



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

2013 SEP 30 PM 2:04

FILED  
EPA REGION VIII  
HEARING CLERK


DOCKET NO.: SDWA-08-2013-0054

IN THE MATTER OF:	)	
	)	
TOWN OF NEIHART, MONTANA	)	FINAL ORDER
	)	
Respondent	)	
	)	

Pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

Respondent is hereby **ORDERED** to comply with all of the terms of this **Order**, effective immediately upon receipt by Respondent of this **Order**.

SO ORDERED THIS 30<sup>th</sup> Day of September, 2013

  
 \_\_\_\_\_  
 Elyana R. Sutin  
 Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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In the Matter of: )  
)  
**Town of Neihart, Montana** ) **CONSENT AGREEMENT**  
**Respondent** ) **SDWA-08-2013-0054**  
)  
) **Simultaneous Commencement and**  
) **Conclusion of a Proceeding Pursuant to**  
) **Section 1414(g)(3) of the Safe Drinking**  
) **Water Act and 40 C.F.R. § 22.13(b).**

The United States Environmental Protection Agency, Region 8 ("the EPA" or "Complainant"), and the Town of Neihart, Montana ("the Town" or "Respondent") by their undersigned representatives, hereby consent and agree as follows:

**PRELIMINARY STATEMENT**

1. The EPA has jurisdiction over this matter pursuant to Section 1414(g)(3) of the Safe Drinking Water Act ("Act"), as amended, 42 U.S.C. § 300g-3(g)(3). The National Primary Drinking Water Regulations ("NPDWRs") authorized by the statute are set out in 40 C.F.R. part 141, and violations of the statute, regulations, and/or EPA Administrative Orders constitute violations of the Act.
2. The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits" ("Rules of Practice"), 40 C.F.R. part 22, a copy of which has been provided to Respondent.
3. This 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).
4. Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations contained in this Consent Agreement.
5. Respondent waives its right to a hearing or appeal, before any tribunal, to contest any issue of law or fact set forth in this Consent Agreement.
6. Complainant asserts that settlement of this matter is in the public interest, and the parties agree that entry of this Consent Agreement without further litigation and without adjudication of any issue of fact or law is the most appropriate means of resolving this matter at the least cost and expense to Respondent and the EPA.

7. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent, and Respondent's successors and assigns. Any change in the ownership status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.
8. This Consent Agreement contains all terms of the settlement agreed to by the parties.

### **ALLEGATIONS**

9. 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. Respondent's mailing address is P.O. Box 36, Neihart, MT 59465.
10. Respondent owns and/or operates a public water system, the Town of Neihart Water System ("the System"), located in Cascade County, Montana that provides piped water to the public for human consumption.
11. The System has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents 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" within the meaning of 40 C.F.R. § 141.2.
12. Respondent 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.
13. Respondent is subject to Part B of the Act ("Public Water Systems") and the NPDWRs.
14. The Montana Department of Environmental Quality ("the State") has primary enforcement authority for the public water supply protection provisions of the Act in the State of Montana. On December 10, 2007, the EPA sent a Notice of Violation pursuant to section 1414(a) of the Act, 42 U.S.C. § 300g-3(a), to the State and the System regarding the System's failure to comply with NPDWRs (including compliance with the turbidity requirements). The State elected not to commence an enforcement action against the System for the failure to comply with NPDWRs within the thirty-day time frame set forth in section 1414(a) of the Act, 42 U.S.C. § 300-3(a).
15. The EPA issued an Administrative Order to Respondent (Docket No. SDWA-08-2008-0008) on January 22, 2008 ("Order") requiring, inter alia, compliance with turbidity levels set in 40 C.F.R. § 141.551, and within 90 days of a violation of the turbidity levels, submission to the EPA of detailed plans for bringing the System into compliance with turbidity standards. The final completion date for the modifications to the System was to be no later than 18 months after the triggering turbidity violation.

16. In June 2008, Respondent notified the EPA that the System had a turbidity violation in May 2008.
17. On December 29, 2008, the EPA issued an Addendum to the Order setting December 31, 2009 as the date for completion of modifications to the System.
18. On December 28, 2009, Respondent requested an extension to the December 30, 2009 deadline, citing pending equipment deliveries, needed programming work, and the winter weather season.
19. On March 9, 2010, the EPA issued a Second Addendum to the Order, providing an extension to the System modification date to June 30, 2010.
20. On June 23, 2010, Respondent notified the EPA that the modifications had been completed except for the permanent intake structures, citing lack of funding.
21. On December 28, 2010, the EPA issued a Notice of Violation to Respondent citing the failure to complete the permanent intake structure.
22. On July 5, 2011, the EPA issued a Third Addendum to the Order, authorizing an alternate permanent intake modification approach (infiltration gallery) and new completion schedule with interim milestone dates as follows:

