



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET  
DENVER, COLORADO 80202-1129

Phone 800-227-8917

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

SEP 30 2013

Ref: 8ENF-L

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

NO. 7009 3410 0000 2598 4785

Ms. Tomi White, President  
Kennington Springs Pipeline, Inc.  
P.O. Box 1284  
Afton, Wyoming 83110

Re: Complaint and Notice of Opportunity for Hearing  
Docket No. **SDWA-08-2013-0065**

Dear Ms. White:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (Complaint) filed against Kennington Springs Pipeline, Inc. (Kennington) under section 1414(g)(3) of the Safe Drinking Water Act (SDWA), 42 U.S.C § 300g-3(g)(3). The U.S. Environmental Protection Agency (EPA) alleges in the Complaint that Kennington failed to comply with an administrative order issued by the EPA on August 5, 2011. The violations are described in the Complaint.

By law, Kennington has the right to request a hearing regarding the matters set forth in the Complaint. Please pay particular attention to those parts of the Complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If Kennington does not file an answer to the Complaint within 30 days of receipt, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In its answer Kennington may request a hearing. Kennington has the right to be represented by an attorney at any stage of these proceedings.

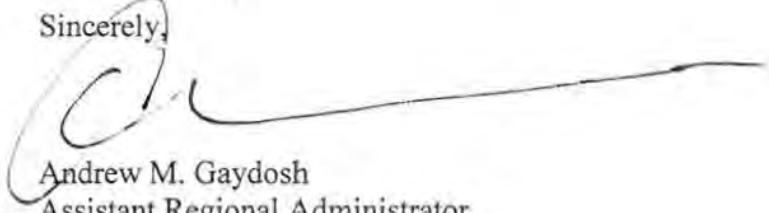
The EPA encourages all parties against whom it files any complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. If a representative of Kennington signs a consent agreement that is finalized by a final order, Kennington will waive its right to request a hearing on any matter to which it has stipulated in that agreement.

Whether or not Kennington requests a hearing, its representative(s) may confer informally with the EPA concerning the alleged violation and/or the amount of the proposed penalty. However, an informal settlement conference does **not** substitute for filing a written answer and requesting a hearing. A request for an informal conference also does not extend the 30-day period during which Kennington must submit a written answer and a request for a hearing. Kennington may pursue settlement and have an informal conference even if it is also litigating the case.

For any questions specific to the violations or penalty, the most knowledgeable people at the EPA regarding this matter are Kathelene Brainich, Environmental Protection Specialist, who can be reached at 1-800-227-8917, extension 6481, and, for questions from counsel, if any, Peggy Livingston, Enforcement Attorney, who can be reached at 1-800-227-8917, extension 6858.

We urge your prompt attention to this matter.

01/04/2011  
Sincerely,



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

Enclosure

cc: Tina Artemis, EPA Regional Hearing Clerk

2013 SEP 30 AM 11:10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF	)
	)
Kennington Springs Pipeline, Inc.,	)
	)
	) Docket No. <b>SDWA-08-2013-0065</b>
	)
Respondent	) <b>COMPLAINT AND NOTICE OF</b>
	) <b>OPPORTUNITY FOR HEARING</b>
Proceeding under § 1414(g)	)
of the Safe Drinking Water Act,	)
42 U.S.C. § 300g-3(g)	)
_____	)

In this Complaint and Notice of Opportunity for Hearing (Complaint), the United States Environmental Protection Agency (EPA) proposes to assess a civil administrative penalty against Kennington Springs Pipeline, Inc. (Respondent).

**JURISDICTIONAL ALLEGATIONS**

This Complaint is issued under the authority vested in the Administrator of the EPA by section 1414(g)(3)(B) of the Safe Drinking Water Act (the SDWA), 42 U.S.C. § 300g-3(g)(3)(B). The undersigned EPA official has been duly authorized to institute this action.

This proceeding is subject to the 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, a copy of which is attached to this Complaint as Complainant's Exhibit 1.

