



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2014 JUN 30 PM 1:26

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DENVER, CO 80202-1129  
Phone 800-227-8917  
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EPA REGION VIII  
DENVER, CO

DOCKET NO.: SDWA-08-2014-0018

IN THE MATTER OF:

LAMBERT COUNTY SEWER AND  
WATER DIST.  
P. O. Box 104  
Lambert, MT 59243

FINAL ORDER

Respondent

Pursuant to 40 C.F.R. §22.13(b) and 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 30<sup>th</sup> Day of June, 2014

Elyana R. Surin  
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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IN THE MATTER OF: )  
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Lambert County Sewer and Water District )  
P.O. Box 104 )  
Lambert, MT 59243 )  
)  
Respondent. )  
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Docket No. SDWA-08-2014-0018  
EPA REGION VIII  
**COMBINED COMPLAINT AND  
CONSENT AGREEMENT**

The United States Environmental Protection Agency Region 8 (Complainant or EPA) and Lambert County Sewer and Water District (Respondent) hereby consent and agree as follows:

**AUTHORITY**

1. 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. This Combined Complaint and Consent Agreement (Consent Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b) and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. Complainant has jurisdiction over this matter pursuant to section 1414(g)(3) of the Safe Drinking Water Act (the Act), as amended, 42 U.S.C. § 300g-3(g)(3).

**GENERAL ALLEGATIONS**

3. The Respondent is a municipality and therefore a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
4. The Respondent owns and/or operates the Lambert County Sewer and Water District public water system (system), located in Richland County, Montana, for the provision to the public of piped water for human consumption.

5. The system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is therefore a "public water system" within the meaning of section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "community water system" as that term is defined in section 1401(15) of the Act, 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2.

6. The Respondent owns and/or operates a public water system and therefore is a "supplier of water" within the meaning of section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. The Respondent is therefore subject to the requirements of part B of the Act, 42 U.S.C. § 300g, and its implementing regulations set forth in 40 C.F.R. part 141.

7. The Respondent operates a system that is supplied solely by a ground water source consisting of two wells. The system serves approximately 150 persons per day year-round through 117 service connections.

8. The Montana Department of Environmental Quality has primary enforcement authority for the public water supply system provisions of the Act in the State of Montana (State).

9. The EPA issued a notice of the system's violations to the State on May 26, 2010. The State elected not to commence an enforcement action against the Respondent for the violations listed in the notice of violation within the thirty day time frame set forth in section 1414(a) of the Act, 42 U.S.C. § 300g-3(a).

10. On June 28, 2010, the EPA issued an Administrative Order (Order) to the Respondent pursuant to section 1414(g)(1) of the Act, 42 U.S.C. § 300g-3(g)(1), citing violations of the National Primary Drinking Water Regulations (NPDWRs) (40 C.F.R. part 141) and other

“applicable requirements” within the meaning of section 1414(i) of the Act, 42 U.S.C. § 300g-3(i).

11. The EPA provided the State a copy of and an opportunity to confer regarding the Order.

12. The Order requires the system to comply with the “applicable requirements” it violated, including the NPDWRs and Montana’s EPA-approved “Public Water Supply Requirements” at Administrative Rules of Montana (ARM) 17.38.101 through 703.

13. On December 6, 2010, the EPA sent the Respondent a "Violation of Administrative Order" letter citing noncompliance with the Order, NPDWRs and other applicable requirements.

14. On February 24, 2011, the EPA sent the Respondent a “2<sup>nd</sup> Violation of Administrative Order” letter citing noncompliance with the Order, NPDWRs and other applicable requirements.

15. On September 24, 2012, the EPA sent the Respondent a “3<sup>rd</sup> Violation of Administrative Order” letter citing noncompliance with the Order, NPDWRs and other applicable requirements.

## **VIOLATIONS**

### **Count I**

#### **Failure to Report Residual Disinfectant Levels**

16. The Order (page 4, paragraph 22) requires that the Respondent pursuant to 40 C.F.R. § 141.134 report the residual disinfectant sample results and all information required by 40 C.F.R. 141.132(c)(1) to the EPA and the State no later than 10 days after the end of each quarter.

17. 40 C.F.R. § 141.132(c)(1) requires that systems using chlorine monitor the residual disinfectant level in the system’s water in the distribution system at the same point and at the same time as total coliforms are sampled.

18. The Respondent failed to report the residual disinfectant level monitoring results for the 3<sup>rd</sup> Quarter 2010 and 4<sup>th</sup> Quarter 2010 to the EPA and the State within the first 10 days after the

end of the quarterly monitoring period (October 10, 2010, and January 10, 2011) in violation of 40 C.F.R. § 141.132(c)(1) and the Act.

**Count II**  
**Failure to Monitor the Daily Residual Disinfectant Concentration  
at the Point of Entry to the System**

19. The Order (page 4, paragraph 23) requires that the Respondent pursuant to ARM 17.38.225 and 17.38.229 monitor the daily residual disinfectant concentration at the point of entry to the system.

