

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103

REGIONAL HEARING CLERK
EPA REGION III, PHILA, PA

2014 JUN 17 PM 4: 16

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In the Matter of)	Proceeding to Assess Civil Penalty
)	Pursuant to Section 1414(g)(3) of
)	the Safe Drinking Water Act,
)	42 U.S.C. § 300g-3
Dale Daniel Kyser)	
8701 Oldham Road)	
Fredericksburg, Virginia 22408,)	Docket Number
)	SDWA-03-2014-0089
Respondent.)	
)	
PWS ID No. VA6047490)	ADMINISTRATIVE COMPLAINT
Brenridge Subdivision)	AND NOTICE OF OPPORTUNITY
Public Water System)	TO REQUEST HEARING
Culpeper, Virginia)	

I. INTRODUCTION

This Administrative Complaint and Notice of Opportunity to Request a Hearing (“Complaint”) is issued by the U.S. Environmental Protection Agency (“EPA”) pursuant to Section 1414(g)(3)(A) and (B) of the Safe Drinking Water Act (“SDWA” or “Act”), 42 U.S.C. § 300g-3(g)(3)(A) and (B), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. A copy of the Consolidated Rules of Practice is enclosed as Attachment A. Complainant is the Director of the Water Protection Division for EPA Region III (“Complainant”).

Complainant hereby proposes that an administrative civil penalty be assessed against Dale Daniel Kyser (“Respondent”) for violations of an Administrative Order issued on September 17, 2013, pursuant to Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), requiring compliance with applicable requirements of the SDWA at Respondent’s public water system located in Culpeper, Virginia.

**II. FACTUAL AND JURISDICTIONAL ALLEGATIONS
AND FINDINGS OF VIOLATIONS**

1. Respondent, Mr. Dale Daniel Kyser is an individual and therefore a "person" as defined by § 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. Respondent is the owner of the water supply and distribution system that provides drinking water for human consumption, known as Brenridge Subdivision Public Water System, Public Water System Identification Number: VA6047490 ("Brenridge System"), located in Culpeper, Virginia.
3. The Brenridge System is supplied by ground water from two (2) wells.
4. A "public water system," as defined by § 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2, is a system that regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year, and/or has at least fifteen (15) service connections. A "community water system" is defined at § 1401(15) of the SDWA, 42 U.S.C. § 300f(15) and 40 C.F.R. § 141.2 to be a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.
5. According to the Sanitary Survey dated December 17, 2012, provided by the Virginia Department of Health ("VDH"), the Brenridge System serves one hundred and seventy-five (175) persons year-round and has fifty-six (56) service connections. Therefore, the Brenridge System meets the definition of a "public water system" and a "community water system".
6. As the owner of the Brenridge System, Respondent is a "supplier of water" as defined by § 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. who is subject to the requirements of Part B of the SDWA, 42 U.S.C. § 300g *et seq.*, and its implementing regulations, the National Primary Drinking Water Regulations ("NPDWR"), 40 C.F.R. Part 141. The NPDWR establish mandatory monitoring, analysis and reporting requirements for suppliers of water.
7. The NPDWR provides sampling and analytical requirements for arsenic and inorganic chemicals at 40 C.F.R. §§ 141.23, for radionuclides at 40 C.F.R. § 141.26(a), and for lead and copper at 40 C.F.R. § 141.86.
8. The NPDWR provides sampling and analytical requirements for fifty-three organic chemicals listed in a table in 40 CFR § 141.24. Organic chemicals in the

table at 40 CFR § 141.24(e)(1) numbered one through 21 are volatile organic compounds (“VOCs”), *see* 52 Fed. Reg. 25694 Table 1, 56 Fed. Reg. 3528 Table 2, 57 Fed. Reg. 31778 Table 2, and 12 VAC 5-590-440 Table 2.2, and those numbered 22 through 53 are synthetic organic compounds (“SOCs”), *see* 40 C.F.R § 141.61(c).

