

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 MAR 26 PM 2:41
REGIONAL HEARING
CLERK

IN THE MATTER OF:

George Blackhall
Professional Center
Nisky Center Suite 211
45 A & 45 B Estate Nisky
St. Thomas, VI 00802
PWS ID: VI1000085

Respondent

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

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

Docket No.
SDWA-02-2008-8403

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

I. Statutory Authority

1. This Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 1414(g)(3)(B) of the Safe Drinking Water Act ("SDWA" or "Act"), 42 U.S.C. §300g-3(g)(3)(B) and duly delegated to the Director of the Division of Enforcement and Compliance Assistance of EPA Region 2 ("Complainant").
2. Pursuant to Section 1414(g)(3)(B) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("CROP"), 40 C.F.R. Part 22, a copy of which is attached, Complainant hereby requests that a civil penalty be assessed against the Professional Center ("Respondent") for the violation of an administrative order issued pursuant to Section 1414(g) of the SDWA requiring compliance with an applicable requirement of the Act at its Professional Center public water system, located at Nisky Center Suite 211, 45 A & 45 B Estate Nisky, St. Thomas, VI 00802.

II. Findings of Violation

1. Respondent owns and/or operates the Professional Center “public water system,” within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. §300f(4), and 40 C.F.R. §141.2, located in St. Thomas, United States Virgin Islands.
2. Respondent is a “supplier of water” within the meaning of Section 1401 (5) of the SDWA, 42 U.S.C. §300f (5), and 40 C.F.R. §141.2.
3. Respondent, is a “person” as defined in Section 1401(12) of SDWA, 42 U.S.C. §300f(12), and 40 C.F.R. §141.2, and is subject to an Administrative Order issued under Section 1414(g)(1) of the SDWA, 42 U.S.C. §300g-3(g)(1).
4. The Professional Center public water system provides piped water for human consumption and regularly serves a population of at least 25 individuals, and is, therefore, a “community water system” (“CWS”) as defined by Section 1401(15) of the SDWA, 42 U.S.C. §300f(15) and 40 C.F.R. §141.2.
5. On December 7, 2000, EPA promulgated the Radionuclides Rule (40 C.F.R. §§141.25, 141.26, 141.55 and 141.66) to improve public health by reducing exposure to radionuclides in drinking water. The Radionuclides Rule establishes monitoring and compliance requirements (40 C.F.R. §141.26), establishes a Maximum Contaminant Level (MCL) for Uranium of 30 micrograms per liter (30 ug/L), and retains existing MCLs for combined radium-226/228, gross alpha particle, beta particle and photon radioactivity (40 C.F.R. §141.66). The Rule also establishes Maximum Contaminant Level Goals (MCLGs) for radionuclides in drinking water (40 C.F.R. §141.55).
6. The Virgin Islands Department of Planning and Natural Resources (“VIDPNR”) administers the Public Water Supply Supervision Program in the U.S. Virgin Islands pursuant to Section 1413 of the SDWA. The approval of primary enforcement authority from EPA to the VIDPNR was effected as of September 22, 1979. However, the VIDPNR has not yet obtained primary enforcement responsibility for the Radionuclides Rule. Therefore, as of the date of this Complaint, EPA has primary responsibility for enforcement of the Radionuclides Rule.
7. 40 C.F.R. §141.26 requires all CWSs to comply with the radionuclides monitoring.
8. 40 C.F.R. § 141.26 (a)(1) requires CWSs to conduct initial monitoring to determine compliance with 40 C.F.R. §141.66 (b)(c), and (e) by December 31, 2007. CWSs are required to sample at every entry point to the distribution system that is representative of all sources of water being used under normal operating conditions. The system must take each sample at the same sampling point unless conditions make another sampling point more representative of each source or the State has designated a distribution system location.