20. The Order (page 4, paragraph 23) requires that the Respondent pursuant to ARM 17.38.234 and 40 C.F.R. § 141.31(a) report monthly analytical results to the EPA and the State within the first ten days following the end of the monitoring period.

21. The Respondent failed to report the monthly monitoring results for daily residual disinfectant concentration at the point of entry to the system for the periods July through October 2010; December 2010; March, April, June, July, October and November 2011; and February through July 2012 to the EPA and the State within the first 10 days after the end of the monitoring period in violation of the Order, ARM 17.38.234, 40 C.F.R. § 141.31(a) and the Act.

**Count III**  
**Failure to Prepare and/or Distribute CCRs**

22. The Order (page 5, paragraph 27) requires that within 30 days the Respondent pursuant to 40 C.F.R. § 141.151 through 155 prepare an annual Consumer Confidence Report (CCR) for Calendar Year 2008 and distribute the report to the system's customers, the EPA and the State. The Order further requires that within three months, The Respondent certify to the EPA and the State that the CCR has been distributed to the system's customers and that the information is correct and consistent with monitoring data previously provided to the EPA and the State. The

Order requires that the Respondent annually thereafter prepare and distribute CCRs by July 1 and provide certification to the EPA and the State within the following three months in accordance with the regulations.

23. The Respondent failed to prepare and submit to the EPA and the State CCRs for calendar years 2010 and 2011 by July 1, 2011 and July 1, 2012, respectively, and provide certification for the 2011 CCR to the EPA and the State within three months following July 1, 2012, in violation of the Order, the Act and 40 C.F.R. § 141.151 through 155.

**Count IV**  
**Failure to Provide Public Notice**

24. The Order (page 5, paragraph 28) requires that the Respondent pursuant to 40 C.F.R. part 141, subpart Q, notify the public of the violations cited in paragraphs 8 through 15 of the Order and any future violations of the NPDWRs. The Respondent is required within 10 days of providing public notice to submit a copy to the EPA and the State.

25. The Respondent failed to notify the public and/or submit a copy to the EPA and the State within 10 days of failing to monitor daily for residual disinfectant at the point of entry to the distribution system violations during the months of March, April, June, July, October and November 2011, and February and March 2012, in violation of the Order, 40 C.F.R. part 141, subpart Q, and the Act.

**Count V**  
**Failure to Report NPDWR Violations**

26. The Order (page 6, paragraph 30) requires that the Respondent pursuant to 40 C.F.R. § 141.31(b), notify the EPA and the State within 48 hours of discovery of any NPDWR violation other than total coliform monitoring.

27. The Respondent failed to report to the EPA and/ the State the violations detailed in Counts I through III above, in violation of the Order, 40 C.F.R. § 141.31(b) and the Act.

### **TERMS OF SETTLEMENT**

28. The Respondent admits the jurisdictional allegations of the Consent Agreement and neither admits nor denies the specific factual allegations of the Consent Agreement.

29. The Respondent waives its rights to contest the allegations in the Consent Agreement and to appeal the Final Order issued by the Regional Judicial Officer approving this Consent Agreement.

30. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon the Respondent and the Respondent's successors and assigns. Any change in the Respondent's ownership or operation of the public water system, including, but not limited to, any transfer of assets or real or personal property, shall not alter the Respondent's responsibilities under this Consent Agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

### **CIVIL PENALTY**

31. Pursuant to section 1414(g)(3)(A) of the Act, 42 U.S.C. § 300g-3(g)(3)(A), and 40 C.F.R. part 19, the Administrator may assess an administrative civil penalty not to exceed \$32,500 for each day of violation occurring after January 12, 2009, whenever the Administrator determines that any person has violated, or fails or refuses to comply with, an order under section 1414(g) of the Act. The Act requires the EPA to take into account appropriate factors in assessing a civil penalty including the seriousness of the violation(s), the population at risk and other appropriate factors including the Respondent's degree of willfulness and/or negligence, history of

noncompliance and ability to pay.

32. The Respondent consents and agrees to pay a civil administrative penalty in the amount of Three Thousand Dollars (\$3,000), in the manner described below:

- a. Payment shall be in a single payment of \$3,000, due no later than 30 calendar days from the date of the Final Order issued by the Regional Judicial Officer that adopts this Consent Agreement. If the due date falls on a weekend or federal holiday, then the due date for the payment is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank described below. Payment must be received by 11:00 AM Eastern Standard Time to be considered as received that day.
- b. The payment shall be made by remitting a cashier's or certified check, or making a wire or on-line payment. The check or other payment shall designate the name and docket number of this case, and be payable to "**Treasurer, United States of America.**" It shall be sent as follows:

**If by regular mail:** US EPA Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

**If sent by any overnight commercial carrier:** U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

**If sent by wire transfer:** Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA: 021030004  
Account Number: 68010727

**If made on-line:** WWW.PAY.GOV

A copy of the check (or notification of wire transfer or on-line payment) shall be sent simultaneously to:

Sienna Meredith  
U.S. EPA Region 8 (8MO)



Federal Building, 10 W. 15<sup>th</sup> Street, Suite 3200  
Helena, MT 59826

and

Tina Artemis, Regional Hearing Clerk  
U.S. EPA Region 8 (8RC)  
1595 Wynkoop Street  
Denver, CO 80202-1129

