



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

OCT 04 2011

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO.

Henry Nemec, President and Trustee
Coffee Creek Water Company
401 4th Avenue
Coffee Creek, MT 59424

Lon Nemec, Trustee
Coffee Creek Water Company
Box 6161 MT Highway 81
Coffee Creek, MT 59424

Charlie Hartman, Trustee
Coffee Creek Water Company
Box 4984 MT Highway 85
Coffee Creek, MT 59424

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. SDWA-08-2012-0001

Dear Messrs. Nemec and Hartman:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (Complaint) filed against the Coffee Creek Water Company (Coffee Creek) and each of you as trustees for Coffee Creek under section 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 Coffee Creek and you (referenced collectively as "you" in this letter) failed to comply with an Administrative Order, Docket No. SDWA-08-2006-0006, issued on December 5, 2005, as amended on November 15, 2010. The violation is described in the Complaint.

By law, you have 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 you do not file an answer to the 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 you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings.



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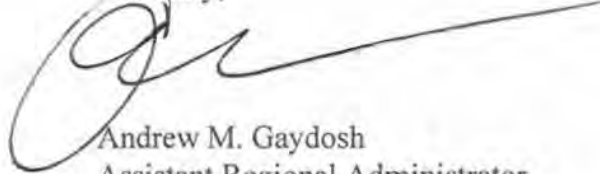
The EPA encourages all parties against whom it files any complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. If you sign a consent agreement that is finalized by a final order, you will waive your right to request a hearing on any matter to which you have stipulated in that agreement.

Whether or not you request a hearing, you and/or your representative(s) may confer informally with the EPA concerning the alleged violation and/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 you must submit a written answer and a request for a hearing. You may pursue settlement and have an informal conference even if you are also litigating the case.

For any questions specific to the violations or penalty, the most knowledgeable people at the EPA regarding this matter are Sienna Meredith, Environmental Protection Specialist, who can be reached at 406-457-5026, or Peggy Livingston, Enforcement Attorney, who can be reached at 1-800-227-8917, extension 6858.

We urge your prompt attention to this matter.

Sincerely,



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

Enclosure

cc: Tina Artemis, EPA Regional Hearing Clerk
Jon Dilliard, Chief, MTDEQ Public Water Supply Bureau
John Arrigo, Administrator, MTDEQ Enforcement Division



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 OCT -4 PM 2:27

FILED
EPA REGION VIII
READING CLERK

IN THE MATTER OF)

Coffee Creek Water Company,)
Charlie Hartman, Lon Nemeec,)
and Henry Nemeec)
Respondents)

) Docket No. SDWA-08-2012-0001

) **COMPLAINT AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**

Proceeding 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 United States Environmental Protection Agency (EPA) by § 1414(g)(3) of the Safe Drinking Water Act (SDWA or Act), 42 U.S.C. § 300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes 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)(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 the 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), a copy of which is attached to this Complaint as Complainant's Exhibit 1.

GENERAL ALLEGATIONS

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

1. Respondent Coffee Creek Water Company (the “Company”) is an unincorporated association of individuals known as “Trustees” and therefore a “person” as that term is defined in § 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. As stated in an Agreement and Declaration of Trust of the Coffee Creek Water Company dated January 2, 1953 (the “Agreement”), the Trustees of the Company hold the title in trust to a water system (the “System”) serving the citizens and residents of Coffee Creek, Montana.
3. According to page 1 of the Agreement, the Trustees of the Company manage, operate, and distribute water to the residents of Coffee Creek, Montana, or others in the vicinity.
4. According to page 2 of the Agreement, the Trustees of the Company “are to be designated in their collective capacity as the ‘COFFEE CREEK WATER COMPANY.’”
5. According to page 2 of the Agreement, the Trustees of the Company “are authorized to engage in the operation” of the System.
6. Respondent Charlie Hartman is an individual and therefore a “person” as that term is defined in § 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.

7. Respondent Charlie Hartman is a Trustee of the Company and is named in this proceeding in his capacity as a Trustee of the Company.
8. Respondent Lon Nemeč is an individual and therefore a “person” as that term is defined in § 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
9. Respondent Lon Nemeč is a Trustee of the Company and is named in this proceeding in his capacity as a Trustee of the Company.
10. Respondent Henry Nemeč is an individual and therefore a “person” as that term is defined in § 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
11. Henry Nemeč is President and a Trustee of the Company and is named in this proceeding in his capacity as a Trustee of the Company.
12. Each Respondent owns and/or operates the System.
13. The System provides the public in and near Coffee Creek, Montana, with piped water for human consumption.
14. The System regularly serves an average of approximately 35 persons daily through approximately 16 service connections and is therefore a “public water system” as that term is defined in Section 1401(4) of the Act, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2 and a “community water system” as that term is defined in 40 C.F.R. § 141.2.
15. Each Respondent is a “supplier of water” as that term is defined in Section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Each 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 (NPDWRs).

