

FILED

10/10/2023

12:48 PM

**U.S. EPA REGION 8
HEARING CLERK**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF)
)
 Leisure Valley, Inc.,) Docket No. SDWA-08-2024-0004
)
 Respondent.) **COMPLAINT AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**
)
)
(Star Valley RV Park, WY5601471))

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 Leisure Valley, Inc. (Respondent).

JURISDICTIONAL ALLEGATIONS

1. This Complaint is issued under the authority vested in the Administrator of the EPA by section 1414(g)(3) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300g-3(g)(3). The undersigned EPA official has been duly authorized to issue this complaint.
2. This proceeding is subject to the EPA’s Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. part 22, a copy of which is being provided to Respondent with this Complaint.

GENERAL ALLEGATIONS

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

3. Respondent is a Nevada corporation.
4. Respondent’s registered agent for service of process in the State of Wyoming is Nancy J. Brown, 3510 Muddy String Rd., P.O. Box 299, Thayne, WY 83127.
5. Respondent 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.
6. Respondent owns and/or operates a system, the Star Valley RV Park (the System), located in Lincoln County, Wyoming.
7. The System provides water for human consumption to the public through pipes or other constructed conveyances.
8. The source of the System’s water is ground water from two wells. The System’s water is not treated.

9. The System has approximately 810 service connections, at least 15 of which are used by year-round residents.
10. The System regularly serves approximately 50 year-round residents and approximately 700 individuals who do not use the System year-round.
11. 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.
12. 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.
13. Respondent is subject to 40 C.F.R. part 141 (also known as the National Primary Drinking Water Regulations or NPDWRs), each of which is an “applicable requirement” as defined in section 1414(i) of the SDWA, 42 U.S.C. § 300g-3(i).
14. 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.
15. On November 14, 2018, 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-08-2019-0004 (the Order) to Respondent, citing violations of the NPDWRs.
16. According to a signed certified mail, return receipt card, Respondent received the Order on November 20, 2018.

VIOLATIONS

Count One

Failure to Monitor for Lead and Copper Contamination

17. Respondent is required to monitor the System’s drinking water for lead and copper. Depending on the results of prior sampling, the required monitoring frequency and number of sampling sites may be reduced or increased. Details are set forth in 40 C.F.R. § 141.86.
18. Paragraph 14 of the Order directed Respondent to monitor the System’s water for lead and copper by collecting five samples between June 1, 2021, and September 30, 2021, according to the System’s tap sample site plan.
19. In addition, in a notification to the System dated February 22, 2021, which summarized the System’s monitoring requirements for 2021, the EPA stated that the System was required to monitor its drinking water for lead and copper, with five sets of lead and copper samples to be collected between June 1 and September 30, 2021.

20. Respondent failed to monitor the System's water for lead and copper during the June 1, 2021, to September 30, 2021 time period.
21. Paragraph 14 of the Order directed Respondent to monitor for lead and copper after September 2021 as required by 40 C.F.R. § 141.86(a)-(d).
22. Under 40 C.F.R. § 141.86(a)-(d), the System was required to monitor for lead and copper by collecting five sets of lead and copper samples between June 1, 2022, and September 30, 2022.
23. In a notification to the System dated February 7, 2022, which summarized the System's monitoring requirements for 2022, the EPA stated that the System was required to monitor its drinking water for lead and copper, with five sets of lead and copper samples to be collected between June 1, 2022, and September 30, 2022.
24. Respondent failed to monitor the System's water for lead and copper during the June 1, 2022, to September 30, 2022 time period.
25. Respondent violated paragraph 14 of the Order by:
 - a. failing to monitor the System's water for lead and copper during the June 1, 2021, to September 30, 2021 time period; and
 - b. failing to monitor the System's water for lead and copper during the June 1, 2022, to September 30, 2022 time period.

Count Two
Failure to Submit Timely Consumer Confidence Reports to the EPA

26. Respondent is required to prepare an annual consumer confidence report (CCR), which is to include information about the quality of the System's water. See 40 C.F.R. §§ 141.152-141.154.
27. Respondent is required to provide a copy of the CCR to each of the System's customers and to the EPA by July 1st of the year following the year covered by the report. See 40 C.F.R. §§ 141.152(b) and 144.155(c).
28. Paragraph 15 of the Order directed Respondent, within 30 days of receiving the Order, to prepare and distribute a CCR for 2017 to the System's customers and the EPA.
29. Respondent did not provide the EPA with a copy of the 2017 CCR until October 30, 2019, which was more than 11 months after Respondent received the Order.
30. Beginning with the CCR for 2018, paragraph 15 of the Order directed Respondent to distribute annual CCRs to the System's customers and to the EPA as required by 40 C.F.R. §§ 141.151-141.155, i.e., by no later than July 1st of the year following the year covered by relevant CCR.
31. Respondent did not provide the EPA with a copy of the 2018 CCR until October 30, 2019.

