

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2012 FEB 23 AM 8:21

IN THE MATTER OF)

Rick Nelson, Owner)
Fort Devils Tower)
601 Highway 24)
Devils Tower, Wyoming 82714)

Respondent,)
_____)

Docket No. SDWA-08-2011-0021

**COMPLAINANT'S
MOTION FOR DEFAULT**

EPA Region 8, the Complainant in this matter, requests a default order pursuant to 40 C.F.R. § 22.17 against Rick Nelson, who owns and/or operates the Fort Devils Tower public water system, located in Devils Tower, Wyoming. Complainant seeks a default order for Counts I, II and III of the Complaint in this action for failure to monitor for total coliform bacteria, untimely reporting of monitoring results and failure to report coliform monitoring violations to EPA. Complainant requests that a default order in the amount of \$2000 be entered against Respondent. This request for a default order is based on Respondent's failure to file a timely answer to the complaint which was filed on February 14, 2011. Pursuant to 40 C.F.R. § 22.15 failure of respondent to answer the complaint within 30 days after service of the complaint, constitutes an admission of the allegations set forth in the complaint. Please see the accompanying Memorandum in Support of Complainant's Motion for Default for more details in support of this motion.

Respectfully submitted,



Jean Belille
Enforcement Attorney
Office of Enforcement, Compliance
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202
Telephone Number: (303) 312-6556
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Certificate of Service

The undersigned certifies that on the date indicated below, copies of the preceding Complainant's Motion for Default and the accompanying Memorandum in Support of Complainant's Motion for Default were sent or delivered to each of the following:

One copy to:

Rick Nelson
Fort Devils Tower
601 Highway 24
Devils Tower, WY 82714
Certified Mail, Return Receipt No.
7009-3410-0000-2597-6919

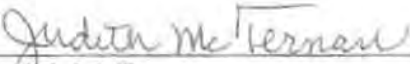
Original and one copy hand delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

One copy hand delivered to:

Hon. Elyana R. Sutin
Regional Judicial Officer
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

Dated: 2/23/2012


Judith McTernan

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2012 FEB 23 AM 8:36

IN THE MATTER OF)

Rick Nelson, Owner)
Fort Devils Tower)
601 Highway 24)
Devils Tower, Wyoming)

Respondent.)

Docket No. SDWA-08-2011-0021

**MEMORANDUM IN SUPPORT OF
MOTION FOR DEFAULT**

FILED
EPA REGION VIII
FEBRUARY 23 2012

I. INTRODUCTION

This memorandum is filed in support of a motion for default filed by the United States Environmental Protection Agency (EPA), in accordance with 40 C.F.R. Part 22 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits. As set forth below, the respondent in this action has failed to answer the Complaint that EPA filed on February 14, 2011 (Exhibit 1); was issued an Administrative Order on September 24, 2003, and was notified of his failure to comply with the terms of this order on May 24, 2005 (Violation 1), April 6, 2010 (Violation 2), September 27, 2010 (Violation 3); and has continued as recently as November 22, 2010 (Violation 4) to fail to comply with the requirements at issue in this proceeding.

II. BACKGROUND

Respondent Rick Nelson, (Respondent) owns and operates a public water supply system (the System) in Crook County, Wyoming. The System is supplied by piped water for human consumption. 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 a "public water system" as that term is defined in section 1401(4) of the Safe Drinking Water Act (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 the term is defined in 40 C.F.R. §141.2. On September 24, 2003, EPA

issued an Administrative Order (the Order)¹ to Fort Devils Tower, alleging that Fort Devils Tower had violated provisions of the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. part 141.

The Order directed Respondent to (1) monitor for nitrate within 30 days of the order and to monitor annually thereafter, (2) report analytical results to EPA within the first 10 day following the month in which the sample results are received, (3) comply with the total coliform monitoring requirements, (4) to report analytical results to EPA within the first 10 days following the month in which sample results were received, (5) comply with the public notice requirements by providing public notice of the failure to monitor for nitrate and the failure to monitor for contamination by total coliform bacteria, (6) provide EPA a copy of the public notice within 10 days of any future violation, (7) report to EPA any failure to comply with any National Primary Drinking Water Regulation within 48 hours, (8) report any failure to comply with coliform monitoring requirements within 10 days after the system discovers the violation.

On May 24, 2005, EPA sent a Letter to Rick Nelson, stating that he was in violation of the Administrative Order by:

- failing to monitor for total coliform bacteria during the third (July-September) quarter in 2003 and 2004, and
- failing to monitor for nitrate in 2003 and 2004, and
- failing to provide public notice of the failure to monitor for contamination by total coliform during the second (April-June) quarter in 2002, the third (July-September) quarter in 2002, the third (July-September) quarter in 2003, and failure to monitor nitrate in 2002.

On April 6, 2010 a second letter was sent to Rick Nelson stating that he was in violation of the 2003 Administrative Order because of:

¹ See Administrative Order, Docket No. SDWA-08-2003-0062, filed with the Regional Hearing Clerk on September 24, 2003. A copy of the Order is also Exhibit 2 to both the Complaint and Notice of Opportunity for Hearing, filed on February 14, 2011, with the Regional Hearing Clerk in this matter.

- failing to monitor the system's water for total coliform bacteria during the fourth (October-December) quarter of 2009, and
- failing to report to EPA the failure to monitor the system's water for total coliform bacteria during the fourth quarter of 2009.