16. The System is supplied solely by a ground water source consisting of a spring.
17. The System is open all year.
18. The State of Montana (State) has had primary enforcement authority for public water supply systems in Montana since 1978. 43 Fed. Reg. 8028 (February 27, 1978).
19. According to 40 C.F.R. § 141.62(b), the Maximum Contaminant Level (“MCL”) for total nitrate and nitrite in water provided by public water systems is 10 milligrams per liter (mg/L).
20. According to 40 C.F.R. § 141.62(b), the MCL for nitrate in water provided by public water systems is 10 mg/L.
21. Infants below the age of six months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome. See 40 C.F.R. Part 141, Subpart Q, Appendix B.
22. The System has been reporting sample results in excess of the MCL for total nitrate and nitrite going as far back as May of 1973 and in excess of the MCL for nitrate going back to the 1990s or earlier.

23. On December 11, 2003, the Montana Department of Environmental Quality requested that the EPA initiate an enforcement action concerning violations at the System.
24. By letter dated September 27, 2005, the EPA proposed that the Respondents enter into an Administrative Order on Consent (proposed consent order) with the EPA. The proposed consent order would have required the System to come into compliance with the nitrate MCL by December 30, 2007. The proposed consent order included alternatives for the System to achieve compliance. One method was to form a water district and apply for funding that would be available to water districts but not trusts. The EPA's cover letter transmitting the proposed consent order listed at least six potential sources of grants and/or loans for which the System could apply to obtain funding for improvements.
25. The Respondents did not agree to enter into the proposed consent order.
26. On December 5, 2005, the EPA issued an Administrative Order (Order), Docket No. SDWA-08-2006-0006, to the Respondents. The Order cited multiple instances in which the System's water had exceeded the MCLs for nitrate and for total nitrate and nitrite. The Order set forth a compliance schedule similar to that in the proposed consent order, including a final compliance date of December 30, 2007, and intermediate deadlines for contacting various agencies for assistance in creating a water district and for applying for funding for improvements to the System. The Order also included deadlines for notifying the EPA if the System

chose to purchase water from another source or mix its water with water from another public water system. A copy of the Order and a copy of its accompanying cover letter are attached to this Complaint as Complainant's Exhibit 2.

27. In lieu of submitting a written compliance schedule as directed by the Order, the Respondents proposed to reduce nitrate in the System's water by a phytoremediation plan, i.e., planting willow trees near the spring that is the source of the System's water. By letter dated September 20, 2006, the Company stated that a reduction in nitrate "may be seen in 3-5 years," that its "best guess for the process to reduce the MCL to the standard is 10-12 years," and that the trees were to be planted in the spring of 2007.
28. The Respondents planted willow trees near the System's source spring during the spring of 2008.
29. On February 8, 2010, the EPA, noting that nitrate levels had increased significantly since the trees had been planted, issued an Addendum to the Order, directing the Respondents to submit a new compliance plan and schedule to the EPA, with specific milestone dates and a final compliance date to be within 36 months of the EPA's approval of the plan.
30. By letter dated May 17, 2010, the EPA issued a revised Addendum to the Order, directing the Respondents to submit a new compliance plan and schedule to the EPA within 90 days of receipt of that letter. Again, the proposed schedule was to

include specific milestone dates and a final compliance date to be within 36 months of the EPA's approval of the plan.

31. By letter dated August 16, 2010, the Company replied that its copy of the May 17, 2010, letter did not include page 2. The Company requested an extension for its compliance deadline.
32. By letter dated September 28, 2010, the EPA extended the Respondents' deadline for submitting a new compliance plan and schedule to thirty days after receipt of that letter.
33. By letter dated October 27, 2010, the Company submitted a compliance plan and schedule based on giving the trees until "2018-2020" to produce results.
34. By letter dated November 15, 2010, the EPA stated that the October 27th compliance plan and schedule from the Company did not include an alternative plan designed to achieve compliance within 36 months of the EPA's approval. The EPA stated that it was not asking the Company to abandon the phytoremediation effort but instead was requiring an alternative, backup plan. The EPA also cited concerns with the willow trees, which had been 12-14 feet in height when they were planted in the spring of 2008 but were now only 3-4 feet high, and with the average nitrate levels, which had increased from 15.6 mg/l in 2005 to 21.6 mg/l in 2009. A copy of EPA's letter dated November 15, 2010, is attached to this Complaint as Complainant's Exhibit 3.
35. As of June of 2011, nitrate levels in the System's water had risen to 28.8 mg/l.