9. CWSs with State-approved historical monitoring data collected between June 2000 and December 8, 2003, may use this data to satisfy the initial monitoring requirements. CWSs without acceptable historical monitoring data, as defined in 40 C.F.R. §141.26(a)(2)(ii), are required to collect four (4) consecutive quarterly samples at all sampling points described in paragraph 8 above before December 31, 2007.
10. Respondent's Professional Center public water system is a CWS and, therefore, was required to comply with 40 C.F.R. § 141.26 beginning January 2007. Pursuant to 40 C.F.R. § 141.26(a)(2), Respondent was required to begin the initial monitoring for radionuclides during the first quarter of 2007 or to submit State-approved historical monitoring data collected as defined in paragraph 9 above.
11. In May 2007, the VIDPNR provided EPA with information that indicated Respondent failed to report the results of radionuclides contaminants monitoring corresponding to the first quarter of 2007, for its Professional Center public water system.
12. On July 25, 2007, EPA issued an Administrative Order ("AO"), Docket Number SDWA-02-2007-8039, requiring Respondent to submit a copy of all historical monitoring radionuclides results, collected between June 2000 and December 8, 2003, to EPA and VIDPNR within thirty (30) days after receipt of the AO.
13. If Respondent could not provide historical monitoring radionuclides data, as indicated in paragraph 12 above, Respondent was required to conduct monitoring for radionuclides contaminants and submit the results of such monitoring to EPA and VIDPNR within forty five (45) days after receipt of the AO.
14. According to EPA's records in the form of the certified mail return receipt (Article Number 7005 3110 0000 5931 9291), the AO was received and signed for by the Respondent on October 30, 2007.
15. In September 2007, the VIDPNR provided EPA with information that indicated Respondent failed to report the results of radionuclides contaminants monitoring corresponding to the second quarter of 2007, for its Professional Center public water system.

COUNT 1

16. Pursuant to 40 C.F.R. §141.26, Respondent is required to comply with the monitoring requirements of the Radionuclides Rule, either by the submittal of State-approved historical monitoring data collected between June 2000 and December 8, 2003 or by collecting four (4) consecutive quarterly samples at all sampling points before December 31, 2007.
17. Pursuant to Paragraph 13 of the AO, Respondent was required to submit a copy of all State-approved historical monitoring radionuclides results, collected between June 2000 and December 8, 2003 within thirty (30) days of receipt of the AO.

18. Pursuant to Paragraph 14 of the AO, if Respondent could not provide historical monitoring radionuclides data, Respondent was required to conduct monitoring for radionuclides contaminants and submit the results of such monitoring to EPA and VIDPNR within forty five (45) days after receipt of the AO.
19. Respondent failed to demonstrate compliance with the requirements specified in 40 C.F.R. §141.26 by the date specified in the AO, and is therefore, in violation of Paragraphs 13 and 14 of the AO.

III. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 1414(g)(3)(b) of the Act, 42 U.S.C. §300g-3(g)(3)(B), EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a penalty of **Six Thousand Dollars (\$6,000.00)**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 1414(b) of the Act, 42 U.S.C. §300g-3(g)(b). EPA has taken into account the seriousness of the violation(s), the population at risk and other appropriate factors, in light of information currently available to it.

IV. Procedures Governing This Administrative Litigation

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

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

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

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

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

B. Opportunity to Request a Hearing

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

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

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

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

V. Informal Settlement Conference

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. §

22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

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

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

Melva J. Hayden, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3230

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

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

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

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminates

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

VI. Resolution of this Proceeding without Hearing or Conference

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

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

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

VII. Filing of Documents

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

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

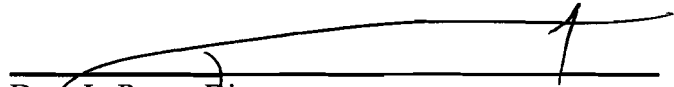
2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Melva J. Hayden, Esq., Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3230

VIII. General Provisions

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), will affect Respondent's continuing obligation to comply with the Act, and with regulations promulgated thereunder.

ISSUED THIS 21st DAY OF MARCH, 2008.



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

To: Mr. George Blackhall
Professional Center
Nisky Center Suite 211
45 A & 45 B Estate Nisky
St. Thomas, VI 00802