UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

MAR 3 0 2007

Ref: 8ENF-T

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7005 0390 0000 4845 4999

Honorable Greg Salisbury, Mayor
Town of Encampment
P.O. Box 5
Encampment, WY 82325

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7005 0390 0000 4845 5002

Mr. Bill Craig, Operator
Town of Encampment
P.O. Box 5
Encampment, WY 82325

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. **SDWA-08-2007-0042**

Dear Mayor Salisbury and Mr. Craig:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against the Town of Encampment (town) under section 1414 of the Safe Drinking Water Act (SWDA), 42 U.S.C § 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that the town failed to comply with an Amended Administrative Order, Docket No. SDWA-08-2005-0026, issued on March 20, 2006, 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 town 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 town 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 town's answer it may request a hearing. The town has the right to be represented by an attorney at any stage of these proceedings.

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Whether or not the town 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 consent agreement shall constitute a waiver of the town's right to request a hearing on any matter to which the town has stipulated in that agreement.

A request for an informal conference does not extend the 30-day period during which the town 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 Kathelene Brainich, Environmental Protection Specialist, who can be reached at 800/227-8917 extension 6467, 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 Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc: WY DEQ (via email)
WY DOH (via email)

Printed on Recycled Paper

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MAR 30 2007

HONORABLE GREG SALISBURY, MAYOR
TOWN OF ENCAMPMENT
P.O. BOX 5
ENCAMPMENT, WY 82325

SDWA-08-2007-0042

R

COMPLETE THIS SECTION ON DELIVERY

A. Signature
x Doreen Harvey ☑ Agent ☐ Addressee

B. Received by (*Printed Name*) Doreen Harvey
C. Date of Delivery 4-2-07

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (*Extra Fee*) ☐ Yes

2. Article Number
(*Transfer from service label*) 7005 0390 0000 4845 4999

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MAR 3 0 2007

S

MR. BILL CRAIG, OPERATOR
TOWN OF ENCAMPMENT
P.O. BOX 5
ENCAMPMENT, WY 82325

SDWA-08-2007-0042

COMPLETE THIS SECTION ON DELIVERY

A. Signature
x Doreen Harvey ☐ Agent ☐ Addressee

B. Received by (*Printed Name*) Doreen Harvey
C. Date of Delivery 4-2-07

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (*Extra Fee*) ☐ Yes

2. Article Number
(*Transfer from service label*) 7005 0390 0000 4845 5002

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 MAR 30 AM 9: 19
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF	)
	)
Town of Encampment	)
Encampment, Wyoming	)
	) Docket No. SDWA-08-2007-0042
	)
Respondent	) **COMPLAINT AND NOTICE OF**
	) **OPPORTUNITY FOR HEARING**
Proceedings under section 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 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. The Town of Encampment ("Respondent") is a municipality and 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.

2. Respondent owns and/or operates a system, the Town of Encampment Water System (the "System"), located in Carbon County, 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 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 an owner and/or operator of a public water system, 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. 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 the North Fork of the Encampment River, which is a surface water. The System serves an average of approximately 450 persons daily through approximately 341 service connections year-round.

6. As part of its treatment process, the System adds chemical disinfectant to the water that it provides to the public.

7. On November 19, 2003, 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-08-2004-2005 (the "2003 Order") to Respondent, citing violations of the NPDWRs, including requirements

   - to monitor annually for volatile organic contaminants ("VOCs");
   - to monitor annually for lead and copper after meeting the lead and copper action level;
   - to monitor annually for nitrate;
   - to monitor monthly for total coliform bacteria;
   - to collect at least five routine samples during a month following a total coliform positive sample;
   - to monitor annually for cyanide;
   - to provide public notice of the preceding violations; and
   - to report the preceding violations to EPA.

8. On March 4, 2004, EPA issued an Administrative Order Violation letter notifying the Respondent that it was in violation of the 2003 Order, due to failures to submit

monitoring results for VOCs, for nitrates, and for cyanide and failure to provide public notice of violations cited in the 2003 Order.

8. On June 13, 2005, 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-08-2005-0026 (the "2005 Order") to Respondent, citing violations of the NPDWRs, including requirements

- to monitor for total trihalomethane (TTHM) and haloacetic acids (HAA5), both of which are disinfection byproducts, and for volatile organic contaminants;
- to submit timely reports to EPA concerning disinfection byproduct sampling information and certain disinfectant residual and turbidity information;
- to monitor for disinfection byproduct precursors;
- to monitor turbidity continuously and record results every fifteen minutes;
- to provide public notice of these failures to monitor; and
- to notify EPA of its failures to monitor and to provide public notice.

9 On March 20, 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 Amended Administrative Order, Docket No. SDWA-08-2005-0026 (the "2006 Order") to Respondent.

10. The 2006 Order cited the same NPDWR violations as the 2005 Order for failures

- to monitor for TTHM and HAA5 and for volatile organic contaminants;

- to submit timely reports to EPA concerning disinfection byproduct sampling information and certain disinfectant residual and turbidity information; and
- to monitor for disinfection by product precursors and raw water alkalinity.

11. The 2006 Order also cited violations of the same NPDWR requirements as the 2005 Order to monitor turbidity continuously and record results every fifteen minutes and to submit reports of violations to EPA, but included additional instances of these violations.

12. In addition, the 2006 Order cited violations of NPDWR requirements

- to maintain a required total organic carbon reduction ratio;
- to maintain turbidity at no more than 0.3 Nephelometric Turbidity Units (NTU) in at least 95% of monthly measurements;
- to conduct a disinfection profile or evidence that such a profile was unnecessary; and
- to take various actions required after exceeding a lead action level, including monitoring for certain water quality parameters (WQP), monitoring for lead and copper, providing public education, and recommending treatment for corrosion control.