### **GENERAL ALLEGATIONS**

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

1. Respondent is a Wyoming 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.
2. Respondent owns and/or operates the Kennington Springs Pipeline, Inc. Water System (the System), located in Lincoln County, Wyoming, for the provision of water for human consumption to the public through pipes or other constructed conveyances.
3. The System has at least 15 service connections used by year-round residents and/or regularly serves at least 25 year-round residents and is, therefore, a “public water system” and a “community water system” as defined in 40 C.F.R. § 141.2 and section 1401 of the SDWA, 42 U.S.C. § 300f.
4. As an owner and/or operator of a public water system, Respondent is a “supplier of water” as defined in section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent is, therefore, subject to the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. part 141. Each NPDWR is an “applicable requirement” as defined in section 1414(i) of the SDWA, 42 U.S.C. § 300g-3(i).
5. The source of the System’s water is ground water from one spring. The System is open year-round. It regularly serves at least 75 year-round residents through approximately 33 service connections.

6. On March 25, 2010, in accordance with section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), the EPA issued an Administrative Order, Docket No. SDWA-08-2010-0026 (the First Order) to Respondent, citing violations of the NPDWRs.
7. On March 8, 2011, in accordance with section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), the EPA issued an Administrative Order, Docket No. SDWA-08-2011-0030 (the Second Order) to Respondent, citing additional violations of the NPDWRs.
8. On August 5, 2011, the EPA issued an amendment to the Second Order, citing additional NPDWR violations. The order issued on August 5, 2011, is referenced as the Amended Order and is attached to this Complaint as Complainant's Exhibit 2.
9. The Amended Order, among other things, directed Respondent to comply with the maximum contaminant level (MCL) for total coliform as stated in 40 C.F.R. § 141.63(a) and, in the event of any total coliform MCL violations while the Order was in effect, to submit a compliance plan and schedule for the System to come into compliance with the total coliform MCL. According to paragraph 14 of the Amended Order, Respondent was to have submitted the plan and schedule within 30 days of learning of a coliform MCL violation.
10. Paragraph 15 of the Amended Order stated, in relevant part, that the plan and schedule referenced in the preceding paragraph was to become incorporated as an enforceable part of the Amended Order upon approval by the EPA.

11. Paragraph 16 of the Amended Order also stated that if the compliance plan failed to achieve permanent compliance with the coliform MCL, the EPA “may order further steps and/or seek penalties for noncompliance.”
12. By letter dated June 12, 2012, the EPA approved a compliance schedule Respondent had submitted on April 6, 2012, and May 15, 2012, making the schedule an enforceable part of the Amended Order. The plan and compliance schedule was completed as of May 31, 2012.
13. During August and September of 2012, the System exceeded the total coliform MCL.
14. On December 19, 2012, Respondent submitted an additional plan and schedule to the EPA, in response to the August and September of 2012 coliform MCL violations cited in the preceding paragraph.
15. By letter dated February 20, 2013, the EPA approved the compliance schedule that Respondent had submitted on December 19, 2012. This schedule included a deadline of April 30, 2013, for determining if there was a leak from the System’s spring to its collection box and, if so, to fix that leak. It also required that if no leaks were found or if another sample of the System’s water was positive for total coliform, then Respondent, within three weeks of completing leak detection or receiving a positive total coliform result, whichever was earlier, was to reconstruct its spring collection area and install a chlorinator and continuously disinfect the System’s water.

16. By letter dated July 3, 2013, the EPA notified Respondent that it had not performed the required leak detection determination. Therefore, the EPA directed Respondent to submit a new compliance schedule to the EPA no later than July 15, 2013.
17. On July 15, 2013, Respondent submitted an interim compliance schedule to the EPA.
18. By letter dated July 30, 2013, the EPA approved the interim compliance schedule referenced in the preceding paragraph. That schedule included a deadline of August 30, 2013, for Respondent to notify the EPA of which plan option (e.g., redevelopment of its existing groundwater source, a new groundwater source, or forming a water district) that Respondent would select to address its MCL violations.
19. As of the date of this Complaint, Respondent has not notified the EPA which, if any, compliance plan option it has selected.
20. On December 20, 2011, the EPA issued an administrative complaint and notice of opportunity for hearing (First Complaint) to Respondent, citing various violations of the First Order, the Second Order, and the Amended Order, including the failure to submit a compliance plan and schedule for meeting the total coliform MCL, as required by the Second Order and the Amended Order. The First Complaint proposed an administrative penalty of \$1,200 for these violations.
21. Respondent agreed to pay the full proposed penalty in the First Complaint. On June 5, 2012, the Regional Judicial Officer of EPA Region 8 issued a final order

