



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

Phone 800-227-8917

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

Ref: 8ENF-L

SEP 9 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7008 3230 0003 0729 9979

Henry Gutz, Commissioner
Daggett County
P.O. Box 219
Manila, UT 84046

Re: Complaint and Notice of
Opportunity for Hearing
Dutch John Public Water System
Docket No. **SDWA-08-2010-0073**

Dear Mr. Gutz:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against Daggett County (the county) under § 1414(g)(3) of the Safe Drinking Water Act (SDWA), 42 U.S.C § 300g-3(g)(3). The U.S. Environmental Protection Agency (EPA) alleges in the complaint that the county failed to comply with an Administrative Order, Docket No. SDWA-08-2007-0048, issued on April 23, 2007, under § 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), regarding the Dutch John Water System. The violations are specifically set out in the complaint.

By law, the county has the right to request a hearing regarding the matters set forth in the complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If the county does not file an answer to this complaint within 30 days of receipt, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In its answer the county may request a hearing. The county has the right to be represented by an attorney at any stage of these proceedings.

EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. The issuance of a consent agreement shall constitute a waiver of the right to request a hearing on any matter to which the county has stipulated in that agreement.

Whether or not the county requests a hearing, its representative(s) may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. However, an informal settlement conference does **not** substitute for filing a written answer and requesting a hearing. A



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request for an informal conference also does not extend the 30-day period during which the county must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kathelene Brainich, Environmental Protection Specialist, who can be reached at 800/227-8917, extension 6481, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917, extension 6858.

We urge your prompt attention to this matter.

Sincerely,



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

Enclosure

cc: Tina Artemis, Regional Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 SEP -9 AM 9:15

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)
)
Daggett County)
Dutch John, UT)
) Docket No. SDWA-08-2010-0073
)
Respondent) **COMPLAINT AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**
)
Proceeding under § 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))
_____)

COMPLAINT

This civil administrative Complaint and Notice of Opportunity for Hearing (complaint) is issued under the authority vested in the United States Environmental Protection Agency (EPA) by § 1414(g)(3) of the Safe Drinking Water Act (SDWA or Act), 42 U.S.C. § 300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes EPA to assess an administrative civil penalty against any person who violates, or fails or refuses to comply with, an order issued under § 1414(g)(1) of the SDWA.

The complainant in this action is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22 (Consolidated Rules of Practice) (Complainant's Exhibit 1).

GENERAL ALLEGATIONS

The following general allegations apply to each count of this complaint:

1. Respondent Daggett County, Utah (Respondent) is a political subdivision of the State of Utah and therefore a “municipality” as defined in § 1401(10) of the SDWA, 42 U.S.C. § 300f(10), and a “person” as defined in § 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 Dutch John Water System (the System), located in Daggett County, Utah, for the provision to the public of piped water for human consumption.
3. The source of the System’s water is surface water. The System uses conventional filtration treatment. The System serves an average of approximately 185 residents daily.
4. Because the System has at least 15 service connections used by year-round residents, it is a “public water system” as defined in § 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2. It is also a “community water system” as defined in 40 C.F.R. § 141.2.
5. As an owner and/or operator of a public water system, Respondent is a “supplier of water” as defined in § 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 40 C.F.R. part 141 (also known as the National Primary Drinking Water Regulations or NPDWRs).

6. The Utah Department of Environmental Quality (UDEQ or State) has primary enforcement authority for the public water supply protection provisions of the SDWA in Utah.
7. As regulations that EPA promulgated under § 1412 of the SDWA, 42 U.S.C. § 300g-1, the NPDWRs are “applicable requirements” as defined in § 1414(i) of the SDWA, 42 U.S.C. § 300g-3(i).
8. On November 30, 2006, EPA issued a Notice of Violation (NOV) pursuant to § 1414(a) of the SDWA, 42 U.S.C. § 300g-3(a), to UDEQ regarding violations of the NPDWRs at the System. UDEQ elected not to commence an enforcement action against Respondent for the violations cited in the NOV within the thirty-day time-frame set forth in § 1414(a) of the SDWA, 42 U.S.C. § 300g-3(a).
9. On April 23, 2007, in accordance with § 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), EPA issued an Administrative Order, Docket No. SDWA-08-2007-0048 (the Order) to Respondent, citing various violations of the NPDWRs, including, but not limited to
 - failing to monitor for disinfection byproduct precursors, in violation of 40 C.F.R. § 141.132(d);
 - failing to monitor for total coliform bacteria, in violation of 40 C.F.R. § 141.21;
 - failing to monitor for nitrate, in violation of 40 C.F.R. § 141.23(d); and
 - failing to notify the public of various violations cited in the Order, in violation of 40 C.F.R. § 141.201.

