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1 NANCY MARVEL
Regional Counsel
2 United States Environmental Protection Agency, Region 9

3 RICH CAMPBELL
Assistant Regional Counsel
4 United States Environmental Protection Agency, Region 9
5 75 Hawthorne Street
San Francisco, California 94105
6 (415) 972-3870

7 Attorneys for Complainant

8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
9 **REGION 9**

10 IN THE MATTER OF:) DOCKET NO. SDWA-09-2007-0004
11)
12)

12 American Realty & Mortgage Company, Inc.,)
13)

13 Respondent.)
14)
15)

**COMPLAINT AND
NOTICE OF OPPORTUNITY
FOR HEARING**

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

17 **COMPLAINT**

18 This civil administrative Complaint and Notice of Opportunity for Hearing ("Complaint")
19 is issued to the American Realty & Mortgage Company, Inc. ("Respondent") pursuant to the
20 authority vested in the Administrator of the United States Environmental Protection Agency
21 ("EPA") by Section 1414(g)(3) of the Safe Drinking Water Act, as amended ("SDWA"), 42
22 U.S.C. § 300g-3(g)(3).
23

24 The Administrator has delegated the authority to issue this Complaint to the Regional
25 Administrator for EPA Region 9, who in turn has delegated the authority to the Director of the
Water Division for EPA Region 9, hereinafter referred to as "Complainant."

**Complaint and
Notice of Opportunity for Hearing**

1 This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the
2 Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40
3 C.F.R. Part 22 ("Consolidated Rules of Practice") (Complainant's Exhibit 1).

4 GENERAL ALLEGATIONS

5 Each allegation in this Complaint has applied at all relevant times unless otherwise stated.

6 1. Respondent American Realty & Mortgage Company, Inc. is an Arizona corporation and
7 therefore a "person" as that term is defined in Section 1401(12) of the SDWA, 42 U.S.C. §
8 300f(12), and 40 C.F.R. § 141.2.

9 2. The Respondent owns and/or operates a water system known as the American Realty and
10 Mortgage Company Inc. water system (the "System") located in Pinal County, Arizona, for the
11 provision to the public of piped water for human consumption.

12 3. The System provides water for human consumption to the public through pipes to at least
13 21 service connections that regularly serve approximately 50 year-round residents, and is a
14 "public water system" as defined by Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40
15 C.F.R. § 141.2.

16 4. The System is a public water system that serves at least 15 service connections used by
17 year-round residents of the area served by the system, and regularly serves at least 25 year-round
18 residents, and is therefore a "community water system" as defined by Section 1401(15) of the
19 SDWA, 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2.

20 5. The System serves 3,300 persons or fewer and is a "small water system" as defined by 40
21 C.F.R. § 141.2, for the purpose of the Lead and Copper Rule at 40 C.F.R. Part 141, Subpart I.

22 6. As the owner and/or operator of the System, Respondent is a "supplier of water" as
23 defined in Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2.

24 Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g *et*
25 *seq.*, and its implementing regulations at 40 C.F.R. Part 141.

1 7. The source of the System's water is a ground water well.

2 8. The System serves an average of 50 persons daily through 21 service connections.

3 9. On September 21, 2005, EPA issued an Administrative Order (the "Order") to the
4 Respondent pursuant to Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), citing violations
5 of the SDWA's implementing regulations at 40 C.F.R. Part 141. A copy of the Order (Docket
6 No. PWS-AO-2005-010) is attached to this Complaint and incorporated herein. (Complainant's
7 Exhibit 2.) The effective date of the Order was September 21, 2005. The Order required the
8 Respondent, among other things, to achieve compliance with certain SDWA regulations, in
9 accordance with specified deadlines.

10 10. By letter dated August 14, 2007, EPA notified Respondent that it had violated the Order
11 by (1) failing to complete two six-month rounds of lead and copper monitoring by the deadline
12 specified in the Order; (2) failing to perform quarterly nitrate monitoring for one year; (3) failing
13 to perform confirmation sampling where initial nitrate sampling results indicate an MCL
14 violation; (4) failing to comply with the 48-hour reporting requirements of 40 C.F.R. § 141.31(b)
15 for failures to comply with National Primary Drinking Water Regulations (NPDWRs), including
16 40 C.F.R. Part 141; and (5) failing to provide public notice of certain NPDWR violations. (See
17 Complainant's Exhibit 3.)

18 **SPECIFIC ALLEGATIONS**

19 11. Paragraphs 1 through 10 are realleged and incorporated herein by reference.

20 12. Following issuance of the Order on September 21, 2005, Respondent failed to comply
21 with the requirements of the Order as follows:

22 Count 1: Failure to conduct lead and copper monitoring

23 13. The Lead and Copper Rule at 40 C.F.R. Part 141, Subpart I, requires small community
24 water systems to conduct tap water sampling for lead and copper at five sites at least once every
25

1 six months beginning with the six-month initial compliance period of July 1, 1993 through
2 December 31, 1993. See 40 C.F.R. § 141.86.

