



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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EPA REGION VIII
HEARING CLERK

Ref: 8 ENF-W

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Michael McCord
Mayor, Town of Neihart
P.O. Box 36
Neihart, MT 59465

Re: Violation of Administrative Order
Docket No. SDWA-08-2008-0008
PWS ID # MT00002980

Dear Mayor McCord:

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 (Town) to comply with various regulations issued by EPA under the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.* Further, on July 5, 2011, the EPA issued an Administrative Order Addendum, approving the Town of Neihart's proposed compliance plan and schedule for ensuring compliance with effluent turbidity limits and incorporating the plan into the Administrative Order as enforceable requirements.

Our records indicate that the Town is in violation of its approved compliance plan and schedule, and therefore of the Administrative Order (Order). Milestones and completion dates for the Town's plan, as approved in the EPA's Addendum letter of July 5, 2011 (Addendum), along with current milestone status, are shown below.

Water Rights Timeline

| <i>Milestone</i> | <i>Completion Date</i> | <i>Milestone Status</i> |
|------------------------------------------------------------------------|------------------------|--------------------------------------|
| Submit water rights application for Shorty Creek to Montana DNRC | October 31, 2011 | Completed |
| Expected approval by DNRC of water rights application for Shorty Creek | May 31, 2012 | Application still pending with DNRC. |

Permanent Intake Modification: Shorty Creek Infiltration Gallery Design, Approval, and Construction Timeline

| <i>Milestone</i> | <i>Completion Date</i> | <i>Milestone Status</i> |
|-----------------------------------------------------------------------------------------------------------------|--------------------------------------|-------------------------|
| In-concept approval of infiltration gallery by DEQ | Completed prior to Addendum issuance | Completed |
| Prepare preliminary design of infiltration gallery | Completed prior to Addendum issuance | Completed |
| Initial technical submissions (pre-design packet) to MT State Agencies (DEQ, DNRC, FWP) | October 31, 2011 | Not completed |
| Complete and submit final infiltration gallery design packet to DEQ | January 31, 2012 | Not completed |
| Submit form 124 (Montana Stream Protection Act permit application) to MT Department of Fish, Wildlife and Parks | February 29, 2012 | No information |
| Expected approval of infiltration gallery design by DEQ | March 31, 2012 | Not completed |
| Construction of infiltration gallery begins | August 31, 2012 | Not completed |
| Construction of infiltration gallery completed | September 30, 2012 | Not completed |
| Infiltration gallery brought online (replacing interim intake modification currently in place) | October 31, 2012 | Not completed |

The Town completed an initial pilot study (temporary intake modifications) during July 2009 which proved effective in returning the system to compliance with the turbidity requirements. However, the Town was required to install permanent intake modifications. The proposal for installation of the permanent infiltration gallery was approved by EPA in the July 5, 2011, Addendum and was scheduled for completion by October 31, 2012. On September 10, 2012 via e-mail message, Mayor McCord reported that the Town failed to complete and submit its final infiltration gallery design packet to DEQ by the January 31, 2012 deadline. As a result of this delay and for other funding-related reasons, the Town was not able to complete the other deadlines in the plan and schedule, including the final completion of the permanent infiltration gallery. The Addendum required the Town to “notify EPA well in advance of the deadline dates” that it was not going to meet a deadline and therefore would require a deadline extension. The Town failed to notify EPA that it would not make the January 31, 2012 deadline for submitting final infiltration designs to DEQ, and subsequently, that it would not meet any of the deadlines in the Addendum.

The Town will remain in continuing violation of the Order until the permanent infiltration gallery (replacing the interim intake modification currently in place) is brought online. The EPA urges the Town to take immediate steps to come into compliance with the Order.

The 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.

If the Town has any questions or wishes to have an informal conference with EPA, it may contact Mario Mérida at 1-800-227-8917, extension 6297 or (303) 312-6297. If the Town's attorney has questions, she/he may contact Thomas Sitz, Enforcement Attorney, at 1-800-227-8917, extension 6918 or (303) 312-6918 or at the following address:

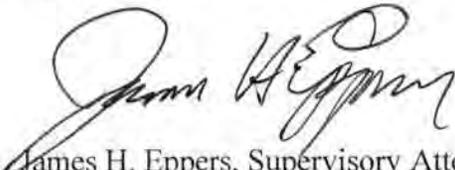
Thomas Sitz
Enforcement Attorney
U.S. EPA, Region 8 (8-ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge your prompt attention to this matter.

Sincerely,



Arturo Palomares, Director
Water Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice



James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc: Tina Artemis, EPA Regional Hearing Clerk
John Arrigo, Enforcement Division, MT DEQ
Shelley Nolan, Public Water Supply Compliance Section, MT DEQ
Bob Reynolds, Operator, Town of Neihart Public Water System