UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
http://www.epa.gov/region08

MAY 3 1 2006

Ref: 8ENF-T

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Darwin McGuire, Registered Agent & Director
Daniel Domestic Water Co.
815 E. 3000 South
Heber City, UT 84032

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. SDWA-08-2006-0036

Dear Mr. McGuire:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against Daniel Domestic Water Co. (the company) under section 1414 of the Safe Drinking Water Act (SWDA), 42 U.S.C section 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that the company failed to comply with an Administrative Order, Docket No. SDWA-08-2004-0041, issued on December 3, 2004, under Section 1414(g) of the SDWA, 42 U.S.C. section 300g-3(g). The violations are specifically set out in the complaint.

By law, the company 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 company 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 company's answer it may request a hearing. The company has the right to be represented by an attorney at any stage of these proceedings.

Whether or not the company requests a hearing, you and/or any other representative of the company, including counsel for the company, 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

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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 company's right to request a hearing on any matter to which the company has stipulated therein.

A request for an informal conference does not extend the 30-day period during which the company must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneous 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
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc: Kenneth Bousfield, UT DEQ
Gary Walton, Daniel Domestic Water Co.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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HEARING CLERK

IN THE MATTER OF	)
	)
Daniel Domestic Water Co.	)
Heber City, Utah	) Docket No. SDWA-08-2006- **0036**
	)
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. Daniel Domestic Water Co ("Respondent") is a Utah non-profit corporation 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 Daniel Domestic Water System (the "System"), located in Wasatch County, Utah, 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 groundwater from two springs. The System serves an average of 312 persons daily through approximately 112 service connections year-round.

6. The State of Utah ("State") has primary authority for enforcing the public water supply protection provisions of the SDWA within its jurisdiction. After the State made unsuccessful efforts to bring the System into compliance with the NPDWRs, the EPA determined that the System was a chronic violator of the NPDWRs.

7. On August 19, 2004, the EPA issued a Notice of Violation ("NOV") to the State regarding the Respondent's violations of the SDWA and the NPDWRs. This notification was provided pursuant to section 1414(a)(1)(A) of the SDWA, 42 U.S.C. § 300g-3(a)(1)(A).

8. The State did not commence an enforcement action against Respondent within thirty days after the NOV was issued. Consequently, on December 3, 2004, in accordance with sections 1414(a)(1)(B) and (g) of the SDWA, 42 U.S.C. § 300g-3(a)(1)(B) and (g), the EPA issued an Administrative Order (the "Order") to Respondent, citing violations of the NPDWRs, including requirements to monitor for volatile organic contaminants, to monitor for pesticide/herbicide organic contaminants, to provide public notice of these failures to monitor, to notify EPA of its failures to monitor and to provide public notice. A copy of the Order

(Docket No. SDWA-08-2004-0041) is attached to this complaint (Complainant's Exhibit 2).

9. On March 29, 2005, EPA sent Respondent an "Administrative Order Violation" letter citing failures by Respondent to comply with the Order's requirements to monitor for volatile organic contaminants and to provide public notice. (Complainant's Exhibit 3.)

COUNTS OF VIOLATION

Count I
Failure to Monitor for Volatile Organic Contaminants

10. 40 C.F.R. § 141.24(f) requires community public water systems to monitor their water annually to determine compliance with the maximum contaminant levels ("MCLs") for volatile organic contaminants ("VOCs") as stated in 40 C.F.R. § 141.61(a).

11. Pages 4 and 5 of the Order, in paragraph 1 of the "Order" section, required Respondent to monitor for VOCs within 30 days of the Order and thereafter according to 40 C.F.R. § 141.61(a). It also required Respondent to report analytical results to EPA within the first 10 days following the end of each monitoring period, as required by 40 C.F.R. § 141.31(a).

12. Respondent violated the Order by failing to monitor for VOCs within thirty days of the Order. Later, on March 22, 2005, Respondent did so.