- c. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the 1<sup>st</sup> late day, 30 days of interest will have accrued).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31<sup>st</sup> day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. The Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

### **SUPPLEMENTAL ENVIRONMENTAL PROJECT**

33. For settlement purposes only, the Respondent shall undertake the performance of a Supplemental Environmental Project (SEP) as described below, which the parties agree is a pollution prevention assessment intended to identify and provide information about opportunities to reduce the use, production and generation of reject water from the system into Lambert's sewer collection system and treatment lagoons. This SEP has been reviewed by the EPA's legal counsel for legal sufficiency and conformance with the 1988 SEP Policy (SEP Policy). The SEP is within the EPA's legal authority to include in the Consent Agreement.

34. This SEP involves the analysis of design alternatives to mitigate the impacts of the large

amount of “reject water” produced by the water treatment facility in the Lambert County Sewer and Water District. The current reject water is routed to Lambert’s sewer collection system and treatment lagoons. These lagoons are now at capacity and need to be improved as the population of Lambert continues to grow. The analysis will include a review of the following alternatives to reduce with the large amount of reject water:

- Construct a treatment facility to recycle the reject water for non-potable water uses.
- Build a separate treatment lagoon for the reject water only.
- Install a new treatment skid to treat the reject water.

This analysis will coincide with an engineering study on Lambert’s wastewater collection and treatment systems that will be used for planning upgrades and improvements to both of these systems in the future.

The reject water from the water treatment facility has often been responsible for causing capacity issues with Lambert’s wastewater treatment lagoons. By either eliminating or reducing the amount of reject water, Lambert will save the efforts and costs of dealing with it through their wastewater system as well as greatly reducing the environmental impacts involved with the production and treatment of this reject water.

35. Within 180 days of the Effective Date of the Consent Agreement, Lambert shall have a completed copy of the water analysis for review by Lambert Board and the EPA.

36. The total cost of this SEP which Lambert will pay for the analysis is \$9,000. In the event that the analysis is less than \$9,000, the balance will be used to fund a drinking water improvement recommended by the analysis. No SEP money will be expended on any wastewater improvement project proposed by the analysis.

37. Lambert shall conduct the SEP according to all applicable federal and state work practice and notification requirements. "Actual expenditures" shall be limited to the costs of the completion of the analysis.

38. With regard to the SEP, Lambert certifies the truth and accuracy of each of the following:

a. that, as of the date of executing this Consent Agreement, Lambert is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

b. that the SEP is not a project that Lambert was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Agreement;

c. that Lambert has not received and will not receive credit for the SEP in any other enforcement action; and

d. that Lambert will not receive any reimbursement for any portion of the SEP from any other person; and

e. that Lambert is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Lambert further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to the EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

39. Within 30 days after the date of completion of the SEP, and no later than 330 days after the Effective Date, Lambert shall submit a SEP Completion Report to the EPA. The SEP Completion Report shall contain the following information:

- a. a detailed description of the SEP as implemented;
- b. a description of any problems encountered in completing the SEP and the solutions thereto;
- c. an itemized list of all eligible SEP actual expenditures;
- d. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement; and
- e. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
- f. The EPA may, in its sole discretion, require information in addition to that described above (a-e), in order to evaluate Lambert's completion report.
- g. After receiving the SEP Completion Report, the EPA shall notify Lambert whether or not Defendant has satisfactorily completed the SEP.

40. Any public statement, oral or written, in print, film, or other media, made by Lambert making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency under the Safe Drinking Water Act."

41. For federal income tax purposes, Defendant agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

#### **GENERAL PROVISIONS**

42. Nothing in this Consent Agreement shall relieve the Respondent of the duty to comply with the Act and its implementing regulations.

43. Any failure by the Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of this Consent Agreement and may result in referral of the matter to the

Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

44. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by the Respondent to meet its obligations under this Consent Agreement.

45. The undersigned individual certifies that [he/she] is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement.

46. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

47. Each party shall bear its own costs and attorney's fees in this matter.

48. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a full settlement of the United States' claims for civil penalties against the Respondent for the specific violations alleged in the Complaint.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8**  
Complainant.

Date: 06/24/2014

Eddie A. Sierra

Eddie A. Sierra  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

**LAMBERT COUNTY WATER AND SEWER  
DISTRICT**  
Respondent.

Date: 6-11-14

Kenny Hill

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **COMBINED COMPLAINT/CONSENT AGREEMENT and FINAL ORDER** in the matter of **LAMBERT COUNTY SEWER AND WATER DISTRICT; DOCKET NO.: SDWA-08-2014-0018**, was filed with the Regional Hearing Clerk on June 30, 2014.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail, domestic return receipt and emailed on June 30, 2014, to:

Kenney Hill, President  
Lambert Sewer and Water District  
P. O. Box 104  
Lambert, MT 59243  
Ernestp67@hotmailcom

And emailed to:

Kim White  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

June 30, 2014



Tina Artemis  
Paralegal/Regional Hearing Clerk