

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF)	Docket No. SDWA-08-2009-0020
)	
Hitching Post, LLC.)	CONSENT AGREEMENT
The Hitching Post)	
Melrose, MT)	
PWS ID# MT0002143,)	
)	
Respondent.)	
_____)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Hitching Post, LLC (Respondent), by their undersigned representatives, hereby consent and agree as follows:

FACTUAL AND PROCEDURAL BACKGROUND

1. On November 26, 2008, Complainant issued a Complaint and Notice of Opportunity for Hearing (Complaint) alleging certain violations of the National Primary Drinking Water Regulations (NPDWRs) set forth at 40 C.F.R. Part 141 and Section 1414 of the Safe Drinking Water Act (Act), 42 U.S.C. § 300g *et seq.* Specifically, the Complaint cites the Respondent for failure to monitor for total coliform, failure to report noncompliance with the total coliform rule to EPA, and failure to provide public notice. The Complaint proposes a civil penalty for the violations alleged therein.

2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.

3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or the Consent Agreement.

4. This Consent Agreement contains all terms of the settlement agreed to by the Parties. Upon incorporation into a final order, this Consent Agreement applies to and is binding upon Respondent, its officers, directors, employees, agents and all persons acting under or for Respondent, until such time as the civil penalty required under paragraph no. 6 has been paid. This Consent Agreement upon incorporation into a final order shall constitute full civil settlement of the violations alleged in the Complaint.

5. Pursuant to section 1414(g)(3) of the Act, 42 U.S.C. § 300g-3(g)(3), taking into account the seriousness of the violation, the population at risk, the Respondent's degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay, EPA has determined that an appropriate civil penalty to settle this action is in the amount of SIX THOUSAND TWO HUNDRED FIFTY DOLLARS (\$6,250).

TERMS OF SETTLEMENT

6. Respondent consents to the issuance of the Consent Agreement and consents, for the purposes of settlement and without admitting any of the allegations in the Order not heretofore admitted, to the payment of the civil penalty cited in paragraph no. 5 above. Respondent shall pay the civil penalty cited in paragraph no. 5 above by making a total of five payments as set forth in this Consent Agreement. Respondent shall make an initial payment in the amount of TWO HUNDRED FIFTY DOLLARS (\$250.00) in the manner described below:

- a. Payment is due within 30 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, that adopts 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 Mellon Bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.

- b. The payment shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case for this amount, payable to "**Environmental Protection Agency**," to:

US checks by regular

US postal service mail:

US EPA Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

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

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

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 "D 68010727
Environmental Protection Agency"

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required
fields.

Copies of the check or wire transfer shall be simultaneously sent to:

Amy Swanson, Enforcement Attorney
U.S. EPA Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

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

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the payment 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 the payment is received in full (i.e., on the 1st late day of the first payment, 30 days of interest accrues; interest will accrue back to the final order date to the date of receipt for any subsequent late installment payments).

- d. In addition to the accrual of interest specified in paragraph 7(c) of this Agreement, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31st day from the date of the final order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if any penalty payment is not received within 90 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. Respondent agrees that the penalty shall never be claimed as a Federal or other tax deduction or credit.

7. The Respondent shall make four additional payments according to the following schedule and in the same manner as referenced in Paragraph 6 above:

- a. No later than July 1, 2009, Respondent shall pay \$1,500;
- b. No later than September 1, 2009, Respondent shall pay \$1,500;
- c. No later than July 1, 2010, Respondent shall pay \$1,500;
- d. No later than September 1, 2010, Respondent shall pay \$1,500.

8. The Respondent may pay the full penalty amount any time prior to September 1, 2010, without incurring a pre-payment penalty.

GENERAL PROVISIONS

9. This Consent Agreement shall not relieve Respondent of its obligation to comply with the Act and its implementing regulations.

10. Nothing in this Consent Agreement shall be construed as a waiver by the EPA 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 the Consent Agreement.

11. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement.

12. The parties agree to submit this Consent Agreement to the presiding officer with a request that it be incorporated into a final order.

13. Each party shall bear its own costs and attorney fees in connection with this matter.

14. Failure by Respondent to comply with any of the terms of the Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of the Consent Agreement and for such other relief as may be appropriate in federal district court.

15. The Consent Agreement, upon incorporation into a final order by the presiding officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

16. This Consent Agreement shall become effective upon filing with the presiding officer.

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

Date: _____

3/16/59

By: _____

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

HITCHING POST, LLC,
Respondent.

Date: 3/10/08

By: [Signature]
Debra Kearns, Operating Partner

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **HITCHING POST, LLC., THE HITCHING POST; DOCKET NO.: SDWA-08-2009-0020** was filed with the Regional Hearing Clerk on March 24, 2009.

Further, the undersigned certifies that a true and correct copy of the documents were 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 certified/return receipt requested on March 24, 2009 to:

Debbie Kearns
Hitchin' Post LLC, Operation Member
P. O. Box 67
Melrose, MT 59743

Hand delivered to:

Honorable Elyana R. Sutin
Regional Judicial Officer
U. S. Environmental Protection Agency
1595 Wynkoop Street (8RC)
Denver, CO 80202-1129

E-mailed to:

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

March 23, 2009


Tina Artemis
Paralegal Regional Hearing Clerk