13. A copy of the 2006 Order (Docket No. SDWA-08-2005-0026) is attached to this complaint (Complainant's Exhibit 2).

14. On August 16, 2006, EPA sent Respondent an "Administrative Order Violation" letter citing failures by Respondent to comply with the 2006 Order's requirements

- to submit monthly reports on the Respondent's progress in bringing the System into compliance with effluent turbidity limits;
- to submit a quarterly disinfection profile and a monthly report on raw water turbidity and alkalinity;
- to submit residual disinfectant and turbidity monitoring reports to EPA;
- to submit quarterly monitoring results for volatile organic compounds;
- to submit WQP and source monitoring sample results; and
- to submit other required monitoring results for lead and copper.

15. A copy of the August 16, 2006 letter is attached to this complaint as Complainant's Exhibit 3.

COUNTS OF VIOLATION

Count I
Late Monitoring for Lead and Copper Contamination

1. The 2006 Order (on page 17, in par. 16 of the "Order" section) required Respondent to collect 10 tap samples during the two consecutive six-month monitoring periods of January-June 2006 and July-December 2006.

2. Respondent violated the 2006 Order because it did not monitor as required during the January-June 2006 period. After some of the samples it took for that period were invalidated due to having been taken at inappropriate sites, it sampled on August 10, 2006.

Count II
Late Delivery of Public Education Materials

1. The 2006 Order (on pages 15 and 16, in par. 14 of the "Order" section) required Respondent to deliver public education materials about lead in accordance with 40 C.F.R. § 141.85, no later than April 20, 2006. The 2006 Order provided specific instructions for inserting notices in mailings, submitting information to newspapers, delivering pamphlets, and submitting a public service announcement to the media.

2. Respondent violated the 2006 Order by failing to provide the required public education program until July 27, 2006.

Count III
Late Monitoring of WQP and Source Water

1. The 2006 Order (on pages 14 and 15, in par. 13 of the "Order" section) required Respondent to comply with all requirements for WQP and source water monitoring in 40 C.F.R. § 141.87, upon the effective date of the 2006 Order.

2. Respondent violated the 2006 Order by failing to monitor for WQPs until September 27, 2006.

Count IV
Failure to Report Monthly Interim Monitoring

1. The 2006 Order (on page 13, in paragraph 9 of the "Order" section) required the Respondent to maintain daily records of raw water turbidity (along with finished water turbidity), raw water alkalinity, any daily changes to soda ash or other adjustment chemicals or coagulant dosages, and annotate daily any operating

problems and submit the records to EPA monthly, beginning on the effective date of the 2006 Order, until modifications to the System were completed.

2. Respondent violated the 2006 Order by failing to submit monthly reports of interim monitoring measures to EPA until October 6, 2006.

Count V
Late Monthly Progress Reports

1. The 2006 Order (on page 12, in par. 8 of the "Order" section) required the Respondent to submit monthly reports to EPA on progress in bringing the System into consistent compliance with the effluent turbidity limits defined in 40 C.F.R. §141.551, with reports due within ten days of the end of each month. EPA approved the Respondent's plan for modifications on July 24, 2006, making the first report due by August 24, 2006.

2. Respondent violated the 2006 Order by failing to submit its first progress report until November 9, 2006.

Count VI
Late Reporting of Quarterly Disinfection Profile

1. The 2006 Order (on pages 12 and 13, in par. 9 and 10 of the "Order" section) required Respondent to submit a quarterly (cumulative) disinfection profile of weekly log inactivations to EPA, beginning 30 days after the effective date of the 2006 Order.

2. Respondent violated the 2006 Order by failing to submit any quarterly disinfection profiles of weekly log inactivations to EPA until August 2, 2006.

Count VII
Late Reporting of Turbidity

1. The 2006 Order (on page 14, in par. 11 of the "Order" section) required Respondent to submit turbidity results to EPA within the first ten days following the end of each monthly monitoring period, as required by 40 C.F.R. § 141.570 and 141.75(b).

2. Respondent violated the 2006 Order by failing to report results of turbidity sampling for June of 2006, which were due by July 10, 2006, until July 26, 2006.

Count VIII
Late Reporting of Residual Disinfection Concentration

1. The 2006 Order (on page 14, in par. 11 of the "Order" section) required Respondent to submit residual disinfectant results to EPA within the first ten days following the end of each monthly monitoring period, as required by 40 C.F.R. § 141.570 and 141.75(b).

2. Respondent violated the 2006 Order by failing to report results of residual disinfectant sampling for June of 2006 until July 26, 2006.

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 section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3) for violation of an administrative order issued under section 1414(g)(1) of the SDWA. The amount may be up to $27,500.[1]

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[1]The original statutory amount of $25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19.

EPA has determined the proposed penalty amount in accordance with section 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 $2,500 against Respondent for its violations of the 2006 Order.

OPPORTUNITY TO REQUEST A HEARING

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.

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 its 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 section 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 recaption 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 listed below and the EPA Regional Hearing Clerk at the address below:

Tina Artemis
Region 8 Hearing Clerk (8RC)
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 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, Respondent 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 conference occurs. The parties may simultaneously pursue settlement and proceed with administrative litigation under 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 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 29th day of March, 2007.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.

Diane L. Sipe
for Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Margaret J (Peggy) Livingston
Margaret J. ("Peggy") Livingston, Enforcement Attorney
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1595 Wynkoop Street
Denver, Colorado 80202
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