<i>Milestone</i>	<i>Completion Date</i>
In-concept approval of infiltration gallery by DEQ	Completed
Prepare preliminary design of infiltration gallery	Completed
Initial technical submissions (pre-design packet) to MT State Agencies (DEQ, DNRC, FWP)	October 31, 2011
Complete and submit final infiltration gallery design packet to DEQ	January 31, 2012
Submit form 124 (Montana Stream Protection Act permit application) to MT Department of Fish, Wildlife and Parks	February 29, 2012
Expected approval of infiltration gallery design by DEQ	March 31, 2012
Construction of infiltration gallery begins	August 31, 2012
Construction of infiltration gallery completed	September 30, 2012
Infiltration gallery brought online (replacing interim intake modification currently in place)	October 31, 2012

23. Starting with the October 31, 2011 requirement for submission of technical pre-design packages to the State, Respondent failed to meet all of the required milestone dates of the Third Addendum to the Order (and has yet to perform those tasks), thereby violating the Order.

24. Respondent and the EPA are currently in discussions regarding an appropriate compliance schedule to complete the required permanent intake modification. Respondent submitted a proposal in this regard to the EPA on May 6, 2013.

### **TERMS AND CONDITIONS**

25. Respondent consents and agrees to pay a civil penalty in the amount of **\$5,800** in the manner described below:
- a. Payment shall be made in a single payment of \$5,800, due no later than 30 calendar days from the date of the Final Order issued by the Regional Judicial Officer that incorporates this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by US Bank described below. Payments received by 11:00 A.M. EST are processed on the same day, those received after 11:00 A.M. are processed on the next business day.
  - b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case; for the amount, payable to "Treasurer, United States of America," to:

**Regular Mail:**

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

**Federal Express, Airborne, or other commercial carrier:**

US Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

**Wire Transfers:**

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

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 "D 68010727 Environmental Protection Agency"

**Automated Clearinghouse (ACH) for receiving US currency:**

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 -- checking

Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contacts: John Schmid (202-874-7026) and REX (Remittance Express) 800-234-5681

**On-line Debit and Credit Card payment:**

There is now an On-Line Payment Option available through the Dept. of Treasury.  
This payment option can be accessed from the information below:

WWW.PAY.GOV  
Enter sfo 1.1 in the search field  
Open form and complete required fields.

**A copy of the payment shall be sent simultaneously to:**

Mario Merida  
Environmental Protection Specialist  
U.S. EPA Region 8 (ENF-W)  
1595 Wynkoop Street  
Denver, CO 80202-1129

**and to:**

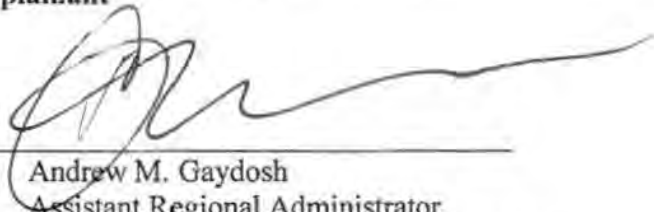
Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest will accrue 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 (i.e., on the 1st late day, 30 days of interest accrues).
  - d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the Final Order is signed). 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. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or tax credit.
- 26. Nothing in this Consent Agreement shall relieve Respondent of its duty to comply with the Act, the NPDWRs, and the Order.
  - 27. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
  - 28. 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 Respondent's failure to perform pursuant to the terms of this Consent Agreement.
  - 29. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.
  - 30. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

31. Each party shall bear its own costs and attorney fees in connection with this matter.
32. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged herein.


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

Date: 9/27/13

By:   
\_\_\_\_\_  
Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

**TOWN OF NEIHART, MONTANA,  
Respondent**

Date: 9/20/13

By:   
\_\_\_\_\_  
Michael P. McCord, Mayor



## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **TOWN OF NEIHART, MONTANA, DOCKET NO.: SDWA-08-2013-0054**. The documents were filed with the Regional Hearing Clerk on September 30, 2013.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Thomas Sitz, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were resent and placed in the United States mail certified/return receipt requested and emailed on September 30, 2013, to:

Jon M. Hesse  
City Attorney  
P. O. Box 1078  
411 East Callender Street  
Livingston, MT 59047-1078  
jhesse@jm-hesselaw.com

And emailed to:

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

September 30, 2013



Tina Artemis  
Paralegal/Regional Hearing Clerk