On September 27, 2010 a third violation letter was sent to Rick Nelson stating that he was in violation of the 2003 Administrative Order because of:

- failing to monitor the system's water for total coliform bacteria during the second (April-June) quarter of 2010, and
- failing to report to EPA the failure to monitor the system's water for total coliform bacteria during the second quarter of 2010.

Finally, on November 22, 2010, a fourth violation letter was sent to Rick Nelson stating that he was in violation of the 2003 Administrative Order because of:

- failing to monitor the system's water for total coliform bacteria during the third (July-September) quarter of 2010, and
- failing to report to EPA the failure to monitor the system's water for total coliform bacteria during the third quarter of 2010.

On February 14, 2011, EPA issued a Complaint and Notice of Opportunity (Complaint) for hearing to Fort Devils Tower under, Section 1414 (g) (3) of the SDWA which authorizes the Administrator of 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 specific violations alleged in the Complaint, which are the violations that are the subject of this default order, were as follows:

- failing to monitor the system's water for total coliform during the fourth quarter of 2009 as required by 40 C.F.R. § 141.21.
- failing to report the results of coliform monitoring for May of 2010, June of 2010 and September of 2010 by the tenth day of the following month. Respondent failed to provide EPA with the results of the monitoring for these months until December 27, 2010 (for the May of 2010 sample), November 15, 2010 (for the June of 2010 sample), and December 22, 2010 (for the September of 2010 sample).
- failing to report to EPA that no total coliform sampling was done in the fourth quarter of 2009.

III. STANDARD FOR FINDING DEFAULT

A respondent may be found in default upon failure to file a timely answer to an administrative complaint. A respondent's default constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of the respondent's right to contest such factual allegations. 40 C.F.R. §22.17(a).

A motion for default may seek resolution of all or part of the proceeding. Where the EPA requests a penalty in a motion for default, EPA must specify the amount of, and explain the legal and factual basis for, the penalty it seeks. 40 C.F.R. §22.17(b).

When a Presiding Officer finds that a default has occurred, s/he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. The relief proposed in a complaint or motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the particular statute authorizing the proceeding at issue. 40 C.F.R. §22.17(c).

IV. ARGUMENT

A. Respondent Failed to File an Answer

According to 40 C.F.R. §22.15(a), a respondent must file an answer to a complaint with the Regional Hearing Clerk within 30 days after service of the complaint.

In this instance, the precise date of service of the Complaint is not known, because the signature on the return receipt card accompanying the Complaint was not dated. However, the card was signed by Richard Nelson, AKA Rick Nelson owner of Fort Devils Tower and it was filed with the Regional Hearing Clerk on April 26, 2011. The receipt cards number is 7009 3410 0000 2592 7379. Assuming for the sake of argument that the date of service is the date that the return receipt card was filed with the Regional Hearing Clerk and not an earlier date when the card was indeed received, the deadline for Rick Nelson to have filed an answer was no later than May 26, 2011. However, Mr. Nelson did not file an answer by that date.

B. *Prima Facie* Case of Liability

A respondent's default constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of that respondent's right to contest the complaint's factual allegations. 40 C.F.R. §22.17(a); see also In the Matter of: Alvin Raber, Jr., and Water Enterprises Northwest, Inc., 2004 EPA RJO LEXIS 188 (July 22, 2004, RJO Alfred C. Smith).

To prove a *prima facie* case of liability in this matter, EPA must prove that Rick Nelson is a person that owns and/or operates a public water supply system, that Rick Nelson was issued an administrative order under section 1414(g) of the Act, 42 U.S.C. §300g-3(g), and that Rick Nelson violated that order.

The facts alleged in the Complaint establish liability. By failing to answer the Complaint, Rick Nelson has admitted all factual allegations in the Complaint, including the following:

1. Rick Nelson (Respondent) is an individual and therefore a "person" as that term is defined in §1401 (12) of the SDWA, (Act) 42 U.S.C. §300f(12), and 40 C.F.R. §141.2.(Par. 1, Complaint.)

2. Respondent owns and/or operates the Fort Devils Tower public water system (System), located in Crook County, Wyoming, for the provision to the public of piped water for human consumption. (Par. 2, Complaint.)
3. The System has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. (Par. 3, Complaint.)
4. The System is also a “transient, non-community water system” as the term is defined in the Act. (Par. 3, Complaint.)
5. As the owner and/or operator of a public water system, Respondent is a “supplier of water” as the term is defined in the Act, and is therefore subject to the requirements of part B of the Act, and its implementing regulations 40 C.F.R. part 141 (also known as the National Primary Drinking Water Regulations or NPDWRs). (Par. 4, Complaint.)
6. The source of the System’s water is ground water from one well. The system is open year round. It serves an average of approximately 150 persons per day through 26 service connections from May to mid-September. It serves approximately 50 people per day in October and 30 per day in November. During January through March of each year, the system serves an average of only three people per day. (Par. 5, Complaint.)
7. Respondent is required to monitor the system’s water for total coliform bacteria at least once per quarter. EPA has notified the Respondent that he must take at one sample each quarter during the second (April-June), third (July-September), and fourth (October-December) quarters of each year. (Par. 6, Complaint.)
8. On September 24, 2003, in accordance with § 1414 (g) of the SDWA, 42 U.S.C. § 300g-3 (g), EPA issued an Administrative Order, Docket No. SDWA-08-2003-0062 (the Order) to Respondent citing violations of the NPDWRs.