approving a consent agreement reflecting this settlement. Thereafter, Respondent paid the full proposed penalty.

22. Because Wyoming has not sought primary authority for enforcing the public water supply supervision program, the EPA directly implements this program in Wyoming. Consequently, as provided by the definition of "state" in 40 C.F.R. § 141.2, the EPA is the "state" for purposes of applying the NPDWRs in Wyoming.

## **VIOLATIONS**

### **Count I**

#### **Exceeding Maximum Contaminant Level for Total Coliform Bacteria**

1. According to 40 C.F.R. § 141.63, a public water system collecting fewer than 40 samples per month (which includes the System) has not complied with the MCL for total coliform bacteria if two or more samples collected in any month from the system's water are positive for total coliform.
2. Paragraph 13 of the Amended Order required Respondent to comply with the total coliform MCL as stated in 40 C.F.R. § 141.63.
3. In violation of paragraph 13 of the Amended Order, Respondent allowed the System's water to exceed the total coliform MCL during August and September of 2012.



**Count II**  
**Failure to Report Total Coliform MCL Violation**

1. According to 40 C.F.R. § 141.21(g)(1), a public water system that has exceeded the MCL for total coliform must report the violation to the EPA no later than the end of the next business day after it learns of the violation.
2. Paragraph 13 of the Amended Order required Respondent to report any coliform MCL violation to the EPA by the end of the business day after discovering the violation.
3. In violation of paragraph 13 of the Amended Order, Respondent failed to report either its August of 2012 or September of 2012 total coliform MCL violations to the EPA by the end of the next business day after discovery.

**Count III**  
**Failure to Submit Compliance Plan Within 30 Days**

1. Paragraph 14 of the Amended Order required Respondent to provide the EPA with a compliance plan and schedule for coming into compliance with the total coliform MCL no later than 30 days after learning of total coliform MCL violation.
2. In violation of paragraph 14 of the Amended Order, Respondent failed to submit a compliance plan and schedule to the EPA within 30 days of learning of the August of 2012 total coliform MCL violation. Respondent did not submit a compliance plan and schedule to the EPA until December 19, 2012.

**Count IV**  
**Failure to Implement Compliance Plan**

1. According to the compliance plan and schedule that the EPA approved by letter dated February 20, 2013, Respondent was to have determined, no later than April 30, 2013, whether there was a leak from the System's spring to its collection box and, if so, to have that leak repaired. This requirement was an enforceable part of the Amended Order, as provided by paragraph 15 of the Amended Order.
2. Respondent failed to determine whether there was any leak from the System's spring to its collection box or to fix any such leak by April 30, 2013, in violation of the Amended Order.
3. According to the compliance plan and schedule that the EPA approved by letter dated July 30, 2013, Respondent was under a deadline of August 30, 2013, for notifying the EPA of which compliance plan option it had selected and submitting a final compliance schedule to the EPA. This requirement was an enforceable part of the Amended Order, as provided by paragraph 15 of the Amended Order.
4. Respondent failed to notify the EPA of its plan option decision and to submit its final compliance schedule to the EPA by August 30, 2013, in violation of the Amended Order.

**Count V**  
**Failure to Conduct Source Water Monitoring**

1. According to 40 C.F.R. § 141.402(a) and (c), a public water system that has been notified that any regular, routine total coliform monitoring sample is positive for

total coliform must collect at least one water sample from each source in use and submit each source sample for fecal indicator analysis.

