



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET  
DENVER, COLORADO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

2010 APR -5 AM 10:00

FILED  
EPA REGION VIII  
HEARING CLERK

Ref: 8ENF-L

APR 05 2010

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
NO. 7008 3230 0003 0730 4352

James Montuoro  
District #3 Maintenance Engineer  
Wyoming Department of Transportation  
P.O. Box 1260  
Rock Springs, WY 82902

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
NO. 7008 3230 0003 0730 4345

Tyler Willie  
District #3 Maintenance  
Wyoming Department of Transportation  
P.O. Box 1260  
Rock Springs, WY 82902

Re: Complaint and Notice of  
Opportunity for Hearing  
Docket No. **SDWA-08-2010-0029**

Dear Mr. Montuoro and Mr. Willie:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against the Wyoming Department of Transportation (the department) 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 department failed to comply with an Administrative Order, Docket No. SDWA-08-2009-0038, issued on March 9, 2009, under § 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), regarding the Evanston Port-of-Entry facility. The violations are specifically set out in the complaint.

By law, the department 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 department does not file an answer to this complaint within 30 days of receipt, a default judgment may be entered and the proposed civil penalty



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may be assessed without further proceedings. In its answer the department may request a hearing. The department 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 department has stipulated in that agreement.

Whether or not the department 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 request for an informal conference also does not extend the 30-day period during which the department 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.

As EPA representatives have discussed with you, the Administrative Order mentioned above directed the department to monitor the Port-of-Entry's water three times per month. This requirement was based on information from the department that the Port-of-Entry's public water system served approximately 3,000 people each day. However, because the department has since informed EPA that fewer than 1,000 are served, the requirement is to monitor only once per month. In the enclosed complaint, EPA is not alleging that the department violated any requirement to monitor three times per month.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kimberly Pardue-Welch, Environmental Protection Specialist, who can be reached at 800/227-8917, extension 6983, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917, extension 6858.

We urge your prompt attention to this matter.

Sincerely,



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

Enclosure

cc: Tina Artemis, Regional Hearing Clerk  
Douglas Moench, Assistant Attorney General



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8 2010 APR -5 AM 10:00

IN THE MATTER OF )

APR 5 2010  
EPA REGION VIII  
HEARING CLERK

Wyoming Department of Transportation )  
Evanston Port-of-Entry )  
Evanston, WY )

) Docket No. **SDWA-08-2010-0029**

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 Administrator of the United States Environmental Protection Agency (EPA) by § 1414(g)(3) of the Safe Drinking Water Act, as amended (the SDWA), 42 U.S.C. § 300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes the Administrator of the EPA to assess an administrative civil penalty against any person who violates, or fails or refuses to comply with, an order issued under § 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g).

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. The Wyoming Department of Transportation (Respondent) is a Wyoming state agency and therefore a “person” as that term is 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 the Evanston Port-of-Entry public water system (the system), located in Uinta County, Wyoming, for the provision to the public of piped water for human consumption.
3. The system has at least 15 service connections or regularly serves at least 25 individuals at least 60 days out of the year and is therefore a “public water system” as that term is defined in § 1401(4) of the SDWA, 42 U.S.C. § 300f (4), and 40 C.F.R. § 141.2. The system is also a “transient, non-community water system” as that term is defined in 40 C.F.R. § 141.2.
4. As an owner and/or operator of a public water system, Respondent is a “supplier of water” as that term is defined in § 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of part B of the SDWA, 42 U.S.C. § 300g *et seq.*, and its implementing regulations, 40 C.F.R. part 141 (also known as the National Primary Drinking Water Regulations or NPDWRs).

5. The source of the system's water is ground water from one well. The system serves an average of approximately 1,000 persons per day through one service connection and is operational year-round.
6. On March 9, 2009, in accordance with § 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), the EPA issued an Administrative Order, Docket No. SDWA-08-2009-0038 (the Order) to Respondent, citing violations of the NPDWRs.
7. A copy of the Order is attached to this complaint (Complainant's Exhibit 2).
8. By letter dated July 22, 2009, EPA notified the Respondent that the Respondent was in violation of the Order.
9. A copy of the July 22, 2009 letter is attached to this complaint (Complainant's Exhibit 3).
10. By letter dated December 21, 2009, EPA again notified the Respondent that the Respondent was in violation of the Order.
11. A copy of the December 21, 2009 letter is attached to this complaint (Complainant's Exhibit 4).