10. A copy of the Order is attached to this complaint (Complainant's Exhibit 2).
11. By letter dated June 18, 2008, EPA notified Respondent that Respondent had violated the Order by failing to submit timely and complete monitoring results for disinfection byproducts for the fourth quarter of 2007 and the first quarter of 2008, by failing to submit timely monitoring results for total coliform bacteria for the months of October of 2007 through April of 2008, and by failing to provide EPA with a copy of the public notice required by the Order.
12. A copy of EPA's June 18, 2008, letter is attached to this Complaint (Complainant's Exhibit 3).
13. By letter dated September 23, 2009, EPA notified Respondent that Respondent had violated the Order by failing to monitor for nitrate in 2008 and for total coliform in February of 2009.
14. A copy of EPA's September 23, 2009, letter is attached to this Complaint (Complainant's Exhibit 4).
15. On September 15, 2009, EPA issued a second administrative order to the Respondent, citing additional violations of the NPDWRs that are not the subject of this complaint.

COUNTS OF VIOLATION

Count I

Failure to Report Disinfection Byproduct Precursor Monitoring Results

1. The Order required Respondent to monitor the System's water monthly for disinfection byproduct precursors and to report its analytical results and its

calculation of running arithmetic average of total organic carbon reduction ratio to EPA and the State within the first 10 days at the end of each quarter. (See page 7, in par. 4 of the “Order” section, citing 40 C.F.R. §§ 141.132(d) and 141.134(a) and (b).)

2. Respondent violated the Order by failing to report to EPA any monitoring results of disinfection byproduct precursors for the fourth quarter of 2007 and the first quarter of 2008 until May 19, 2008, and by failing to include the calculated running arithmetic average of total organic carbon reduction ratio in its submission.

Count II

Failure to Report Total Coliform Monitoring Results

1. The Order required Respondent to monitor the System’s water monthly for total coliform and to report analytical results to EPA and the State within the first 10 days of the end of the monitoring period. (See page 8 of the Order, in par. 7 of the “Order” section, citing 40 C.F.R. §§ 141.21(a) and 141.31(a).)
2. Respondent violated the Order by failing to submit results of total coliform monitoring for the months of October of 2007 through April of 2008 to EPA until May 19, 2008.

Count III

Failure to Monitor for Total Coliform

1. As mentioned above, the Order required Respondent to monitor the System’s water monthly for total coliform and to report analytical results to EPA and the State within the first 10 days of the end of the monitoring period. (See page 8 of

the Order, in par. 7 of the "Order" section, citing 40 C.F.R. §§ 141.21(a) and 141.31(a).)

2. Respondent violated the Order by failing to monitor the System's water for total coliform for the months of February of 2009 and July of 2009.

Count IV
Failure to Monitor for Nitrate

1. As mentioned above, the Order required Respondent to monitor the System's water annually for nitrate and to report analytical results to EPA and the State within the first 10 days of the end of the monitoring period. (See page 7 of the Order, in par. 5 of the "Order" section, citing 40 C.F.R. §§ 141.23(d) and 141.31(a).)
2. Respondent violated the Order by failing to monitor the System's water for nitrate in 2008.

Count V
Untimely Public Notice

1. The Order directed Respondent to provide public notice of certain violations no later than 30 days from the effective date of the Order and to provide a copy of the public notice to EPA and the State within ten days of completing public notice. (See (See page 8 of the Order, in par. 7 of the "Order" section, citing 40 C.F.R. §§ 141.201, 141.204, and 141.205, and referring to violations cited in par. I-V of the "Findings of Violation" section of the Order.)
2. Respondent violated the Order by failing to complete public notice of any violations cited in the Order until June 1, 2008.