9. Respondent failed to monitor for total coliform bacteria during the fourth quarter of 2009 as required by the Order and 40 C.F.R. § 141.21. (Count I of Complaint.)

10. Respondent failed to report all analytical results for total coliform to EPA for May of 2010, June of 2010 and September 2010 by the tenth day of the following month within in which sample results were received as required by the Order and 40 C.F.R. § 141.31(a). Respondent did not provide EPA with the results of monitoring for these months until December 27, 2010 (for the May of 2010 sample), November 15, 2010 (for the June of 2010 sample), and December 22, 2010 (for the September of 2010 sample). (Count II of Complaint.)

11. Respondent failed to report to EPA that no total coliform sampling was done in the fourth quarter of 2009 as required by the Order and 40 C.F.R. § 141.21(g)(2). (Count III of Complaint.)

Based on Rick Nelson's uncontested factual evidence, the following *prima facie* case has been established: the System, is open year round, serves an average of approximately 150 persons per day through 26 service connections from May to mid-September, serves approximately 50 people per day in October and 30 per day in November and during January through March of each year, the system serves an average of only three people per day; is 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; and the system is also a "transient, non-community water system" as the term is defined in 40 C.F.R. §141.2; Rick Nelson is an individual, and therefore is a "person" as that word is defined in section 1401(12) of the SDWA, 42 U.S.C. §300f(12); Rick

Nelson owns and/or operates a public water system; and 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 and is therefore is 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 NPDWRs; Rick Nelson has violated an order issued under section 1414(g) of the SDWA, 42 U.S.C. §300g-3(g); and Rick Nelson is therefore liable to EPA for a civil administrative penalty pursuant to section 1414(g)(3) of the SDWA, 42 U.S.C. §300g-3(g)(3).

C. Grounds in Support of the Requested Penalty

EPA has proposed a penalty of \$2,000. According to 40 C.F.R. §22.17(c), the relief proposed in a complaint or motion for default should be ordered unless the relief requested is clearly inconsistent with the record of the proceeding or the particular statute authorizing the proceeding at issue. As demonstrated below, the requested penalty is consistent with the record in this proceeding, the SDWA, and legal precedent.

Section 1414(g)(3) of the SDWA, 42 U.S.C. §300g-3(g)(3), authorizes EPA to assess a civil administrative penalty of up to \$25,000 for violation of an order issued under section 1414(g) of the SDWA, 42 U.S.C. §300g-3(g). This amount has been adjusted for inflation to \$27,500, as provided in 40 C.F.R. part 19, for violations occurring March 16, 2004, through January 12, 2009, and to \$32,500 for violations occurring after January 12, 2009. (See 74 Fed. Reg. 626, 628 (January 12, 2009).)

For a judicial enforcement action, a court is to consider the seriousness of the violation, the population at risk, and other appropriate factors when imposing civil penalties, according to section 1414(b) of the SDWA, 42 U.S.C. §300g-3(b). For assessing administrative penalties, the SDWA does not specify factors for EPA to consider.

Various Administrative Law Judges have held that it is appropriate to consider the statutory penalty factors in administrative penalty cases. See, *e.g.*, In the Matter of Sunbeam Water Company, Inc. et al., 1999 EPA ALJ LEXIS 79, 1999 WL 1013077 (ALJ Pearlstein, October 28, 1999); In the Matter of Paul Durham, d/b/a Windmill Hill Estates Water System, 1997 EPA ALJ LEXIS 107, 1997 WL 273142, Docket No. [SDWA]-C930036 (ALJ Biro, April 14, 1997); In the Matter of: Anthony J. Taylor, Andover Water Corporation, 1992 EPA ALJ LEXIS 713, 1992 WL 293140, Docket No. PWS-NJ-CFP-03 (ALJ Yost, August 14, 1992).

EPA has not developed a policy for proposing penalty amounts in public water supply enforcement actions. Sunbeam, *supra*. Therefore, EPA presents the following analysis of the factors set forth in section 1414(b) of the SDWA, 42 U.S.C. §300g-3(b).

1. Population At Risk

As mentioned above, the System serves a population of approximately 150 individuals per day from May to mid-September, 50 persons per day in October and 30 per day in November, during January through March, the system serves an average of only three people per day. In at least three cases involving comparable or lower populations, Administrative Law Judges have assessed a penalty of \$5,000, substantially more than what EPA has proposed in this case. See, *e.g.*, In the Matter of: Board of Directors of Rural Aqueduct, et al., 2005 EPA RJO LEXIS 340, Docket No. SDWA-02-2003-8264 (RJO Helen S. Ferrara, June 16, 2005), where the system served 120 individuals; Taylor, *supra*, where the system served 160 individuals; and Durham, *supra*, where the Administrative Law Judge found no support for the allegation that the system served 37 persons, instead finding that “all that can be concluded is that at least 25 persons would be potentially exposed to the risk.” 1997 EPA ALJ LEXIS 107, *47.

2. Seriousness of Violations

Mr. Nelson's longstanding failures to monitor for coliform and to report its violations to the EPA are serious violations. Because Mr. Nelson consistently failed to provide the EPA with results of coliform testing or even to alert the EPA that it had not performed the required sampling, EPA was left without knowing whether Mr. Nelson's customers were drinking safe water or the extent to which the customers were at risk of contracting diseases from coliform or other pathogens in their drinking water.

