



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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

Ref: 8ENF-L

SEP 22 2011

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ron and Jodi Newkirk, Owners  
Arlington Outpost  
Arlington Route, HC 64  
P.O. Box 95  
McFadden, Wyoming 82083

Re: Complaint and Notice of Opportunity for Hearing  
In the Matter of Ron and Jodi Newkirk (Owners), Arlington Outpost Public Water System  
Docket No. **SDWA-08-2011-0075**

Dear Mr. and Mrs. Newkirk:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" filed against you under section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300g-3. The U.S. Environmental Protection Agency alleges in the complaint that you failed to comply with an Administrative Order issued on June 16, 2009, under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), for alleged violations of the SDWA and the National Primary Drinking Water Regulations (NPDWRs) at the Arlington Outpost public water system. The violations are specifically set out in the complaint.

By law, you have 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 you do not respond 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 your answer you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings.

Whether or not you request a hearing, you or your designated representatives may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty.

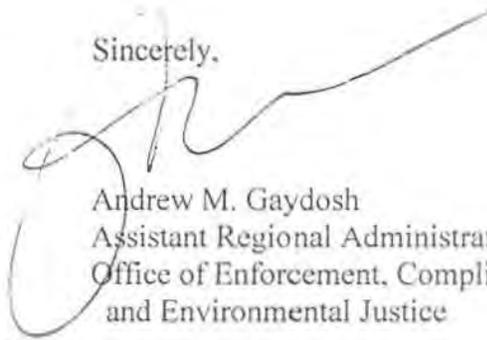
The EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. The issuance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

A request for an informal conference does not extend the 30-day period during which you 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. Please note that if you do not file an answer, you may be subject to a default order requiring payment of the full penalty proposed in the complaint, even if you have requested an informal conference.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kimberley Pardue-Welch, Environmental Protection Specialist, who can be reached at 800-227-8917 extension 6983, and Amy Swanson, Enforcement Attorney, who can be reached at 800-227-8917 extension 6906.

We urge your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew M. Gaydosh", is written over the typed name and title.

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

Enclosures

1. Administrative Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice (Complainant's Exhibit 1)
3. Administrative Order (Complainant's Exhibit 2)
4. Violation of Administrative Order letter (Complainant's Exhibit 3)
5. 2<sup>nd</sup> Violation of Administrative Order letter (Complainant's Exhibit 4)

cc: Tina Artemis, Regional Hearing Clerk  
WY DEQ/DOH (via email)

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY 2011 SEP 22 PM 12:32  
REGION 8

EPA REGION VIII  
2011 SEP 22 PM 12:32

In the Matter of:	)	Docket No. <b>SDWA-08-2011-0075</b>
	)	
Ron and Jodi Newkirk, Owners	)	<b>COMPLAINT AND NOTICE OF</b>
Arlington Outpost Public Water System	)	<b>OPPORTUNITY FOR HEARING</b>
McFadden, WY	)	
PWS ID #WY5600068	)	
	)	
Respondents.	)	

COMPLAINT

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

The Complainant in this action is the Assistant Regional Administrator for the Office of Enforcement, Compliance, and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is governed by 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 (Consolidated Rules) set forth at 40 C.F.R. part 22 (Complainant's Exhibit 1).

## GENERAL ALLEGATIONS

1. The following general allegations apply to and are incorporated into each of the counts alleged in this Complaint:

2. Ron and Jodi Newkirk (Respondents) are individuals and therefore "persons" within the meaning of section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.

3. Respondents own and/or operate a system, the Arlington Outpost public water system (system), located in Carbon County, Wyoming, for the provision to the public of piped water for human consumption.

4. The system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is therefore a "public water system" within the meaning of section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and a "non community water system" as that term is defined in section 1401(16) of the SDWA, 42 U.S.C. § 300f(16), and 40 C.F.R. § 141.2.