Count II
Failure to Monitor for Synthetic Organic Contaminants

13. 40 C.F.R. § 141.24(h) requires community public water systems to take initial samples of their water to determine compliance with the MCLs for synthetic organic contaminants ("SOCs," also sometimes referenced as "pesticide/herbicide organic contaminants) as stated in 40 C.F.R. § 141.61(c). The initial sampling is to include four consecutive, quarterly samples during a three-year compliance period as defined in 40 C.F.R. § 141.2.

14. Page 5 of the Order, in paragraph 2 of the "Order" section, required Respondent to monitor for pesticide/herbicide contaminants for the four quarters of 2005, beginning with the first quarter (i.e., January 1, 2005 to March 31, 2005). It also required Respondent to report analytical results to EPA within the first 10 days following the end of each monitoring period, as required by 40 C.F.R. § 141.31(a).

15. Respondent violated the Order by failing to monitor for pesticide/herbicide contaminants for the four quarters of 2005. Although Respondent monitored for these contaminants in the second and fourth quarters, it failed to do so during the first and third quarters.

Count III
Failure to Notify the Public
of NPDWR Violations

16. Subpart Q of 40 C.F.R. part 141 requires owners and/or operators of public water systems to notify the public of any NPDWR violation, including any violation of monitoring requirements or testing procedures found in 40 C.F.R. part 141.

17. Pages 5-7 of the first Order, in paragraph 3 of the "Order" section, required Respondent to provide a public notice for the violations specified in the Order within thirty days of the effective date of the Order (i.e., by January 3, 2005). The Order specified acceptable methods for Respondent to give the public notice. The Order also required Respondent to comply with the public notification requirements at 40 C.F.R. § 141.201 et seq. following any future NPDWR violation and to submit a copy of the public notice to EPA within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d).

18. In violation of the Order, Respondent failed to provide timely notice to the public of the Respondent's failures to monitor for VOCs and SOCs. Later, on May 17, 2005, Respondent did provide EPA with a copy of public notice of its failure to monitor for VOCs and SOCs violations.

Count IV
Failure to Report Noncompliance
with NPDWRs to EPA

19. According to 40 C.F.R. § 141.31(b), public water systems shall report any failure to comply with the NPDWRs to EPA within 48 hours, except where the NPDWRs specify a different period.

20. Page 7 of the Order, in paragraph 4 of the "Order" section, required Respondent to comply with 40 C.F.R. § 141.31(b) by reporting to EPA, within 48 hours, any failure to comply with any NPDWR.

21. Respondent failed to report to EPA that Respondent had failed to monitor for herbicide/pesticide contaminants during the first and third quarters of 2005, in violation of the Order.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), authorizes the Administrator to assess an administrative civil penalty of up to $27,500[1] for violation of an administrative order issued under section 1414(g)(1) of the SDWA. EPA is now proposing that Respondent pay an administrative penalty.

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.

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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 proposes to assess an administrative civil penalty of $3,000 against Respondent for its violations of the 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.

Any 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
999 18th Street, Suite 300
Denver, Colorado 80202-2466

FAILURE TO FILE AN ANSWER

To avoid entry of a default order against Respondent pursuant to 40 C.F.R. § 22.17 for the full amount of the penalty proposed in this complaint, **the Respondent must file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this complaint.** The answer should 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 should state (1) the circumstances or arguments which are alleged to constitute grounds of defense, (2) a concise statement of the facts which the Respondent intends to place at issue in the hearing, and (3) whether a hearing is requested. **Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of the allegation.**

SETTLEMENT CONFERENCE

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference **does not** extend the period for filing an answer and request for hearing as set out

above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 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 31st day of May, 2006.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Complainant.

Eddie A. Sierra
for Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Margaret J. (Peggy) Livingston
Margaret J. ("Peggy") Livingston
Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466
Telephone Number: (303) 312-6858
Facsimile Number: (303) 312-6953

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and two copies (the second copy is a working copy for the Regional Judicial Officer) of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with all Exhibits were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent as follows:

Via CERTIFIED MAIL/RETURN RECEIPT REQUESTED to:

Darwin McGuire, Registered Agent & Director
Daniel Domestic Water Co.
815 E. 3000 S
Heber City, UT 84032

Date: May 31 2006 By: Judith McTernan
Judith McTernan

shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with § 21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in § 21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§ 21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.
22.1 Scope of this part.