VIOLATION

Count I

Failure to Submit Alternative Compliance Plan and Schedule

1. The Order, as amended by the EPA's letter dated November 15, 2010, required the Respondents to submit an alternative compliance plan and schedule to the EPA within thirty days. The alternative compliance plan and schedule was to be designed to achieve compliance with the nitrate MCL within 36 months of the EPA's approval of the compliance schedule.
2. The Respondents have violated the Order, as amended by the EPA's letter dated November 15, 2010, because they have not submitted an alternative compliance plan and schedule designed to achieve compliance with the nitrate MCL within 36 month's of the EPA's approval of the compliance schedule.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

This complaint proposes that the EPA assess an administrative penalty against the Respondents. The EPA is authorized to assess an administrative penalty according to § 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), for violation of an administrative order issued under § 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g). As adjusted for inflation by 40 C.F.R. Part 19, the amount may be up to \$27,500 for violations occurring after March 15, 2004 through January 12, 2009, and \$32,500 for violations occurring after January 12, 2009.

The 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 violations, the population at risk, and other appropriate factors, including the Respondents' degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay, as known to the EPA at this time, the EPA proposes to assess an administrative civil penalty of \$5,000 against the Respondents for their violations of the Order.

OPPORTUNITY TO REQUEST A HEARING

As provided in § 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), the Respondents have the right to request a public hearing on this matter.

If the Respondents wish to request a hearing, to contest any material fact alleged in this complaint, to contest the appropriateness of the proposed penalty, and/or to assert that they are entitled to judgment as a matter of law, the Respondents 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, the Respondents have an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.7(c), in which to file their answer.

If the Respondents request a hearing in their 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, the Respondents have 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 following:

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

A copy of the answer must also be sent to the Enforcement Attorney named at the end of this complaint.

FAILURE TO FILE AN ANSWER

If the Respondents do not file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this complaint, the Respondents may be subject to a default order requiring payment of the full penalty proposed in this complaint. The 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 the Respondents have any knowledge. The answer must state (1) any circumstances or arguments which the Respondents allege to constitute grounds of defense, (2) any facts the Respondents dispute, (3) whether and on what basis the Respondents oppose the proposed penalty, and (4) whether the Respondents

request a hearing. **Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of that allegation.**

QUICK RESOLUTION

The Respondents 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, the Respondents need not file an answer. Alternatively, as allowed by 40 C.F.R. § 22.18(b), the Respondents 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 the 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:

Sienna Meredith (8MO)
U.S. EPA Region 8
Federal Building
10 W. 15th St., Suite 3200
Helena, MT 59626

Payment of the penalty in this manner does not relieve the Respondents of their obligation to comply with the requirements of the SDWA and its implementing regulations. Payment of the penalty pursuant to 40 C.F.R. § 22.18 shall constitute consent by the Respondents to the assessment of the proposed penalty and a waiver of the Respondents’ right to a hearing on this matter.

SETTLEMENT NEGOTIATIONS

The EPA encourages exploring settlement possibilities through informal settlement negotiations. Even if the Respondents request, schedule, or participate in settlement discussions,

they must still file an answer by the deadline above to avoid a default order. The parties may simultaneously pursue settlement and proceed with administrative litigation. If a settlement is 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. Any request for settlement negotiations should be directed to the Enforcement Attorney named below.

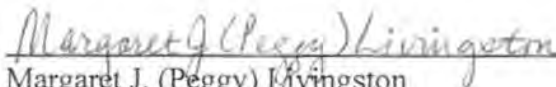
Dated this 29th day of September, 2011.

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

Henry Nemec, President and Trustee
Coffee Creek Water Company
401 4th Avenue
Coffee Creek, MT 59424
Certified Mail # 7009-3410-0000-2594-9654

Lon Nemec, Trustee
Coffee Creek Water Company
Box 6160 MT Highway 81
Coffee Creek, MT 59424
Certified Mail # 7009-3410-0000-2594-9661

Charlie Hartman, Trustee
Coffee Creek Water Company
Box 4984 MT Highway 81
Coffee Creek, MT 59424
Certified Mail # 7009-3410-0000-2594-9678

Date: 9/4/2011 By: Judith Mc Ternan
Judith McTernan

§ 21.13

approve or disapprove the State issued statement, in accordance with the requirements of § 21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State 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.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18th STREET - SUITE 300
DENVER, COLORADO 80202-2466
<http://www.epa.gov/region08>

COMPLAINANT'S
EXHIBIT NO. 2

DEC 5 2005

Ref: 8ENF-T

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Henry Nemec, President and Trustee
Coffee Creek Water Company
401 4th Avenue
Coffee Creek, MT 59424

Lon Nemec, Trustee
Coffee Creek Water Company
Box 6160 MT Highway 81
Coffee Creek, MT 59424

Charlie Hartman, Trustee
Coffee Creek Water Company
Box 4984 MT Highway 81
Coffee Creek, MT 59424

Re: Administrative Order
Coffee Creek Water Company

Dear Messrs. Nemec and Hartman:

This letter concerns our mutual efforts to bring the Coffee Creek Water Company (the Company) into compliance with the Safe Drinking Water Act (SDWA), particularly with the Maximum Contaminant Levels (MCLs) for nitrate and total nitrate and nitrite established by the National Primary Drinking Water Regulations, 40 C.F.R. part 141.