3 14. Respondent failed to conduct two consecutive six-month monitoring periods for lead and
4 copper at five sites at least once every six months beginning with the six-month initial
5 compliance period of July 1, 1993, as required by the Lead and Copper Rule, 40 C.F.R. Part 141,
6 Subpart I.

7 15. Based on Respondent's failure to comply with the Lead and Copper Rule, 40 C.F.R. Part
8 141, Subpart I, as described in paragraph 14 above, the Order (pg. 8, paragraph 45) required
9 Respondent to complete two consecutive six-month rounds of monitoring for lead and copper, in
10 accordance with 40 C.F.R. § 141.86, by the Order's deadline of August 10, 2006.

11 16. Respondent violated the Order, and the Lead and Copper Rule, 40 C.F.R. Part 141,
12 Subpart I, by failing to conduct two consecutive six-month rounds of monitoring for lead and
13 copper by August 10, 2006, or at any time thereafter.

14 Count 2: Failure to conduct quarterly nitrate monitoring

15 17. 40 C.F.R. § 141.23(d)(2) requires, among other things, that community water systems
16 conduct quarterly monitoring for nitrates for at least one year following any one sample in which
17 the concentration is above 50% of the MCL.

18 18. Respondent violated 40 C.F.R. § 141.23(d)(2) by failing to conduct quarterly monitoring
19 for nitrates for at least one year following submission of its June 3, 2004 and November 19, 2004
20 monitoring results, which revealed nitrate levels greater than 50% of the MCL (10.8 mg/l and
21 12.6 on June 3, 2004, and 12.8 mg/l on November 19, 2004).

22 19. Based on Respondent's violation of 40 C.F.R. § 141.23(d)(2) described above in
23 paragraph 18, the Order (pg. 9, paragraph 52) required Respondent to commence quarterly
24 monitoring for nitrates by the Order's deadline of October 21, 2005, and continue such
25 monitoring for at least one year in accordance with the requirements of 40 C.F.R. § 141.23(d)(2).

1 20. Respondent violated the Order, 40 C.F.R. § 141.23(d)(2), by failing to commence one
2 year of quarterly monitoring for nitrates by the Order's October 21, 2005 deadline, and by failing
3 to complete at least one year of quarterly monitoring for nitrates at any time thereafter.

4 Count 3: Failure to conduct confirmation sampling

5 21. 40 C.F.R. § 141.23(f)(2) requires confirmation sampling within 24 hours when initial
6 nitrate sampling results indicate a violation of the nitrate MCL of 10 mg/l, but allows systems
7 unable to comply with the 24-hour sampling requirement to instead immediately notify persons
8 served by the system of the exceedance in accordance with the Tier 1 public notification
9 requirements of 40 C.F.R. Part 141, Subpart Q.

10 22. Respondent violated 40 C.F.R. § 141.23(f)(2) by failing to issue and provide a Tier 1
11 public notice to the persons served by the System of its failure to take confirmation samples
12 within 24 hours of Respondent's receipt of the analytical results of a November 19, 2004
13 sampling event, which showed a violation of the nitrate MCL.

14 23. Based on Respondent's violation of 40 C.F.R. § 141.23(f)(2), as described above in
15 paragraph 22, the Order (pg. 9, paragraph 52) required Respondent to conduct confirmation
16 sampling if initial nitrate sampling shows a violation of the nitrate MCL, in accordance with 40
17 C.F.R. § 141.23(f)(2).

18 24. Respondent violated the Order, and 40 C.F.R. § 141.23(f)(2), by failing to take a
19 confirmation sample within 24 hours of the System's receipt of notification of the analytical
20 results of its July 17, 2006 nitrate monitoring, which showed levels of nitrate at 15.4 mg/l, above
21 the nitrate MCL of 10 mg/l.

22 Count 4: Failure to comply with 48-hour reporting requirements of 40 C.F.R. § 141.31(b)

23 25. 40 C.F.R. § 141.31(b) provides that except where a different reporting period is specified
24 in 40 C.F.R. Part 141, the supplier of water must report to the State within 48 hours the failure to
25

1 comply with any NPDWR (including failure to comply with monitoring requirements) set forth
2 in 40 C.F.R. Part 141.

3 26. The Order (pg. 10, paragraph 53) required that Respondent comply upon the effective
4 date of the Order and at all times thereafter with the violation reporting requirements of 40
5 C.F.R. § 141.31(b) by reporting to EPA and the State of Arizona within 48 hours any failure to
6 comply with the NPDWRs (including monitoring requirements).