5. Respondents own and/or operate a public water system and therefore are "suppliers 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. Respondents are therefore subject to the requirements of part B of the SDWA, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. part 141.

6. Respondents operate a system that is supplied solely by a ground water source consisting of one well. The system serves approximately 100 persons per day from May to September each year through 19 service connections.

7. On June 16, 2009, EPA issued an Administrative Order (Order) to the Respondents pursuant to section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1), citing violations of the National Primary Drinking Water Regulations (NPDWRs) (40 C.F.R. part 141). A copy of the Order is attached to and incorporated in this Complaint as Complainant's Exhibit 2.

8. The Order required Respondents to achieve compliance with the NPDWRs that EPA alleged Respondents violated including, but not limited to, 1) monitor the water for total coliform during the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of each year and report results to EPA within 10 days following the end of the monitoring period. Report any violation of the total coliform monitoring requirements to EPA within 10 days of discovery; 2) monitor the system's water annually for nitrate and report results to EPA within 10 days following the month in which the samples were received; 3) notify the public of NPDWR violations; and 4) report any violations of the NPDWRs (except where a different reporting period is specified) to EPA within 48 hours.

9. On November 22, 2010, EPA sent Respondents a "Violation of Administrative Order" letter citing the following noncompliance by Respondents with the Order and the NPDWRs: 1) failure to monitor for total coliform bacteria during the 3<sup>rd</sup> quarter of 2010; and 2) failure to report to EPA the 3<sup>rd</sup> quarter 2010 total coliform monitoring violation within 10 days of learning of the violation. A copy of EPA's November 22, 2010 letter is attached to and incorporated in this Complaint as Complainant's Exhibit 3.

10. On February 28, 2011, EPA sent Respondents a "2<sup>nd</sup> Violation of Administrative Order" letter citing the following noncompliance by Respondents with the Order and the

NPDWRs: 1) failure to monitor the system's water for nitrate for 2010 and 2) failure to report to EPA the failure to monitor nitrate violation within 48 hours. A copy of EPA's February 28, 2011 letter is attached to and incorporated in this Complaint as Complainant's Exhibit 3.

11. Pursuant to section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), and 40 C.F.R. part 19, the Administrator may assess an administrative civil penalty not to exceed \$32,500 for each day of violation occurring after January 12, 2009, whenever the Administrator determines that any person has violated, or fails or refuses to comply with, an order under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g).

## VIOLATIONS

### **Count I**

#### **Failure to Monitor for Total Coliform Bacteria**

12. 40 C.F.R. § 141.21 requires public water systems to monitor the water at least once per quarter to determine compliance with the Maximum Contaminant Level (MCL) for total coliform bacteria as stated in 40 C.F.R. § 141.63.

13. Page 2, paragraph 6 of the "Order" section of the Order requires Respondents to monitor the water quarterly for total coliform during the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of each year to determine compliance with the total coliform MCL appearing at 40 C.F.R. § 141.63(a)(2). The paragraph also requires Respondents to report total coliform monitoring violations to EPA within 10 days after learning of the violations, as required by 40 C.F.R. § 141.21(g).

14. Respondents failed to monitor the system's water for contamination by total coliform bacteria in the 3<sup>rd</sup> quarter of 2010 and 2<sup>nd</sup> quarter of 2011. Respondents also failed to

report the total coliform violations to EPA for the same time frame within 10 days after learning of the violation, in violation of the Order and 40 C.F.R. § 141.21 (g).

**Count II**  
**Failure to Monitor for Nitrate**

15. 40 C.F.R. § 141.23(d) requires public water systems to monitor annually for nitrate to determine compliance with the nitrate MCL as stated in 40 C.F.R. § 141.62.

16. Page 2, paragraph 7 of the "Order" section of the Order requires Respondents to comply with 40 C.F.R. § 141.23(d) by monitoring the system's water for nitrate as required by the drinking water regulations. The Order also requires Respondents to report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).