2. Paragraph 17 of the Amended Order required Respondent, within 24 hours of receiving any notification that a regular, routine total coliform monitoring sample was positive for total coliform, to conduct source water sampling for fecal indicator analysis, as required by 40 C.F.R. § 141.402(a) and (c).
3. In violation of paragraph 17 of the Amended Order, Respondent failed to conduct source water sampling within 24 hours of being notified on August 7, 2012, of a total coliform-positive water sample. (Respondent later took the source sample, on October 1, 2012.)

#### **Count VI**

##### **Failure to Report Source Water Monitoring Violation**

1. If Respondent fails to conduct source water monitoring as required by 40 C.F.R. § 141.402(a) and (c), Respondent is required by 40 C.F.R. § 141.31(b) to report this omission to the EPA.
2. Paragraph 18 of the Amended Order required Respondent, within 48 hours, to report to the EPA any failure to conduct sampling as required by 40 C.F.R. § 141.402(a) and (c).
3. In violation of paragraph 18 of the Amended Order, Respondent failed to report to the EPA within 48 hours that Respondent had failed to conduct the source water sampling that had been triggered by the August 7, 2012, total coliform-positive water sample.

**Count VII**  
**Failure to Provide Timely Public Notice**

1. According to 40 C.F.R. § 141.203(b), Respondent is to provide public notice of a total coliform MCL violation no later than 30 days after learning of the violation.
2. Paragraph 20 of the Amended Order directed Respondent to provide public notice of any future violation of the Drinking Water Regulations as required by 40 C.F.R. part 141, subpart Q, which includes 40 C.F.R. § 141.203(b).
3. In violation of paragraph 20 of the Amended Order, Respondent failed to provide public notice of its August 7, 2012, total coliform MCL violation within 30 days of learning of it. Respondent did, however, provide public notice of this violation on October 3, 2012.

**PROPOSED PENALTY**

This Complaint proposes that the EPA assess an administrative penalty against Respondent. The EPA is authorized to assess an administrative civil penalty according to section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), for violation of an administrative order issued under section 1414(g) of the SDWA. The amount of the administrative penalty may not exceed \$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. See 74 Fed. Reg. 626, January 7, 2009.)

The EPA has determined the proposed penalty amount in accordance with section 1414 of the SDWA, 42 U.S.C. § 300g-3. Taking into account the seriousness of the 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 the EPA at this time, the EPA proposes to assess an administrative civil penalty of **\$2,500** against Respondent for its violations of the Amended Order.

### **OPPORTUNITY TO REQUEST A HEARING**

As provided in section 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 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 section 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 place new captions on 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, 8RC  
Regional Hearing Clerk (8RC)  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

A copy of the answer must also be sent to:

Peggy Livingston, 8ENF-L  
Enforcement Attorney  
Office of Enforcement, Compliance and Environmental Justice  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

#### **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.**

The 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 action by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, Respondent need not file an answer. Alternatively, as allowed by 40 C.F.R. § 22.18(b), Respondent may file a statement with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint agreeing to pay the full assessed penalty and may make the penalty payment within sixty (60) days of receiving this Complaint.

If made by check, the payment shall be made by remitting a cashier's or certified check, including the name and docket number of the case, referencing the Docket Number given on the first page of this Complaint and payable to "Treasurer, United States of America."

The check shall be sent to the EPA in one of the following ways:

By first class US postal service mail:	U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, Missouri 63197-9000
By Federal Express, Airborne, or other commercial carrier:	US Bank 1005 Convention Plaza Mail Station SL-MO-C2GL St. Louis, Missouri 63101
Wire transfers:	Federal Reserve Bank of New York ABA = 021030004, Account = 68010727 SWIFT address = FRNYUS33 33 Liberty Street New York, New York 10045 Field Tag 4200 of the Fedwire message should read "D68010727 Environmental Protection Agency"

Automated Clearinghouse  
(ACH) for receiving  
U.S. currency:

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number 310006,  
Environmental Protection Agency  
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737

Contacts: John Schmid (202-874-7026) and REX  
(Remittance Express) 800-234-5681

On-Line Payment:

WWW.PAY.GOV  
Enter sfo 1.1 in the search field  
Open form and complete required fields.