Count VI
Failure to Report Coliform Monitoring Violations to EPA

1. The Order directed Respondent to notify EPA and the State within ten days after discovering any violation of the coliform monitoring requirements of 40 C.F.R. § 141.21. (See pages 9 and 10 of the Order, in par. 10 of the “Order” section, citing 40 C.F.R. § 141.21(g)(2).)
2. Respondent violated the Order by failing to notify EPA within ten days of discovering the failures to monitor total coliform in February of 2009 and July of 2009.

Count VII
Failure to Report Other Violations to EPA

1. The Order directed Respondent to report any failure to comply with any NPDWR to EPA and the State within 48 hours. (See page 9 of the Order, in par. 9 of the “Order” section, citing 40 C.F.R. § 141.31(b).)
2. Respondent violated the Order by failing to notify EPA within 48 hours of having failed to provide public notice of its violations, of having failed to monitor for nitrate in 2008, of having failed to make a timely submission of monitoring results for disinfection byproducts for the fourth quarter of 2007 and the first quarter of 2008, and of having failed to make a timely submission of monitoring results for total coliform for October of 2007.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

This complaint proposes that EPA assess an administrative penalty against Respondent. EPA is authorized to assess an administrative penalty according to § 1414(g)(3) of the SDWA,

42 U.S.C. § 300g-3(g)(3), for violation of an administrative order issued under § 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g). As adjusted for inflation by 40 C.F.R. part 19, the amount may be up to \$27,500 for violations occurring after March 15, 2004 through January 12, 2009, and \$32,500 for violations occurring after January 12, 2009.

EPA has determined the proposed penalty amount in accordance with § 1414 of the SDWA, 42 U.S.C. § 300g-3. 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, if any, and ability to pay, as known to EPA at this time, EPA proposes to assess an administrative civil penalty of \$1,500 against Respondent for its violations of the Order.

OPPORTUNITY TO REQUEST A HEARING

As provided in § 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 § 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 re-title 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 following:

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

A copy of the answer must also be sent to the Enforcement Attorney named at the end of this complaint.

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 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 request a hearing.

Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of that allegation.

QUICK RESOLUTION

Respondent may resolve this action by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this complaint, Respondent need not file an answer. Alternatively, as allowed by 40 C.F.R. § 22.18(b), Respondent may file a statement with the Regional Hearing Clerk within thirty (30) days of receipt of the complaint agreeing to pay the full assessed penalty and may make the penalty payment within sixty (60) days of receiving the complaint.

If made by check, the payment shall be made by remitting a cashier's or certified check, including the name and docket number of the case, referencing the Docket Number given on the first page of this complaint and payable to the Environmental Protection Agency.

The check shall be sent to EPA in one of the following ways:

By first class US postal service mail:	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, MO 63197-9000
By Federal Express, Airborne, or other commercial carrier:	US Bank 1005 Convention Plaza Mail Station SL-MO-C2GL St. Louis, MO 63101

The payment may also be made by wire transfer or on-line via the internet, as follows:

Wire transfers: Federal Reserve Bank of New York
ABA = 021030004, Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
“D68010727 Environmental Protection Agency “

On-Line Payment: WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

A copy of the check, wire transfer, or record of on-line payment shall be simultaneously sent to:

Kathelene Brainich (8ENF-W)
Technical Enforcement Program
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the SDWA and its implementing regulations. Payment of the penalty pursuant to 40 C.F.R. § 22.18 shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent’s right to a hearing on this matter.

SETTLEMENT NEGOTIATIONS

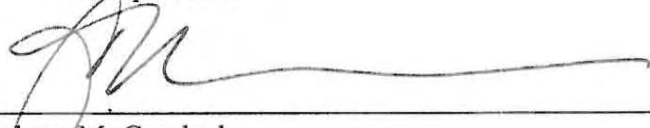
EPA encourages exploring settlement possibilities through informal settlement negotiations. Requesting, scheduling, or participating in settlement discussions **does not** substitute for an answer or extend the deadline for filing an answer and a request for a hearing. Failing to file an answer may lead to a default order, even if settlement negotiations occur. The parties may simultaneously pursue settlement and proceed with administrative litigation.