17. Respondents failed to monitor the system's water for nitrate for 2010, , in violation of the Order and 40 C.F.R. § 141.23(d).

**PROPOSED ADMINISTRATIVE CIVIL PENALTY**

This complaint proposes that EPA assess an administrative penalty. EPA is authorized to assess an administrative penalty according to section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B) for violation of an administrative order issued under section 1414(g)(1) of the SDWA. The amount may be up to \$32,500 (adjusted upwards for inflation from the original statutory amount of \$25,000 pursuant to 40 C.F.R. part 19).

EPA has determined the proposed penalty amount in accordance with section 1414 of the SDWA, 42 U.S.C. § 300g-3. Taking into account the seriousness of the violations, the population at risk, and other appropriate factors, including the Respondents' degree of

willfulness and/or negligence, history of non-compliance, if any, and ability to pay, as known to EPA at this time, EPA proposed to assess an administrative civil penalty of \$1,250 against the Respondents for their violations of the Order.

**TERMS OF PAYMENT FOR QUICK RESOLUTION**

If the Respondents do not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within 30 calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondents may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt. Payment shall be made by remitting a cashier's or certified check for the amount, including the name and docket number of the case, payable to the "**Environmental Protection Agency**" to:

**US checks by regular  
US postal service mail:**

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

**Federal Express, Airborne,  
Or other commercial carrier:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

**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 "D  
68010727 Environmental Protection Agency "

**Online Payment:**

WWW.PAY.GOV  
Enter sfo 1.1 in the search field

A copy of the check or wire transfer shall be simultaneously sent to:

Kimberly Pardue-Welch (8ENF-W)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Payment of the penalty in this manner does not relieve Respondents of their obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondents to the assessment of the proposed penalty and a waiver of Respondents' right to a hearing on this matter.

**OPPORTUNITY TO REQUEST A HEARING**

As provided in the SDWA, you have the right to a public hearing to contest this Complaint. If you 1) contest the factual claims made in this Complaint; 2) contest the appropriateness of the proposed penalty; and/or 3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with sections 22.15 and 22.38 of the Consolidated Rules within 30 calendar days after receipt of this Complaint. Your Answer must 1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; 2) state circumstances or arguments which are alleged to constitute grounds for defense; 3) state the facts you dispute; 4) state the basis for opposing the proposed relief; and 5) specifically request an administrative hearing, if desired. Failure to admit, deny or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

In the Matter of Ron and Jodi Newkirk, Arlington Outpost PWS  
Administrative Complaint - 7

The Answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

and a copy must be sent to the following attorney:

Amy Swanson, Enforcement Attorney  
U.S. EPA Region 8 (8ENF-L)  
1595 Wynkoop Street  
Denver, CO 80202-1129

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

### **SETTLEMENT CONFERENCE**

The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the SDWA and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Amy Swanson at (303) 312-6906. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a

settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,**  
Complainant.

Date: 9/22/11

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

Date: 9.22.2011

By:   
Amy Swanson, Enforcement Attorney  
U.S. EPA, Region 8  
1595 Wynkoop St. (8ENF-L)  
Denver, CO 80202-1129  
Telephone: 303/312-6906  
Facsimile: 303/312-6953

1st Page only  
Complainant's Ex 1

§21.13

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.



Complainant's Ep 2  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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

JUN 16 2009

Ref: 8ENF-W

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ron and Jodi Newkirk, Owners  
Arlington Outpost  
Arlington Route,  
HC 64 P.O. Box 95  
McFadden, WY 82083

Re: Administrative Order  
Arlington Outpost  
Public Water System  
Docket No. SDWA-08-2009-0049  
PWS ID #WY5600068

Dear Mr. and Mrs. Newkirk:

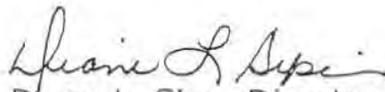
Enclosed is an Administrative Order issued by the Environmental Protection Agency (EPA) under the authority of the Safe Drinking Water Act (SDWA), 42 U.S.C. section 300f et seq. Among other things, the Order describes how you have violated the National Primary Drinking Water Regulations at the Arlington Outpost Public Water System (the system) in Carbon County, Wyoming.

