

3. Ticonderoga is also currently violating Section 5-1.30 of the New York State Sanitary Code, 10 NYCRR 5-1.30.

4. This action seeks monetary penalties for these violations as well as injunctive relief compelling Ticonderoga to come into compliance with the SDWA, its implementing regulations, and the New York State Sanitary Code.

JURISDICTION AND VENUE

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

6. Venue is proper in the Northern District of New York pursuant to 28 U.S.C. § 1391(b) and 1395(a) because the violations alleged below occurred in this district, and because Ticonderoga is located in this district.

DEFENDANT

7. Ticonderoga is an incorporated town formed under the laws of New York, and located in Essex County.

8. Ticonderoga is a “municipality” within the meaning of Section 1401(10) of SDWA, 42 U.S.C. § 300f(10).

9. Ticonderoga is a “person” within the meaning of Section 1401(12) of SDWA, 42 U.S.C. § 300f(12).

STATUTORY BACKGROUND

The Safe Drinking Water Act

10. Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2, define a “public water system” as a “system for the provision to the public of water for human

consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals.”

11. A “supplier of water” is defined at Section 1401(5) of the SDWA, 42 U.S.C. §300f(5), and 40 C.F.R. § 141.2, as “any person who owns or operates a public water system.”

12. Public water systems must comply with the National Primary Drinking Water Regulations promulgated under Part B of the SDWA, 42 U.S.C. § 300g-300g-6, except to the extent that an exception, variance, or exemption under Section 1411, 1415, or 1416, 42 U.S.C. §§ 300g, 300g-4, or 300g-5, is applicable. SDWA Section 1411, 42 U.S.C. § 300g.

13. Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), authorizes the EPA Administrator to commence a civil action to compel compliance with applicable requirements of the SDWA and to obtain civil penalties for violations of applicable requirements of the SDWA.

14. Applicable requirements of the SDWA include all regulations promulgated pursuant to 42 U.S.C. § 300g-1, such as the National Primary Drinking Water Regulations. 42 U.S.C. § 300g-3(i).

15. 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 per day for each violation after January 12, 2009 through November 2, 2015, and \$55,907 per day per violation after November 2, 2015. *See* 42 U.S.C. § 300g-3(b) and 300g-3(g)(3)(A); 40 C.F.R. Part 19, 61 Fed. Reg. 69,364 (Dec. 31, 1996); 73 Fed. Reg. 75,340 (Dec. 11, 2008); 74 Fed. Reg. 628 (Jan 7, 2009); 78 Fed. Reg. 66,643 (Dec. 6, 2013), 83 Fed. Reg. 1190, 1193 (Jan. 10, 2018).

The Enhanced Treatment Rule

16. The National Primary Drinking Water Regulations include the Long Term 2 Enhanced Surface Water Treatment Rule, hereinafter “Enhanced Treatment Rule.” 40 C.F.R. § 141.700(a).

17. EPA promulgated the Enhanced Treatment Rule on January 5, 2006. See 71 Fed. Reg. 654 (January 5, 2006).

18. The Enhanced Treatment Rule applies to public water systems supplied by a surface water source. 40 C.F.R. § 141.700(b).

19. EPA described the purpose of the Enhanced Treatment Rule at its publication:

EPA is promulgating the Long Term 2 Enhanced Surface Water Treatment Rule to further protect public health against *Cryptosporidium* and other microbial pathogens in drinking water. *Cryptosporidium* is a protozoan parasite that is common in surface water used as drinking water sources by public water systems. In drinking water, *Cryptosporidium* is a particular concern because it is highly resistant to chemical disinfectants like chlorine. When ingested, *Cryptosporidium* can cause acute gastrointestinal illness, which may be severe and sometimes fatal for people with weakened immune systems. *Cryptosporidium* has been identified as the cause of a number of waterborne disease outbreaks in the United States.