As you are aware, in September of this year, EPA Region 8 proposed that the Company enter into an Administrative Order on Consent, under which the Company would have taken steps with assistance from the United States Environmental Protection Agency (EPA) and the State of Montana Department of Environmental Quality (MDEQ), to bring the Company's public water supply system (the System) into compliance. The Company declined to sign the Administrative Order on Consent, although it notified EPA that it was interested in resolving this issue.



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In order to continue the process of bringing the System into compliance, EPA Region 8 is issuing the enclosed Administrative Order, which contains requirements similar to those in the previously proposed Administrative Order on Consent. EPA has the authority to issue orders of this sort according to section 1414 of the SDWA, 42 U.S.C. § 300g-3.

Under the enclosed Order, the Company would investigate options for bringing the System into compliance and implement the option it selects, with an ultimate compliance date of December 30, 2007 for meeting the nitrate and total nitrate and nitrite MCLs.

One option is to form a water district to run the System, which would help qualify the System for loans or grants. The Order would allow you to form another kind of entity if that other entity would also be eligible for loans and/or grants and would be allowed to own a public water system under Montana law.

Alternatively, the Order would allow for coming into compliance by, for example, buying water from another public water system, or mixing water from the System with water purchased from another public water system. For example, you may wish to consider buying water from another community and transporting it to Coffee Creek by truck. Dilution of Coffee Creek water with water from a nitrate-free source may be an economical solution. The Order requires you to notify EPA within 90 days if you wish to pursue one of these options. If EPA approves the alternative water source, and if you can afford to buy this water without applying for grants or loans, it is possible that you could avoid having to form a district.

If you chose to form a district, we would recommend that you consult with a qualified attorney and/or water system technical assistance provider to assist you in the process. Some organizations that provide that kind of assistance, without charge, include the Montana Rural Water Systems (406-454-1151) and the Midwest Assistance Program (952-758-4334; local contact Pam Higgins at 406-538-5173).

For funding improvements to your system, there are several potential sources. Eric Finke of EPA's Montana office has contacted various entities and obtained this information concerning their deadlines for applications:

- The Montana Department of Natural Resources and Conservation offers grants of up to \$10,000 for planning (preparation of a Preliminary Engineering Report). The deadline for these grants is May 15 of each year.
- The Montana Board of Investments offers what is called an INTERCAP loan. There is no deadline for an application for this loan.
- Montana Department of Environmental Quality Drinking Water State Revolving Fund (DWSRF) loans have no deadline.



- The United States Department of Agriculture Rural Development/Rural Utilities Service offers both grants and loans. There is no application deadline.
- The Montana Department of Natural Resources and Conservation (DNRC) offers Renewable Resource grants and loans. The deadline for the next two years of funding for capital projects has already passed. The application deadline is based on the biennial legislative cycle. The next deadline will be May 15, 2006, and this will be for projects that the legislature would fund by April 1, 2007. Subsequent application/funding dates occur every 2 years.
- The Montana Department of Commerce offers Treasure State Endowment Program (TSEP) grants and loans, and Community Development Block Grant (CDBGs). The deadline for the next 2 years of TSEP and CDBG funding for capital projects has already passed. This application deadline also is based on the biennial legislative cycle. The next deadline for TSEP will be May 27, 2006 for CDBG, and first week of May 2006 for TSEP; these projects would be funded by April 1, 2007. Subsequent application/funding dates occur every 2 years.
- The TSEP also offers planning grants up to \$15,000, which are subject to the same deadline as applications for TSEP capital projects.

These agencies also have informed us that they require a Preliminary Engineering Report prior to approving a loan or grant for a capital project.

Please note that the enclosed Order names each of you individually as a party to the Order. Once the district is formed, we may, depending on what develops, amend it to substitute the district as the only respondent. If that amendment occurs, none of you would be individually named as a respondent.

The Order requires you to disconnect any abandoned homes from the system. This is because, in the absence of functioning back-flow prevention valves, these "dead ends" could cause accumulated bacteria to be back-washed into the system in the event of a loss of pressure.

The Order also requires you to disconnect any standpipes where users can load water into cisterns, or, alternatively, to preclude access to the standpipe by the general public.

