



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, COLORADO 80202-1129

Phone 800-227-8917

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

Ref: 8ENF-L

JUL 28 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Dan Wells, Registered Agent
Oak Ridge Estates
PO Box 80445
Billings, MT 59108

Aquanet, Inc., Owner
Oak Ridge Estates
PO Box 80445
Billings, MT 59108

Re: Complaint and Notice of Opportunity for Hearing
Docket No. **SDWA-08-2009-0071**
Oak Ridge Estates Public Water System
PWS ID #MT0004250

Dear Mr. Wells:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against Aquanet, Inc. (Aquanet), as owner of the Oak Ridge Estates public water system (System) under section 1414 of the Safe Drinking Water Act (Act), 42 U.S.C. § 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that Aquanet failed to comply with an Administrative Order, Docket No. SDWA-08-2006-0061, issued on November 8, 2006, under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), for alleged violations of the Act and the National Primary Drinking Water Regulations.

By law, Aquanet has the right to request a hearing regarding the matter 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 Aquanet does not respond to this complaint within 30 days of receipt, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. Aquanet may request a hearing in its answer. Aquanet has the right to be represented by an attorney at any stage of these proceedings.

Whether or not Aquanet requests a hearing, an authorized representative may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty.



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

A request for an informal conference does not extend the 30-day period during which Aquanet must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing. Please note that if Aquanet does not file an answer, it may be subject to a default order requiring it to pay the full penalty proposed in the complaint, even if Aquanet has requested an informal conference.

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 Amy Swanson, Enforcement Attorney, who can be reached at 800-227-8917, extension 6906.

We urge your prompt attention to this matter.

Sincerely,

Eddie A. Sierra

Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures: Complaint w/ Exhibits

cc: John Arrigo, MT DEQ
Shelley Nolan, MT DEQ
Tina Artemis, EPA Region 8 Regional Hearing Clerk



2009 JUL 28 AM 8:20

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

EPA REGION 8
1225 NORTH 17TH AVENUE
DENVER, CO 80202

IN THE MATTER OF)
)
Aquanet, Inc.)
Oak Ridge Estates Water System)
Billings, MT,)
)
Respondent.)
)
Proceedings under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))
_____)

Docket No. **SDWA-08-2009-0071**

**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 section 1414(g)(3) of the Safe Drinking Water Act, as amended (SDWA), 42 U.S.C. § 300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes the Administrator of the EPA to assess an administrative civil penalty against any person who violates, or fails or refuses to comply with, an order issued under section 1414(g)(1) of the SDWA.

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

GENERAL ALLEGATIONS

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

1. Respondent Aquanet, Inc., is a corporation and therefore a “person” as that term is defined in section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2, for purposes of federal enforcement.
2. Respondent owns and/or operates a system, the Oak Ridge Estates Water System (System), located in Yellowstone County, Montana, for the provision to the public of piped water for human consumption.
3. The System has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents and is therefore a “public water system” within the meaning of section 1401(4) of the Act, 42 U.S.C. § 300f (4), and a “community water system” within the meaning of 40 C.F.R. § 141.2.
4. As the owner and/or operator of a public water system, the Respondent is a “supplier of water” as that term is defined in section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. The 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. Water is supplied from two wells, and serves approximately 200 persons through 83 service connections year-round.

6. On November 8, 2006, in accordance with sections 1414(a)(2) and (g)(1) of the SDWA, 42 U.S.C. §§ 300g-3(a)(2) and (g)(1), the EPA issued an Administrative Order, Docket No. SDWA-08-2006-0061 (Order), to the Respondent, citing various violations of the NPDWRs including, but not limited to: exceedance of maximum contaminant levels (MCL) for total coliform bacteria, failure to monitor for bacteriological quality, failure to monitor for disinfection byproducts, failure to monitor for nitrate, failure to monitor for volatile organic contaminants (VOCs), failure to monitor for lead and copper, failure to prepare and deliver an annual Consumer Confidence Report, failure to provide public notice, and failure to notify the State of the violations. A copy of the Order is attached to and incorporated in this Complaint as Complainant's Exhibit 2.
7. On June 25, 2007, EPA issued an Administrative Order Violation letter to the Respondent, noting that it was in violation of the Order, the Act, and the NPDWRs for failing to monitor for VOCs in 2006, and failing to report the 2006 VOC failure to monitor violation to EPA. A copy of EPA's June 25, 2007 letter is attached to and incorporated in this Complaint as Complainant's Exhibit 3.
8. On May 29, 2009, EPA issued the Respondent a second Administrative Order Violation letter, noting that it was in violation of the Order, the Act, and the NPDWRs for failing to monitor for VOCs in 2008; failing to provide public notice for the 2006 VOC failure to monitor violation; and failing to notify the

State of both violations. A copy of EPA's May 29, 2009 letter is attached to and incorporated in this Complaint as Complainant's Exhibit 4.