71 Fed. Reg. 654 (January 5, 2006) (parenthetical references omitted).

20. The Enhanced Treatment Rule requires public water systems that receive 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 *Cryptosporidium* bacteria, and potentially higher levels of inactivation depending on the current *Cryptosporidium* levels in the water source. 40 C.F.R. § 141.712.

21. The Enhanced Treatment Rule requires unfiltered public water systems serving fewer than 10,000 people to achieve the required *Cryptosporidium* treatment by October 1, 2014. 40 C.F.R. § 141.713.

22. The Enhanced Treatment Rule also requires public water systems using uncovered finished water storage facilities to cover the water storage facility, or treat the water discharged from the uncovered finished water storage facility to the distribution system in order to achieve inactivation and/or removal of at least 4-log virus, 3-log *Giardia lamblia*, and 2-log *Cryptosporidium* by April 1, 2009, or to be in compliance with a state-approved schedule to meet these conditions no later than April 1, 2009. 40 C.F.R. § 141.714.

The New York Public Health Law

23. New York Public Health Law § 1100 authorizes the New York Department of Health to promulgate regulations to protect public water supplies from contamination.

24. New York Public Health Law § 1102 provides that if a public water system is in violation of regulations promulgated pursuant to § 1100, and the water system does not come into compliance after receiving notice of the violation, New York may file an action for penalties and an injunction restraining the public water system from further violations.

25. New York Public Health Law § 1103 provides that a public health system in violation of regulations promulgated pursuant to § 1100 is subject to civil penalties of up \$200 per violation, per day of violation.

The New York State Sanitary Code

26. Pursuant to § 1100 of the New York Public Health Law, the Department of Health promulgated § 5-1.30 of the New York State Sanitary Code to establish treatment requirements for public water systems.

27. The State Sanitary Code definition of public water system includes community water systems that provide water to the public for human consumption through pipes that serve at least 25 individuals daily at least 60 days out of the year. 10 NYCRR 5-1.1(be).

28. For public water systems using an unfiltered surface water source, as a condition of continuing to avoid filtering water provided to users, the State Sanitary Code requires disinfection sufficient to ensure at least 99.9 percent inactivation of *Giardia lamblia* cysts and 99.99 percent inactivation of viruses, between a point where the raw water is no longer subject to recontamination by surface water runoff and a point downstream before or at the first consumer. 10 NYCRR 5-1.30(c)(3).

29. For public water systems using an unfiltered surface water source, as a condition of continuing to avoid filtering water provided to users, the State Sanitary Code requires that the disinfection system have redundant components to ensure continuous disinfection, and requires that auxiliary power with automatic start and alarm is provided at all disinfection facilities where a power outage would result in a loss or reduction in the ability of the system to maintain the required disinfection concentration. 10 NYCRR 5-1.30(c)(4).

Filtration Avoidance Determination

30. Public water systems must filter all water from a surface water source that is not subject to a current Filtration Avoidance Determination. 10 NYCRR 5-1.30(b).

31. In 1991, New York granted Ticonderoga a Filtration Avoidance Determination for Gooseneck Pond, which allowed Ticonderoga to distribute water from Gooseneck Pond to its users without filtering the water.

32. One condition of the Filtration Avoidance Determination was that Ticonderoga install a redundant chlorination system at its Gooseneck Pond Chlorination Station.

33. Another condition of the Filtration Avoidance Determination was that Ticonderoga evaluate its transmission system to ensure that users directly upstream from the

Gooseneck Pond Chlorination Station were receiving water that had been exposed to the required chlorine contact time.

GENERAL ALLEGATIONS

34. Ticonderoga operates a “public water system” within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), 40 C.F.R. § 141.2, and 10 NYCRR 5-1.1(be).

35. Ticonderoga is a “supplier of water” within the meaning of Section 1401(5) of the SDWA, 42 U.S.C. §300f(5), 40 C.F.R. § 141.2, and 10 NYCRR 5-1.1(bu).

36. Ticonderoga must comply with all National Primary Drinking Water Regulations promulgated under Part B of the SDWA. None of the exceptions in Section 1411, 42 U.S.C. § 300g are applicable.