7 27. In violation of the Order, and 40 C.F.R. § 141.31(b), Respondent failed to notify EPA
8 and the State of Arizona within 48 hours of the following violations: (a) failing to conduct two
9 consecutive six-month rounds of monitoring for lead and copper; (b) failing to monitor for
10 nitrates in the fourth quarter of 2005, the second and fourth quarters of 2006, and the first two
11 quarters of 2007; (c) failing to take confirmation sampling after initial nitrate sampling of July
12 17, 2006 revealed nitrate levels greater than 50% of the nitrate MCL; and (d) a July 17, 2006
13 violation of the nitrate MCL.

14 Count 5: Failure to provide public notice of violations of 40 C.F.R. § Part 141
15 specified in the Order

16 28. The Revised Public Notice Rule at 40 C.F.R. Part 141, Subpart Q, §§ 141.201 - 211,
17 contains the public notification requirements that public water systems are required to meet for
18 all violations of NPDWRs.

19 29. Respondent violated the Revised Public Notice Rule by failing to provide public notice
20 to the System's customers within 24 hours of the System's violations of the nitrate MCL on June
21 3, 2004 and November 19, 2004, in accordance with the Tier 1 notice requirements of 40 C.F.R.
22 § 141.202. Respondent also violated the Revised Public Notice Rule by failing to provide public
23 notice to the System's customers within one year of the System's learning of its failure to
24 comply with the Lead and Copper Rule, 40 C.F.R. Part 141, Subpart I, in accordance with the
25 Tier 3 public notice requirements of 40 C.F.R. § 141.204, as described in paragraph 14 above.

1 30. Based on Respondent's violations of the Revised Public Notice Rule at 40 C.F.R. Part
2 141, Subpart Q, as described in paragraph 29 above, the Order (pg. 10, paragraph 55) required
3 Respondent to issue public notices by October 21, 2005 for Respondent's failure to conduct two
4 six-month rounds of lead and copper monitoring, and for Respondent's violations of the nitrate
5 MCL on June 3, 2004 and November 19, 2004.

6 31. Respondent violated the Order by failing to issue public notices for its lead and copper
7 monitoring violation and for its nitrate MCL violations, as described in paragraph 29 above, by
8 October 21, 2005, or at any time thereafter.

9 Count 6: Failure to provide public notice of violations of 40 C.F.R. § Part 141 after the
10 effective date of the Order

11 32. The Revised Public Notice Rule at 40 C.F.R. Part 141, Subpart Q, contains the public
12 notification requirements that public water systems are required to meet for all violations of
13 NPDWRs.

14 33. The Order (p. 10, paragraph 55) required Respondent to comply within thirty (30) days
15 of the effective date of the Order, and at all times thereafter, with the public notification
16 requirements of the Revised Public Notice Rule at 40 C.F.R. Part 141, Subpart Q.

17 34. In violation of the Order, Respondent failed to provide public notice pursuant to the
18 Revised Public Notice Rule at 40 C.F.R. Part 141, Subpart Q, of the following violations that
19 occurred after the effective date of the Order: (a) failing to conduct two consecutive six-month
20 rounds of monitoring for lead and copper; (b) failing to monitor for nitrates in the second quarter
21 of 2006; (c) failing to take confirmation sampling after initial nitrate sampling of July 17, 2006
22 revealed nitrate levels greater than 50% of the MCL; and (d) a July 17, 2006 violation of the
23 nitrate MCL.
24
25

PROPOSED ADMINISTRATIVE CIVIL PENALTY

35. Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. §§ 19.1-19.4, authorizes the Administrator of the EPA to assess an administrative civil penalty, not exceeding \$27,500, against any person who violates, or fails or refuses to comply with, an order issued under section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1).

36. Pursuant to Section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. §§ 19.1-19.4, and in accordance with the enclosed Consolidated Rules of Practice, EPA hereby requests that a civil penalty of up to twenty-seven thousand five hundred dollars (\$27,500) be assessed against Respondent for violations of the Order issued pursuant to Section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1).

37. EPA has determined the proposed penalty amount in accordance with Section 1414 of the SDWA, 42 U.S.C. § 300g-3. EPA took into consideration the seriousness of the violations, the population at risk, and other appropriate factors. In considering these factors, among other things, Complainant has evaluated the economic benefit to Respondent in failing to comply with the SDWA, the gravity and severity of each violation (children are particularly susceptible to the adverse health effects of lead and nitrate in drinking water), the service population of the System, the duration of violation, Respondent's history of non-compliance, and other considerations. Respondent ignored repeated requests and orders by ADEQ and EPA to come into compliance with the SDWA and the requirements of the Lead and Copper Rule and the Revised Public Notice Rule, and other SDWA requirements, and has failed to comply to date. Respondent's history of disregarding requirements of the SDWA and its regulations has provided significant economic benefit to Respondent and placed Respondent's customers at risk of exposure to elevated levels of lead, copper, and nitrate in their drinking water.

