



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-L

MAR 11 2010

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

NO. 7008 3230 0003 0730 4406

Eugene Moore, President
Southside Well Improvement
and Service District
3523 Speigelmyer Ave.
Gillette, WY 82178-6446

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. **SDWA-08-2010-0021**

Dear Mr. Moore:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against the Southside Well Improvement and Service District (the district) under § 1414(g)(3) of the Safe Drinking Water Act (SDWA), 42 U.S.C § 300g-3(g)(3). The U.S. Environmental Protection Agency (EPA) alleges in the complaint that the district failed to comply with two Administrative Orders, Docket Nos. SDWA-08-2008-0097 and SDWA-08-2009-0047, issued on September 2, 2008, and June 2, 2009, respectively, under § 1414(g) of the SDWA, 42 U.S.C. §300g-3(g). The violations are specifically set out in the complaint.

By law, the district 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 district does not file an answer 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 its answer the district may request a hearing. The district has the right to be represented by an attorney at any stage of these proceedings.

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 consent agreement shall constitute a waiver of the right to request a hearing on any matter to which the district has stipulated in that agreement.




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Whether or not the district requests a hearing, its representative(s) may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. However, an informal settlement conference does **not** substitute for filing a written answer and requesting a hearing. A request for an informal conference also does not extend the 30-day period during which the district 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.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Shawn McCaffrey, Environmental Protection Specialist, who can be reached at 800/227-8917, extension 6515, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917, extension 6858.

We urge your prompt attention to this matter.

Sincerely,


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

Enclosure

cc: Tina Artemis, Regional Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)
)
Southside Well Improvement and)
Service District) Docket No. SDWA-08-2010-0021
)
PWS ID # WY 5600122)
) **COMPLAINT**
Respondent) **AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**
)
Proceedings under § 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 under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by § 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 § 1414(g) 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 (Complainant's Exhibit 1).

GENERAL ALLEGATIONS

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

1. Respondent Southside Well Improvement and Service District is a municipality. The Respondent is therefore a “person” as that term is defined in § 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. Respondent owns and/or operates the Southside Well Improvement and Service District Public Water System (the system), located in Campbell County, Wyoming, which provides piped water to the public for human consumption.
3. The system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is therefore a “public water system” as that term is defined in § 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2.
4. As an owner and/or operator of a public water system, the Respondent is a “supplier of water” as that term is defined in § 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 ground water, from one well.
6. The system serves an average of approximately 75 persons through 19 service connections daily, year-round. The system is therefore a “community water

system” as that term is defined in § 1401(16) of the SDWA, 42 U.S.C. § 300f(16), and 40 C.F.R. § 141.2.

7. On September 2, 2008, in accordance with § 1414 of the SDWA, 42 U.S.C. § 300g-3, the EPA issued an Administrative Order, Docket No. SDWA-08-2008-0097 (the First Order) to Respondent, citing various violations of the NPDWRs, including but not limited to failing to monitor for total coliform and failing to notify the EPA of the failure to monitor for total coliform.
7. A copy of the First Order is attached to this complaint (Complainant’s Exhibit 2).
8. On September 23, 2009, EPA issued a letter to Respondent, stating that the Respondent had violated the First Order by failing to monitor the system’s water for total coliform in June of 2009 and failing to report to EPA that the Respondent had failed to monitor for total coliform. (Complainant’s Exhibit 3.)
9. On June 2, 2009, in accordance with § 1414 of the SDWA, 42 U.S.C. § 300g-3, the EPA issued an Administrative Order, Docket No. SDWA-08-2009-0047 (the Second Order) to Respondent, citing various violations of the NPDWRs, including but not limited to failing to monitor the system’s water for lead and copper. (Complainant’s Exhibit 4.)
10. By letter dated December 21, 2009, the EPA notified the Respondent that the Respondent had violated the Second Order by failing to collect and monitor five samples of the system’s water for lead and copper during the period from June 1 to September 30, 2009. The EPA’s letter did, however, acknowledge that

Respondent had collected two lead and copper samples during this period.

(Complainant's Exhibit 5.)

COUNTS OF VIOLATION

Count I

Failure to Monitor for Total Coliform Bacteria

1. Paragraph 10 of the First Order required Respondent to monitor the system's water once per month, as required by 40 C.F.R. § 141.21.
2. Respondent violated the First Order by failing to monitor the system's water for total coliform in June of 2009.

Count II

Failure to Monitor for Lead and Copper

1. Paragraph 9 of the Second Order required Respondent to monitor the system's water for lead and copper by collecting five samples during the period between June 1 and September 30, 2009, as required by 40 C.F.R. § 141.86(c) and (d).
2. Respondent violated the Second Order by failing to collect five samples of the system's water for lead and copper during the period between June 1 and September 30, 2009.

Count III

Failure to Report Coliform Monitoring Violations to EPA

1. Paragraph 14 of the First Order required Respondent to report any violations of total coliform monitoring requirements to EPA within ten days of the Respondent learning of the violation, as required by 40 C.F.R. § 141.21(g)(2).

2. Respondent violated the First Order by failing to report to EPA that the Respondent did not monitor the system's water for total coliform in June of 2009.