We believe that this Order presents a reasonable approach to the System's problems with nitrate and total nitrate and nitrite.

As with any administrative order that EPA issues under SDWA § 1414(a), violating the enclosed Order may lead to (1) a penalty of up to \$32,500 per day of violation of the Order, (2) a separate such penalty for violating the regulations themselves, and/or (3) a court injunction ordering compliance.



Also enclosed is a Small Business Regulatory Enforcement and Fairness Act (SBREFA) Section 22 information sheet. The SBREFA sheet notifies small businesses of their right to comment on regulatory enforcement activities, and provides information on compliance assistance. Dissemination of this information sheet does not constitute an admission or a determination by EPA that the Company is a small entity as defined by SBREFA.

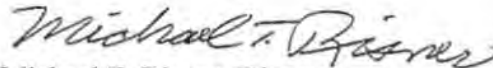
If you wish to discuss this Order further, please contact Eric Finke of EPA's Helena, Montana office at (406) 457-5026, or toll-free at 1-866-457-2690, ext. 5026. If you are represented by an attorney, please feel free to ask your attorney to call Peggy Livingston at (303) 312-6858.

Thank you for your cooperation. We look forward to hearing from you soon.

Sincerely,



John Wardell, Director
Montana Office



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

Enclosure

Order

cc: John Arrigo, Montana DEQ
Frank H. Gessaman, Montana DEQ
Keith Christie, Montana DEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

2005 DEC -5 AM 8:41

IN THE MATTER OF)	
)	
Coffee Creek Water Company,)	
Charlie Hartman, Lon Nemec,)	
and Henry Nemec)	
)	
Coffee Creek, Montana)	Docket No. SDWA-08-2006-0006
)	
Respondents)	
)	ADMINISTRATIVE ORDER
Proceedings under Section 1414(g))	
of the Safe Drinking Water Act,)	
42 U.S.C. §300g-3(g))	

This Administrative Order ("Order") is being issued by the United States Environmental Protection Agency Region VIII (EPA), pursuant to the authority vested in the Administrator of the EPA by Section 1414(g) of the Safe Drinking Water Act (the "Act"), 42 U.S.C. §300g-3(g). Authority to take this action has been properly delegated to the undersigned EPA officials.

FINDINGS

1. Respondent Coffee Creek Water Company (the "Company") is an unincorporated association of individuals known as "Trustees" and therefore a "person" as that term is defined in § 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 CFR §141.2.
2. As stated in a January 2, 1953 Agreement and Declaration of Trust of the Coffee Creek Water Company (the "Agreement"), the Trustees of the Company hold the title in trust to a water system (the "System") serving the citizens and residents of Coffee Creek, Montana.
3. According to page 1 of the Agreement, the Trustees of the Company manage, operate, and distribute water to the residents of Coffee Creek, Montana, or others in the vicinity.

4. According to page 2 of the Agreement, the Trustees of the Company "are to be designated in their collective capacity as the 'COFFEE CREEK WATER COMPANY.'"
5. According to page 2 of the Agreement, the Trustees of the Company "are authorized to engage in the operation" of the System.
6. Respondent Charlie Hartman is an individual and therefore a "person" as that term is defined in § 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 CFR § 141.2.
7. Respondent Charlie Hoffman is a Trustee of the Company.
8. Respondent Lon Nemeč is an individual and therefore a "person" as that term is defined in § 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 CFR § 141.2.
9. Respondent Lon Nemeč is a Trustee of the Company.
10. Respondent Henry Nemeč is an individual and therefore a "person" as that term is defined in § 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 CFR § 141.2.
11. Henry Nemeč is President and a Trustee of the Company.
12. Each Respondent owns and/or operates the System.
13. The System provides the public in and near Coffee Creek, Montana, with piped water for human consumption.
14. The System regularly serves an average of approximately 33 persons daily through approximately 24 service connections and is therefore a "public water system" as that term is defined in Section 1401(4) of the Act, 42 U.S.C. § 300f(4), and 40 CFR § 141.2 and a "community water system" as that term is defined in 40 CFR § 141.2.
15. Each Respondent is a "supplier of water" as that term is defined in Section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 CFR § 141.2. The Respondents are therefore subject to the requirements of Part B of the Act, 42 U.S.C. §300g *et seq.*, and its implementing

regulations, 40 CFR part 141, also known as the National Primary Drinking Water Regulations (NPDWRs).

16. The System is supplied solely by a ground water source consisting of a spring known as Johnson Springs.
17. The System is open all year.
18. The State of Montana has primary enforcement authority for public water supply systems in Montana. The Montana Department of Environmental Quality has requested EPA's assistance in addressing the violations cited below.

