JUDGE ROMAN

PREET BHARARA
United States Attorney for the
Southern District of New York
By: NATALIE N. KUEHLER
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel. No.: (212) 637-2741
Fax No.: (212) 637-2750
E-mail: natalie.kuehler@usdoj.gov

13 CV 5475

RECEIVED
AUG 06 2013
U.S.D.C. S.D. N.Y.
CASHIERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. THE COUNTY OF WESTCHESTER, NEW YORK, Defendant.	ECF CASE 13 Civ. _____ COMPLAINT

The United States of America, by its attorney Preet Bharara, United States Attorney for the Southern District of New York, acting on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges for its complaint against defendant the County of Westchester, New York ("Westchester County" or the "Defendant") as follows:

INTRODUCTION

1. The United States brings this civil action under Sections 1414(b) and (g) of the Safe Drinking Water Act (the "SDWA" or "Act"), 42 U.S.C. § 300g-3(b) and (g), to obtain monetary penalties and permanent injunctive relief compelling Westchester County to bring the Westchester County Water District No. 1 ("District No. 1") into compliance with the Act and its implementing regulations ("SDWA Regulations").

2. Safe drinking water is essential to the protection of public health. *See* Safe Drinking Water Act Amendments of 1996, Pub. L. No. 104-182, § 3(1). Accordingly, the SDWA requires public water systems to take a variety of steps to ensure that the public water supply is protected against contamination by pollutants. *See* "Understanding the Safe Drinking Water Act," http://water.epa.gov/lawsregs/guidance/sdwa/upload/2009_08_28_sdwa_fs_30ann_sdwa_web.pdf. These steps include the protection of the source-water, water treatment, water-quality monitoring, and providing information to the public. *See id.*

3. One potential water-borne threat is Cryptosporidium, a microbial pathogen that causes cryptosporidiosis, a potentially fatal gastrointestinal illness in humans with symptoms that include diarrhea, nausea and abdominal cramps. There is no known treatment for cryptosporidiosis, and symptoms may persist for two weeks or longer in otherwise healthy adults and can be life-threatening for more vulnerable individuals.

4. In order to protect the public from this threat, EPA promulgated a rule under the SDWA on January 5, 2006, to require water suppliers like District No. 1 to implement specified water treatment systems to prevent the contamination of its water by Cryptosporidium. *See* Long Term 2 Enhanced Surface Water Treatment Rule, 40 C.F.R. Part 141, Subpart W (the "Enhanced Water Treatment Rule").

5. District No. 1, which is owned and operated by Westchester County, distributes, treats, maintains and administers a public water system serving the cities of White Plains, Yonkers, Mount Vernon, the Village of Scarsdale, and the Town of North Castle. These towns and cities, in turn, distribute the water they receive from District No. 1 to approximately 175,000 individuals.

6. Westchester County has failed to ensure that District No. 1 complies with the Enhanced Water Treatment Rule by timely upgrading its water treatment facilities to comply with the SDWA. As a result, a significant portion of the individuals who receive their drinking water supply from District No. 1 are at risk of consuming water contaminated with Cryptosporidium.

7. The United States brings this action on behalf of the EPA to ensure that the members of the public served by District No. 1's water system have a reliable and safe source of drinking water.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b).

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1395 because the violations alleged below occurred in this district, and because the Defendant resides and has its principal place of business in this District.

THE PARTIES

10. Plaintiff is the United States of America on behalf of EPA.

11. Defendant Westchester County is a person and supplier of water, as defined in SDWA Sections 1401(5) and (12), 42 U.S.C. § 300f(5) and (12), and the SDWA Regulations at 40 C.F.R. § 141.2. Westchester County is located in the southeastern tip of the State of New York and is the owner and, through its Water Agency, the operator of District No. 1, a public water system and community water system as defined in SDWA Sections 1401(4) and (15), 42 U.S.C. § 300f(4) and (15), and the SDWA Regulations at 40 C.F.R. § 141.2.

THE SAFE DRINKING WATER ACT AND NATIONAL PRIMARY DRINKING WATER REGULATIONS

12. The SDWA requires that owners and operators of public water systems test their water supply for specified contaminants, treat the water accordingly, and provide regular reports and other notices to their customers. Each of these steps is essential to ensuring that the drinking water is safe.