1 41. The Answer must also state: (1) the circumstances or arguments that are alleged to
2 constitute the grounds of any defense, (2) the facts that Respondent disputes (and thus intends to
3 place at issue in the proceeding), (3) the basis for opposing the proposed relief, and (4) whether
4 Respondent requests a hearing. 40 C.F.R. § 22.15(b).

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

9 **OPPORTUNITY TO REQUEST A HEARING**

10 43. If requested by Respondent in the Answer, a hearing upon the issues raised by the
11 Complaint and Answer may be held. 40 C.F.R. § 22.15(c). Any hearing in this proceeding will
12 be held at a location determined in accordance with 40 C.F.R. § 22.21(d).

13 44. Respondent has the right to elect a hearing on the record in accordance with Section 554
14 of the APA, 5 U.S.C. § 554. 40 C.F.R. § 22.42(b). Respondent waives this right unless
15 Respondent requests in the Answer a hearing on the record in accordance with Section 554 of the
16 APA, 5 U.S.C. § 554. 40 C.F.R. § 22.42(b).

17 45. If Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R.
18 § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. §
19 22.15(c).

20 **FAILURE TO ANSWER**

21 46. To avoid entry of a Default Order against you pursuant to 40 C.F.R. § 22.17 for a
22 penalty of up to \$27,500 as proposed in this Complaint, Respondent must file a written Answer
23 with the Regional Hearing Clerk at the address above within 30 days of receipt of this
24 Complaint.

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

5 48. Whether or not Respondent requests a formal hearing, Respondent may request an
6 informal settlement conference to discuss the facts of this case, the proposed penalty, and the
7 possibility of settling this matter. 40 C.F.R. § 22.18(b). To request such a settlement
8 conference, please contact: Rich Campbell, Office of Regional Counsel, U.S. Environmental
9 Protection Agency, Region IX, 75 Hawthorne Street (ORC-2), San Francisco, CA 94105, Phone:
10 (415) 972-3870. Mr. Campbell is authorized to receive service related to this proceeding.

11 49. The parties may engage in settlement discussions regardless of whether Respondent
12 requests a hearing. 40 C.F.R. § 22.18(b)(1). In other words, even if Respondent requests a
13 formal hearing, Respondent may also request an informal settlement conference and the informal
14 conference procedure may be pursued simultaneously with the formal adjudicatory hearing
15 procedure. A request for an informal settlement conference constitutes neither an admission nor
16 a denial of any of the matters alleged in the Complaint. EPA does not deem a request for an
17 informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

18 50. Settlement discussions do not affect Respondent's obligation to file a timely Answer
19 to the Complaint pursuant to 40 C.F.R. § 22.15. 40 C.F.R. § 22.18(b)(1). EPA will not modify
20 its proposed penalty simply because an informal settlement conference is held.

21 51. The terms and conditions of any settlement that may be reached as a result of a
22 settlement conference will be recorded in a written Consent Agreement signed by all parties. 40
23 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, EPA will execute a Final Order
24 ratifying the parties' Consent Agreement. 40 C.F.R. § 22.18(b)(3). In accepting the Consent
25 Agreement, Respondent waives any right to contest the allegations in the Complaint and waives

1 any right to appeal the Final Order accompanying the Consent Agreement. 40 C.F.R. §
2 22.18(b)(2).

3 52. Respondent's entering into a settlement does not extinguish, waive, satisfy, or otherwise
4 affect Respondent's obligation to comply with all applicable statutory and regulatory
5 requirements and legal orders.

6 **FILING OF DOCUMENTS**

7 53. Respondent must send the Answer and any Hearing Request, as well as all subsequent
8 documents filed in this action, to:

9 Danielle Carr
10 Regional Hearing Clerk (ORC-1)
11 U.S. Environmental Protection Agency, Region IX
12 75 Hawthorne Street
13 San Francisco, CA 94105

14 Respondent must send a *copy* of the Answer, a *copy* of any Hearing Request, and a *copy* of all
15 subsequent documents filed in this action, to:


16 Rich Campbell
17 Office of Regional Counsel (ORC-2)
18 U.S. Environmental Protection Agency, Region IX
19 75 Hawthorne Street
20 San Francisco, CA 94105

21 54. Respondent has a right to be represented by an attorney at any stage of this proceeding.

22 55. This Complaint does not constitute a waiver, suspension, or modification of the
23 requirements of the SDWA, any regulations promulgated thereunder, or any applicable permit.

24 56. Neither assessment nor payment of an administrative civil penalty pursuant to section
25 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 SDWA, and with regulations promulgated thereunder.

Dated this 28th day of September, 2007


Alexis Strauss, Director
Water Division