A copy of the check, wire transfer, or record of other type of payment shall be sent at the  
time of payment to:

Kathelene Brainich, 8ENF-W  
Office of Enforcement, Compliance and Environmental Justice  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

and

Tina Artemis, Regional Hearing Clerk, 8RC  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

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



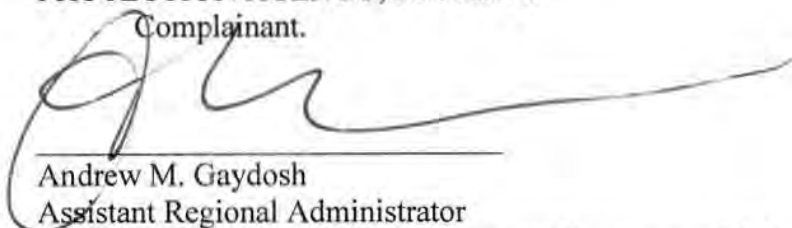
**SETTLEMENT CONFERENCE**

The 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 to be signed by the parties and incorporated into a final order signed by the Presiding Officer. Any request for settlement negotiations should be directed to the attorney named above, who can also be reached by telephone at 303-312-6858.

Dated this 30 day of September, 2013

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8

Complainant.



Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and Environmental Justice  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and a copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING (with Exhibit 2 but not Exhibit 1) were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same (with both Exhibits) was sent to the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Tomi White, President and Registered Agent  
Kennington Springs Pipeline, Inc.  
P.O. Box 1284  
Afton, Wyoming 83110

Date: SEP 30 2013

By: Gayle Aldinger

**§21.13**

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

**§21.13 Effect of certification upon authority to enforce applicable standards.**

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

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

IN THE MATTER OF: )  
 )  
Kennington Springs )  
Pipeline, Inc. )  
 )  
Respondent. )

2011 AUG -5 AM 8:35

Docket No. SDWA-08-2011-0030

EPA REGION VIII  
HEARING CLERK

AMENDED ADMINISTRATIVE ORDER

1. This Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by section 1414 of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300g-3, as properly delegated to the undersigned officials. The original Order was issued to Kennington Springs Pipeline, Inc. on March 8, 2011, and is now amended to add new violations.

2. Kennington Springs Pipeline, Inc. (Respondent) is a nonprofit corporation that owns and/or operates the Kennington Springs Pipeline, Inc. Water System (the system), which provides piped water to the public in Lincoln County, Wyoming, for human consumption.

3. The system is supplied by a groundwater source consisting of one spring.

4. The system has approximately 33 service connections used by year-round residents and/or regularly serves at least 75 year-round residents. Therefore, the system is a "public water system" and a "community water system" as defined in 40 C.F.R. § 141.2 and § 1401 of the Act, 42 U.S.C. § 300f.

5. Respondent is subject to the Act and the National Primary Drinking Water Regulations (drinking water regulations) at 40 C.F.R. part 141. The drinking water regulations are "applicable requirements" as defined in § 1414(i) of the Act, 42 U.S.C. § 300g-3(i).

6. The drinking water regulations include monitoring requirements. EPA has sent Respondent annual notifications of the specific monitoring requirements that apply to the system.

VIOLATIONS

7. If two or more samples collected in any month from the system's water are positive for total coliform, then the system has not complied with the maximum contaminant level (MCL) for total coliform bacteria. 40 C.F.R. § 141.63(a)(2). During the months of September 2010 and November 2010, two or more samples from the system were positive for total coliform, and, therefore, Respondent violated this requirement.

8. Within 24 hours of being notified that any regular, routine total coliform monitoring sample is total coliform-positive, Respondent is required to collect at least one water sample from each source in use and to submit each source sample for fecal indicator analysis. 40 C.F.R. § 141.402(a) and (c). The system received total coliform-positive results for its routine water samples collected on November 1, 2010 and November 3, 2010, but Respondent failed to collect any ground water source samples within the required 24 hour time-frame and, therefore, violated this requirement. The September 2010 total coliform positive results were determined by EPA to be due to a distribution system deficiency rather than a source water deficiency and therefore no source water sample was required for September 2010.

