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1 NANCY MARVEL
Regional Counsel
2 United States Environmental Protection Agency, Region 9

3 RICH CAMPBELL
Assistant Regional Counsel
4 United States Environmental Protection Agency, Region 9
5 75 Hawthorne Street
San Francisco, California 94105
6 (415) 972-3870

7 Attorneys for Complainant

8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
9 **REGION 9**

10 IN THE MATTER OF:) DOCKET NO. SDWA-09-2008-0001

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Respondent.

**COMPLAINT AND
NOTICE OF OPPORTUNITY
FOR HEARING**

PWS ID#AZ0401009
Proceedings under Section 1414(g) of the Safe
Drinking Water Act, 42 U.S.C. § 300g-3(g)

COMPLAINT

This civil administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued to the Arizona Windsong Water Company (“Respondent”) pursuant to 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). The Administrator has delegated the authority to issue this Complaint to the Regional Administrator for EPA Region 9, who in turn has delegated the authority to the Director of the Water Division for EPA Region 9, hereinafter referred to as “Complainant.”

1 This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the
2 Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40
3 C.F.R. Part 22 ("Consolidated Rules of Practice") (**Exhibit 1**).

4 **GENERAL ALLEGATIONS**

5 Each allegation in this Complaint has applied at all relevant times unless otherwise stated.

6 1. Respondent Arizona Windsong Water Company is an Arizona corporation and therefore
7 a "person" as that term is defined in Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and
8 40 C.F.R. § 141.2.

9 2. The Respondent owns and/or operates a water system known to EPA as the Arizona
10 Windsong Water Company water system (the "System") located in Apache County, Arizona, for
11 the provision to the public of piped water for human consumption.

12 3. The System provides water for human consumption to the public through pipes to at least
13 76 service connections that regularly serve approximately 380 year-round residents, and is a
14 "public water system" as defined by Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40
15 C.F.R. § 141.2.

16 4. The System is a public water system that serves at least 15 service connections used by
17 year-round residents of the area served by the system, and regularly serves at least 25 year-round
18 residents, and is therefore a "community water system" as defined by Section 1401(15) of the
19 SDWA, 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2.

20 5. The System serves 3,300 persons or fewer and is a "small water system" as defined by 40
21 C.F.R. § 141.2, for the purpose of the Lead and Copper Rule at 40 C.F.R. Part 141, Subpart I.

22 6. As the owner and/or operator of the System, Respondent is a "supplier of water" as
23 defined in Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2.

24 Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g *et*
25

1 *seq.*, and its implementing regulations at 40 C.F.R. Part 141 (also known as the “National
2 Primary Drinking Water Regulations” or “NPDWRs”).

3 7. The source of the System’s water is a ground water well.

4 8. On March 25, 2005, EPA issued an Administrative Order (the “Order”), Docket No.
5 PWS-AO-2005-002, to the Respondent pursuant to Section 1414(g) of the SDWA, 42 U.S.C. §
6 300g-3(g), citing violations of the SDWA’s NPDWRs. (**Exhibit 2.**) The effective date of the
7 Order was March 30, 2005. The Order required the Respondent, among other things, to achieve
8 compliance with certain SDWA regulations, in accordance with specified deadlines.

9 9. By letter dated April 10, 2007, EPA notified the Respondents that they were in violation
10 of the Order. (**Exhibit 3.**)

11 SPECIFIC ALLEGATIONS

12 10. Paragraphs 1 through 9 are realleged and incorporated herein by reference.

13 11. Following EPA’s issuance of the March 25, 2005 Order, Respondent failed to comply
14 with the requirements of the Order as follows:

15 Count 1: Failure to conduct total coliform monitoring.

16 12. The Order (pgs. 6-7, paragraph 41) required Respondent to commence monitoring for
17 total coliforms on a monthly basis in accordance with 40 C.F.R. § 141.21(a) within ten days of
18 the effective date of the Order.

19 13. After consulting with the State, neither the State nor EPA has received any data from
20 Respondent indicating Respondent commenced monthly monitoring of total coliform within ten
21 days of the Order’s effective date on March 30, 2005 (i.e., by April 10, 2005), or any time
22 thereafter, in violation of the Order (pgs. 6-7, paragraph 41).