General Provisions

13. District No. 1 is both a "public water system" and a "community water system" under the SDWA and its implementing regulations because it provides drinking water to more than fifteen service connections and regularly serves more than twenty-five individuals year-round. *See* 42 U.S.C. § 300f(4) and (15); 40 C.F.R. § 141.2. As a public water system and a community water system, District No. 1 must comply with the National Primary Drinking Water Regulations ("NPDWRs") promulgated under Part B of the SDWA, 42 U.S.C. § 300g *et seq.* The NPDWRs, which include the Enhanced Water Treatment Rule, contain the maximum contaminant levels for various contaminants in drinking water, as well as testing and treatment requirements with regard to such contaminants.

14. As the owner and/or operator of District No. 1, Westchester County is a "supplier of water" under the SDWA and its implementing regulations, *see* 42 U.S.C. § 300f(5); 40 C.F.R. § 141.2, and must comply with the NPDWRs, including the Enhanced Water Treatment Rule.

15. In addition, the SDWA requires Westchester County to ensure that District No. 1 complies with the rules implementing New York State's Public Water Supply Supervision Program, which are codified under Title 10 of the New York Code, Rules and Regulations (the

"New York Regulations"). *See* 42 U.S.C. § 300g-3(i). The New York Regulations cover various aspects of the provision of drinking water to the public to ensure that the drinking water is safe.

16. Although for most aspects of the SDWA EPA has delegated primary enforcement responsibility regarding public water systems within New York to the State, EPA currently retains primary enforcement responsibility for the Enhanced Water Treatment Rule.

Environmental and Public Health Consequences of Cryptosporidium

17. Cryptosporidium is a microscopic parasite that is found in most surface waters and has the potential to cause severe, and in some cases life-threatening, illnesses in humans. The parasite, in its spore phase, has thick outer walls, making it highly resistant to standard disinfectants, such as chlorine.

18. Cryptosporidium is most commonly transmitted through drinking water and recreational water, and is one of the most frequent causes of waterborne disease among people in the United States. If found in surface waters, Cryptosporidium can cause large outbreaks of waterborne disease, known as cryptosporidiosis.

19. The most common symptoms in humans are fever, diarrhea, nausea, vomiting and abdominal cramps, which can last for weeks. People with weakened immune systems, as well as young children, pregnant women and the elderly, are at heightened risk of contracting cryptosporidiosis, and their symptoms tend to be more severe and persistent. Cryptosporidiosis can be life threatening. Because there is no known treatment for cryptosporidiosis, prevention of an outbreak is critical to ensure the public's health and safety.

The Enhanced Water Treatment Rule's Requirements for Treatment of Cryptosporidium

20. Part B of the SDWA authorizes EPA to promulgate regulations regarding public water systems that EPA determines are necessary to protect public health. *See* 42 U.S.C. § 300g

21. Pursuant to Part B of the SDWA, EPA promulgated the Enhanced Water Treatment Rule. This rule, which became effective on January 5, 2006, supplements pre-existing microbial treatment regulations under the SDWA by specifically targeting public water systems with higher potential risks from Cryptosporidium in their source water and imposing specific treatment requirements on them.

22. Specifically, the Enhanced Water Treatment Rule requires public water systems that receive their water from an unfiltered surface water source to provide at least 2-log Cryptosporidium inactivation, *i.e.*, treatment that inactivates 99% of the existing number of pathogens using at least two disinfectants in treating the water prior to its distribution, and to meet all applicable filtration avoidance criteria. *See* 40 C.F.R. § 141.712-13.

23. The Enhanced Water Treatment Rule also requires public water systems that use unfiltered surface water to monitor that source water for the existence of Cryptosporidium, and depending on the level of the parasite population that is present, additional treatment requirements may be triggered. *See id.* § 141.701.

24. The Enhanced Water Treatment Rule required all public water systems regulated by it to install the necessary secondary disinfection treatments by April 1, 2012. *See id.* § 141.713.

Enforcement of the Enhanced Water Treatment Rule

25. Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), authorizes the Administrator of the EPA to commence a civil action to seek compliance with the SDWA and civil penalties for violations of any applicable requirement under the SDWA, including violations of the Enhanced Water Treatment Rule.

26. Section 1414(b) of the SDWA, as modified by the Civil Monetary Penalty Inflation Adjustment Rule, authorizes the United States to seek civil penalties of up to $37,500 for each day of violation on or after January 12, 2009. *See* 42 U.S.C. §§ 300g-3(b) and 3(g)(3)(A); 61 Fed. Reg. 69,364 (Dec. 31, 1996); 73 Fed. Reg. 75,340 (Dec. 11, 2008); 74 Fed. Reg. 628 (Jan. 7, 2009).