The Order is effective upon the date received. Please review the Order and within 10 days provide EPA with any information you believe EPA may not have. If you comply with the Order, EPA may close the Order without further action. Failure to comply with the Order may lead to substantial civil penalties and/or a federal court injunction ordering compliance.

To submit information or request an informal conference with EPA, contact Kimberly Pardue Welch at the above address (with the mailcode 8ENF-W) or by phone at (800) 227-8917, extension 6983, or (303) 312-6983. For legal questions, the attorney assigned to this matter is Amy Swanson, who may be reached at the above address (with the mailcode 8ENF-L) or by phone at (800) 227-8917, extension 6906, or (303) 312-6906.

We urge your prompt attention to this matter.

Sincerely,



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

Enclosures

Administrative Order  
Small Business Regulatory Enforcement Fairness Act (SBREFA) Office  
of Enforcement and Compliance Assurance Information Sheet  
Public Notice

cc:

Tina Artemis, EPA Regional Hearing Clerk  
WY DEQ/DOH (via email)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

IN THE MATTER OF )  
 )  
Ron and Jodi Newkirk, Owners )  
Arlington Outpost )  
McFadden, WY, )  
 )  
Respondents. )

Docket No. SDWA 08-2009-0049

ADMINISTRATIVE ORDER

1. This Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by the Public Health Service Act (as amended by and hereafter referred to as the "Safe Drinking Water Act" or the "Act," 42 U.S.C. § 300f et seq.), as properly delegated to the undersigned officials.

2. Ron and Jodi Newkirk (Respondents) are persons which own and/or operate the Arlington Outpost public water system (the system) in Carbon County, Wyoming, which provides piped water to the public for human consumption. The system is supplied by a groundwater source consisting of one well and serves an average of approximately 100 people per day through 19 service connections from May – September each year. The system is a "non-community" water system as defined in 40 C.F.R. § 141.2. Respondents are subject to the requirements of the Act and the National Primary Drinking Water Regulations (drinking water regulations) at 40 C.F.R. part 141.

**VIOLATIONS**

1. Respondents are required to monitor the system's water at least once per quarter during the 2<sup>nd</sup> (April – June) and 3<sup>rd</sup> (July – September) quarters annually to determine compliance with the maximum contaminant level (MCL) for total coliform bacteria. 40 C.F.R. § 141.21. Respondents failed to monitor the water for contamination of total coliform bacteria during the 2<sup>nd</sup> quarter of 2005 and the 2<sup>nd</sup> quarter of 2007 and, therefore, violated this requirement.

2. Respondents are required to monitor the system's water annually for nitrate to determine compliance with the nitrate MCL. 40 C.F.R. § 141.23(d). Respondents failed to monitor the water for nitrate contamination in 2006 and 2008 and, therefore, violated this requirement.

3. The law requires Respondents to notify the public of certain violations of the drinking water regulations, in the manner specified by the regulations. 40 C.F.R. §§ 141.201 et seq. Respondents failed to notify the

public of the total coliform violations listed in paragraph 1 above and the 2006 failure to monitor nitrate violation listed in paragraph 2 above and, therefore, violated this requirement. Public notice for the 2008 failure to monitor nitrate violation is not yet past due.

4. Respondents are required to report any failure to comply with a coliform monitoring requirement to the EPA within 10 days after learning of the violation. 40 C.F.R. § 141.21(g)(2). Respondents failed to report to the EPA the total coliform monitoring violations listed in paragraph 1 above and, therefore, violated this requirement.

