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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

In the Matter of:)	
)	
Estell Subdivison, Lot 2)	Docket No. SDWA-10-2014-0137
Public Water System)	
(AK# 216902))	COMPLAINT, NOTICE AND
)	OPPORTUNITY FOR HEARING
)	
Respondent.)	
_____)	

I. AUTHORITIES

1.1. This administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA or "Complainant") by Section 1414(g)(3)(B) of the Safe Drinking Water Act (the SDWA), 42 U.S.C. § 300g-3(g)(3)(B). The Administrator has delegated this authority to the Regional Administrator of EPA Region 10, who has in turn delegated the authority to the Manager of the Drinking Water Unit in Region 10.

1.2. Pursuant to Section 1414(g)(3)(B) of the Safe Drinking Water Act (the SDWA), 42 U.S.C. § 300g-3(g)(3)(B) and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), Complaint hereby seek the assessment of a civil administrative penalty against Estell Subdivision, Lot 2 (Respondent) for violations of SDWA and the regulations at 40 C.F.R. Part 141.

II. STATUTORY AND REGULATORY BACKGROUND

2.1. In accordance with Section 1413(a) of the SDWA, 42 U.S.C. § 300g-2(a), the State of Alaska (State) has primary enforcement responsibility to ensure that suppliers of water within the state comply with the requirements of the SDWA. The Alaska Department of Environmental Conservation (ADEC) is the state agency that has authority for implementing the drinking water regulations in Alaska.

2.2. According to Section 1414(b) of SDWA, 42 U.S.C. § 300g-3(b), for violations of applicable requirements of the SDWA in a state that has primary enforcement responsibility, the EPA may bring a civil action if requested by the agency of that state with the authority for enforcing such requirements. Further, according to Section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1), the EPA may issue an administrative compliance order in any case in which the EPA may bring a civil action.

2.3. On behalf of the State, ADEC has requested that the EPA initiate a formal enforcement action to bring the public water system operated by the Respondent into compliance with the SDWA, the regulations at 40 C.F.R. Part 141, and applicable State requirements.

2.4. On August 25, 2014, in accordance with Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), the EPA issued by personal service an Administrative Order, Docket No. SDWA-08-2014-0137 (the Order) to Respondent, citing violations of 40 C.F.R. Part 141 (also known as the National Primary Drinking Water Regulations or NPDWRs).

III. ALLEGATIONS

3.1. Estell Subdivision, Lot 2 is a "person" within the meaning of is a "person" as defined in Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.

3.2. Respondent operates the Estell Subdivision, Lot 2 Public Water System (the System) located in Anchorage, Alaska that provides water for human consumption to the public through pipes or other constructed conveyances.

3.3. The System serves three service connections and approximately 40 fulltime residents. The System is supplied solely by a groundwater source.

3.4. Because the System has at least 15 service connections used by year-round residents and/or regularly serves at least 25 year-round residents, the System is a “public water system” and a “community water system” as those terms are defined in 40 C.F.R. § 141.2 and Section 1401 of the SDWA, 42 U.S.C. § 300f.

3.5. 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 NPDWRs, each of which is an “applicable requirement” as defined in Section 1414(i) of the SDWA, 42 U.S.C. § 300g-3(i).

VIOLATIONS

Count I

Failure to Provide Timely Consumer Confidence Reports

3.6. According to 40 C.F.R. §§ 141.152-141.154, Respondent is required to distribute to their customers and ADEC an annual Consumer Confidence Report (CCR) containing certain information and to certify to ADEC that the report has been sent within three months of distribution to their customers.

3.7. Paragraph 4.1 of the Order directed Respondent to prepare and deliver a CCR for 2009 through 2013 to the System’s customers, the EPA, and ADEC within 60 days of receiving the Order.

3.8. To date, Respondent has not delivered a CCR for 2009 through 2013 to the System's customers, the EPA, and ADEC, in violation of paragraph 4.1 of the Order.

Count II

Failure to Submit Compliance Plan and Schedule within 60 Days of Receiving Order

3.9. Paragraph 3.4 of the Order cited an instance on December 31, 2009 in which the Respondent had violated the Maximum Contaminant Level (MCL) for arsenic, which is set forth in 40 C.F.R. §§ 141.62(b) and 141.23(i)(1).