If a settlement is 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. Any request for settlement negotiations, or any questions that Respondent may have regarding this complaint, should be directed to the attorney named below.

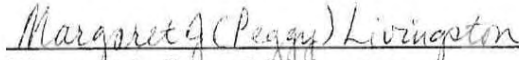
Dated this 9th day of September, 2010.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,

Complainant



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



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:

Henry Gutz, Commissioner
Daggett County
P.O. Box 219
Manila, UT 84046
Certified Mail # 7008 3230 0003 0129 9979

Date: 9/9/2010

By: Judith McTernan
Judith McTernan

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State 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.

(i) 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.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) 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.
- 22.1 Scope of this part.
- 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 filed documents; 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 proceeding.
- 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 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.

Subpart D—Hearing Procedures

- 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.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

K.B.

REGION 8
999 18th STREET - SUITE 300
DENVER, COLORADO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

**COMPLAINANT'S
EXHIBIT NO. 2**

APR 23 2007

Ref: 8ENF-W

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Henry Gutz, Commissioner
Daggett County
POB 219
Manila, UT 84046

Re: Administrative Order
Docket No. SDWA-08-2007-0048
Dutch John
PWS ID #UTAH05001

Dear Mr. Gutz:

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 Daggett County (County) is a supplier of water as defined by the SDWA and that the County has violated the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. §§ 141.135(a)(1), 141.32(d), 141.23(d), 141.24(h), 141.21, 141.201, 141.31(b), and 141.21(g)(2) for inadequate disinfection byproduct precursor removal (total organic carbons); failure to monitor for disinfection byproduct precursors, nitrate, pesticides and bacteriological quality; and failure to notify the State and public of these violations.

If the County complies with the enclosed Order 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 the County to comply.

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 can be sent to Kathelene Brainich at the address on the letterhead, including the mailcode 8ENF-W, or you may call Ms. Brainich at (800) 227-8917, extension 6481, or (303) 312-6481. If you wish to have an 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 Thomas Sitz at the above 800 number, extension 6918, or at (303) 312-6918.

We urge your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane L. Sipe for".

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

Enclosure

cc: Patti Fauver, UT DEQ
Wesley Scott Slaugh, Dutch John

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2007 APR 23 PM 12:34

IN THE MATTER OF)

Daggett County)
Dutch John, UT)

Respondent)

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

ADMINISTRATIVE ORDER

Docket No. SDWA-08-2007-0048

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. Daggett County, Utah (Respondent) is a political subdivision of the State of Utah and therefore is a "person" within the meaning of 40 C.F.R. § 141.2.
2. Respondent owns and/or operates a system, the Dutch John Water System (the "System"), located in Daggett County, Utah for the provision to the public of piped water for human consumption.
3. The System has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents and is therefore a "public water System" within the meaning of Section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "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. According to an October 29, 2003 sanitary survey by the Utah Department of Environmental Quality ("DEQ"), the System is supplied by a surface water source with conventional treatment. The System serves approximately 185 persons.
6. The Utah DEQ has primary enforcement authority for the public water supply program of the Act in the State of Utah ("State"). On November 30, 2006, EPA issued a Notice of Violation to the State regarding the System's violations of the Act and 40 C.F.R. part 141. The State chose not to commence enforcement for the violations within 30 days of EPA's letter.
7. EPA has provided the State with an opportunity to confer with EPA regarding this Order pursuant to Section 1414(g)(2) of the Act, 42 U.S.C. § 300g-3(g)(2).
8. EPA has provided a copy of this Order to the State pursuant to Section 1414(g)(2) of the Act, 42 U.S.C. § 300g-3(g)(2).

FINDINGS OF VIOLATION

I.

1. 40 C.F.R. § 141.135(a)(1) requires surface water systems using conventional filtration treatment to operate with enhanced coagulation or enhanced softening to achieve the total organic carbon (TOC) percentage reduction levels specified in



40 C.F.R. § 141.135(b)(2), unless the system can meet at least one of the alternative compliance criteria listed in 40 C.F.R. § 141.135(a)(2) or 40 C.F.R. § 141.135(a)(3).