22.2 Use of number and gender.
22.3 Definitions.
22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
22.5 Filing, service, and form of all filed documents; business confidentiality claims.
22.6 Filing and service of rulings, orders and decisions.
22.7 Computation and extension of time.
22.8 *Ex parte* discussion of proceeding.
22.9 Examination of documents filed.

Subpart B—Parties and Appearances

22.10 Appearances.
22.11 Intervention and non-party briefs.
22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

22.13 Commencement of a proceeding.
22.14 Complaint.
22.15 Answer to the complaint.
22.16 Motions.
22.17 Default.
22.18 Quick resolution; settlement; alternative dispute resolution.
22.19 Prehearing information exchange; prehearing conference; other discovery.
22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

22.21 Assignment of Presiding Officer; scheduling the hearing.
22.22 Evidence.
22.23 Objections and offers of proof.
22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
22.25 Filing the transcript.
22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

22.27 Initial decision.
22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

22.29 Appeal from or review of interlocutory orders or rulings.
22.30 Appeal from or review of initial decision.

Subpart G—Final Order

22.31 Final order.
22.32 Motion to reconsider a final order.

COMPLAINANT'S EXHIBIT 1

Subpart H—Supplemental Rules

22.33 [Reserved]
22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.
22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
22.36 [Reserved]
22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.
22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.
22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
22.40 [Reserved]
22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).
22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.
22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.
22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.
22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.
22.46–22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

22.50 Scope of this subpart.
22.51 Presiding Officer.
22.52 Information exchange and discovery.

AUTHORITY: 7 U.S.C. 136(l); 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g–3(g), 6912, 6925, 6928, 6991e and 6992d; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

SOURCE: 64 FR 40176, July 23, 1999, unless otherwise noted.

Subpart A—General

§ 22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136*l*(a));

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d));

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4) The issuance of a compliance order or the issuance of a corrective action order, the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3005(e), or the assessment of any civil penalty under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6925(e), 6928, 6991e, and 6992d)), except as provided in part 24 of this chapter;

(5) The assessment of any administrative civil penalty under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);

(6) The assessment of any Class II penalty under sections 309(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the Clean Water Act, as amended (33 U.S.C. 1319(g), 1321(b)(6), and 1342(a));

(7) The assessment of any administrative civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609)

(8) The assessment of any administrative civil penalty under section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA") (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under section

1st Page Only

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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IN THE MATTER OF Daniel Domestic Water Co Heber City, Utah Respondent Proceedings under Section 1414(g) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(g)	ADMINISTRATIVE ORDER Docket No. SDWA-08-2004-0041

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 1414(g) of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300g-3(g), and its implementing regulations, as properly delegated to the Supervisors of the Technical and Legal Enforcement Programs of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

FINDINGS

1. Daniel Domestic Water Co (Respondent) is a corporation under the laws of the State of Utah as of February 14, 1958 and therefore a "person" within the meaning of 40 C.F.R. § 141.2.

2. Respondent owns and/or operates a system, the Daniel Domestic Water System (the "System"), located in Wasatch County, Utah 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

COMPLAINANT'S
EXHIBIT NO. 2

year-round residents and is therefore a "public water system" within the meaning of Section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "community water system" within the meaning of 40 C.F.R. § 141.2.

4. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of Section 1401(5) of the Act, 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 Act, 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. According to a June 29, 2001 sanitary survey by the Utah Department of Environmental Quality, the System is supplied by a groundwater source consisting of two springs with gas chlorination treatment. The System serves approximately 312 persons and has 112 service connections.

6. The Utah Department of Environmental Quality has primary enforcement authority for the public water supply program of the Safe Drinking Water Act in the State of Utah. On August 19, 2004, EPA issued a Notice of Violation to the State regarding the System's violations of the Act and 40 C.F.R. part 141. The

State chose not to commence enforcement for the violations within 30 days of EPA's letter.

