.R. § 141.601, a system specific study plan in accordance with 40 C.F.R. § 141.602, or 40/30 certification in accordance with 40 C.F.R. § 141.603 by October 1, 2007. Wholesale and consecutive systems that are part of a combined distribution system, as defined by 40 C.F.R. § 141.2, are required to comply at the same time as the largest system within their combined distribution system.
10. Respondent's public water system is a community water system that serves between 10,000 and 49,999 people, or a consecutive community water system that is part of a combined distribution system that serves between 10,000 and 49,999 people. Therefore, it was required to submit a standard monitoring plan in accordance with 40 C.F.R. § 141.601, a system specific study plan in accordance with 40 C.F.R. § 141.602, or 40/30 certification in accordance with 40 C.F.R. § 141.603, by October 1, 2007.
11. Based on information available to EPA, Respondent submitted a standard monitoring plan on September 14, 2006.
12. Pursuant to 40 C.F.R. § 141.600 and § 141.601, Respondent was required to conduct sampling in accordance with the standard monitoring plan during the first week of November 2007, February 2008, May 2008, and August 2008.
13. Based on information provided by NYSDOH, Respondent failed to complete sampling pursuant to 40 C.F.R. § 141.601, as outlined in their IDSE Standard Monitoring Plan dated September 14, 2006 ("SMP").
14. On December 14, 2009, EPA issued an Administrative Order, Docket Number SDWA-02-2010-8004 ("AO"), requiring Respondent to collect samples during the third week of February 2010, May 2010, and August 2010 in accordance with the sampling locations set up in the September 14, 2006 SMP and submit an IDSE report by December 1, 2010.
15. On June 2, 2011, EPA called the Respondent requesting the status of compliance with the AO because EPA had not yet received the IDSE report.
16. On June 28, 2011, EPA received an IDSE Report from the Respondent that was incomplete.

17. Based on information available to EPA, as of the date of this Complaint, Respondent is in violation of 40 C.F.R. §§ 141.600 and 141.601, and the AO.

#### COUNT 1

18. Pursuant to 40 C.F.R. §§ 141.600 and 141.601, Respondent was required to complete standard monitoring and prepare and submit an IDSE report to the state.
19. Pursuant to Paragraph 16 of the AO, Respondent was required to sample in accordance with 40 C.F.R. § 141.601 during the first week of February 2010, May 2010, and August 2010.
20. Pursuant to Paragraph 17 of the AO, Respondent was required to complete an IDSE report in accordance with 40 C.F.R. § 141.601(c) and submit compliance to NYSDOH and EPA by December 1, 2010.
21. Respondent failed to demonstrate compliance with the requirements specified in 40 C.F.R. §§ 141.600 and 141.601 by the date specified in the AO, and is, therefore, in violation of Paragraphs 16 and 17 of the AO.

#### III. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 1414(g)(3)(b) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), EPA Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a penalty of **Two Thousand Dollars (\$2,000.00)**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 1414(b) of the Act, 42 U.S.C. § 300g-3(g)(b). EPA has taken into account the seriousness of the violation(s), the population at risk, and other appropriate factors, in light of information currently available to it.

#### IV. Procedures Governing This Administrative Litigation

The rules of procedure governing this civil administrative litigation have been set forth in 40 C.F.R. Part 22. This proceeding will be conducted in accordance with the CROP, including Subpart I thereof; unless, in your Answer, you request a hearing on the record in accordance with Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554, in which case Subpart I shall not apply.

##### A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate, or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written

Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2 is:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action, 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief, and (4) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

#### B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing on this matter will be conducted in accordance with the applicable provisions of the APA, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

#### C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent

may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued there after shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

#### V. Informal Settlement Conference

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business, and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Lauren Fischer, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866  
(212) 637-3236

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

#### VI. Resolution of this Proceeding Without Hearing or Conference

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on the previous page. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this complaint to the following addressee:

Regional Hearing Clerk  
U. S. Environmental Protection Agency, Region 2  
P.O. Box 360188M  
Pittsburgh, Pennsylvania 15251

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall issue until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

#### VII. Filing of Documents

1. The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway - 16th Floor  
New York, New York 10007-1866

2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

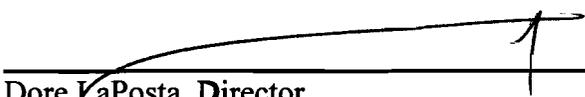
Lauren Fischer, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866  
(212) 637-3236

#### VIII. General Provisions

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder, or any applicable permit.

3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), will affect Respondent's continuing obligation to comply with the Act, and with regulations promulgated thereunder.

ISSUED THIS 9<sup>th</sup> DAY OF SEPTEMBER 2011.

  
\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
United States Environmental Protection Agency – Region 2  
290 Broadway  
New York, New York 10007-1866

To: MR. HAROLD J. ANGER JR.  
Hanover Water District #1  
68 Hanover Street  
Silver Creek, NY 14136

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:

Hanover Water District #1  
68 Hanover Street  
Silver Creek, NY 14136

PWS ID: NY0600393

Respondent

Proceeding Pursuant to § 1414(g)(3)(B) of the Safe  
Drinking Water Act, 42 U.S.C. § 300g-3(g)(3)(B)

Proceeding to Assess Civil  
Penalty Under Section 1414(g)(3)(B)  
of the  
Safe Drinking Water Act

Docket No.  
SDWA-02-2011-8402

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," (40 C.F.R. Part 22) to the following person at the address listed below:

MR. HAROLD J. ANGER JR.  
Hanover Water District #1  
68 Hanover Street  
Silver Creek, NY 14136

I sent by inter-office mail the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date:

9/13/11

  
New York, New York