



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-W

AUG 20 2008

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Gerald Redman, Director  
Northern Arapaho Utilities  
Box 8583  
Ethete, WY 82520

Re: Complaint and Notice of Opportunity for Hearing  
Docket No. **SDWA-08-2008-0093**  
Northern Arapaho Utilities  
Ethete Public Water System, ID #085690002

Dear Mr. Redman:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against the Northern Arapaho Utilities (NAU) under section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that the NAU failed to comply with an Administrative Order, Docket No. SDWA-08-2006-0035, issued on May 18, 2006, to the NAU for Ethete Public Water System, under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g). The violations are specifically set out in the complaint.

By law, the NAU 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 the NAU 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. In the NAU's answer it may request a hearing. The NAU has the right to be represented by an attorney at any stage of these proceedings.

Whether or not the NAU requests a hearing, its representatives may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty.

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 the NAU's right to request a hearing on any matter to which the NAU has stipulated in that agreement.



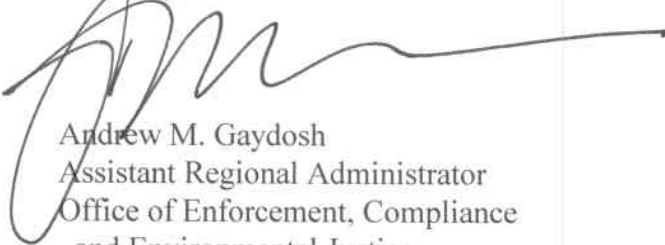
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A request for an informal conference does not extend the 30-day period during which the NAU must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing. Please note that if the NAU 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 it 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 Melanie Wasco, Environmental Protection Specialist, who can be reached at 800-227-8917 extension 6540, or Amy Swanson, Enforcement Attorney, who can be reached at 800-227-8917 extension 6906.

We urge your prompt attention to this matter.

Sincerely,



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

Enclosure

cc: VIA CERTIFIED MAIL:  
Anthony Addison, Sr., Chairman  
Northern Arapaho Business Council

Don Aragon, Executive Director  
Wind River Environmental Quality Commission

Christopher J. Schneider, Attorney  
Baldwin & Crocker, P.C.



2008 AUG 20 AM 10:24

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

EPA REGION VIII  
HEARING CLERK

\_\_\_\_\_ )  
 IN THE MATTER OF )  
 )  
 Ethete Public Water System )  
 Northern Arapaho Utilities )  
 Ethete, Wyoming )  
 PWS ID# 085690002 )  
 )  
 Respondent )  
 )  
 Proceedings under section 1414(g) )  
 of the Safe Drinking Water Act, )  
 42 U.S.C. § 300g-3(g) )  
 \_\_\_\_\_ )

Docket No. **SDWA-08-2008-0093**

**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 (the "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 Northern Arapaho Utilities is a tribal agency under the laws of the Northern Arapaho Business Council and is 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 Ethete Public Water System (the “System”), located on the Wind River Reservation, Ethete, Wyoming, 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” as that term is defined in section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2, and a “community water system” as that term is defined in section 1401(15) of the SDWA, 42 U.S.C. § 300f(15), and 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 surface water from the South Fork of the Little Wind River and, when needed, the North Fork of the Little Wind River. The System serves an average of approximately 2,500 residents daily through approximately 330 service connections year-round.
6. On May 18, 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-08-2006-0035 (the "Order") to the Respondent, citing various violations of the NPDWRs, including, but not limited to: failing to comply with regulatory requirements following a copper action level exceedance; failing to monitor and adequately report results for disinfection byproduct precursors and disinfection byproducts; failing to comply with turbidity limits; failing to monitor for monthly, repeat and additional routine total coliform samples; violating the Maximum Contaminant Level (MCL) for total coliform; failing to monitor for residual disinfectant concentration, nitrate, and volatile organic compounds; and failing to notify the public and EPA of these violations.
7. A copy of the Order is attached to this Complaint (Complainant's Exhibit 2).
8. On September 25, 2006, EPA issued an Administrative Order Violation letter, noting that the Respondent was in violation of the Order's requirement to determine and report the enhanced coagulation calculation required under the disinfection byproduct regulations to EPA quarterly.