1 Count 2: Failure to conduct lead and copper monitoring.

2 14. The Order (pgs. 7-8, paragraphs 45-46) required Respondent to complete two
3 consecutive six-month rounds of monitoring for lead and copper, in accordance with 40 C.F.R. §
4 141.86, by December 10, 2006.

5 15. After consulting with the State, neither the State nor EPA has received any data from
6 Respondent indicating that it conducted two consecutive six-month rounds of monitoring for lead
7 and copper by December 10, 2006, or at any time thereafter, in violation of the Order (pgs. 7-8,
8 paragraphs 45-46).

9 Count 3. Failure to Report Monitoring Violations.

10 16. The Order (pg. 8, paragraph 47) required that Respondent comply upon the effective date
11 of the Order, and at all times thereafter with the violation reporting requirements of 40 C.F.R. §
12 141.31(b) by reporting to EPA and the State of Arizona within 48 hours any failure to comply
13 with the NPDWRs (including monitoring requirements).

14 17. After consulting with the State, neither the State nor EPA has received any data from
15 Respondent indicating that it complied with the 48-hour reporting requirements of 40 C.F.R. §
16 141.31(b) after Respondent failed to conduct the monthly total coliform monitoring required by
17 40 C.F.R. § 141.21(a), and lead and copper monitoring required by 40 C.F.R. § 141.86, after the
18 effective date of the Order on March 30, 2005, in violation of the Order (pg. 8, paragraph 47).

19 Count 4: Failure to issue Consumer Confidence Report.

20 18. The Order (pg. 9, paragraphs 48-49) required Respondent to prepare and issue a single
21 CCR to its water customers July 1, 2005 summarizing drinking water information from 2001
22 through 2004.

23 19. After consulting with the State, neither the State nor EPA has received any data from
24 Respondent indicating that it issued a CCR to its water customers by July 1, 2005, or any time
25

1 thereafter, summarizing drinking water information from 2001 through 2004, in violation of the
2 Order (pg. 9, paragraphs 48-49).

3 Count 5: Failure to provide public notice of violations of 40 C.F.R. Part 141 specified in
4 the Order.

5 20. The Order (pg. 9, paragraph 51) required Respondent to issue public notices for the total
6 coliforms, nitrate, and lead and copper monitoring violations, which had occurred prior to
7 issuance of the Order, within thirty days of the effective date of the Order.

8 21. After consulting with the State, neither the State nor EPA has received any data from
9 Respondent that it issued public notices for the total coliforms, nitrate, and lead and copper
10 monitoring violations that had occurred prior to issuance of the Order, by April 29, 2005 (i.e.,
11 thirty days of the Order's effective date of March 30, 2005), or any time thereafter, in violation
12 of the Order (pg. 9, paragraph 51).

13 Count 6: Failure to provide public notice of violations of 40 C.F.R. Part 141 after the
14 effective date of the Order.

15 22. The Order (pg. 9, paragraph 51) required Respondent to comply within thirty days of the
16 effective date of the Order, and at all times thereafter, with the public notification requirements
17 of the Revised Public Notice Rule at 40 C.F.R. Part 141, Subpart Q.

18 23. After consulting with the State, neither the State nor EPA has received any data from
19 Respondent that it provided public notice of the following violations that occurred after the
20 Order's effective date of March 30, 2005: (a) failure to conduct two consecutive six-month
21 rounds of monitoring for lead and copper in accordance 40 C.F.R. § 141.82; and (b) failing to
22 monitor for total coliform on a monthly basis in accordance with 40 C.F.R. § 141.21(a), in
23 violation of the Order (pg. 9, paragraph 51).

24 24. Pursuant to Section 1414(g)(2) of the SDWA, 42 U.S.C. § 300g-3(g)(2), EPA has
25 provided the State of Arizona with an opportunity to confer with EPA regarding this Complaint.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

25. Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. §§ 19.1-19.4, authorizes the Administrator of the EPA to assess an administrative civil penalty, not exceeding \$27,500, against any person who violates, or fails or refuses to comply with, an order issued under section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1).

26. Pursuant to Section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. §§ 19.1-19.4, and in accordance with the enclosed Consolidated Rules of Practice, EPA hereby requests that a civil penalty of up to \$27,500 be assessed against Respondent for violations of the Order issued pursuant to Section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1).