Count IV
Failure to Report Lead and Copper Monitoring Violations to EPA

1. Paragraph 10 of the Second Order required Respondent to report any violations of the NPDWRs to EPA within 48 hours, as required by 40 C.F.R. § 141.31(b).
2. Respondent violated the Second Order by failing to report to EPA that the Respondent did not collect five samples of the system's water for lead and copper between June 1 and September 30, 2009.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

This complaint proposes that EPA assess an administrative penalty from Respondent. EPA is authorized to assess an administrative penalty according to § 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3). EPA has determined the proposed penalty amount in accordance with § 1414 of the SDWA, 42 U.S.C. § 300g-3. Taking into account 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, if any, and ability to pay, as known to EPA at this time, EPA proposes to assess an administrative civil penalty of \$1,200.00 against Respondent for its violations of the Order.

QUICK RESOLUTION

Respondent may resolve this action by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this

Complaint, Respondent need not file an answer. Alternatively, as allowed by 40 C.F.R. § 22.18(b), Respondent may file a statement with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint agreeing to pay the full assessed penalty and may make the penalty payment within sixty (60) days of receiving the complaint.

If made by check, the payment shall be made by remitting a cashier's or certified check, including the name and docket number of the case, referencing the Docket Number given on the first page of this complaint and payable to the Environmental Protection Agency.

The check shall be sent to EPA in one of the following ways:

**By first class
US postal service mail:** US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

**By Federal Express, Airborne,
or other commercial carrier:** US Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The payment may also be made by wire transfer or on-line via the internet, as follows:

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
"D68010727 Environmental Protection Agency "

On-Line Payment: WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

A copy of the check, wire transfer, or record of on-line payment shall be simultaneously sent to:

Shawn McCaffrey (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 Act and its implementing regulations. Payment of the penalty pursuant to 40 C.F.R. § 22.18 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 § 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.

If Respondent wishes to request a hearing, Respondent must file a written answer in accordance with 40 C.F.R. §§ 22.15 and 22.42 within thirty (30) calendar days after this complaint is served. If this complaint is served by mail, Respondent has an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.7(c), in which to file their answer.

If Respondent requests a hearing in its answer, the procedures provided in 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, Respondent has the right under the SDWA to elect a hearing on the record in

accordance with § 554 of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq. (APA). To exercise this right, the answer must include a specific request for a hearing on the record in accordance with 5 U.S.C. § 554. Upon such request, the Regional Hearing Clerk will re-title the pleadings and documents in the record as necessary. (See 40 C.F.R. § 22.42.) Pursuant to such a request, subpart I will not apply to the proceedings and an Administrative Law Judge from Washington, D.C., will preside.

The answer must be in writing. An original and one copy of the answer must be sent to the attorney signing this complaint and the EPA Regional Hearing Clerk at the address below:

Tina Artemis
Region 8 Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

FAILURE TO FILE AN ANSWER

If Respondent does not file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this complaint, it may be subject to a default order requiring payment of the full penalty proposed in this complaint. EPA may obtain a default order according to 40 C.F.R. § 22.17.

REQUIREMENTS FOR ANSWER

The 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 which the Respondent alleges to constitute grounds of defense, (2) any facts the Respondent disputes, (3) whether and on what

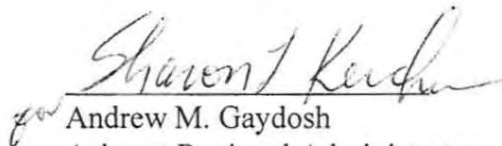
basis the Respondent opposes the proposed penalty, and (4) whether the Respondent requests a hearing. **Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of that allegation.**

SETTLEMENT CONFERENCE

EPA encourages exploring settlement possibilities through an informal settlement conference. Requesting, scheduling, or participating in a settlement conference **does not** substitute for an answer or extend the period mentioned above for filing an answer and a request for a hearing. Failing to file an answer may lead to a default order, even if a settlement is reached. 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 Presiding Officer. A request for a settlement conference, or any questions that Respondent may have regarding this complaint, should be directed to the attorney named below.

Dated this ____ day of _____, 2010.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.


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

Margaret J. (Peggy) Livingston
Margaret J. (Peggy) Livingston
Enforcement Attorney
Office of Enforcement, Compliance
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202
Telephone Number: (303) 312-6858
Facsimile Number: (303) 312-7202

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, U.S. EPA Region 8, 1595 Wynkoop Street, Denver, CO, 80202, and that a true copy of the same was sent to the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Eugene Moore, President
Southside Well Improvement and Service District
3523 Speigelmeyer Ave.
Gillette, WY 82178-6446

The Exhibits to the Complaint and Notice of Opportunity for Hearing are as follows:

1. 40 C.F.R. part 22
2. September 2, 2008 Administrative Order, Docket No. SDWA-08-2008-0097
3. September 23, 2009, letter
4. June 2, 2009 Administrative Order, Docket No. SDWA-08-2009-0047
5. December 21, 2009, letter

Date: 3/11/10

By: Judith McTernan
Judith McTernan