5. Respondents are required to report any failure to comply with any of the drinking water regulations (except where a different reporting period is specified in the drinking water regulations) to EPA within 48 hours. 40 C.F.R. § 141.31(b). Respondents failed to report the violations listed in paragraphs 2 and 3 above to EPA and, therefore, violated this requirement.

### **ORDER**

Based on the above violations, Respondents are ordered to perform the following actions upon receipt of this Order:

6. Respondents shall monitor for total coliform bacteria during the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of each year. 40 C.F.R. § 141.21. Respondents shall report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by the drinking regulations. 40 C.F.R. § 141.31(a). Any violation of total coliform monitoring requirements shall be reported to EPA within 10 days after the Respondents learn of it. 40 C.F.R. § 141.21(g)(2).

7. Respondents shall monitor the system's water for nitrate as required by the drinking water regulations. 40 C.F.R. § 141.23(d). Respondents shall report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by the drinking water regulations. 40 C.F.R. § 141.31(a).

8. Within 30 days of the effective date of this Order, Respondents must provide public notice of the violations specified in Paragraphs 1 and 2 in this Order. 40 C.F.R. §§ 141.201, 141.202 and 141.205. Respondents shall submit a copy of the public notice to EPA within ten days of completion of the public notice. 40 C.F.R. § 141.31(d). This notice shall be given by (1) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system OR (2) by mail or direct

delivery to each customer and service connection; AND (3) any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice required above, such as publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or delivery of multiple copies in central locations. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but for no less than seven days. The public water system must repeat the notice every three months as long as the violation or situation persists. Upon the effective date of this Order, Respondents shall comply with the public notification requirements following any future drinking water regulations violation. 40 C.F.R. §§ 141.201 et seq.

9. Respondents shall report any violation of the drinking water requirements (except where a different reporting period is specified in the drinking water regulations) to EPA within 48 hours. 40 C.F.R. § 141.31(b).

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

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

**GENERAL PROVISIONS**

11. This Order does not constitute a waiver, suspension, or modification of any requirement of the Act or drinking water regulations. Issuance of this Order is not an election by EPA to forgo any civil or criminal action.

12. Violation of any part of this Order, the Act, or the drinking water regulations may subject Respondents to a civil penalty of up to \$37,500 (as adjusted for inflation) per day of violation. 42 U.S.C. § 300g-3(g)(3); 40 C.F.R. part 19.

Issued this 16<sup>th</sup> day of June, 2009.

David Rochlin

David Rochlin, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Diane L. Sipe

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

# TIER 3 TEMPLATES

The pages that follow contain templates for Tier 3 violations and situations. Along with the templates are instructions, including the required method of delivery and instructions for completing individual sections of the notices. These instructions are designed to supplement Chapter 7, so you may see much of the information repeated here.

**Mandatory language on unknown risk for monitoring violations, which must be included exactly as written, is presented in *italics* (141.205(d)).**

You must also include the following italicized language in all notices, where applicable (141.205(d)). Use of this language does *not* relieve you of your obligation to take steps reasonably calculated to notify all persons served:

*Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.*

## Templates

Monitoring Violations Annual Notice Template 3-1

## Instructions for Monitoring Violations Annual Notice--Template 3-1

### Template on Reverse

Since most monitoring violations are included in Tier 3, you must provide public notice to persons served within one year after you learn of the violation (141.204(b)). Multiple monitoring violations can be serious, and your primacy agency may have more stringent requirements. Check with your primacy agency to make sure you meet its requirements.

Community systems must use one of the following (141.204(c)):

- Hand or direct delivery
- Mail, as a separate notice or included with the bill

Non-community systems must use one of the following (141.204(c)):

- Posting in conspicuous locations
- Hand delivery
- Mail

In addition, both community and non-community systems must use *another* method reasonably calculated to reach others if they would not be reached by the first method (141.204(c)). Such methods could include newspapers, e-mail, or delivery to community organizations. If you post the notice, it must remain posted until the violation is resolved. If the violation has been resolved, you must post the notice for at least one week (141.204(b)). If you mail, post, or hand deliver, print your notice on letterhead, if available.