VIOLATIONS

19. According to 40 C.F.R. §141.62(b), the Maximum Contaminant Level ("MCL") for total nitrate and nitrite in water provided by public water systems is 10 milligrams per liter (mg/L).
20. According to 40 C.F.R. §141.62(b), the MCL for nitrate in water provided by public water systems is 10 mg/L.
21. The System has been reporting sample results in excess of the MCL for total nitrate and nitrite going as far back as May of 1973. Samples collected more recently from the System and reported to the Montana DEQ indicate that on the following dates the System's water contained the following concentrations of total nitrate and nitrite, each of was in excess of the applicable MCL:

March 1, 2000	17.6 mg/L
June 21, 2000	16.9 mg/L
March 8, 2001	17 mg/L
June 25, 2001	16.3 mg/L

Oct. 11, 2001	17.7 mg/L
Dec. 2, 2002	15.9 mg/L and 17.2 mg/L
March 19, 2003	14.9 mg/L
Jun 24, 2003	10.7 mg/L
Sep 24, 2003	14.8 mg/L
Dec 10, 2003	12.8 mg/L
Mar 25, 2004	12.3 mg/L
Jun 16, 2003	14.0 mg/L
Sep 1, 2004	11.8 mg/L
Dec 16, 2004	13.6 mg/L

22. Samples collected from the System and reported to the Montana DEQ indicate that on the following dates the System's water contained the following concentrations of nitrate, each of was in excess of the applicable MCL:

May 17, 1994	12 mg/L
September 13, 1999	17.7 mg/L
June 25, 2002	15.7 mg/L

23. EPA has determined that nitrate poses an acute health concern at certain levels of exposure. Excessive levels of nitrate in drinking water have caused serious illness and sometimes death in infants under six months of age.
24. EPA has concluded that the System does not reliably and consistently meet the MCL for nitrate or for total nitrate and nitrite.

ORDER

Based on the foregoing Findings and pursuant to the authority set forth in section 1414(g) of the Act, it is hereby ORDERED that the Respondents shall, seeking appropriate assistance from EPA and the Montana DEQ, implement a program to upgrade the System in order to achieve compliance with the nitrate and total nitrate and nitrite MCLs and all other NPDWRs.

The program shall include the following:

1. Within thirty (30) days after the effective date of this Order, the Respondents shall begin the process of creating a water district that will acquire and operate the System and be eligible for applying for funds from the State of Montana and/or the United States to upgrade the System. For purposes of this paragraph, to "begin the process" includes, at a minimum, notifying the following agencies of plans to form a district and requesting current information on their procedures for accepting applications for funding improvements to public water supply systems: the Montana DEQ (regarding its Drinking Water State Revolving Fund), the Montana Department of Natural Resources and Conservation (regarding its Renewable Resource grants and loans), the Montana Department of Commerce (regarding its Treasure State Endowment Program grants and loans and its Community Development Block Grants), the Montana Board of Investments (regarding its INTERCAP loan program), and/or the United States Department of Agriculture Rural Utilities Service (regarding its Rural Development grants and loans). Alternatively, the Respondents may satisfy this requirement by contacting any other organization or agency if they demonstrate to EPA and Montana DEQ in writing that such other organization or agency is capable of providing loans and

grants to assist public water supply systems. The Respondents also may form an entity other than a water district if they demonstrate to EPA and Montana DEQ that such other entity (a) is eligible to receive funding from some available source and (b) is the type of person authorized to own a public water supply system under Montana law, including MCA § 75-6-126(1), and if the EPA and Montana DEQ approve the formation of that entity.

2. Within six (6) months of the effective date of this Order, the Respondents shall have finished creating the new district or other entity referenced in the prior paragraph and will have transferred ownership and operational responsibility for the System to that district or other entity.
3. No later than May 15, 2006, the Respondents, on behalf of the district or other entity that they shall have created as described above, shall apply to the Montana Department of Natural Resources and Conservation and, if so requested in writing by EPA or the Montana DEQ at least 30 days before that deadline, to any other agency for a loan and/or grant to fund planning (including preparing a Preliminary Engineering Report or PER) for upgrades to the System in order to comply with the NPDWRs, including but not limited to the MCLs for nitrate and for total nitrate and nitrite. The Respondents shall provide EPA with a copy of their completed loan and/or grant application.
5. By December 30, 2006, the Respondents shall, on behalf of the district, submit a PER to EPA and the Montana DEQ for review. The PER shall describe and compare the costs, benefits, and feasibility of reasonable alternatives for

upgrading the System to bring it into compliance with all NPDWRs. Among the alternatives that the PER may consider are installing central treatment, installing a well or other equipment to obtain water from an alternative source, and purchasing water from another community or other source.