For failures to monitor public water supplies, Administrative Law Judges have assessed penalties of at least several thousand dollars.

In Durham, *supra*, where a public water supply system had failed to sample for coliform bacteria for eleven months, and EPA sought \$5,000, the judge held that EPA's calculations had understated the seriousness of the violations:

Expert testimony at the hearing indicated that coliform analysis involves testing for the presence of coliform bacteria, which are bacteria which come from the gastrointestinal tracts of warm-blooded animals. Such bacteria also exist in the environment. [The project manager for EPA Region 6's Drinking Water Enforcement Program] indicated that some coliform organisms can, by themselves, be very dangerous to the environment. [He] indicated that some coliform organisms can, by themselves, be very dangerous to the health of persons with compromised immune systems. [citation omitted] However, coliform is mainly used as a secondary pathogen, to suggest the presence of other organisms dangerous to the health of humans. [citation omitted] Exposure to such organisms can result in gastrointestinal diseases, nausea, vomiting, dizziness, and convey illnesses like hepatitis, typhoid, giardiasis and cryptosporidiosis. [citation omitted] Mr. Nelson's failure to have the water analyzed for months at a time left the health of men,

women, and children drinking it exposed to these conditions. [1997 EPA ALJ LEXIS 107, *44-45]

In Durham, although coliform had been detected in the system, no evidence was presented of any complaints about anyone becoming sick from drinking the system's water. Nonetheless, the Administrative Law Judge found that the system's failures to analyze coliform samples and report results were serious violations:

"[The violations] directly undermin[ed] the purpose of the SDWA enforcement program, which is the foundation of the EPA's ability to generally protect human health by maintaining water potability. Without the results of periodic water analysis the Agency cannot effectively exercise its power under the [Safe Drinking Water] Act to take measure to prevent the consumption of contaminated water and demand water improvement efforts." [1997 EPA ALJ LEXIS 107, *47]

Similarly, in In Re: Village of Glendora, 1992 EPA ALJ LEXIS 712 (ALJ Yost, May 20, 1992), another Administrative Law Judge observed:

Without adequate monitoring and monitoring data supplied by [Glendora], EPA is unable to determine whether [Glendora] is supplying water to the public that does not exceed the maximum contaminant levels established by national primary drinking water regulations. [Glendora's] violations of the AO as they relate to coliform bacteria testing analysis, reporting and public notification are grave. [1992 EPA ALJ LEXIS 712, *11-12]

3. Other Appropriate Factors

As "other appropriate factors" in public water supply cases, Administrative Law Judges have considered the factors set forth in EPA General Enforcement Policy GM-21 (Exhibit 2 in this Memorandum). Sunbeam, *supra*, 1999 EPA ALJ LEXIS 79, *24; Glendora, *supra*, 1992 EPA ALJ LEXIS 712, *9. According to GM-21, the steps in calculating a penalty are:

- first, calculate a preliminary deterrence amount, consisting of:
 - economic benefit, and
 - a gravity component
- second, to apply the following adjustment factors to compute an initial penalty target figure:
 - degree of cooperation / noncooperation
 - degree of willfulness and/or negligence
 - history of noncompliance
 - ability to pay (optional)
 - other unique factors
- third, to adjust the initial penalty target figure after negotiations have begun.

a. Economic Benefit

The amount of money that Mr. Nelson saved by failing to monitor for coliform and provide public notice was probably minimal. In similar cases, administrative judges have found relatively low amounts of economic benefit for these types of violations. See, e.g., *Glendora, supra*, finding an economic benefit of \$25 for each month of failing to sample for coliform bacteria. Thus, for the five monitoring violations alleged in the Complaint, a conservative estimate of economic benefit is therefore \$125. The estimated economic benefit for Mr. Nelson's failures to provide public notice of its failures to monitor is likewise minimal.

According to GM-21, EPA retains discretion not to calculate economic benefit where the amount is likely to be less than \$10,000. (See GM-21, page 11.) A relatively small economic benefit should not preclude a penalty. See, for example, *In the Matter of: Melotz Trucking, Inc.*, Docket No. CWA-08-2005-0033, 2006

EPA RJO LEXIS 238 (RJO Sutin, July 9, 2006), in which a penalty of \$5,000 was assessed on a motion for default in a Clean Water Act case, where EPA did not present calculations of economic benefit and the Regional Judicial Officer concluded that if there was any economic benefit for the violation, it was negligible.

b. Degree of Cooperation / Noncooperation

Mr. Nelson has shown no cooperation with EPA. Although Mr. Nelson has been given repeated opportunities to answer the Complaint and has been sent many Notice of Violations and to contact EPA to initiate settlement negotiations, Mr. Nelson has failed to do so.

c. Degree of Willfulness or Negligence

Mr. Nelson's violations persisted after he received no fewer than four notices of violation from EPA, after he received the Order, and even after EPA initiated this proceeding. As demonstrated by Attachments 2, 3, 4 and 5 to this Memorandum, Mr. Nelson failed to submit coliform monitoring results for May 19, 2005, April 6, 2010, September 27, 2010 and November 22, 2010 to the EPA.