FINDINGS OF VIOLATION

I.

1. 40 C.F.R. § 141.24(f) requires that community and non-transient, non-community water systems monitor their water annually to determine compliance with the maximum contaminant level (MCL) for volatile organic contaminants as stated in 40 C.F.R. § 141.61.

2. Respondent has failed to monitor the System's water for volatile organic contaminants in 1999, 2001, 2002, and 2003, in violation of 40 C.F.R. § 141.24(f).

II.

1. 40 C.F.R. § 141.24(h) requires community and non-transient, non-community water systems to conduct initial sampling of their water consisting of four consecutive, quarterly samples during each three-year compliance period (defined in 40 C.F.R. § 141.2) to determine compliance with the MCLs for pesticide/herbicide organic contaminants as stated in 40 C.F.R. § 141.61(c).

2. Respondent failed to conduct initial sampling of the water for pesticide/herbicide organic contaminants for four consecutive, quarterly samples from 4th quarter

(October-December) 1999 through 3rd quarter (July-September) 2004, in violation of 40 C.F.R. § 141.24(h).

III.

1. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any NPDWR violations, including violations of the maximum contaminant level (MCL), maximum residual disinfection level (MRDL), treatment technique (TT), monitoring requirements, and testing procedures in 40 part 141.
2. Respondent has not provided public notice of the noncompliance detailed in the preceding Sections I and II, in violation of 40 C.F.R. § 141.201.

IV.

1. 40 C.F.R. § 141.31(b) requires public water systems to report any failure to comply with any NPDWRs to the State within 48 hours.
2. Respondent failed to report to the State the noncompliance detailed in Sections I through III, in violation of 40 C.F.R. § 141.31(b).

ORDER

Based on the foregoing Findings, and pursuant to Section 1414(g) of the Act, IT IS ORDERED:

1. Within 30 days of the date of this Order, and per the regulation thereafter, Respondent shall monitor the water for volatile organic contaminants as required by

40 C.F.R. § 141.24(f) to determine compliance with the MCL for volatile organic contaminants appearing at 40 C.F.R. § 141.61(a). Respondent shall report analytical results to the State and EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).

2. Between January 1, 2005 and March 31, 2005, and for three additional quarters (April-June 2005, July-September 2005 and October-December 2005), and per the regulation thereafter, Respondent shall comply with the pesticide/herbicide organic monitoring requirements as set forth in 40 C.F.R. § 141.24(h) to determine compliance with the MCLs for pesticide/ herbicide organic contaminants appearing at 40 C.F.R. § 141.61(c). Respondent shall report analytical results to the State and EPA within the first 10 days following the month which results are received, as required by 40 C.F.R. § 141.31(a).

3. Within 30 days of the effective date of this Order, Respondent shall provide a notice to the public of the violations specified under the Findings of Violation in this Order, to return to compliance with 40 C.F.R. §§ 141.201, 141.203, and 141.205. This notice shall be given by (1) mail or other direct delivery to each

customer receiving a bill and to other service connections to which water is delivered by the System; AND (2) any other method reasonably calculated to reach other persons served by the System, if they would not normally be reached by mail or direct delivery, such as publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others; posting in public places or on the internet; or delivery to community organizations. The System must repeat the notice annually for as long as the violation persists. If the public notice is posted, the notice must remain in place for as long as the violation persists, but in no case less than seven days. Respondent may use its consumer confidence report (CCR) to provide public notice as long as (1) the CCR is provided to persons served no later than 12 months after the System learns of the violation; (2) the public notice contained in the CCR follows the content requirements under 40 C.F.R. § 141.205; AND (3) the CCR is distributed following the delivery requirements under 40 C.F.R. § 141.204(c). Upon the effective date of this Order, Respondent shall comply with the public notice requirements at 40 C.F.R. § 141.201 et seq. following any future NPDWR violation. Respondent shall submit a

copy of the public notice to the State and EPA within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d).

4. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.31(b) by reporting any failure to comply with any NPDWR to the State and EPA within 48 hours.