9. Respondent is required to monitor the system's water for 26 synthetic organic contaminants (pesticide/herbicide or SOCs) at least once in every three-year compliance period, including the 2008 - 2010 compliance period. 40 C.F.R. § 141.24(h). (The regulation lists 30 SOCs that are to be monitored; of these 30, EPA has issued state wide monitoring waivers for diquat, endothall, glyphosate, and dioxin.) Respondent collected a water sample on September 27, 2010, but failed to have it analyzed for all required SOCs and, therefore, violated this requirement. Respondent had the sample analyzed for only 10 of the required 26 SOC contaminants.

10. Respondent is required to notify the public of certain violations of the drinking water regulations, in the manner specified by the regulations. 40 C.F.R. §§ 141.201 et seq. Respondent failed to notify the public of the violations listed in paragraph 7, above, and, therefore, violated this requirement. Public notice for the violations cited in paragraphs 8 and 9 are not yet overdue.

11. Respondent is required to report any coliform MCL violation to EPA no later than the end of the first business day after learning of it. 40 C.F.R. § 141.21(g)(1). Respondent did not notify EPA of the MCL violations cited in paragraph 7, above, and, therefore, violated this requirement.

12. Respondent is required to report any failure to comply with any of the drinking water regulations to EPA within 48 hours (except where a different reporting period is specified in the drinking water regulations). 40 C.F.R. § 141.31(b). Respondent failed to report the violations listed in paragraphs 8 and 9, above, to EPA and, therefore, violated this requirement.

ORDER

Based on the above violations, Respondent is ordered to perform the following actions upon Respondent's receipt of this Order (unless a different deadline is specified below):

13. Respondent shall comply with the total coliform MCL. 40 C.F.R. § 141.63. If the system's water does not comply with the total coliform MCL, Respondent shall notify EPA of this violation by the end of the business day after discovering the violation, as required by 40 C.F.R. § 141.21(g)(1).

14. If Respondent's total coliform sample results exceed the MCL while this Order is in effect, Respondent shall, within 30 days of learning of this violation, provide EPA with a compliance plan and schedule for the system to come into compliance with the MCL for total coliform as stated in 40 C.F.R. § 141.63(a). The plan shall include proposed system modifications, estimated costs of modifications, and a schedule for completion of the project and compliance with the total coliform MCL. The proposed schedule shall include specific milestone dates and a final compliance date. The final compliance date shall be within 3 months from the date of EPA's approval of the plan and schedule. The proposed plan and schedule must be approved by EPA before construction or modifications may begin. EPA's approval of Respondent's plan and schedule does not substitute for any State of Wyoming approvals of plans and specifications that may also be required before modifications may be made to the system.

15. The plan and schedule required by paragraph 14, above, will be incorporated into this Order as enforceable requirements upon written approval by EPA. Within 10 days after completing all tasks included in the plan and schedule, Respondent shall notify EPA of the project's completion.

16. Respondent shall achieve and maintain compliance with the total coliform MCL by the final date specified in the approved plan, or no later than three months after receiving EPA's approval of the plan and schedule required by paragraph 14 above, whichever is earliest. Respondent shall meet that deadline even if the plan as approved does not achieve compliance. If the plan fails to achieve permanent compliance, EPA may order further steps and/or seek penalties for noncompliance.

17. Respondent shall, within 24 hours of receiving any notification that a regular, routine total coliform monitoring sample is total coliform-positive, collect at least one water sample for

fecal indicator analysis from each source in use, as required by 40 C.F.R. § 141.402(a) and (c). Due to the nature of the spring source, the source water sample shall be collected at the first tap off the collection box. Note: on March 7, 2011, Respondent collected the source water sample that was required under the March 8, 2011 Order.