Mr. Nelson's continued violations in the face of frequent notices from the EPA demonstrate that Mr. Nelson has acted knowingly and willfully in ignoring his responsibilities to meet the drinking water requirements and in protecting the public's health.

In Glendora, *supra*, where the respondent had failed to respond to an EPA order to bring its system into compliance and where the state, had notified the respondent over a period of years of its violations, a penalty of \$5,000 was assessed. It is therefore conservative to assess a \$2,000 penalty in this case.

d. History of Noncompliance

As demonstrated by the EPA's notices of violation, Mr. Nelson's violations had been occurring for over eight years after the EPA issued its Administrative Order. This factor supports a substantial penalty.

e. Ability to Pay

Where a respondent does not raise the claim that it is unable to pay a proposed penalty, there is no reason for a court to consider it. *Taylor, supra*, 1992 EPA ALJ LEXIS 713, *9. Having failed to respond to the Complaint, Mr. Nelson has not in a timely manner raised the possibility of being unable to pay the proposed penalty. Thus, there is no reason for the penalty to be reduced for this factor.

f. Other Unique Circumstances

The EPA has spent considerable resources attempting to bring Mr. Nelson into compliance and to obtain an answer in this action. Mr. Nelson's noncompliance has placed an inordinately high burden on the federal regulatory agency. To deter similar violations by other systems in the future, a substantial penalty is warranted. As recently as July of 2011 settlement negotiations were in progress and a consent agreement was prepared and sent to Mr. Nelson, which was never returned, even though Mr. Nelson agreed to send the signed consent agreement in, during a call on September 19, 2011.

V. CONCLUSION

Mr. Nelson failed to answer EPA's Complaint. For the reasons set forth above, EPA requests that the Presiding Officer find Mr. Rick Nelson in default and issue a default order assessing a penalty of \$2,000.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jean Belille".

Jean Belille, Enforcement Attorney
Office of Enforcement, Compliance
and Environmental Justice

U.S. EPA Region 8

1595 Wynkoop Street

Denver, Colorado 80202

Telephone Number: (303) 312-6556

Facsimile Number: (303) 312-7519

Exhibits:

1. February 14, 2011 Complaint and Notice of Opportunity for Hearing
- 2.. EPA General Enforcement Policy GM-21, February 16, 1984.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 FEB 14 AM 10:39

FILED
EPA REGION VIII
HEADING CLERK

IN THE MATTER OF)
)
)
Rick Nelson, Owner)
Fort Devils Tower)
601 Highway 24)
Devils Tower, Wyoming 82714)

Respondent,)

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

) Docket No. SDWA-08-2011-0021
)
) COMPLAINT AND NOTICE OF
) OPPORTUNITY FOR HEARING

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 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. Rick Nelson (Respondent) is an individual 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 Fort Devils Tower public water system (the system), located in Crook 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 is open year-round. It serves an average of approximately 150 persons per day through 26 service connections from May to mid-September. It serves approximately 50 people per day in October and 30 per day in November. During January through March of each year, the system serves an average of only three people per day.
6. Respondent is required by 40 C.F.R. § 141.21 to monitor the system's water for total coliform bacteria at least once per quarter. EPA has notified the Respondent that he must take one sample each quarter during the second (April - June), third (July - September), and fourth (October - December) quarters of each year.
7. On September 24, 2003, in accordance with § 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), EPA issued an Administrative Order, Docket No. SDWA-08-2003-0062 (the Order) to Respondent, citing violations of the NPDWRs. A copy of the Order is attached to this complaint (Complainant's Exhibit 2).
8. By letter dated May 19, 2005, EPA mailed a letter to notify Respondent that he was in violation of the Order. Respondent refused delivery of that letter. A copy of that letter is attached to this complaint (Complainant's Exhibit 3).
9. In 2006, EPA was notified by Crook County that Respondent had sold the system.
10. In June of 2009, Respondent notified EPA that he had reacquired the system.

11. By letter dated April 6, 2010, EPA again notified Respondent that he was in violation of the Order. A copy of that letter is attached to this complaint (Complainant's Exhibit 4).
12. By letter dated September 27, 2010, EPA again notified Respondent that he was in violation of the Order. A copy of that letter is attached to this complaint (Complainant's Exhibit 5).
13. By letter dated November 22, 2010, EPA again notified Respondent that he was in violation of the Order. A copy of that letter is attached to this complaint (Complainant's Exhibit 6).

COUNTS OF VIOLATION

Count I

Failure to Monitor for Total Coliform Bacteria

1. The Order, on page 5, in Paragraph 2 of the "Order" section, required Respondent to monitor the system's water for total coliform as required by 40 C.F.R. § 141.21.
2. Respondent violated the Order by failing to monitor the system's water for total coliform bacteria during the fourth quarter of 2009.

Count II

Untimely Reporting of Monitoring Results

1. The Order, on page 5, in Paragraph 2 of the "Order" section, required Respondent to report all analytical results for total coliform to EPA within the first ten days following the month in which sample results were received, as required by 40 C.F.R. § 141.31(a).

2. Respondent violated the Order by failing to report the results of coliform monitoring for May of 2010, June of 2010, and September of 2010 by the tenth day of the following month. Respondent did not provide EPA with the results of monitoring for these months until December 27, 2010 (for the May of 2010 sample), November 15, 2010 (for the June of 2010 sample), and December 22, 2010 (for the September of 2010 sample).