The notice on the reverse is appropriate for insertion in an annual notice or the CCR, as long as public notification timing and delivery requirements are met (141.204(d)). You may need to modify the template for a notice for individual monitoring violations. This example presents violations in a table; however, you may write out an explanation for each violation if you wish. For any monitoring violation for volatile organic compounds (VOCs) or other groups, you may list the group name in the table, but you must provide the name of every chemical in the group on the notice, e.g., in a footnote.

You may need to modify the notice if you had any monitoring violations for which monitoring later showed a maximum contaminant level or other violation. In such cases, you should refer to the public notice you issued at that time.

Include in your notice the standard language for monitoring and testing procedure violations in *italics* (141.205(d)(2)). If you modify the notice, you may not alter this mandatory language.

### Corrective Actions

In your notice, describe corrective actions you took or are taking. Listed below are some steps commonly taken by water systems with monitoring violations. Choose the appropriate language, or develop your own:

- 1) We have since taken the required samples, as described in the last column of the table above. The samples showed we are meeting drinking water standards.
- 2) We have since taken the required samples, as described in the last column of the table above. The sample for [contaminant] exceeded the limit. [Describe corrective action; use information from public notice prepared for violating the limit.]
- 3) We plan to take the required samples soon, as described in the last column of the table above.

**After Issuing the Notice**

**Make sure to send your primacy agency a copy of each type of notice and a certification that you have met all the public notice requirements within ten days after issuing the notice (141.31(d)).**

Please send a copy of your notice and dates posted to:

Kimberly Pardue Welch  
US EPA Region 8  
8ENF-W  
1595 Wynkoop Street  
Denver, CO 80202-1129

Or, you may fax a copy to: Attn: Kimberly Pardue Welch at 303-312-7518.

**Certification of Public Notification**

I \_\_\_\_\_ certify that the attached public notification was issued from  
(PWS Operator / Responsible Party)

\_\_\_\_\_ to \_\_\_\_\_  
(Date) (Date)

The attached notice was issued by \_\_\_\_\_  
(Method of delivery)

Signature \_\_\_\_\_ Date \_\_\_\_\_

**IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER**  
**Monitoring Requirements Not Met for Arlington Outpost**

Our water system violated several drinking water standards over the past year. Even though these were not emergencies, as our customers, you have a right to know what happened and what we did to correct these situations.

We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not our drinking water meets health standards. We failed to monitor for total coliform during the 2<sup>nd</sup> quarter 2005 and 2<sup>nd</sup> quarter 2007, and we failed to monitor for nitrate during 2006 and 2008 and therefore cannot be sure of the quality of our drinking water during that time.

**What should I do?**

**There is nothing you need to do at this time.**

The table below lists the contaminant(s) we did not properly test for during the previous years, how often we are supposed to sample for [this contaminant/these contaminants] and how many samples we are supposed to take, how many samples we took, when samples should have been taken, and the date on which follow-up samples were (or will be) taken.

Contaminant	Required sampling frequency	When all samples should have been taken	When samples were or will be taken
Failure to monitor for total coliform	2 <sup>nd</sup> and 3 <sup>rd</sup> quarters each year	2 <sup>nd</sup> quarter 2005 and 2 <sup>nd</sup> quarter 2007	As required since July 2007
Failure to monitor nitrate	Annually	2006 and 2008	January 2009

**What happened? What is being done?**

For more information, please contact [name and number of contact person] \_\_\_\_\_ or [Address] \_\_\_\_\_

*Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.*

This notice is being sent to you by Arlington Outpost  
 State Water System ID#: WY5600068

Date distributed or dates posted: \_\_\_\_\_



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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