37. Ticonderoga does not have a variance or exemption pursuant to Sections 1415 or 1416 of the SDWA, 42 U.S.C. §§ 300g-4 or 300g-5, for any part of its public water system.

38. Ticonderoga’s public water system serves more than 25 and less than 10,000 users.

39. At all times relevant to this Complaint, Gooseneck Pond was and is an unfiltered surface water source.

40. Gooseneck Pond supplies water to Ticonderoga’s public water system.

41. From Gooseneck Pond, water flows through the Gooseneck Pond Chlorination Station, after which water is distributed to several users before being stored in the Chilson Reservoir. After the Chilson Reservoir, water passes through the Chilson Reservoir Chlorination Station, before being distributed to hundreds of users in the Town of Ticonderoga.

42. Ticonderoga was repeatedly notified of the violations at issue in this Complaint, including via communications from the State in 1991, 2009, 2011, 2013, and 2015, and communications from EPA in 2014 and 2015.

FIRST CLAIM FOR RELIEF

Failure to Inactivate and/or Remove *Cryptosporidium* (Gooseneck Pond)

43. Paragraphs 1-42 are realleged and incorporated herein by reference.

44. Ticonderoga has not installed treatment that would provide 2-log inactivation and/or removal of *Cryptosporidium* for water sourced from Gooseneck Pond.

45. Ticonderoga is in violation of 40 C.F.R. § 141.712, and has been since October 1, 2014.

SECOND CLAIM FOR RELIEF

Failure to Cover Finished Water Storage Facility (Chilson Reservoir)

46. Paragraphs 1-42 are realleged and incorporated herein by reference.

47. Ticonderoga uses an uncovered reservoir, the Chilson reservoir, to store finished water.

48. Based on a 2013 New York Department of Health inspection, the concrete bottom and walls of the Chilson Reservoir are heavily cracked, and completely deteriorated in places.

49. Ticonderoga does not treat the water discharged from the Chilson reservoir to achieve inactivation and/or removal of at least 4-log virus, 3-log *Giardia lamblia*, and 2-log *Cryptosporidium*.

50. New York established a schedule for Ticonderoga to comply with 40 C.F.R. § 141.714 in March 2009, and later extended the dates in this schedule in August 2011.

51. Ticonderoga did not comply with either schedule referenced in Paragraph 50.

52. Ticonderoga is in violation of 40 C.F.R. § 141.714, and has been since April 1, 2009, because it has neither covered the Chilson reservoir nor installed treatment facilities to achieve the standards set by 40 C.F.R. § 141.714.

THIRD CLAIM FOR RELIEF

Failure to Provide Redundant Chlorination (Gooseneck Pond Chlorination Station)

53. Paragraphs 1-42 are realleged and incorporated herein by reference.

54. Water distributed to users between Gooseneck Pond and the Chilson Reservoir is treated solely by chlorination at the Gooseneck Pond Chlorination Station.

55. If the Gooseneck Pond Chlorination Station mechanically fails or loses power, untreated and unfiltered pond water will be provided to users because there is no remote alarm to alert officials, there is no redundant system to provide chlorination (such as a second chlorination station), there is no secondary source of power with automatic start, and there is no automatic shut-off valve to stop the flow of unchlorinated water.

56. Ticonderoga is in violation of 10 NYCRR 5-1.30(4), and has been since 1991 because it has not supplied a redundant chlorination system to ensure continuous disinfection of water distributed to users between the Gooseneck Pond Chlorination Station and the Chilson Reservoir, nor has it installed auxiliary power with automatic start and alarm at the Gooseneck Pond Chlorination Station.

FOURTH CLAIM FOR RELIEF

Failure to Adequately Treat Unfiltered Surface Water (Eagle Lake Chlorination Station)

57. Paragraphs 1-42 are realleged and incorporated herein by reference.

58. Water that is treated by chlorine must be in contact with the chlorine for a certain period of time to deactivate pathogens.