Count III

Failure to Report Coliform Monitoring Violations to EPA

1. The Order, on page 7, in Paragraph 5 of the "Order" section, required Respondent to comply with 40 C.F.R. § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R. § 141.21 to EPA within ten days after the system's discovery of the violation.
2. Respondent violated the Order by failing to report to EPA that no total coliform sampling was done in the fourth quarter 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 \$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 \$2,000.00 against Respondent for his 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

will re-caption 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 Respondent alleges to constitute grounds of defense, (2) any facts Respondent disputes, (3) whether and on what basis Respondent opposes the proposed penalty, and (4) whether Respondent 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

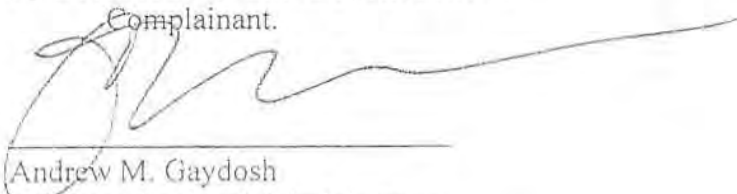
Rick Nelson / Fort Devils Tower
Complaint and Notice of Opportunity for Hearing
Page 9 of 9

Presiding Officer. Any request for settlement negotiations should be directed to the attorney
named below.

Dated this 14 day of February, 2011.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Complainant.



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

Margaret J. Livingston
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:

Rick Nelson
Fort Devils Tower
601 Highway 24
Devils Tower, WY 82714
Certified mail, return receipt requested
No. 7009 3410 0000 2592 7379

Date: 2/14/2011

By: Judith McTernan
Judith McTernan

§21.13

40 CFR Ch. I (7-1-08 Edition)

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

CONFIDENTIAL
EXHIBIT NO. 2

00850 11 2003

IN THE MATTER OF)
Rick Nelson, Owner)
Fort Devils Tower)
601 Highway 24)
Devils Tower, Wyoming 82714)
)
Respondent)
)
Proceedings under Section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. §300g-3(g))

ADMINISTRATIVE ORDER

Docket No. SDWA-08-2003-0062

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 1414(g) of the Safe Drinking Water Act (the Act), 42 U.S.C. §300g-3(g), and its implementing regulations, as properly delegated to the Supervisors of the Technical and Legal Enforcement Programs of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

FINDINGS

1. Rick Nelson ("Respondent") is an individual and therefore a "person" within the meaning of 40 C.F.R. § 141.2.
2. Respondent owns and/or operates a system, Fort Devils Tower Water System (the "System"), located in Crook County, Wyoming for the provision to the public of piped water for human consumption.

3. The Fort Devils Tower Water 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 Act, 42 U.S.C. §300f(4), and a "non-community water system" within the meaning of 40 C.F.R. § 141.2.
4. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of Section 1401(5) of the Act, 42 U.S.C. §300f(5) and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. §300g, and its implementing regulations, 40 C.F.R. Part 141.
5. According to a May 22, 2002 sanitary survey by an agent for EPA, Respondent operates a system that is supplied solely by a ground water source consisting of one well. The system serves approximately 25 persons daily, during its operational season, May-September, through 16 service connections.

FINDINGS OF VIOLATION

I.

1. 40 C.F.R. § 141.21 requires the owner and/or operators of non-community public water systems to monitor the water at least once per quarter that the system is serving water to the public to determine compliance with the maximum contaminant level (MCL) for total coliform bacteria as stated in 40 C.F.R. § 141.63.
2. Respondent failed to monitor the System's water for contamination by total coliform bacteria during the 2nd (April-June) quarter, and 3rd (July-September) quarter in 2002, in violation of 40 C.F.R. § 141.21.

II.

1. 40 C.F.R. § 141.23(d) requires public water systems to monitor their water annually for nitrate to determine compliance with the nitrate MCL as stated in 40 C.F.R. § 141.62.
2. Respondent failed to monitor for nitrate in 2002, in violation of 40 C.F.R. § 141.23(d).

III.

1. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any national primary drinking water regulation ("NPDWR")

violations, including violations of the maximum contaminant level ("MCL"), maximum residual disinfection level ("MRDL"), treatment technique ("TT"), monitoring requirements, and testing procedures in 40 C.F.R. Part 141.

2. Respondent has not provided public notice of the noncompliance detailed in the preceding Sections I and II, in violation of 40 C.F.R. § 141.201.

IV.

1. 40 C.F.R. § 141.31(b) requires that public water systems shall report any failure to comply with the National Primary Drinking Water Regulations to EPA within 48 hours.
2. Respondent failed to report to EPA within 48 hours the instances of noncompliance described in Findings of Violation Sections II and III, in violation of 40 C.F.R. § 141.31(b).

V.

1. 40 C.F.R. § 141.21(g)(2) requires any public water system that has failed to comply with a coliform monitoring requirement under 40 C.F.R. § 141.21 to report the monitoring violation to EPA within ten days after the system discovers the violation.

2. Respondent failed to report to EPA instances of noncompliance detailed in Section I in violation of 40 C.F.R. § 141.21(g)(2).

ORDER

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

1. Within 30 days of the effective date of this Order, and annually thereafter, Respondent shall comply with the nitrate monitoring requirements as stated in 40 C.F.R. § 141.23(d) to determine compliance with the nitrate MCL appearing at 40 C.F.R. § 141.62(b). Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).
2. Upon the effective date of this Order, Respondent shall comply with the total coliform monitoring requirements as stated in 40 C.F.R. § 141.21 to determine compliance with the total coliform MCL appearing at 40 C.F.R. § 141.63. Respondent shall 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).