6. By March 1, 2007, the Respondents shall apply to the Montana DEQ, the Montana Board of Investments, and/or the United States Department of Agriculture Rural Utilities Service (and, if EPA or the Montana DEQ requests in writing by February 1, 2007, to any other agency or agencies) for funding to enable the Respondents to complete all measures, consistent with the PER, for bringing the System into compliance with the NPDWRs. If the Respondents make timely applications to all three of the agencies named in the preceding sentence (and to any other agency or agencies to which EPA or the Montana DEQ may request as allowed above) but nonetheless are unable to secure adequate funding, then the Respondents shall, no later than May 1, 2008, apply to the Montana Department of Natural Resources and Conservation and the Montana Department of Commerce for funding.
7. Before starting construction on any improvements to the System, Respondents shall obtain approval of the Montana DEQ of the plans and specifications for those improvements.
8. If the Respondents purchase water from another source, or if Respondents mix water from the System with water purchased from another public water system, they shall, within ninety (90) days of signing this Order, notify EPA and the

Montana DEQ of the source that they have selected. If EPA and the Montana DEQ approve the alternative source in writing, and if the Respondents demonstrate their ability to secure this alternative source without forming a district, then the Respondents shall no longer be obligated to comply with paragraphs 1-7, above, of this Order. EPA may require that this alternative source be tested before approving it.

9. By December 30, 2007 (or, if allowed by EPA in writing, a later deadline, should applications submitted by March 1, 2007 fail to secure adequate funding), the Respondents shall have completed all measures necessary for the System to achieve and maintain compliance with the nitrate and total nitrate and nitrite MCLs (40 CFR § 141.62(b)).
10. At all times after December 30, 2007 (or, if allowed by EPA in writing, a later deadline), the Respondents shall comply with the nitrate and total nitrate and nitrite MCLs (40 CFR § 141.62(b)).
11. No later than ninety (90) days after the effective date of this Order, the Respondents shall disconnect any abandoned homes from the System. If any home is abandoned after the effective date of this Order, the Respondents shall disconnect that home within six (6) months of determining that the home has been abandoned. Within thirty (30) days of disconnecting any abandoned home or any other connection from the System, the Respondents shall notify EPA in writing of the disconnection. To "disconnect" for purposes of this paragraph and the following paragraph means to sever, cap, and rebury some part of the water line

between the water main and the home, or to meet any other criteria for disconnecting of the abandoned homes that EPA approves in writing.

12. No later than ninety (90) days after the effective date of this Order, the Respondents shall either (1) disconnect any outside standpipes from which it is possible to load cisterns or (2) install measures to allow access to the standpipes only by individuals who have been notified in writing of the nitrate hazard. Within thirty (30) days of making any such disconnections or installing such measures, the Respondents shall notify EPA.
13. Until otherwise notified by EPA in writing, the Respondents shall continue providing bottled water to all households in the System with pregnant women and/or children under the age of six months, in sufficient quantity for drinking and cooking. The bottled water will be from a reputable firm in the business of supplying bottled water to the public.
14. The Respondents shall continue providing public notice of all violations of the nitrate and total nitrate and nitrite MCLs in accordance with 40 CFR part 141, subpart Q. In addition, the Respondents shall give written notification, before the date of hookup, to each new resident hooking up to the System that infants below the age of six months who drink water containing nitrate or total nitrate and nitrite in excess of 10 mg/l could become seriously ill and, if untreated, may die, and that symptoms of drinking water exceeding this level of nitrate or total nitrate and nitrite include shortness of breath and blue baby syndrome.
15. The Respondents shall report to EPA any changes in the population and/or

number of connections served by the System, no later than ten days after the end of the month in which the population or number of connections changes.

OTHER REQUIREMENTS

16. Items reported to EPA and the Montana DEQ under this Order are to be sent to:

Eric Finke
U. S. EPA Region VIII (8MOO)
Federal Office Building, Suite 3200
10 West 15th Street
Helena, MT 59626

and

Franklin H. Gessaman, Chief
Case Management Bureau
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59260-0901

17. This Order does not relieve the Respondents of any responsibilities or liabilities established pursuant to any applicable federal, state or local law.
18. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
19. Violation of any term of this Order may subject Respondents to an administrative civil penalty of up to \$27,500 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 \$32,500 per day of violation, assessed by the U.S. District Court, under Section 1414(g)(3)(A) of the Act, 42 U.S.C. § 300g-3(g)(3)(A).
20. Violation of any requirement of the Act or its implementing regulations not otherwise covered under this Order may subject Respondents 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).

21. This Order shall become effective upon the date of the latest signature below.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,

Complainant.