27. In accordance with Section 1414 of the SDWA, 42 U.S.C. § 300g-3, and 40 C.F.R. § 22.14(a), EPA took into consideration the seriousness of the violations, the population at risk, and other appropriate factors, including the severity of each violation, in its determination of the proposed penalty. In considering these factors, among other things, Complainant evaluated the economic benefit to Respondent in failing to comply with the SDWA, the gravity and severity of each violation (children are particularly susceptible to the adverse health effects of lead and nitrate in drinking water), the service population of the System, the duration of violation, Respondent's history of non-compliance, and other considerations. Respondent ignored repeated requests and orders by ADEQ and EPA to come into compliance with the SDWA and the requirements of the Lead and Copper Rule and the Revised Public Notice Rule, and other SDWA requirements, and has failed to comply with these requirements as of the date of this Complaint. Respondent's history of disregarding requirements of the SDWA and its regulations has provided significant economic benefit to Respondent and placed Respondent's customers at risk of exposure to elevated levels of total coliforms, lead, and copper in their drinking water.

1 **PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

2 28. The rules of procedure governing this administrative litigation are set forth in the
3 attached Consolidated Rules of Practice, which is codified at 40 C.F.R. Part 22. This proceeding
4 will be conducted in accordance with the Consolidated Rules of Practice, including Subpart I,
5 unless Respondent requests in the Answer a hearing on the record in accordance with Section
6 554 of the Administrative Procedure Act (“APA”), 5 U.S.C. § 554, in which case Subpart I of the
7 Consolidated Rules of Practice will not apply.

8 **ANSWERING THE COMPLAINT**

9 29. If Respondent intends to contest any material fact upon which the Complaint is based, or
10 to contend that the proposed penalty is inappropriate or that Respondent is entitled to judgment
11 as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA Region IX
12 both an original and one copy of a written Answer to the Complaint. 40 C.F.R. § 22.15(a). Such
13 Answer must be filed within thirty days after service of this Complaint. 40 C.F.R. § 22.15(a).

14 The address of the Regional Hearing Clerk of EPA Region IX is:

15 Danielle Carr
16 Regional Hearing Clerk
17 U.S. Environmental Protection Agency, Region IX
18 75 Hawthorne Street (ORC-1)
19 San Francisco, CA 94105

20 Respondent must also serve a *copy* of the Answer to the Complaint upon EPA, to the person and
21 address listed in Paragraph 43 below, as required by 40 C.F.R. § 22.15(a).

22 30. Respondent’s Answer to the Complaint must clearly and directly admit, deny, or explain
23 each of the factual allegations contained in the Complaint with regard to which Respondent has
24 any knowledge. 40 C.F.R. § 22.15(b). Where Respondent has no knowledge of a particular
25 factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. §
22.15(b). If Respondent fails in its Answer to admit, deny, or explain any material factual

1 allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40
2 C.F.R. § 22.15(d).

3 31. The Answer must also state: (1) the circumstances or arguments that are alleged to
4 constitute the grounds of any defense, (2) the facts that Respondent disputes (and thus intends to
5 place at issue in the proceeding), (3) the basis for opposing the proposed relief, and (4) whether
6 Respondent requests a hearing. 40 C.F.R. § 22.15(b).

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

10 **OPPORTUNITY TO REQUEST A HEARING**

11 33. If requested by Respondent in the Answer, a hearing upon the issues raised by the
12 Complaint and Answer may be held. 40 C.F.R. § 22.15(c). Any hearing in this proceeding will
13 be held at a location determined in accordance with 40 C.F.R. § 22.21(d).

14 34. Respondent has the right to elect a hearing on the record in accordance with Section 554
15 of the APA, 5 U.S.C. § 554. 40 C.F.R. § 22.42(b). If Respondent does not request such a hearing,
16 then Respondent waives the right to this hearing. Id.

17 35. If Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R.
18 § 22.3) may still hold a hearing if the Answer raises issues appropriate for adjudication. 40
19 C.F.R. § 22.15(c).