10. A copy of EPA's September 25, 2006, letter is attached to this Complaint (Complainant's Exhibit 3).
11. On November 16, 2006, EPA issued a second Administrative Order Violation letter, noting that the Respondent was in violation of the Order's requirements to monitor quarterly for disinfection byproducts and report noncompliance with the NPDWRs to EPA within 48 hours.
12. A copy of EPA's November 16, 2006, letter is attached to this Complaint (Complainant's Exhibit 4).

### **COUNTS OF VIOLATION**

#### **Count I**

##### **Failure to Monitor Quarterly for Disinfection Byproducts**

1. The Order (page 7, par. 3 of the "Order" section) requires the Respondent to monitor quarterly for disinfection byproducts in the distribution system (40 C.F.R. § 141.132(b)) to determine compliance with the disinfection byproducts MCL (40 C.F.R. § 141.64), and report analytical results and compliance calculations to EPA within the first 10 days of the end of the monitoring period (40 C.F.R. §§ 141.134(a) and (b)).
2. The Respondent violated the Order by failing to monitor quarterly for disinfection byproducts in the distribution system for the third quarter (July through September) of 2006, fourth quarter (October through December) 2007, and second quarter (April through June) 2008.

## **Count II**

### **Failure to Determine and Report Quarterly to EPA the Enhanced Coagulation Calculation**

1. The Order (pages 7 and 8, par. 4 of the "Order" section) requires the Respondent to calculate the total organic carbon (TOC) removal percentage between the source water and the combined filter effluent to determine the enhanced coagulation calculation and report this information to EPA within 10 days following the end of each quarter as stated in 40 C.F.R. § 141.135(c).
2. The Respondent violated the Order by failing to report the enhanced coagulation calculation and thus provided inadequate reporting to EPA for the second quarter (April through June) of 2006, and failing to report compliance calculations by April 10, 2008, for first quarter (January through March) of 2008. A complete compliance report was received by EPA on May 28, 2008, for first quarter 2008.

## **Count III**

### **Failure to Provide Public Notice of Violations**

1. The Order (page 9, par. 11 of the "Order" section) requires the Respondent to provide public notice in the manner specified in the regulations, which would contain all of the information required under 40 C.F.R. §§ 141.201, 141.204 and 141.205, and submit a copy of the public notice to EPA within 10 days of completion (40 C.F.R. § 141.31(d)).

2. The Respondent violated the Order by failing to provide public notice of the 2006 violations included in Counts I and II above.

#### **Count IV**

##### **Failure to Report to EPA Noncompliance of the NPDWRs**

1. The Order (page 9, par. 13 of the “Order” section) requires the Respondent to report any failure to comply with any NPDWR to EPA within 48 hours (40 C.F.R. § 141.31(b)).
2. The Respondent violated the Order by failing to report to EPA within 48 hours the violations outlined in Counts I through III above.

#### **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.<sup>1</sup> 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 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 **\$15,703**.

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



**TERMS OF PAYMENT FOR QUICK RESOLUTION**

If 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, for the amount, payable to the “**Environmental Protection Agency**” 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:

Melanie Wasco (8ENF-W)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Payment of the penalty in this manner does not relieve 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 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 CFR §22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

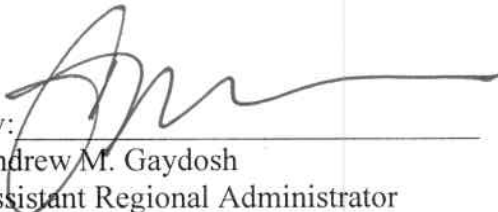
### **SETTLEMENT CONFERENCE**

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, 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

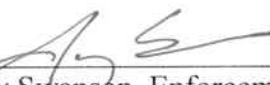
conference or any questions that you may have regarding this Complaint should be directed to the attorney listed below.

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

Date: 8/21/08

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

Date: 8/19/2008

By:   
Amy Swanson, Enforcement Attorney  
U.S. EPA Region 8  
1595 Wynkoop Street (8ENF-L)  
Denver, Colorado 80202-1129  
Telephone: (303) 312-6906  
Facsimile: (303) 312-6953

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:

Gerald Redman, Director  
Northern Arapaho Utilities  
P.O. Box 8583  
Ethete, WY 82520

and to:

Anthony Addison, Sr., Chairman  
Northern Arapaho Business Council  
P.O. Box 396  
Fort Washakie, WY 82514

Date: 8/20/08

By: 