32. Respondent did not provide the EPA with a copy of the 2021 CCR until October 18, 2022.
33. Respondent violated paragraph 15 of the Order by:
 - a. failing to provide the EPA with a copy of the 2017 CCR within 30 days of receiving the Order;
 - b. failing to provide the EPA with a copy of the 2018 CCR by July 1, 2019; and
 - c. failing to provide the EPA with a copy of the 2021 CCR by July 1, 2022.

Count Three
Failure to Provide Timely Certifications to EPA

34. Respondent is required to certify to the EPA by October 1st of each year that the CCR for the prior year was distributed to the System's customers and that the information in the CCR is correct and consistent with the compliance monitoring data previously submitted to the EPA. 40 C.F.R. § 141.155(c).
35. Paragraph 15 of the Order directed Respondent, within 30 days of receiving the Order, to provide the EPA with a certification of having distributed a CCR for 2016 to the System's customers.
36. Respondent did not provide the EPA with a certification of having distributed the 2016 CCR to the System's customers until February 11, 2019, more than two months after receiving the Order.
37. Paragraph 15 of the Order directed Respondent, beginning with the CCR for 2018, to provide certifications to the EPA as required by 40 C.F.R. §§ 141.151-141.155, by no later than October 1st of the year following the year covered by the relevant CCR.
38. To date, Respondent has not submitted a certification to the EPA indicating Respondent distributed the 2019 CCR to the System's customers.
39. To date, Respondent has not submitted a certification to the EPA indicating Respondent distributed the 2020 CCR to the System's customers.
40. To date, Respondent has not submitted a certification to the EPA indicating Respondent distributed the 2021 CCR to the System's customers.
41. Respondent violated paragraph 15 of the Order by failing within 30 days of receiving the Order to submit a certification to the EPA indicating Respondent provided the CCR for 2016 to the System's customers.
42. Respondent is in continuing violation of paragraph 15 of the Order by:
 - a. having failed to submit a certification to the EPA indicating Respondent provided the CCR for 2019 to the System's customers;

- b. having failed to submit a certification to the EPA indicating Respondent provided the CCR for 2020 to the System’s customers; and
- c. having failed to submit a certification to the EPA indicating Respondent provided the CCR for 2021 to the System’s customers.

Count Four
Failure to Report

- 43. Paragraph 16 of the Order directed Respondent to report any violation of the NPDWRs to the EPA within 48 hours of the violation occurring, as required by 40 C.F.R. § 141.31(b), with an exception not relevant here.
- 44. Respondent failed to report to the EPA within 48 hours of Respondent’s failure to monitor for lead and copper in 2022.
- 45. Respondent failed to report to the EPA within 48 hours of Respondent’s failures to provide copies of the CCRs for 2018 and 2021 to the EPA by the required deadlines.
- 46. Respondent failed to report to the EPA within 48 hours of Respondent’s failures to provide certifications of having distributed the CCRs for 2019, 2020, and 2021 to the System’s customers.
- 47. Respondent’s failures to report to the EPA, as described in paragraphs 44, 45, 46, above, were violations of the Order.

PROPOSED PENALTY

- 48. 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 \$47,061 for violations occurring after November 2, 2015, where penalties are assessed on or after January 6, 2023. (The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19. See 88 Fed. Reg. 986, 989 (January 6, 2023).)
- 49. Taking into account the seriousness of the violations, 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 **\$5,000.00** against Respondent for Respondent’s violations of the Order, as described above.

ANSWER AND RIGHT TO REQUEST A HEARING

- 50. Respondent may file an answer in order to contest any material fact upon which this Complaint is based, contend that the proposed penalty is inappropriate, or contend that Respondent is entitled to judgment as a matter of law.