2010 NOV 22 AM 8:48

*Complainant's Ex 3*  
*Jack Kephney*  
*81-10-DW*

Ref: 8 ENF-W

NOV 22 2010

EPA REGION VIII  
ARLINGTON OUTPOST

*JR AAA*  
*BB*  
*NC*  
*WC file*

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ron and Jodi Newkirk, Owners  
Arlington Outpost  
Arlington Route,  
HC 64 P.O. Box 95  
McFadden, WY 82083

Re: Violation of Administrative Order  
Docket No. SDWA-08-2009-0049  
Arlington Outpost  
PWS ID #WY5600068

Dear Mr. and Mrs. Newkirk:

On June 16, 2009, the US Environmental Protection Agency (EPA) issued an Administrative Order (Order), Docket No. SDWA-08-2009-0049, ordering you (Respondents) as owners of the Arlington Outpost public 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 that you are in violation of the Order. Among other things, the Order included the following requirements (quoted from item 6 of the "Order" section on page 2 of the Order):

1. Respondents shall monitor for total coliform bacteria during the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of each year. 40 C.F.R. § 141.21. Respondents shall report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by the drinking regulations. 40 C.F.R. § 141.31(a). Any violation of total coliform monitoring requirements shall be reported to EPA within 10 days after the Respondents learn of it. 40 C.F.R. § 141.21(g)(2).

Respondents failed to monitor total coliform bacteria during the 3<sup>rd</sup> quarter of 2010 and failed to report the violation to EPA within 10 days after learning of it.

EPA is considering additional enforcement action as a result of the 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 Kimberly Pardue Welch at 1-800-227-8917, extension 6983 or (303) 312-6983. If you are represented by an attorney who has questions, please ask your attorney to contact Amy Swanson, Enforcement Attorney, at 1-800-227-8917, extension 6906 or (303) 312-6906 or at the following address:

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

We urge your prompt attention to this matter.

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

cc:

WY DEQ/DOH (via email)  
Tina Artemis, EPA Regional Hearing Clerk





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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

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FEB 28 2011

EPA REGION 8  
HEARING CLERK

JR OR  
JG JG  
AT 4Z  
WC-file

Ref: 8 ENF-W

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ron and Jodi Newkirk, Owners  
Arlington Outpost  
Arlington Route,  
HC 64 P.O. Box 95  
McFadden, WY 82083



Re: 2<sup>nd</sup> Violation of  
Administrative Order  
Docket No. SDWA-08-2009-0049  
Arlington Outpost  
PWS ID #WY5600068

Dear Mr. and Mrs. Newkirk:

On June 16, 2009, the US Environmental Protection Agency (EPA) issued an Administrative Order (Order), Docket No. SDWA-08-2009-0049, ordering you (Respondents) as owners of the Arlington Outpost public 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 that you are in violation of the Order. Among other things, the Order included the following requirements (quoted from items 7 and 9 of the "Order" section on pages 2 and 3 of the Order):

1. Respondents shall monitor the system's water for nitrate as required by the drinking water regulations. 40 C.F.R. § 141.23(d). Respondents shall report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by the drinking water regulations. 40 C.F.R. § 141.31(a).

Respondents failed to monitor nitrate during 2010.

2. Respondents shall report any violation of the drinking water requirements (except where a different reporting period is specified in the drinking water regulations) to EPA within 48 hours. 40 C.F.R. § 141.31(b).

Respondents failed to report the violation in item #1 to EPA within 48 hours of learning of it.

**EPA is considering additional enforcement action, including penalties as a result of the 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 Kimberly Pardue Welch at 1-800-227-8917, extension 6983 or (303) 312-6983. If you are represented by an attorney who has questions, please ask your attorney to contact Amy Swanson, Enforcement Attorney, at 1-800-227-8917, extension 6906 or (303) 312-6906 or at the following address:

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

We urge your prompt attention to this matter.



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

cc:

WY DEQ/DOH (via email)  
Tina Artemis, EPA Regional Hearing Clerk

