



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8 ENF-W

DEC 28 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Bill Lewis
Mayor, Town of Neihart
P.O. Box 36
Neihart, MT 59465

Re: Violation of Administrative Order
Docket No. SDWA-08-2008-0008
PWS ID # MT0000298

Dear Mayor Lewis:

On January 22, 2008, the US Environmental Protection Agency (EPA) issued an Administrative Order, Docket No. SDWA-08-2008-0008, ordering the Town of Neihart to comply with various regulations issued by EPA under the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f *et seq.*

Our records indicate that the Town of Neihart (Town) is in violation of the Administrative Order (the Order), specifically the Administrative Order Addenda issued December 29, 2008 and March 9, 2010. EPA now requests that the town immediately submit a new plan and schedule for permanent modifications to the intake at the Town of Neihart public water system.

Among other things, the December 29, 2008 Addendum included the following requirements (quoted from the schedule for system improvements listed on page 2):

1. Action: Provided grant funds are awarded and pilot test is a success, System will complete installation of the permanent modifications to the intake. Deadline: December 31, 2009 [deadline extended to June 30, 2010 in EPA's 2nd Addendum letter of March 9, 2010.]

The Town has not complied with the schedule for system improvements incorporated into the Order by the Addendum of December

21, 2009, as revised on March 9, 2010, since permanent modifications to the intake have not been installed.

2. Action: If grant funds are not awarded or the pilot test is unsuccessful, System will notify EPA within 90 days of alternative plans for bringing the public water system into compliance with the 90th percentile turbidity limit. Deadline: Within 90 days of determining the pilot test is unsuccessful or being notified that grant funds were denied.

The Town did not provide EPA with alternative plans for permanent treatment once grant funds were not awarded. As per the above, this lack of grant funding does not excuse compliance with the Order.

On February 4, 2009, Respondent advised EPA that the Town had received funds necessary to complete the project as outlined in the approved compliance plan and schedule, including installation of permanent modifications to the intake at the system. While temporary modifications to the intake were installed as part of the pilot test undertaken under the plan, those modifications were to be replaced with permanent modifications by the June 30, 2010 deadline. On June 23, 2010, however the Town reported to EPA that permanent modifications were not completed due to the unavailability of funding for this purpose. The Town advised instead that the State of Montana had approved the temporary modifications for extended use, pending construction of permanent modifications. However, EPA notes that EPA and the State are in agreement that the current temporary pilot structures must be replaced with permanent modifications to the intake.

As a result, presently the Town is in continuing violation of the Order and must take prompt action to address the violations. The Town of Neihart must provide EPA and the State an amended compliance plan and schedule to include a schedule for construction of the permanent intake modifications as well as specific milestone dates (e.g., submission by the Town of a grant application, anticipated grant approval date, etc.). Again, given grant application uncertainties, the Town must include alternative approaches should funding not be awarded. This information will be incorporated into the Order as an Addendum. Please submit this information to EPA and the State immediately. Note also that should existing temporary modifications prove inadequate at any time while the Order is in effect, EPA may seek additional compliance measures.

Further, EPA is considering additional enforcement action, including assessment of penalties, as a result of the non-compliance with the Order detailed above. Violating an Administrative Order 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.

Finally, please be advised that you are required to comply with all provisions of the Order. In this regard, please also submit the next required quarterly report to EPA in addition to your amended compliance plan and schedule, and quarterly thereafter as required in the Order. Penalties for failing to comply are set forth in the Order.

If you or your staff have any questions or wish to have an informal conference with EPA, you may contact Mario Mérida at 1-800-227-8917, extension 6297 or (303) 312-6297. If the Town of Neihart is represented by an attorney who has questions, please ask that attorney to contact Thomas E. Sitz, Enforcement Attorney, at 1-800-227-8917, extension 6918 or (303) 312-6918 or at the following address:

Thomas E. Sitz
Enforcement Attorney
U.S. EPA, Region 8 (8-ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

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: Bob Reynolds, Operator (via e-mail)
John Arrigo, Administrator, Enforcement Division, MT DEQ
Shelley Nolan, Science Program Manager, MT DEQ
Tina Artemis, EPA Regional Hearing Clerk