18. Respondent shall report analytical results for all sampling required by paragraph 17 to EPA within the first 10 days following the month in which the result is received, as required by 40 C.F.R. § 141.31. Each such result shall be identified, upon submission to EPA and upon submission to the laboratory analyzing the sample, using the Source Water Sampling collection and reporting form provided as an attachment with this Order. Respondent shall report any failure to conduct sampling required by 40 C.F.R. § 141.402(a) and (c) to EPA within 48 hours, as required by 40 C.F.R. § 141.31(b).

19. Within 30 days after receiving this Order and per the regulations thereafter, Respondent shall monitor for all 33 contaminants listed in 40 C.F.R. § 141.24(h)(18) except for aldicarb, aldicarb sulfoxide, aldicarb sulfone, diquat, endothall, glyphosate, dioxin, and the contaminants for which Respondent monitored during the 2008-2010 monitoring period. Appendix A includes a list of the remaining contaminants that need to be monitored to meet the requirement of this Order. Subsequently, Respondent will be required to monitor again for the contaminants listed in Appendix B prior to December 31, 2013. Respondent will be required to monitor for synthetic organic contaminants per the regulations thereafter. Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by the drinking water regulations. 40 C.F.R. § 141.31(a). Respondent shall report any violation of the SOC monitoring requirements to EPA within 48 hours of the violation occurring, as required by 40 C.F.R. § 141.31(b).

20. Within 30 days after receiving this Order, Respondent shall notify the public of the violations cited in paragraphs 7 and 8, above, following the instructions provided with the public notice templates provided to Respondent with this Order. Thereafter, following any future violation of the drinking water regulations, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 days after providing public notice, Respondent shall submit a copy of the notice to EPA. Note: on April 18, 2011, EPA received the public notice as required by the March 8, 2011 Order.

Kennington Springs Pipeline, Inc.

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21. Respondent shall direct all reporting required by this Order to:

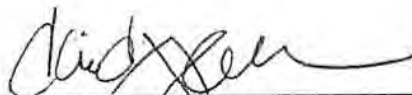
U. S. EPA Region 8 (8P-W-DW)  
1595 Wynkoop Street  
Denver, CO 80202-1129

GENERAL PROVISIONS

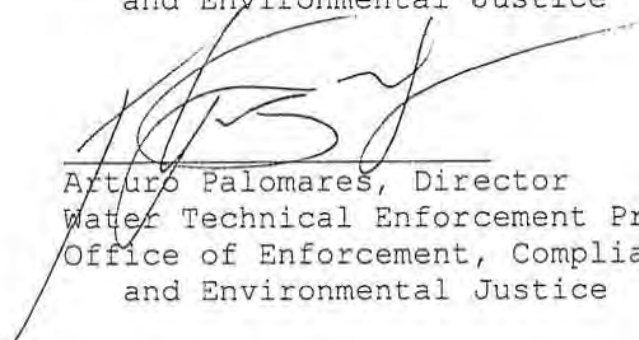
22. This Order does not constitute a waiver, suspension, or modification of any requirement of the Act or drinking water regulations. Issuance of this Order is not an election by EPA to forgo any civil or criminal action.

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

Issued: \_\_\_\_\_, 2011.



David Janik, Acting Director  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice



Arturo Palomares, Director  
Water Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice



## Appendix A

Respondent shall monitor for the following SOCs within 30 days after receiving the Administrative Order:

Alachlor
Atrazine
Benzo(a)pyrene (PAHs)
Chlordane
Di (2-ethylhexyl) adipate
Di (2-ethylhexyl) phthalate
Endrin
Lindane (Gamma-BHC)
Heptachlor
Heptachlor epoxide
Hexachlorobenzene
Hexachlorocyclopentadiene (HEX)
Methoxychlor
Simazine
Toxaphene
Polychlorinated Biphenyls (PCBs), Aroclor E525

Appendix B

Respondent must monitor again for these remaining contaminants before December 31, 2013.

Carbofuran
Oxamyl (Vydate)
2,4-D
Dalapon
Dinoseb
Pentachlorophenol
Picloram
2,4,5-TP (Silvex)
1,2-Dibromo-3-Chloropropane (DBCP)
1,2-Dibromoethane (EDB)