### COUNTS OF VIOLATION

#### **Count I**

#### **Violation of Maximum Contaminant Level for Total Coliform**

1. Paragraph 10 of the Order required Respondent to comply with the total coliform Maximum Contaminant Level (MCL) as stated in 40 C.F.R. § 141.63.

2. Respondent violated the Order by exceeding the total coliform MCL in June of 2009.

**Count II**  
**Failure to Take Daily Chlorine Residual Samples**

1. Paragraph 11 of the Order directed the Respondent to take daily samples of chlorine residual in the system's distribution system and to submit a monthly summary of the results to EPA.
2. Respondent violated the Order by failing to take daily chlorine residual samples at any time during the months of May of 2009 and June of 2009, for 14 days during September of 2009, for 18 days during October of 2009, for 28 days during November of 2009, and for 20 days during December of 2009.

**PROPOSED ADMINISTRATIVE CIVIL PENALTY**

This complaint proposes that EPA assess an administrative penalty against Respondent. EPA is authorized to assess an administrative civil 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. 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. (The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19.)

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 violation, the population at risk, and other appropriate factors, including Respondent's degree of willfulness and/or negligence, history of noncompliance, and ability to pay, as known to EPA at this time, EPA proposes to assess an administrative civil penalty of \$5,000.00 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"). For Respondent 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

Hearing Clerk will recaption the pleadings and documents in the record as necessary. (See 40 C.F.R. § 22.42.) Pursuant to such a request, subpart I will not apply to the proceedings and an Administrative Law Judge from Washington, D.C., will preside.

The answer must be in writing. An original and one copy of the answer must be sent to:

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

A copy of the answer must also be sent to the attorney whose name and address are provided in the signature block 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 the Respondent alleges to constitute grounds of defense, (2) any facts the Respondent disputes, (3) whether and on what basis the Respondent opposes the proposed penalty, and (4) whether the Respondent requests a hearing.



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

### **QUICK RESOLUTION**

Respondent may resolve this proceeding at any time by paying the penalty amount proposed in this complaint. Respondent may make this payment by (1) sending a cashier's or certified check for this amount, including the name and docket number of this case, payable to "Treasurer, United States of America," to the address below to the U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO, 63197-9000, and (2) filing a copy of the check with Tina Artemis, Region 8 Hearing Clerk (8RC), at the address on the preceding page.

If Respondent makes this payment within 30 days of receiving this complaint, it need not file an answer. Such payment waives Respondent's right to contest the allegations and to appeal any final order resulting from this complaint. See § 22.18 of the Rules of Practice for more explanation of the quick resolution process.

### **SETTLEMENT CONFERENCE**

EPA encourages exploring settlement possibilities through informal settlement negotiations. **However, 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

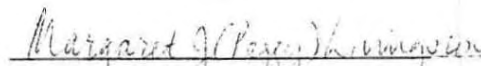
Presiding Officer. Any request for settlement negotiations, or any questions that Respondent may have regarding this complaint, should be directed to the attorney named below.

Dated this 5<sup>th</sup> day of April, 2010.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8  
Complainant.



*for* 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 to each of the following:

James Montuoro  
District #3 Maintenance Engineer  
Wyoming Department of Transportation  
P.O. Box 1260  
Rock Springs, WY 82902  
Certified mail, return receipt requested  
No. 7008 3230 0003 0730 4352

Tyler Willie  
District #3 Maintenance  
Wyoming Department of Transportation  
P.O. Box 1260  
Rock Springs, WY 82902

Certified mail, return receipt requested  
No. 7008 3230 0003 0730 4345

Date: 4/5/10

By: Judith M. McTernan  
Judith McTernan

§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.