20 **FAILURE TO ANSWER**

21 36. To avoid entry of a Default Order against you pursuant to 40 C.F.R. § 22.17 for a
22 penalty of up to \$27,500 as proposed in this Complaint, Respondent must file a written Answer
23 with the Regional Hearing Clerk at the address above within thirty days of receipt of this
24 Complaint.

1 37. Any penalty assessed in the Default Order will become due and payable by
2 Respondent without further proceedings thirty days after the Default Order becomes final
3 pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to
4 enforce such Default Order against Respondent, and to collect the assessed penalty amount, in
5 federal court.

6 38. Whether or not Respondent requests a formal hearing, Respondent may request an
7 informal settlement conference to discuss the facts of this case, the proposed penalty, and the
8 possibility of settling this matter. 40 C.F.R. § 22.18(b). To request such a settlement conference,
9 please contact:

10 Rich Campbell
11 Office of Regional Counsel
12 U.S. Environmental Protection Agency, Region IX
13 75 Hawthorne Street (ORC-2)
14 San Francisco, CA 94105
15 Phone: (415) 972-3870.

16 Mr. Campbell is authorized to receive service related to this proceeding.

17 39. The parties may engage in settlement discussions regardless of whether Respondent
18 requests a hearing. 40 C.F.R. § 22.18(b)(1). In other words, even if Respondent requests a formal
19 hearing, Respondent may also request an informal settlement conference and the informal
20 conference procedure may be pursued simultaneously with the formal adjudicatory hearing
21 procedure. A request for an informal settlement conference constitutes neither an admission nor a
22 denial of any of the matters alleged in the Complaint. EPA does not deem a request for an
23 informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

24 40. Settlement discussions do not affect Respondent's obligation to file a timely Answer
25 to the Complaint pursuant to 40 C.F.R. § 22.15. 40 C.F.R. § 22.18(b)(1). EPA will not modify its
proposed penalty simply because an informal settlement conference is held.

1 41. The terms and conditions of any settlement that may be reached as a result of a
2 settlement conference will be recorded in a written Consent Agreement signed by all parties. 40
3 C.F.R. § 22.18(b)(2). To conclude the proceeding, EPA will execute a Final Order ratifying the
4 parties' Consent Agreement. 40 C.F.R. § 22.18(b)(3). In accepting the Consent Agreement,
5 Respondent waives any right to contest the allegations in the Complaint and waives any right to
6 appeal the Final Order accompanying the Consent Agreement. 40 C.F.R. § 22.18(b)(2).

7 42. Respondent's entering into a settlement does not extinguish, waive, satisfy, or otherwise
8 affect Respondent's obligation to comply with all applicable statutory and regulatory
9 requirements and legal orders.

10 **FILING OF DOCUMENTS**

11 43. Respondent must send the Answer and any Hearing Request, as well as all subsequent
12 documents filed in this action, to:

13 Danielle Carr
14 Regional Hearing Clerk
15 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (ORC-1)
San Francisco, CA 94105

16 Respondent must send a *copy* of the Answer, a *copy* of any Hearing Request, and a *copy* of all
17 subsequent documents filed in this action, to:

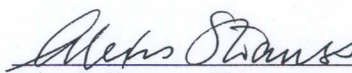
18 Rich Campbell
19 Office of Regional Counsel
20 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (ORC-2)
21 San Francisco, CA 94105

22 44. Respondent has a right to be represented by an attorney at any stage of this proceeding.

23 45. This Complaint does not constitute a waiver, suspension, or modification of the
24 requirements of the SDWA, any regulations promulgated thereunder, or any applicable permit.
25

1 46. Neither assessment nor payment of an administrative civil penalty pursuant to section
2 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), will affect Respondent's continuing
3 obligation to comply with the SDWA, and with regulations promulgated thereunder.
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6 Dated this 11th day of September, 2008


7 Alexis Strauss, Director
8 Water Division
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING were hand-carried to the Regional Hearing Clerk, EPA, Region 9, 75 Hawthorne Street, San Francisco, California, and that a true copy of the same was delivered as follows:

Via certified mail, return receipt requested, to:

Pat Paulsell
Arizona Windsong Water Company
P.O. Box 261
Sanders, AZ 86512

9/15/2008

DATE

Alicia Reyes

NAME

Office Automation Clerk

TITLE