2. 40 C.F.R. § 141.135(c) requires surface water systems using conventional filtration treatment, other than those identified to meet the requirements of 40 C.F.R. § 141.135(a)(2) or 40 C.F.R. § 141.135(a)(3), to determine enhanced coagulation compliance quarterly by calculating the running annual average (RAA) of TOC reduction ratio beginning after the system has collected 12 months of data.
3. 40 C.F.R. § 141.135(c)(1)(iii) requires TOC reduction ratio be calculated by dividing the actual TOC reduction percentage by the required TOC reduction percentage specified in 40 C.F.R. § 141.135(b)(2). 40 C.F.R. § 141.135(c)(1)(v) requires the RAA for TOC reduction ratio be at least 1.00.
4. Respondent failed to meet at least one of the alternative compliance criteria listed in 40 C.F.R. § 141.135(a)(2) or 40 C.F.R. § 141.135(a)(3), and the System's running annual average for TOC reduction ratio for the period of 3rd quarter 2005 through 3rd quarter 2006 is less than 1.00, in violation of 40 C.F.R. § 141.135(a)(1).

II.

1. 40 C.F.R. § 141.132(d) requires surface water systems using conventional filtration treatment to monitor for disinfection byproduct precursors (DBPP), including "paired samples" of TOC in source water and treated water, and alkalinity samples in the source water. Specifically, a system must collect one pair of TOC samples and one source water alkalinity sample per month per plant.



2. Respondent failed to monitor the System's water for disinfection byproduct precursors during the 4th quarter of 2005, in violation of 40 C.F.R. § 141.132(d).

III.

1. 40 C.F.R. § 141.23(d) requires public water systems to monitor annually for nitrate to determine compliance with the nitrate maximum contaminant level (MCL) as stated in 40 C.F.R. § 141.62.
2. Respondent last monitored for nitrate in 2005 but failed to monitor in 2003 and 2006, in violation of 40 C.F.R. § 141.23(d).

IV.

1. 40 C.F.R. § 141.24(h) requires all community and non-transient, non-community water systems that have no detects during initial monitoring and have a population less than 3,301, to monitor the water once during each repeat three year compliance period to determine compliance with the MCL for pesticide/herbicide organic contaminants as stated in 40 C.F.R. § 141.61(c).
2. Respondent failed to monitor the water for pesticide/herbicide organic contaminants during the three year compliance period 2003-2005, in violation of 40 C.F.R. § 141.24(h).

V.

1. 40 C.F.R. § 141.21 requires public water systems to monitor the water at least once per month the system serves water to the public to determine compliance with the 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 February 2006 and May 2004, in violation of 40 C.F.R. § 141.21.

VI.

1. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any National Primary Drinking Water Regulations (NPDWR) violations, including violations of any MCL, maximum residual disinfectant level, treatment technique, monitoring requirements, and testing procedures in 40 C.F.R. part 141.
2. Respondent has not provided public notice of the violations detailed in the preceding Sections I, II, III, IV, and V, in violation of 40 C.F.R. § 141.201.

VII.

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

VIII.

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



ORDER

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

1. Within 90 days of the effective date of this Order, Respondent shall submit to EPA and the State detailed plans for bringing Respondent's System into compliance with the RAA for TOC reduction at 40 C.F.R. § 141.135(a)(1) or meet at least one of the alternative compliance criteria listed in 40 C.F.R. § 141.135(a)(2) or 40 C.F.R. § 141.135(a)(3). The plans shall include proposed system modifications, estimated costs of modifications, and a schedule for completion of the project. The proposed schedule shall include specific milestone dates, a final compliance date with the regulations listed above (that shall be within 12 months from the date of EPA's approval of the plans) and shall be submitted to EPA for approval. The plans must be approved by EPA before modifications and/or construction can commence. Please be advised that the State DEQ requires that a permit be issued by their office prior to any construction or modifications.
2. The schedule for construction and/or completion of modifications will be incorporated into this Order upon written approval by EPA.
3. Within 180 days of the date of this Order, Respondent shall submit to EPA and the State quarterly reports on the progress made toward bringing Respondent's System into compliance with the TOC percentage reduction levels specified in 40 C.F.R. § 141.135(b)(2) or at least one of the alternative compliance criteria



listed in 40 C.F.R. § 141.135(a)(2) or 40 C.F.R. § 141.135(a)(3). Each quarterly report is due by the 10th day of the month following the end of each calendar quarter.