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. 2

Ref: 8ENF-W

MAR 9 2009

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Charles Crompton, Area Supervisor  
Wyoming Department of Transportation  
Evanston Port-of-Entry  
P.O. Box 152  
Evanston, WY 82931

Re: Administrative Order  
Evanston Port-of-Entry  
Public Water System  
Docket No. SDWA-08-2009-0038  
PWS ID #WY5601217

Dear Mr. Crompton:

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 the Wyoming Department of Transportation has violated the National Primary Drinking Water Regulations at the Evanston Port-of-Entry Public Water System (the system) in Uinta 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 the Wyoming Department of Transportation complies 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.

The Order requires the system to monitor at least three times per month for coliform bacteria. As indicated in the Order, in 2008 and earlier, EPA had informed the system that it needed to monitor for coliform at least quarterly. However, EPA has learned from the system that the system serves 3,000 individuals per day, thus requiring three samples per month.

To submit information or request an informal conference with EPA, please 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 from your attorney(s), the EPA attorney assigned to this matter is Peggy Livingston, who may be reached at the above address (with the mailcode 8ENF-L) or by phone at (800) 227-8917, extension 6858 or (303) 312-6858.

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  
Order

cc:

WY DEQ/DOH (via email)  
Tina Artemis, EPA Regional Hearing Clerk  
Jim Montuoro, District Maintenance Engineer, WY DOT Dist. Office #3  
(via certified mail, return receipt requested)  
John Cox, Director, WY DOT  
(via certified mail, return receipt requested)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

IN THE MATTER OF	)	
	)	
Wyoming Department of Transportation	)	
Evanston Port-of-Entry	)	
Evanston, WY	)	ADMINISTRATIVE ORDER
	)	
Respondent	)	Docket No. <b>SDWA-08-2009-0038</b>

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. The Wyoming Department of Transportation (Respondent) is a Wyoming state agency that owns and/or operates the Evanston Port-of - Entry public water system (the system) in Uinta County, Wyoming, which provides piped water to the public for human consumption. The system is supplied by a groundwater source consisting of one well treated with chlorination. The system serves an average of approximately 3,000 people per day through 1 service connection year-round. The system is a "transient, non-community" water system as defined in 40 C.F.R. §141.2. Respondent is 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**

3. Respondent is required to monitor the system's water regularly to determine compliance with the maximum contaminant level (MCL) for total coliform bacteria, with the frequency to depend on the type of system (community/noncommunity, transient/nontransient), source of the system's water (surface water/ground water), and number of people served by the system. 40 C.F.R. §141.21.

4. In 2008 and earlier, EPA notified the system that the system was required to monitor its water for total coliform at least quarterly. Respondent failed to monitor the system's water for total coliform bacteria contamination during the 2<sup>nd</sup> quarter (April - June) of 2008 and, therefore, violated 40 C.F.R. §141.21.

5. Upon confirming that the system serves approximately 3,000 individuals per day, EPA notified the system on January 27, 2009, that the system is required to collect at least three (3) total coliform bacteria samples per month. 40 C.F.R. §141.21(a)(3)(ii).

6. If any sample of the system's water is positive for total coliform bacteria, Respondent is required to take four repeat samples within 24 hours of being notified of the positive result. 40 C.F.R. §141.21(b). If more than one sample collected during a month tests positive for such bacteria, it is a violation of the MCL. 40 C.F.R. §141.63. Respondent's sampling results in August 2008 exceeded the MCL for total coliform bacteria and, therefore, violated this requirement.

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

8. Respondent is required to report total coliform MCL violations to EPA no later than the next business day after learning of the violation. 40 C.F.R. §141.21(g)(1). Respondent failed to report to EPA the August 2008 total coliform MCL violation listed in paragraph 6 above and, therefore, violated this requirement.

### **ORDER**

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

9. Respondent shall monitor the system's water at least three times per month for total coliform bacteria. Samples are to be taken at regular intervals throughout the month. 40 C.F.R. §141.21.