3. No later than thirty days from the effective date of this Order, Respondent must comply with the public notice requirements set forth at 40 C.F.R. § 141.201 et seq. to return to compliance with 40 C.F.R. §§ 141.201, 141.204, and 141.205. Specifically, Respondent must provide public notice of the failure to monitor for nitrate and the failure to monitor for contamination by total coliform bacteria in accordance with 40 C.F.R. § 141.204. Public Notice must be given by any one of the following methods: (1) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system; (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 public notice described in (1) and (2), including 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. Upon the effective date of this Order, Respondent shall comply with the public notification requirements at 40 C.F.R. § 141.201 et seq. following any future NPDWR violation. Respondent shall submit a

copy of the public notice to EPA within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d).

4. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.31(b) by reporting any failure to comply with any National Primary Drinking Water Regulation (40 C.F.R. Part 141) to EPA within 48 hours.
5. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R. § 141.21 to EPA within ten days after the system discovers the violation.
6. Reporting requirements specified in this Order shall be provided by certified mail to:

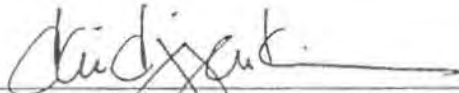
Jackson Naftel
U. S. EPA Region 8 (8ENF-T)
999 18th Street, Suite 300
Denver, Colorado 80202-2466

GENERAL PROVISIONS

1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 et seq., or the Safe Drinking Water Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
2. Violation of any term of this Order, instituted under Section 1414(g)(3)(A) of the Act, 42 U.S.C. §300g-3(g)(3)(A), may subject Respondent to an administrative civil penalty of up to \$25,000 under Section 1414(g)(3)(B) of the Act, 42 U.S.C. §300g-3(g)(3)(B), or a civil penalty of not more than \$27,500 per day of violation, assessed by a U.S. District Court, under Section 1414(g)(3)(C) of the Act, 42 U.S.C. §300g-3(g)(3)(C).
3. Violation of any requirement of the SDWA or its implementing regulations, instituted under Section 1414(b) of the Act, 42 U.S.C. §300g-3(b), may subject Respondent to a civil penalty of not more than \$27,500 per day of violation, assessed by an appropriate U.S. District Court, under Section 1414(b) of the Act, 42 U.S.C. §300g-3(b).

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

Issued this 24th day of September, 2003.



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



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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917

COMPLAINTS
EXHIBIT NO. 3

2005 MAY 24 AM 8:29

EPA REGION 8
READING ROOM

MAY 19 2005

Ref: 8 ENF-W

CERTIFIED MAIL #7003 2260 0001 7791 5541
RETURN RECEIPT REQUESTED

Rick Nelson
Fort Devils Tower
601 Highway 24
Devils Tower, WY 82714

Re: Violation of Administrative Order
Docket No. SDWA-08-2003-0062
Fort Devils Tower
PWS ID # WY5601411

Dear Mr. Nelson:

On September 24, 2003, the US Environmental Protection Agency (EPA) issued an Administrative Order, Docket No. SDWA-08-2003-0062, ordering you to comply with the Safe Drinking Water Act (SDWA), 42 U.S.C. Section 300f *et seq.*, and its implementing regulations, the National Primary Drinking Water Regulations (NPDWRs) 40 C.F.R. Part 141.

Our records indicate that you are in violation of the Administrative Order (the Order). The Order requires you to:

- I. Comply with the requirement of 40 C.F.R. § 141.21 to monitor the System's 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.

EPA has not received bacteriological sample results for the third (July-September) quarter in 2003 and 2004.



Printed on Recycled

2. Comply with 40 C.F.R. § 141.23 (d) to monitor the System's water at least once annually for nitrate to determine compliance with the nitrate MCL as stated in 40 C.F.R. § 141.62.

EPA has not received nitrate sample results for 2003 or 2004.

3. Comply with 40 C.F.R. § 141.201 to provide public notice of the failure to monitor for contamination by total coliform bacteria and nitrate in accordance with 40 C.F.R. § 141.204.

EPA has not received a public notice for violations of failure to monitor total coliform during the second (April-June) quarter in 2002, the third (July-September) quarter in 2002, the third (July-September) quarter in 2003, and failure to monitor nitrate in 2002.

EPA is considering additional enforcement action 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 \$32,500 per day per violation of the Order, and/or (2) a court injunction ordering you to comply.

If you have any questions or wish to have an informal conference with EPA, you may contact Peggy Livingston, Enforcement Attorney, at (303) 312-6858 or at the following address:

Peggy Livingston
Enforcement Attorney
U.S. EPA, Region VIII (8-ENF-L)
999 18th Street, Suite 300
Denver, Colorado 80202-246

We urge your prompt attention to this matter.