9. The NPDWR includes a requirement to notify the public of drinking water violations at 40 C.F.R Part 141, Subpart Q.
10. Upon information and belief, the VDH, pursuant to enforcement responsibility under Section 1413(a) of the SDWA, 42 U.S.C. § 300g-2(a), has issued approximately twenty-nine (29) Notices of Violation to the Respondent from January 2011 to the present for alleged violations of the Virginia Waterworks Regulations, 12 VAC 5-590 *et seq.*, at the Brenridge System.
11. On July 11, 2013, EPA issued a Notice of Violation/Request for Information (referred to as the “Brenridge NOV/RFI”) to Respondent, under Sections 1414(a)(1)(A) and 1445 of the SDWA, 42 U.S.C. §§ 300g-3(a)(1)(A) and 300j-4, notifying Respondent of alleged violations of the SDWA at the Brenridge System and requiring Respondent to provide EPA with certain specified information related to the Brenridge System. The Brenridge NOV/RFI was delivered to the Respondent by United Parcel Service. The United Parcel Service “Proof of Delivery” shows that the NOV/RFI was delivered to Respondent on August 21, 2013.
12. The 2013 Brenridge NOV/RFI notified Respondent of the following alleged violations:
 - A. Failure to monitor for arsenic as required by VDH pursuant to 40 C.F.R. § 141.23, during the three year compliance monitoring period beginning January 2009.
 - B. Failure to monitor for lead and copper, as required by VDH pursuant to 40 C.F.R. § 141.86, during the 2010, 2011, and 2012 yearly compliance monitoring periods.
 - C. Failure to monitor for radionuclides as required by VDH pursuant to 40 C.F.R. § 141.26(a), during the quarterly compliance monitoring periods beginning October 2011, January 2012, April 2012, July 2012, October 2012, and January 2013.
 - D. Failed to monitor for a series of volatile organic chemicals as required by VDH pursuant to 40 C.F.R. § 141.24, during the quarterly compliance monitoring periods beginning October 2011, January 2012, April 2012, July 2012, October 2012, and January 2013.

- E. Failure to monitor for a series of inorganic chemicals as required by VDH pursuant to 40 C.F.R. § 141.23, during the three year compliance monitoring period beginning January 2009.
 - F. Failure to mail or otherwise directly deliver one copy of its 2009, 2010, and 2011 Consumer Confidence Report, among others, to each of its customers by July 1 of the following year, as required by VDH pursuant to 40 C.F.R. § 141.152(a).
 - G. Failure to notify the public of its failure to comply with the monitoring requirements as set forth in 40 CFR § 141.201 *et seq.*
13. The 2013 Brenridge NOV/RFI required Respondent to provide to EPA, within thirty (30) days of receipt of the NOV/RFI, copies of all public notices issued to customers for violations of NPDWR, required by 40 C.F.R. § 141.204, and copies of all reports sent to VDH concerning violations of NPDWR, monitoring activities, and public notifications, required by 40 C.F.R. § 141.31(b) and (d).
 14. As of this date, EPA has not received the information required by the Brenridge NOV/RFI, described in paragraph 13, above.
 15. On September 17, 2013, EPA issued an Administrative Order, Docket No. SDWA-03-2013-0208-DS (“2013 Brenridge AO”) to Respondent that became effective on the same date, pursuant to Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3.
 16. The 2013 Brenridge AO included the findings of violation in paragraph 12, above, and ordered Respondent to conduct specific activities, including monitoring for certain contaminants, in accordance with NPDWR, as further described below.
 17. Paragraph 26 of the 2013 Brenridge AO requires Respondent within fifteen (15) days of the effective date of the Brenridge AO to send written correspondence to the EPA and the VDH, outlining the actions Respondent has taken and plans to take to comply with this Brenridge AO, including specific interim and final milestones for such plans.
 18. Paragraph 27 of the 2013 Brenridge AO requires Respondent to notify each of the Brenridge System’s customers of its failure to monitor for arsenic, lead and copper, radionuclides, volatile organic compounds, and inorganic compounds, within the time period and manner required in 40 C.F.R. 141 [sic] Subpart Q. Paragraph 27 of the AO should have referenced 40 C.F.R. Part 141, Subpart Q.
 19. Paragraph 28 of the 2013 Brenridge AO requires Respondent to send copies of all public notifications to the VDH and to EPA.