51. Respondent must file any such answer to the Complaint with the Regional Hearing Clerk within 30 days after service of this Complaint on Respondent. Note: For computing the number of days in a time period for purposes of 40 C.F.R. part 22, please see 40 C.F.R. § 22.7(a).
52. Respondent's 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. Respondent's failure to admit, deny, or explain any factual allegation in its answer constitutes an admission of that allegation. If, however, Respondent has no knowledge of a particular factual allegation and so states in its answer, that allegation will be deemed denied. For more details on the requirements for an answer, please see 40 C.F.R. § 22.15.
53. Even if Respondent does not explicitly request a hearing in its answer, the Presiding Officer assigned to this case may hold such a hearing if Respondent's answer raises issues appropriate for adjudication. The procedures for any such hearing and for all proceedings in this action are set out in the 40 C.F.R. part 22.
54. Any hearing in this proceeding shall be in accordance with 40 C.F.R. §§ 22.50-22.52, i.e., 40 C.F.R. part 22, subpart I, unless Respondent's answer requests a hearing on the record in accordance with 5 U.S.C. § 554. If Respondent's answer does not request a hearing on the record in accordance 5 U.S.C. § 554, Respondent will have waived the right to a hearing on the record, and any hearing will be held under 40 C.F.R. §§ 22.50-22.52.

INSTRUCTIONS FOR FILING ANSWER AND OTHER DOCUMENTS

55. The answer and any other document filed in this proceeding may be submitted by email, in accordance with the accompanying May 8, 2020, Standing Order by Regional Judicial and Presiding Officer Katherin E. Hall. The email address for the Regional Hearing Clerk is R8_Hearing_Clerk@epa.gov. Filing may also be accomplished by U.S. mail or hand delivery to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129
56. Respondent must provide a copy of the answer and every other document filed in this proceeding to the EPA enforcement attorney named below. This can be accomplished via email, to livingston.peggy@epa.gov. It can also be accomplished by mail or hand delivery to the following:

Margaret J. (Peggy) Livingston, Enforcement Attorney
Legal Enforcement Program, 8ENF-L
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street

FAILURE TO FILE AN ANSWER

57. **If Respondent does not file a written answer with the Regional Hearing Clerk at either the email or physical address specified above within thirty days after the date this Complaint is served on Respondent, Respondent may be subject to a default order requiring payment of the full penalty proposed in this Complaint, pursuant to 40 C.F.R. § 22.17.**

QUICK RESOLUTION

58. Respondent may resolve this action at any time by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18(a)(1). If such payment is made within thirty days after Respondent receives this Complaint, Respondent need not file an answer. Alternatively, as allowed by 40 C.F.R. § 22.18(a)(2), Respondent may file a statement with the Regional Hearing Clerk within 30 days of receipt of this Complaint and may make the penalty payment within 60 days after Respondent receive this Complaint.
59. The payment shall be made in the amount stated in Paragraph 49, above. Payment shall be made by any method provided on the following website <https://www.epa.gov/financial/makepayment>, following the instructions under the heading “Civil Penalties.
60. At the time of payment, Respondent shall email copies of the record of payment to latino.steven@epa.gov and R8_Hearing_Clerk@epa.gov. Alternatively, Respondent may send copies of the record of payment via U.S. mail to:

Steven Latino, Environmental Protection Specialist
U.S. Environmental Protection Agency (R8-ECAD-WEB)
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

61. The email or letter transmitting the record of payment must include the case title and docket number of this proceeding (see the first page of this Complaint).
62. 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 matter. Such payment would waive Respondent’s rights to contest the allegations in this Complaint and to appeal any final order resulting from this Complaint.

SETTLEMENT CONFERENCE

63. 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 Regional Hearing Clerk or Regional Administrator of EPA Region 8. Any request for settlement negotiations should be directed to the EPA enforcement attorney named above, who can also be reached by telephone at 303-312-6858.

Dated this 10th day of October, 2023.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Colleen Rathbone, Manager
Water Enforcement Branch
Enforcement and Compliance Assistance Division
Region 8, U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202
Complainant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING (without a copy of 40 C.F.R. part 22) were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING (with a copy of 40 C.F.R. part 22 and a copy of the May 8, 2020 Standing Order by Regional Judicial and Presiding Officer Katherin E. Hall) was sent to the following:

Nancy J. Brown
Registered Agent, Leisure Valley, Inc.
3910 Muddy String Rd.
P.O. Box 299
Thayne, WY 83127
Certified Mail, Return Receipt Number: _____

Date: _____

By: _____