3.10. Paragraph 4.3 of the Order directed Respondent, within 60 days of receiving the Order, to provide the EPA and ADEC with a compliance plan and schedule for the System to come into compliance with the arsenic MCL.

3.11. To date, Respondent has failed to submit a compliance plan and schedule for attaining the arsenic MCL to either the EPA or ADEC, in violation of paragraph 4.3 of the Order.

Count III

Failure to Provide Timely Public Notice and Certification to ADEC

3.12. Respondent is required to notify the public of certain violations of the Drinking Water Regulations, 40 C.F.R. §§ 141.201-141.211.

3.13. Paragraph 4.6 of the Order required Respondent to provide public notice of its violations as required by 40 C.F.R. §§ 141.201-141.211. Paragraph 4.7 required the Respondent to provide the ADEC with a copy of the public notice and a certification that the water system has fully complied with the public notification regulations no later than the 10th day of the month following the month the public notices were distributed.

3.14. To date, Respondent has not provided public notice of its violation to its customers nor provided a copy and certification to ADEC, in violation of paragraphs 4.6 and 4.7 of the Order.

IV. PROPOSED PENALTY

4.1. 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 per day per violation 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.)

4.2. Based on an evaluation of the facts alleged in this Complaint, and after considering the statutory factors of Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), which include 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 Complainant proposes that an administrative penalty not to exceed **\$34,400** be assessed against Respondent.

V. OPPORTUNITY TO REQUEST A HEARING

5.1. 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. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice, 40 C.F.R. Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

5.2. Respondent's Answer, including any request for hearing, must be in writing and must be filed with:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

VI. FAILURE TO FILE AN ANSWER

6.1. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days after service of this Complaint.

6.2. In accordance with 40 C.F.R. § 22.15, Respondent's answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which the Respondent has any knowledge. Respondent's Answer must also state: (1) the circumstances of arguments which are alleged to constitute the grounds of defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained herein constitutes an admission of the allegation.

VII. INFORMAL SETTLEMENT CONFERENCE

7.1. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of the case, the proposed penalty, and the possibility of settling this matter. To request such a settlement conference, Respondent should contact:

Robert Hartman
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10

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U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
92060 553-1037

7.2. Note that a request for an informal settlement conference does not extend the 30 day period for filing a written Answer to this Complaint, nor does it waive Respondent's right to request a hearing.

7.3. Respondent is advised that pursuant to 40 C.F.R. § 22.8, after the Complaint is issued, the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related proceedings with the Administrator, the Environmental Appeal Board or its members, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision on this case.

VIII. PAYMENT OF PENALTY

8.1. As provided in 40 C.F.R. § 22.18(a)(1), Respondent may resolve the proceeding at any time by paying the specific penalty proposed in the Complaint and by filing with the Regional Hearing Clerk a copy of the check or other instrument of payment (at the address noted in Section V of the Complaint). If the Respondent pays the proposed penalty in full within 30 days after receiving the complaint, no Answer need be filed. Respondent can obtain a 30 day extension to pay the proposed penalty in full without filing an Answer by complying with the requirements of 40 C.F.R. § 22.18(a). Payment of the proposed penalty must be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the proposed penalty in the Complaint to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077

St. Louis, MO 63197-9000

A transmittal letter indicating Respondent's name, complete address, and this case docket number must accompany each payment. A copy of each check should also be provided to Robert Hartman at the address shown in Section VII of the Complaint.

Dated this 20th day of January, 2015.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 10
Complainant


Marie Jennings, Manager
Drinking Water Unit

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the attached **COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, In the matter of: Estell Subdivision Lot 2, Docket No.: SDWA-10-2014-0137**, was filed with the Regional hearing Clerk and served on the addresses in the following manner on the date specified below:

Robert Hartman
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States Mail certified/return receipt to:

Trudy Tush
Owner, Estell Subdivision Lot 2 Public Water System
1117 Chugach Way
Anchorage, Alaska 99503
Certified Mail, Return Receipt Number: 7011 0470 0002 9128 2079

DATED this 20th day of January, 2015

By: Sharon Eng
Signature
EPA Region 10