4. Upon the effective date of this Order, Respondent shall comply with the requirement of 40 C.F.R. § 141.132(d) to perform monthly monitoring for disinfection byproduct precursors. Each month Respondent shall collect one source water sample to be analyzed for alkalinity and collect a pair of samples (one from the source water and one from the treated water) to be analyzed for TOC. Respondent shall report analytical results and calculated RAA arithmetic calculations of TOC reduction/ratio to EPA and the State within the first 10 days of the end of each quarter, as required by 40 C.F.R. § 141.134(a) and (b).
5. Within 30 days of the date of this Order, and per the schedule in the regulations thereafter, 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 EPA and the State within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).
6. Within 30 days of the date of this Order, and per the regulations thereafter, Respondent shall comply with the pesticide/herbicide organic contaminants monitoring requirements as stated in 40 C.F.R. § 141.24(h) to determine compliance with the pesticide/herbicide organic contaminants MCLs appearing at 40 C.F.R. § 141.61(c). Respondent shall report analytical results to EPA and the



State within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).

7. Upon the effective date of this Order, Respondent shall comply with the requirement of 40 C.F.R. § 141.21(a) to perform monthly bacteriological monitoring to determine compliance with the MCLs as stated in 40 C.F.R. § 141.63.

Respondent shall report analytical results to EPA and the State within the first 10 days of the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).

8. Within 30 days of the effective date of this Order, Respondent must provide public notice of all violations specified in Sections I, II, III, IV, and V of the Findings of Violation section of this Order: Inadequate disinfection byproduct precursor removal 3rd quarter 2005-3rd quarter 2006, failure to monitor for TOC 4th quarter 2005, failure to monitor nitrate 2003 and 2005, and failure to monitor for total coliform February 2006 and May 2004. Respondent may use an annual report detailing all monitoring violations that occurred in the last 12 months covered by the report, to return to compliance with 40 C.F.R. §§ 141.201, 141.204 and 141.205. This notice shall be given by (1) mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the System; AND (2) any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the notice, such as publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others; posting in public places or on the Internet; or delivery to community organizations. The



Respondent must repeat the failure to monitor violations public notice annually for as long as the monitoring violation, variance, exemption, or other situation persists: every three months for treatment technique (the TOC violation in Section I) and MCL violations. If the public notice is posted, the notice must remain in place for as long as the violation, variance, exemption, or other situation persists, but in no case less than seven days. Respondent may use the Consumer Confidence Report (“CCR”) to provide public notice of the monitoring violations as long as (1) the CCR is provided to persons served no later than 12 months after the System learns of the violation or situation; (2) The public notice contained in the CCR follows the content requirements under 40 C.F.R. § 141.205; AND (3) the CCR is distributed following the delivery requirements under 40 C.F.R. § 141.204(c). 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 and the State within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d).

9. 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 National Primary Drinking Water Regulation (40 C.F.R. Part 141) to EPA and the State within 48 hours.
10. Except where a different reporting period is specified in paragraph 9 above, 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 and the State within ten days after the system discovers the violation.

11. Reporting requirements specified in this Order shall be provided by certified mail to both:

Kathelene Brainich (8ENF-W)	AND	Patti Fauver, Acting Compl. Mgr.
U. S. EPA Region 8		UT DEQ Drinking Water Program
1595 Wynkoop Street		POB 144830
Denver, Colorado 80202-1129		Salt Lake City, UT 84114-4830

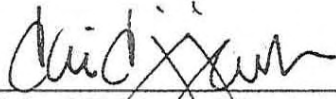
GENERAL PROVISIONS

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 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 Act 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).

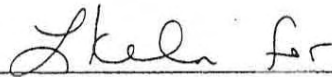


4. The effective date of this Order shall be the date of issuance of this Order.

Issued this 23rd day of April, 2007.



Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice



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





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

COMPLAINANT'S
EXHIBIT NO. 3

Ref: 8ENF-W

JUN 18 2008

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

Henry Gutz, Commissioner
Daggett County
POB 219
Manila, UT 84046

Re: Administrative Order Violation
Docket No. SDWA-08-2007-0048
Dutch John, PWS ID #UTAH05001

Dear Mr. Gutz:

On March 20, 2006, the US Environmental Protection Agency (EPA) issued an Administrative Order (Order), Docket No. SDWA-08-2007-0048, ordering Daggett County, as owner of the Dutch John water system, to comply with various regulations issued by EPA under the Safe Drinking Water Act (SDWA), 42 U.S.C. section 300f et seq.

Our records indicate Daggett County (Respondent) is in violation of the Order. Among other things, the Order included the following requirements (quoted from items 4, 7 and 8 on pages 7, 8 and 9, respectively, of the Order):

1. Upon the effective date of this Order, Respondent shall comply with the requirement of 40 C.F.R. § 141.132(d) to perform monthly monitoring for disinfection byproduct precursors. Each month Respondent shall collect one source water sample to be analyzed for alkalinity and collect a pair of samples (one from the source water and one from the treated water) to be analyzed for total organic carbon (TOC). Respondent shall report analytical results and calculated running annual average (RAA) arithmetic calculations of TOC reduction/ratio to EPA and the State within the first 10 days of the end of each quarter, as required by 40 C.F.R. § 141.134(a) and (b).

Monitoring results for disinfection byproduct precursors for each month during the 4th quarter of 2007 and 1st quarter 2008 were not received by EPA until May 19, 2008. Additionally, results received on May 19, 2008, were analytical results only and did not include the calculated RAA arithmetic calculation of TOC reduction/ ratio. **Within 10 days of receiving this letter, Respondent shall submit calculated TOC reduction ratio to EPA and the State for 4th quarter 2007 and 1st quarter 2008.** Future quarterly TOC reduction/ratio calculations and

analytical results must be submitted to EPA and the State within the first 10 days of the end of each quarter.

2. Upon the effective date of this Order, Respondent shall comply with the requirement of 40 C.F.R. § 141.21(a) to perform monthly bacteriological monitoring to determine compliance with the maximum contaminant levels (MCLs) as stated in 40 C.F.R. § 141.63. Respondent shall report analytical results to EPA and the State within the first 10 days of the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).

Monitoring results for total coliform bacteria for the months October 2007 through April 2008 were not received by EPA until May 19, 2008. Future total coliform monitoring results must be submitted to EPA and the State within the first 10 days of the end of the monitoring period.

3. Within 30 days of the effective date of this Order, Respondent must provide public notice of all violations specified in..... this Order: Inadequate disinfection byproduct precursor removal 3rd quarter 2005 through 3rd quarter 2006, failure to monitor for TOC 4th quarter 2005, failure to monitor nitrate 2003 and 2005, and failure to monitor for total coliform February 2006 and May 2004. Respondent may use an annual report detailing all monitoring violations that occurred in the last 12 months covered by the report, to return to compliance with 40 C.F.R. §§ 141.201, 141.204 and 141.205. This notice shall be given by (1) mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the System; AND (2) any other method reasonable calculated to reach other persons served by the system, if they would not normally be reached by the notice..... Respondent shall submit a copy of the public notice to EPA and the State within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d).

EPA has not received a copy of a public notice and certification to demonstrate that the notice concerning the violations listed in the Order has been completed. If the public notice has been completed, submit a copy with a signed certification of the dates it was completed to the State and EPA immediately. If Respondent has not completed the public notice it must be completed within 10 days of receipt of this letter and a certification and a copy of the public notice submitted to EPA and the State within 10 days of completion. Respondent submitted the consumer confidence report (CCR) for 2007 for their system to EPA on March 19, 2008. This report did not include any information about the violations outlined in the Order and, therefore, cannot fulfill the public notice requirement of the Order. If Respondent's CCRs for the periods of 2003 through 2006 included the violations listed in the Order, they must be submitted to the State and EPA within 10 days of receipt of this letter to demonstrate public notice was completed.

EPA is considering additional enforcement action as a result of non-compliance with the Order. Violating an Administrative 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.