COUNTS OF VIOLATION

Count I

Failure to Monitor for Volatile Organic Contaminants

1. The Order (page 8, para. 4) requires the Respondent to determine compliance with the VOC MCL by complying with the organic chemicals monitoring requirements as stated in 40 C.F.R. § 141.24(f), and to report the analytical results to EPA and the State of Montana within the first 10 days following the month in which results are received as required by 40 C.F.R. § 141.31(a).
2. The Respondent failed to monitor annually for VOCs in 2006 and 2008 in violation of the Order, the Act, and the NPDWRs.

Count II

Failure to Provide Public Notice of Violations

1. The Order (page 12, para.11) requires the Respondent to provide public notice for the violations alleged in the Order under the Findings of Violation Sections I through VI within thirty days from the Order's effective date.
2. The Order (page 12, para. 11) requires the Respondent to comply with the public notification requirements at 40 C.F.R. § 141.201, et seq., following any future NPDWR violations and submit a copy of the public notice to EPA and the State of Montana within 10 days of completion (40 C.F.R. § 141.31(d)).

3. The Respondent failed to provide public notice for the 2006 violation that occurred subsequent to the Order in accordance with 40 C.F.R. § 141.201, et seq., and submit a copy of the public notice to EPA and the State of Montana within 10 days of completion in violation of the Order, the Act, and the NPDWRs.

Count III

Failure to Report to EPA Noncompliance of the NPDWRs

1. The Order (pages 13-14, para. 14) requires the Respondent to report any failure to comply with any NPDWR to EPA and the State of Montana within 48 hours after discovering the violation(s) pursuant to 40 C.F.R. § 141.31(b).
2. The Respondent failed to report to EPA and the State of Montana within 48 hours after discovering the failure to monitor VOC in 2006 and 2008, and the failure to provide public notice of the 2006 VOC monitoring violation, in violation of the Order, the Act, and the NPDWRs.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), authorizes the Administrator to assess an administrative civil penalty of up to \$27,500 for violation of an administrative order issued under section 1414(g)(1) of the SDWA.¹ EPA has determined the proposed penalty amount in accordance with the applicable statutory factors in section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b). Taking into account the seriousness of the violation, the population at risk, and other appropriate factors, including the Respondent's degree of willfulness and/or

¹The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19.

negligence, history of noncompliance, if any, and ability to pay, EPA proposes the assessment of an administrative civil penalty against the Respondent in the amount of \$4,750.

TERMS OF PAYMENT FOR QUICK RESOLUTION

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

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

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

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

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

Wire transfers:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D
68010727 Environmental Protection Agency "

On Line Payment: WWW.PAY.GOV
Enter sfo 1.1 in the search field

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

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

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

OPPORTUNITY TO REQUEST A HEARING

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

Aquanet, Inc.
Oak Ridge Estates PWS
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admit, deny or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The Answer and one copy must be sent to:

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

and a copy must be sent to the following attorney:

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

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

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

SETTLEMENT CONFERENCE

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set forth above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. Part 22. If a settlement can be reached,

Aquanet, Inc.
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its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the regional judicial officer. A request for a settlement conference or any questions that you may have regarding this Complaint should be directed to the attorney listed on page 8 of this Complaint.

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

Date: July 28, 2009

By: Eddie A. Sierra
Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

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Oak Ridge Estates PWS
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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 by CERTIFIED MAIL/RETURN RECEIPT REQUESTED to:

Mr. Dan Wells, Registered Agent
Oak Ridge Estates
PO Box 80445
Billings, MT 59108

Aquanet, Inc., Owner
Oak Ridge Estates
PO Box 80445
Billings, MT 59108

Date: 7/28/09

By: Judith M McTernan