10. Respondent shall comply with the total coliform MCL. 40 C.F.R. §141.63.

11. Beginning within 30 days of receipt of this Order, Respondent shall take daily samples of chlorine residual in the distribution system and submit a monthly summary to EPA. Such monitoring summaries shall be due to



EPA by the 10<sup>th</sup> day following each month. Respondent shall continue such daily chlorine residual monitoring and monthly reporting until notified by EPA that such requirements may cease.

12. If additional total coliform MCL violations occur while this Order is in effect, within 60 days of the date of the violation, Respondent shall provide EPA with a compliance plan and schedule for the system to maintain consistent compliance with the total coliform bacteria MCL. 40 C.F.R. §141.63. The plan shall include an evaluation of the effectiveness of current chlorination treatment, proposed system modifications, estimated cost of the modifications, and a schedule for completion of the project. The proposed schedule shall include specific milestone dates and a final compliance date (to be within 4 months from the date of EPA's approval of the plan and schedule). The plan and schedule must be approved by EPA before construction or modifications can commence. EPA's approval of Respondent's plan and schedule does not substitute for any State of Wyoming approvals of plans and specification that may also be required before modifications can be made to the system.

13. The plan and schedule required by paragraph 12, above, will be incorporated into this Order as enforceable requirements upon written approval by EPA.

14. Within 30 days of EPA's approval of the plan and schedule, Respondent shall submit to EPA monthly reports on the progress made in implementing the plan and schedule required by paragraph 12, above. Each monthly report is due by the 10<sup>th</sup> day of the month following the end of each calendar month.

15. Respondent must comply with the total coliform MCL at 40 C.F.R. §141.63 even if the plan as approved does not achieve compliance. If the plan fails to achieve compliance, EPA may order further steps and/or seek penalties for non-compliance.

16. Respondent shall report any total coliform MCL violation to EPA no later than the next business day after learning of the violation. 40 C.F.R. §141.21(g)(1).

17. Respondent shall report any failure to comply with coliform monitoring requirements to EPA within ten days after discovering the violation. 40 C.F.R. §141.21(g)(2).

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

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

**GENERAL PROVISIONS**

19. 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.

20. Violation of any part of this Order, the Act, or the drinking water regulations may subject Respondent 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 9<sup>th</sup> day of MARCH, 2009.



Michael Risner, Director  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice



Diane L. Sipe, Director  
Technical Water 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: 8 ENF-W

Jun 22 2009

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Charles Crompton, Area Supervisor  
Wyoming Department of Transportation  
Evanston Port-of-Entry  
P.O. Box 152  
Evanston, WY 82931

Re: Violation of Administrative Order  
Docket No. SDWA-08-2009-0038  
PWS ID #WY5601217

Dear Mr. Crompton:

On March 9, 2009, the US Environmental Protection Agency (EPA) issued an Administrative Order, Docket No. SDWA-08-2009-0038, ordering the Wyoming Department of Transportation (Respondent), as owner of the Evanston Port-of-Entry water system, to comply with various regulations issued by EPA under the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f et seq. Respondent received and signed for the Administrative Order on March 31, 2009.

Our records indicate that the Wyoming Department of Transportation is in violation of the Administrative Order (the Order). In addition, according to paragraph 12 on page 3 of the Order, Wyoming Department of Transportation is now required to submit to EPA a compliance plan and schedule for compliance with the total coliform MCL. The plan is due within 60 days of the June 2009 MCL, or by August 30, 2009. Specific requirements of the plan are cited in the Order.

Among other things, the Order included the following requirements (quoted from items 9, 10, 11 and 17 of the Order section on pages 2 and 3 of the Order):

1. Respondent shall monitor the system's water at least three times per month for total coliform bacteria. Samples are to be taken at regular intervals throughout the month. 40 C.F.R. § 141.21.

Respondent failed to collect and analyze three total coliform bacteria samples during April 2009.

2. Respondent shall comply with the total coliform maximum contaminant level (MCL). 40 C.F.R. § 141.63.

The system exceeded the total coliform MCL in June 2009.