20. Paragraph 30 of the 2013 Brenridge AO requires Respondent within thirty (30) days of the date Respondent receives the Brenridge AO to mail or otherwise directly deliver copies of the 2009, 2010, and 2011 Consumer Confidence Report (“CCR”), among others, to each of the Brenridge System’s customers.
21. Paragraph 31 of the 2013 Brenridge AO requires Respondent, within thirty (30) days of the date Respondent receives the Brenridge AO, to send a copy of its 2009, 2010, and 2011 annual CCR, among others, to the VDH.
22. Paragraphs 32, 33, 34, 35, and 36 of the 2013 Brenridge AO require Respondent within thirty (30) days of the date Respondent receives the Brenridge AO to collect and analyze water samples for arsenic, lead and copper, radionuclides, volatile organic chemicals, and inorganic chemicals in accordance with specified provisions of 40 C.F.R. Part 141.
23. Paragraph 38 of the 2013 Brenridge AO requires Respondent, within thirty (30) days of the date Respondent receives the Brenridge AO and every thirty (30) days thereafter, to send written progress reports (“Reports”) to EPA and VDH. The Brenridge AO requires Respondent to submit the following information in the progress reports:
 - a. Respondent’s progress toward complying with each of the requirements of the Brenridge AO;
 - b. copies of all sampling analytical results;
 - c. any event which may delay compliance with this Order, including:
 - i. the cause and the anticipated length of any delay;
 - ii. the efforts taken to prevent or minimize any delay; and
 - iii. a description of any future deadlines which could be affected by the delay.
24. To date, EPA and VDH have not received any of the reports, analytical results, or any other information, required to be submitted by Respondent under the 2013 Brenridge AO.

COUNT I

25. The allegations of paragraphs 1 through 25 of this Complaint are incorporated herein by reference.
26. Section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1), authorizes EPA to issue an order to require compliance with any requirement of the SDWA.
27. On September 17, 2013, EPA issued the Brenridge AO, which requires compliance with certain requirements of the SDWA and its implementing

regulations, pursuant to Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), to Respondent.

28. Section 1414(g)(3)(A) of the SDWA provides that any person who fails or refuses to comply with any order under this section shall be liable for a civil penalty. 42 U.S.C. § 300g-3(g)(3)(A).
29. Upon information and belief, Respondent failed to comply with the Brenridge AO from October 2, 2013 until the date of this Complaint.
30. Respondent's failure to comply with the Brenridge AO constitutes a violation of the SDWA for which penalties may be sought pursuant to Section 1414(g)(3)(A) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(A).

III. PROPOSED CIVIL PENALTY

Section 1414(g)(3)(A) of the Act, 42 U.S.C. § 300g-3(g)(3)(A), authorizes EPA to assess a civil penalty not to exceed \$25,000 per day of violation for failure to comply with an order under section 1414(g) of the Act. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, violations of Section 1414(g) for which EPA seeks an administrative penalty under Section 1414(g)(3)(A) of the Act, 42 U.S.C. § 300g-3(g)(3)(A), that occur after March 15, 2004, subject the violator to civil penalties in an amount not to exceed \$37,500 per proceeding.

Pursuant to Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, in a case where the EPA seeks a civil penalty that exceeds \$7,500, but does not exceed \$37,500, the penalty must be assessed by EPA after notice and opportunity for a hearing on the record in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.

Based on the foregoing findings of violation, and pursuant to the authority of Section 1414(g)(3)(A) and (B) of the Act, 42 U.S.C. § 300g-3(g)(3)(A) and (B), Complainant hereby proposes an Administrative Penalty in the amount of **\$19,500**. The proposed administrative penalty has been determined in accordance with Section 1414(g)(A) and (B) of the Act, 42 U.S.C. § 300g-3(g)(A) and (B). For purposes of determining the amount of the proposed penalty, EPA has taken into account the seriousness of the violations, the population at risk and other appropriate factors including the economic benefit resulting from the violation, any history of such violations, any good faith efforts to comply with the applicable requirements, and the economic impact of the penalty on

the violator. The proposed penalty does not constitute a demand as defined in 28 U.S.C. §§ 2412 *et seq.*

If warranted, Complainant may adjust the proposed civil penalty in this Complaint. Complainant will consider Respondent's ability to pay in making any adjustment to the proposed civil penalty. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent. In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty in the Complaint.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to a hearing to contest any matter of law or material fact contained in this Complaint and the appropriateness of the amount of the proposed penalty. **To request a hearing, the Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk, within thirty (30) days of receipt of this Complaint.**

Respondent's written Answer to the Complaint, and any motions or other filings prior to the filing of the Answer, should be filed with the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
Mail Code 3RC00
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

After the filing of Respondent's Answer to the Complaint, the Hearing Clerk at EPA Headquarters will serve as the Regional Hearing Clerk, and all further filings in this matter, must be filed with the Hearing Clerk at the following addresses, as appropriate:

If using the U.S. Postal Service:

Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Avenue NW
Washington, DC 20460

If using UPS/FedEx/DHL:

Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Avenue NW
Washington, DC 20460

Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation and the Answer so states, the allegation is deemed denied. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. All material facts not denied or explained in the Answer will be considered as admitted. Hearing procedures are described in the Consolidated Rules of Practice, 40 C.F.R. Part 22. See Attachment A. The proceedings for this matter are governed by Subparts A through G of the Consolidated Rules of Practice, 40 C.F.R. Part 22, Subparts A through G.