5. Reporting requirements specified in this Order shall be provided by certified mail to both:

Kathelene Brainich (8ENF-W) U.S. EPA Region 8 999 18th Street, Suite 300 Denver, CO 80202-2466	AND	Kenneth Bousfield UT Dept. Environmental Quality POB 144830 (Drinking Water) Salt Lake City, UT 84114-4830

GENERAL PROVISIONS

1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 et seq., or the Safe Drinking Water Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.

2. Violation of any term of this Order, may subject the Respondent to an administrative civil penalty of up to $27,500 per day of violation under Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), or a civil penalty of not more than $27,500 per day of violation assessed by an appropriate U.S. District

Court under Section 1414(g)(3)(C) of the Act, 42 U.S.C. § 300g-3(g)(3)(C).

3. Violation of any requirement of the SDWA or its implementing regulations may subject Respondent to a civil penalty of not more than $32,500 per day of violation assessed by an appropriate U.S. District Court under Section 1414(b) of the Act, 42 U.S.C. § 300g-3(b).

4. The effective date of this Order shall be the date of issuance of this Order.

Issued this 3rd day of December, 2004.

Michael T. Risner

Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Diane L. Sipe

Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18th STREET - SUITE 300
DENVER, COLORADO 80202-2466
http://www.epa.gov/region08

2005 MAR 29 AM 8:34

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HEARING CLERK

Ref: 8ENF-W

MAR 29 2005

CERTIFIED MAIL 7003 2260 0001 7779 1978
RETURN RECEIPT REQUESTED

Darwin McGuire
Daniel Domestic Water Co.
815 E. 3000 South
Heber City, UT 84032

Re: Administrative Order Violation
Docket No. SDWA-08-2004-0041
PWS ID #UTAH26005

Dear Mr. McGuire:

On December 3, 2004, the U.S. Environmental Protection Agency (EPA) issued an Administrative Order, Docket No. SDWA-08-2004-0041, ordering the Daniel Domestic Water Co. ("Daniel Domestic") to comply with the Safe Drinking Water Act (SDWA), 42 U.S.C. Section 300f et seq., and its implementing regulations, the National Primary Drinking Water Regulations (NPDWRs), 40 C.F.R. Part 141.

Our records indicate that Daniel Domestic is in violation of the Administrative Order ("the Order"). Among other things, the Order included the following requirement:

> Within 30 days of the effective date of the Order, and per the regulation thereafter, Respondent [Daniel Domestic] shall monitor the water for volatile organic contaminants as required by 40 C.F.R. § 141.24(f) to determine compliance with the MCL for volatile organic contaminants appearing at 40 C.F.R. § 141.61(a). Respondent shall report analytical results to the State and EPA within the first 10 days of the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).

EPA has not received monitoring results for volatile organic contaminants. **If monitoring for volatile organic contaminants was performed, submit results to the State and EPA immediately.**

The Order also included this requirement:

> Within 30 days of the effective date of the Order, Respondent shall provide a notice to the public of the

COMPLAINANT'S
EXHIBIT NO. 3

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violations specified under the Findings of Violation in the Order, to return to compliance with 40 C.F.R. §§ 141.201, 141.203, and 141.205.

EPA has not received evidence of public notice being performed. Public notice must be accomplished immediately and a signed copy sent to the State and EPA.

EPA is considering additional enforcement action as a result of your non-compliance with the Order. Violating an Administrative Order may lead to (1) a penalty of up to $32,500 per day per violation of the Order, and/or (2) a court injunction ordering you to comply.

If you have any questions you may contact Kathelene Brainich at (303) 312-6481. If you are represented by an attorney, please ask your attorney to direct any legal questions to Peggy Livingston, Enforcement Attorney, at (303) 312-6858 or at the following address:

Peggy Livingston, Enforcement Attorney
U.S. EPA, Region 8 (8-ENF-L)
999 18th Street, Suite 300
Denver, Colorado 80202-2466

We urge your prompt attention to this matter.

Sincerely,

Lisa Kahn, Team Leader
Drinking Water Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc: Ken Bousfield, UT DEQ
Gary Walton, Daniel Domestic

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