Sincerely,



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

cc: WDEQ (via email)
WDH (via email)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

2010 APR -6 AM 10:08

FILED
EPA REGION VIII
HEARING CLERK

COMPLAINTS
EXHIBIT NO 4

Ref: 8 ENF-W

APR 06 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rick Nelson
Fort Devils Tower
601 Highway 24
Devils Tower, WY 82714

Re: 2nd Violation of
Administrative Order
Docket No. SDWA-08-2003-0062
PWS ID # WY5601411

Dear Mr. Nelson:

On September 24, 2003, the US Environmental Protection Agency (EPA) issued an Administrative Order, Docket No. SDWA-08-2003-0062, ordering you, as owner and/or operator of the Fort Devils Tower public water system (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 you (Respondent) are in violation of the Administrative Order (the Order). Among other things, the Order included the following requirements (quoted from paragraphs 2 and 5 on pages 5 and 7, respectively, of the Order):

1. Upon the effective date of this Order, Respondent shall comply with the total coliform monitoring requirements as stated in 40 C.F.R. § 141.21 to determine compliance with the total coliform MCL [maximum contaminant level] appearing at 40 C.F.R. § 141.63. Respondent shall 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. 40 C.F.R. § 141.31(a).

Respondent failed to monitor the system's water for total coliform bacteria during the 4th quarter (October 1 – December 31) of 2009.

2. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R § 141.21 to EPA within ten days after the system discovers the violation.

Respondent failed to report to EPA the failure to monitor the system's water for total coliform bacteria during the 4th quarter of 2009, cited above.

EPA is considering additional enforcement action, including assessment of penalties, as a result of the non-compliance with the Order detailed above. 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 Mario Mérida at 1-800-227-8917, extension 6297 or (303) 312-6297. 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.



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

cc: Tina Artemis, EPA Regional Hearing Clerk
WY DEQ and DOH via e-mail



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

COMPLAINTS
NO. 5
2010 SEP 27 AM 9:55

EPA REGION VIII
HEARING CLERK

Ref: 8 ENF-W

SEP 27 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rick Nelson
Fort Devils Tower
601 Highway 24
Devils Tower, WY 82714

Re: 3rd Violation of
Administrative Order
Docket No. SDWA-08-2003-0062
PWS ID # WY5601411

Dear Mr. Nelson:

On September 24, 2003, the US Environmental Protection Agency (EPA) issued an Administrative Order, Docket No. SDWA-08-2003-0062, ordering you, as owner and/or operator of the Fort Devils Tower public water system (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 you (Respondent) are in violation of the Administrative Order (the Order). Among other things, the Order included the following requirements (quoted from paragraphs 2 and 5 on pages 5 and 7, respectively, of the Order):

1. Upon the effective date of this Order, Respondent shall comply with the total coliform monitoring requirements as stated in 40 C.F.R. § 141.21 to determine compliance with the total coliform MCL [maximum contaminant level] appearing at 40 C.F.R. § 141.63. Respondent shall 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. 40 C.F.R. § 141.31(a).

Respondent failed to monitor the system's water for total coliform bacteria during the 2nd quarter (April 1 - June 30) of 2010.

2. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R § 141.21 to EPA within ten days after the system discovers the violation.

Respondent failed to report to EPA the failure to monitor the system's water for total coliform bacteria during the 2nd quarter of 2010, cited above.

EPA is considering additional enforcement action, including assessment of penalties, as a result of the non-compliance with the Order detailed above. 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 Mario Mérida at 1-800-227-8917, extension 6297 or (303) 312-6297. 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.



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

cc: Tina Artemis, EPA Regional Hearing Clerk
WY DEQ and DOH via e-mail



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

COMPLAINANTS
EXHIBIT NO. 6

2010 NOV 22 AM 8:48

F
EPA REGION 8
DENVER, CO

Ref: 8 ENF-W

NOV 22 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rick Nelson
Fort Devils Tower
601 Highway 24
Devils Tower, WY 82714

Re: Violation of Administrative Order
Docket No. SDWA-08-2003-0062
PWS ID # WY5601411

Dear Mr. Nelson:

On September 24, 2003, the US Environmental Protection Agency (EPA) issued an Administrative Order, Docket No. SDWA-08-2003-0062, ordering you, as owner and/or operator of the Fort Devils Tower public water system (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 you (Respondent) are in violation of the Administrative Order (the Order). Among other things, the Order included the following requirements (quoted from paragraphs 2 and 5 on pages 5 and 7, respectively, of the Order):

1. Upon the effective date of this Order, Respondent shall comply with the total coliform monitoring requirements as stated in 40 C.F.R. § 141.21 to determine compliance with the total coliform MCL [maximum contaminant level] appearing at 40 C.F.R. § 141.63. Respondent shall 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. 40 C.F.R. § 141.31(a).

Respondent failed to monitor the system's water for total coliform bacteria during the 3rd quarter (July 1, 2010 – September 30, 2010) of 2010.

2. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R § 141.21 to EPA within ten days after the system discovers the violation.


Respondent failed to report to EPA the failure to monitor the system's water for total coliform bacteria during the 3rd quarter of 2010, cited above.

EPA is considering additional enforcement action, including assessment of penalties, as a result of the non-compliance with the Order detailed above. 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 Mario Mérida at 1-800-227-8917, extension 6297 or (303) 312-6297. 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.



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

cc: Tina Artemis, EPA Regional Hearing Clerk
WY DEQ and DOH via e-mail

1st Page Only
COMPLAINANT'S
EXHIBIT NO. 2

POLICY ON CIVIL PENALTIES

EPA GENERAL ENFORCEMENT POLICY #GM - 21

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

EFFECTIVE DATE: FEB 16 1984