A copy of the Answer and any subsequent documents filed in this action shall be sent to:

Judith Hykel
Senior Assistant Regional Counsel (3RC20)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

Ms. Hykel, the attorney assigned to this case, may be reached by telephone at (215) 814-2484 and by facsimile at (215) 814-2603.

If Respondent fails to admit, deny or explain any material factual contained in this Complaint within thirty (30) days after service of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint. Failure to file a written Answer may result in the filing of a Motion for Default Order and the issuance of a Default Order imposing the penalties herein without further proceedings. Default by the Respondent constitutes, for purposes of this proceeding only, an admission of all facts alleged in this Complaint and a waiver of Respondent's right to contest such factual allegations. Respondent's failure to pay the entire penalty assessed in any Default Order issued in this case by its due date may result in a civil action to collect the assessed penalty. In addition, the Default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

V. SETTLEMENT CONFERENCE

EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the SDWA. Whether or not a hearing is requested, the Respondent may request a settlement conference to discuss the allegations of the Complaint and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve the Respondent of the responsibility to file a timely Answer to the Complaint.**

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

If Respondent wishes to arrange a settlement conference or if Respondent has any questions related to this proceeding, Respondent may contact the attorney assigned to this case, as indicated in Section IV. **Once again, such a request for a settlement conference does not relieve Respondent of the responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.**

VI. QUICK RESOLUTION

In accordance with 40 C.F.R. § 22.18(a) Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint.

If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the following:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and a copy shall be provided to:

Judith Hykel
Senior Assistant Regional Counsel
(3RC20)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

If Respondent files such a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint, Respondent shall pay the full amount of the proposed penalty within sixty (60) days of receiving the Complaint. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

Payment of the penalty shall be made by one of the following methods below. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this Complaint.

a. Payment by check to "United States Treasury":

i. If sent via first-class mail, to:

US EPA Region III
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000

ii. If sent via UPS, Federal Express, or Overnight Mail, to:

U.S. Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

b. Via wire transfer, sent to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Attn: "D 68010727 Environmental Protection Agency"

- c. Via ACH (Automated Clearing House) for receiving U.S. currency, sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Finance Center Contacts:
1) Jesse White: 301-887-6548
2) John Schmid: 202-874-7026
3) REX (Remittance Express) 866-234-5681

At the same time payment is made, copies of the check and/or proof of payment via wire transfer or ACH shall be mailed to:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and to:

Judith Hykel
Senior Assistant Regional Counsel
(3RC20)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

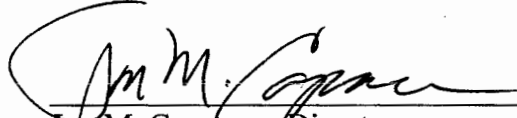
VII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Water Protection Division, the Office of the EPA Assistant Administrator for the Office of Water, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have

an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice, 40 C.F.R. Part 22, prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date:

6/17/14



Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection Agency
Region III

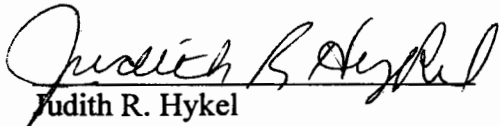
CERTIFICATE OF SERVICE

I hereby certify that I delivered a copy of the foregoing Complaint on the date specified below, by certified mail, return receipt requested and by UPS to:

Dale Daniel Kyser
8701 Oldham Road
Fredricksburg, Virginia 22408

I also certify that, on the date show below, I filed the original and one copy of the Complaint with the Regional Hearing Clerk for the Environmental Protection Agency Region III at the following address:

1650 Arch Street
Philadelphia, Pennsylvania 19103



Judith R. Hykel
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103
Phone: (215) 814-2646
Fax: (215) 814-2603
Email: hykel.judith@epa.gov

Date: 6/17/14