If you have any questions or wish to have an informal conference with EPA, you may contact Kathelene Brainich at 1-800-227-8917, extension 6481 or (303) 312-6481. If you are represented by an attorney who has questions, ask your attorney to contact Thomas Sitz, Enforcement Attorney, at 1-800-227-8917, extension 312-6918, or (303) 312-6918 or at the following address:

Thomas Sitz
Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge your prompt attention to this matter.

Sincerely,



Lisa Kahn, Team Leader
Drinking Water Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc: Patti Fauver, UT DEQ

bcc: Tina Artemis, 8RC
 Brenda Cazier, 8ENF-PT
 Tom Sitz, 8ENF-L
 Lisa Kahn, 8ENF-W
 John Gillis (via email)
 Reading File

cc address:

Patti Fauver, Rule Manager.
 DEQ Drinking Water Program
 POB 144830
 SLC, UT 84114-4830

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

COMPLAINANT'S
EXHIBIT NO. 4

2009 SEP 23 AM 11:59



Ref: 8ENF-W

SEP 23 2009

FILED
EPA REGION VIII
HEARING CLERK

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

Henry Gutz, Commissioner
Daggett County
POB 219
Manila, UT 84046

Re: Administrative Order Violation #2
Docket No. SDWA-08-2007-0048
Dutch John, PWS ID #UTAH05001

Dear Mr. Gutz:

On March 23, 2007, the US Environmental Protection Agency (EPA) issued an Administrative Order (Order), Docket No. SDWA-08-2007-0048, ordering Daggett County, as owner of the Dutch John water system, to comply with various regulations issued by EPA under the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f et seq.

Our records indicate Daggett County (Respondent) is in violation of the Order. Among other things, the Order included the following requirements (quoted from items 5, 7, 9, and 10 on pages 7 through 10 of the Order):

1. Within 30 days of the date of this Order, and per the schedule in the regulations thereafter, Respondent shall comply with the nitrate monitoring requirements as stated in 40 C.F.R. § 141.23(d) to determine compliance with the nitrate maximum contaminant level (MCL) appearing at 40 C.F.R. § 141.62(b). Respondent shall report analytical results to EPA and the State within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).

Respondent did not monitor for nitrate in 2008.

2. Upon the effective date of this Order, Respondent shall comply with the requirement of 40 C.F.R. § 141.21(a) to perform monthly bacteriological monitoring to determine compliance with the MCLs as stated in 40 C.F.R. § 141.63. Respondent shall report analytical results to EPA and the State within the first 10 days of the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).

Respondent did not monitor for total coliform bacteria in February 2009. Respondent has failed to report any analytical results to EPA during 2009.

3. 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 National Primary Drinking Water Regulation (40 C.F.R. Part 141) to EPA and the State within 48 hours.

Respondent failed to report to EPA the noncompliance detailed in part 1 above, failure to monitor for nitrate.

4. 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 and the State within 10 days after the system discovers the violation.

Respondent failed to report to EPA the noncompliance detailed in part 2 above, failure to monitor for total coliform bacteria.


This is the second Order violation letter sent regarding Dutch John. EPA is considering additional enforcement action as a result of non-compliance with the Order. Violating an Administrative Order may lead to (1) a penalty of up to \$37,500 per day per violation of the Order, and/or (2) a court injunction ordering compliance.

If you have any questions or wish to have an informal conference with EPA, you may contact Kathelene Brainich at 1-800-227-8917, extension 6481 or (303) 312-6481. If you are represented by an attorney who has questions, ask your attorney to contact Thomas Sitz, Enforcement Attorney, at 1-800-227-8917, extension 312-6918, or (303) 312-6918 or at the following address:

Thomas Sitz
Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge your prompt attention to this matter.

Sincerely,



Lisa Kahn, Team Leader
Drinking Water Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc: Patti Fauver, UT DEQ
Tina Artemis, EPA Regional Hearing Clerk

bcc: Brenda Cazier, 8ENF-PJ
Jack Rychecky, 8P-W-DW
John Gillis, Gary Carlson 8P-W-DW (via email)
~~Peggy Livingston, 8ENF-L~~ Tom Gutz
Lisa Kahn, 8ENF-W
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Sent To	Henry Gutz, Commissioner
Street, or PO 1	Daggett County
City, St	PO Box 219
	Manila, UT 84046

PS Form 3800, June 2002 See Reverse for Instructions