DEFENDANT'S VIOLATIONS OF THE SAFE DRINKING WATER ACT AND THE ENHANCED WATER TREATMENT RULE

27. As described below, Westchester County has violated, and is continuing to violate, the SDWA as well as SDWA regulations by failing to ensure that District No. 1 is in compliance with the requirements of the Enhanced Water Treatment Rule.

28. District No. 1 distributes raw water taken from the Kensico Reservoir at the Kensico Dam and partially treated water taken from Shaft 22 of the Delaware Aqueduct. In 2010, District No. 1 withdrew an average of 12.4 million gallons of untreated surface water per day from Kensico Reservoir. District No. 1 does not treat the drinking water it distributes with the minimum 2-log Cryptosporidium inactivation required by the Enhanced Water Treatment Rule.

29. On September 20, 2011, EPA issued an SDWA Information Request Letter (the "September 20, 2011 Information Request") to District No. 1 requesting documentation and certification that it would comply with the Enhanced Water Treatment Rule by April 1, 2012, the

regulatory deadline to install the required second level of disinfection. EPA advised District No. 1 that failure to respond to its letter could result in a civil penalty of up to $37,500, daily penalties of $32,500 per day of violation, and sanctions under the SDWA. EPA's September 20, 2011 Information Request, sent via United States Postal Service certified mail, was returned to EPA marked "unclaimed."

30. On November 3, 2011, EPA sent District No. 1 an additional letter enclosing its September 20, 2011 Information Request and again seeking a response.

31. On December 3, 2011, Thomas J. Lauro, Commissioner of Westchester County's Office of the County Executive's Department of Environmental Facilities, responded to EPA's Information Request. Commissioner Lauro acknowledged that District No. 1 was required to comply with the Enhanced Water Treatment Rule by April 1, 2012. He stated, however, that District No. 1 "is not anticipated to be able to meet the [Enhanced Water Treatment Rule's] requirements for using at least two disinfectants by the April 1, 2012 deadline."

32. To date, Westchester County still has not complied with the Enhanced Water Treatment Rule's requirement that all drinking water distributed by District No. 1 be treated with the minimum 2-log Cryptosporidium inactivation. To date, a significant portion of the drinking water distributed by District No. 1 is or has not been treated with 2-log Cryptosporidium inactivation.

33. Because of Westchester County's failure to bring District No. 1 into compliance with the requirements of the Enhanced Water Treatment Rule, a significant portion of the individuals who receive their drinking water from District No. 1 face an increased daily risk of contracting cryptosporidiosis.

CLAIM FOR RELIEF

(Violations of the Safe Drinking Water Act and Regulations)

34. The United States incorporates by reference paragraphs 1 through 32 above as if fully set forth herein.

35. Since April 1, 2012, Westchester County has been violating the Enhanced Water Treatment Rule's requirements to treat public drinking water for Cryptosporidium.

36. Protection of the public health requires that Westchester County be enjoined to comply with the SDWA and its implementing regulations, including the Enhanced Water Treatment Rule.

37. Westchester County is also liable for civil penalties for violating the SDWA and its implementing regulations.

PRAYER FOR RELIEF

WHEREFORE, the United States of America respectfully requests that this Court:

A. Enjoin Westchester County from violating the Safe Drinking Water Act and its regulations, including but not limited to the treatment and monitoring requirements of the Enhanced Water Treatment Rule;

B. Order Westchester County to put in place measures ensuring both short term and long term compliance with the Enhanced Water Treatment Rule;

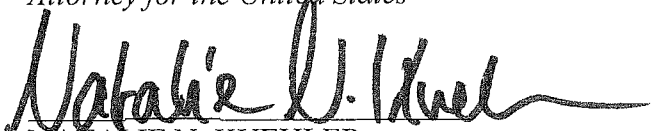
D. Order Westchester County to pay a civil penalty not to exceed $37,500 per day for each day on which Westchester County has violated the SDWA and its implementing regulations;

F. Award the United States its costs in this action; and

G. Grant such other and further relief as the Court deems just and appropriate.

Dated: New York, New York
August 6, 2013

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for the United States

By: 

NATALIE N. KUEHLER
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, NY 10007
Telephone: (212) 637-2741
Facsimile: (212) 637-2650

ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Of Counsel: Phyllis Feinmark
Chief, Water and General Law Branch
United States Environmental Protection Agency, Region 2