3. Beginning within 30 days of receipt of this Order, Respondent shall take daily samples of chlorine residual in the distribution system and submit a monthly summary to EPA. Such monitoring summaries shall be due to EPA by the 10<sup>th</sup> day following each month. Respondent shall continue such daily chlorine residual monitoring and monthly reporting until notified by EPA that such requirements may cease.

Respondent has not provided EPA with chlorine residual reports for May 2009 and June 2009. EPA was notified, by Mr. Crompton, on June 30, 2009 that the chlorinator was pumping intermittently due to an inability to keep prime.

4. Respondent shall report any failure to comply with coliform monitoring requirements to EPA within ten days after discovering the violation. 40 C.F.R. § 141.21(g)(2).

Respondent failed to report the April 2009 noncompliance with the total coliform monitoring requirements to EPA within 10 days of learning of the violation.

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 Peggy Livingston, Enforcement Attorney, at 1-800-227-8917, extension 6858 or (303) 312-6858 or at the following address:

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

We urge your prompt attention to this matter.



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

cc: Jim Montuoro, District Maintenance Engineer, WY DOT Dist. Office #3  
John Cox, Director, WY DOT  
WY DEQ and DOH (via e-mail)  
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>

2009 DEC 21 PM 12:43

COMPLAINANT'S  
Docket NO. 4

FILED  
EPA REGION VIII  
HEARING CLERK

Ref: 8 ENF-W

DEC 21 2009

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Jim Montuoro, District #3 Maintenance Engineer  
WY Department of Transportation  
P.O. Box 1260  
Rock Springs, WY 82902

Tyler Wille, District #3 Maintenance  
WY Department of Transportation  
P.O. Box 1260  
Rock Springs, WY 82902

Re: 2<sup>nd</sup> Violation of  
Administrative Order  
Docket No. SDWA-08-2009-0038  
PWS ID #WY5601217

Dear Mr. Montuoro and Mr. Wille:

On March 9, 2009, the US Environmental Protection Agency (EPA) issued an Administrative Order, Docket No. SDWA-08-2009-0038, ordering the Wyoming Department of Transportation (Respondent), as owner of the Evanston Port-of-Entry 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 that the Wyoming Department of Transportation is again in violation of the Order. Among other things, the Order included the following requirements (quoted from items 9, 11 and 17 of the Order section on pages 2 and 3 of the Order):

1. Respondent shall monitor the system's water at least three times per month for total coliform bacteria. Samples are to be taken at regular intervals throughout the month. 40 C.F.R. § 141.21.

Respondent failed to collect and analyze three total coliform bacteria samples during May 2009, August 2009 and October 2009.

2. Beginning within 30 days of receipt of this Order, Respondent shall take daily samples of chlorine residual in the distribution system and submit a monthly summary to EPA. Such monitoring summaries shall be due to EPA by the 10<sup>th</sup> day following each month. Respondent shall continue such daily chlorine residual monitoring and monthly reporting until notified by EPA that such requirements may cease.

On August 11, 2009, Mr. Crompton notified EPA, on behalf of the Wyoming Department of Transportation, that a new chlorine pump would be installed and should be up and running within the next 10 days (by August 25, 2009). Respondent has not provided EPA with chlorine residual reports for September 2009 and October 2009.

3. Respondent shall report any failure to comply with coliform monitoring requirements to EPA within ten days after discovering the violation. 40 C.F.R. § 141.21(g)(2).

Respondent failed to report the May 2009, August 2009 and October 2009 noncompliance with the total coliform monitoring requirements to EPA within 10 days of learning of the violation.

**EPA is considering additional enforcement action, including assessment of penalties, as a result of the System's 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. You may also want to ask an attorney from the Wyoming Attorney General's office to contact Peggy Livingston, Enforcement Attorney, at 1-800-227-8917, extension 6858 or (303) 312-6858 or at the following address:

Peggy Livingston  
Enforcement Attorney  
U.S. EPA, Region 8 (8-ENF-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:

John Cox, Director, WY DOT  
Mr. Charles Crompton, Area Supervisor, WY DOT  
WY DEQ and DOH (via e-mail)  
Tina Artemis, EPA Regional Hearing Clerk