59. Approximately 39 users just downstream of the Eagle Lake Chlorination Station receive water during peak flow conditions that has not received adequate chlorine contact time to ensure 99.9 percent inactivation of *Giardia lamblia* cysts and 99.99 percent inactivation of viruses, as required by 10 NYCRR 5-1.30(c)(3).

60. Inadequate chlorine contact times for users downstream from the Eagle Lake Chlorination Station was noted in the 1991 Gooseneck Pond Filtration Avoidance Determination.

61. Ticonderoga is in violation of 10 NYCRR 5-1.30(c)(3), and has been since 1991, for failing to adequately treat water supplied to the approximately 39 users directly downstream from the Eagle Lake Chlorination Station.

FIFTH CLAIM FOR RELIEF

Failure to Maintain Adequate Pressure in Distribution Line (Gooseneck Pond Upland Users)

62. Paragraphs 1-42 are realleged and incorporated herein by reference.

63. 10 NYCRR 5-1.27 requires that the public water system will be maintained and operated to ensure a minimum working pressure of 20 pounds per square inch at ground level at all points in the distribution system.

64. Public water distribution lines must be maintained at the required pressure to avoid the intrusion of contamination into the distribution lines.

65. Approximately 21 users between the Eagle Lake Chlorination Station and the Chilson Reservoir receive water from distribution pipes under inadequate pressure.

66. Ticonderoga is in violation of 10 NYCRR 5-1.27 for failing to maintain adequate pressure in its distribution line between Eagle Lake Chlorination Station and the Chilson Reservoir.

SIXTH CLAIM FOR RELIEF

Failure to Adequately Treat Surface Water (Baldwin Road Filtration Plant)

67. Paragraphs 1-42 are realleged and incorporated herein by reference.

68. Ticonderoga uses a diatomaceous earth filtration plant called the Baldwin Road Filtration Plant to treat drinking water sourced from Lake George.

69. The diatomaceous earth is held in contact with water by parts called “septums.”

70. As noted in a 2013 New York Department of Health inspection, the septums at the Baldwin Road Filtration Plant have repeatedly broken, allowing unfiltered surface water from Lake George to enter the distribution system.

71. Ticonderoga does not treat the effluent from the Baldwin Road Filtration Plant to achieve inactivation and/or removal of at least 4-log virus, 3-log *Giardia lamblia*, and 2-log *Cryptosporidium* when the filter unit septums are broken.

72. Ticonderoga has been in violation of 10 NYCRR 5-1.30(b) since at least 2013, during periods where broken septums have allowed unfiltered surface water to enter the distribution system.

PRAYER FOR RELIEF

WHEREFORE, the United States of America and the State of New York respectfully request that this Court grant the following relief:

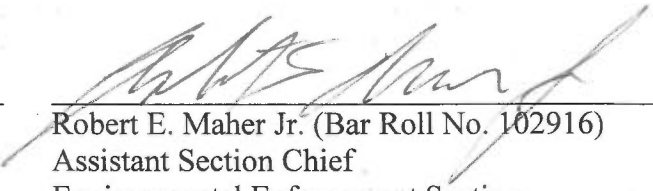
1. Permanently enjoin Ticonderoga from any further violations of the SDWA, the National Primary Drinking Water Regulations, the New York Public Health Law, and the New York State Sanitary Code;
2. Order Ticonderoga to expeditiously complete all actions necessary to ensure that it complies with the National Primary Drinking Water Regulations and all other requirements of SDWA and the State Sanitary Code;

3. Order Ticonderoga to pay a civil penalty of up to \$53,907 per day for each violation of the SDWA and its implementing regulations;
4. Order Ticonderoga to pay a civil penalty of up to \$200 per day for each violation of the New York Public Health Law and its implementing regulations; and
5. Grant the Plaintiffs such other and further relief as this Court deems appropriate.

Respectfully Submitted,

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Dated: 3/29/18



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