Date: 12/1/05

By: Michael T. Risner
Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program

Date: 11/23/05

By: John Wardell
John Wardell, Director
Montana Office





2010 NOV 15 PM 1:57
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
REGION 8, MONTANA OFFICE
FEDERAL BUILDING, 10 W. 15th STREET, SUITE 3200
HELENA, MONTANA 59626
<http://www.epa.gov/region08>

Ref: 8-MO

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul Tesarek, Operator
Coffee Creek Water Company
P.O. Box 37
Coffee Creek, MT 59424

Re: Notice of Violation
of Administrative Order
Coffee Creek Water Company
Public Water Supply
Docket No. SDWA-08-2006-0006
PWS ID # MT0000179

Dear Mr. Tesarek:

The U.S. Environmental Protection Agency (EPA) has received the October 27, 2010, letter from the Trust of the Coffee Creek Water Company (CCWC), submitting a Plan and Schedule in response to EPA's September 28, 2010, letter.

As you are aware, EPA's September 28th letter granted CCWC an extension to the deadline for submitting a compliance plan that had been required by a May 17, 2010, letter from EPA. The May 17th letter was an Addendum to an Administrative Order that EPA issued on December 6, 2005.

The May 17th and September 28th letters required CCWC to submit a compliance plan and schedule for coming into compliance with the nitrate maximum contaminant level (MCL) in 40 C.F.R. § 141.62(b). As stated in EPA's September 28th letter:

The new compliance plan required by the May 17th Addendum is intended to serve as an alternative course of action in case the willow trees that CCWC has planted near its spring do not succeed in bringing the system into compliance with the MCL for nitrate. For this eventuality, we will need an alternative plan that is designed to achieve compliance within 36 months of EPA's approval of the compliance schedule. We understand that Montana Rural Water Systems has offered assistance to CCWC

in developing a written compliance plan and schedule, and we would encourage you to take advantage of the assistance that has been offered. We would also expect that if the plan involves applying to the Montana Department of Environmental Quality (MDEQ) for a variance or exemption from the nitrate MCL, the schedule would include a date, within 12 months of EPA's approval of the system's compliance schedule, by which CCWC would make that application.

The Plan and Schedule that CCWC submitted with its October 27th letter did not include an alternative plan designed to achieve compliance within 36 months of EPA's approval of the compliance schedule. Nor did it address any potential variance or exemption the System may need from MDEQ.

CCWC's October 27th Plan and Schedule does not mention any backup to the willow tree phytoremediation plan now underway. Although there was optimism at the beginning of this project, there are now serious concerns that it will succeed. For example, when the willow trees that were to remove nitrates were planted in the spring of 2008, they were 12-14 feet in height. Now, as a result of an early frost, they are only 3-4 feet high. EPA is especially concerned that in 2005, the average nitrate level was 15.6 milligrams per liter (mg/L) but that in 2009 it was 21.6 mg/L. This is more than double the nitrate MCL of 10 mg/L established by 40 C.F.R § 141.62(b). EPA is not asking that CCWC abandon the phytoremediation plan. EPA is instead requiring an alternative, backup plan.

Unfortunately, because the Plan and Schedule does not include any alternative plan, EPA considers CCWC to be in violation of the Order. Violation of any part of the Order (as modified by the May 17th and September 28th Addendum letters) may lead to (1) a penalty of up to \$37,500 per day per violation of the Order, and/or (2) a court injunction ordering compliance.

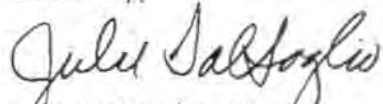
We urge you to submit an alternative plan, as required by the May 17th and September 28th Addendum letters. Please do so within thirty days. Again, we would encourage you to use the assistance that Montana Rural Water Systems has offered and to consider forming a district in order to take advantage of the potential funding sources that EPA has mentioned in previous correspondence (e.g., EPA's letter dated December 5, 2005).

If you have any questions or wish to have an informal conference with EPA, you may contact Sienna Meredith at 1-800-227-8917, extension 5026 or (406)457-5026. If you are represented by an attorney who has questions, please ask your attorney to contact Peggy Livingston, Enforcement Attorney, at 1-800-227-8917, extension 6858 or (303) 312-6858 or at the following address:

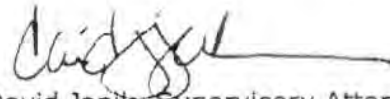
Peggy Livingston, 8ENF-L
U.S. Environmental Protection Agency
1595 Wynkoop St.
Denver, CO 80202

We urge your prompt attention to this matter.

Sincerely,



Julie DalSoglio, Director
EPA Region 8 Montana Office



David Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc:

John Arrigo, MDEQ
Shelley Nolan, MDEQ
Henry Nemeč, CCWC Representative
Lon Nemeč, CCWC Representative
Rod Bolling, CCWC Representative
Tina Artemis, EPA Regional Hearing Clerk
Peggy Livingston, 8ENF-L

