



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

Ref: 8ENF-L

NOV 26 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Debra Kearns, Registered Agent
Hitching Post LLC
P.O. Box 67
Melrose, MT 59743

Re: Complaint and Notice of Opportunity for Hearing
Docket No. **SDWA-08-2009-0020**
Hitching Post LLC
PWS ID #MT0002143

Dear Ms. Kearns:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against Hitching Post LLC under section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that Hitching Post LLC failed to comply with an Administrative Order issued on July 2, 2007, under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), for alleged violations of the SDWA and the National Primary Drinking Water Regulations (NPDWRs) at the Hitching Post Public Water System. The specific violations are set forth in the complaint.

By law, Hitching Post LLC has the right to request a hearing regarding the matters set forth in the complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If Hitching Post LLC does not respond to this complaint within 30 days of receipt, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In Hitching Post's answer it may request a hearing. Hitching Post LLC has the right to be represented by an attorney at any stage of these proceedings.

Whether or not Hitching Post requests a hearing, its representatives may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty.

EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. The issuance



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of a final order incorporating a consent agreement shall constitute a waiver of Hitching Post's right to request a hearing on any matter to which Hitching Post LLC has stipulated in that agreement.

A request for an informal conference does not extend the 30-day period during which Hitching Post must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing. Please note that if Hitching Post LLC does not file an answer, it may be subject to a default order requiring it to pay the full penalty proposed in the complaint, even if it has requested an informal conference.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kimberly Pardue-Welch, Environmental Protection Specialist, who can be reached at 800-227-8917 extension 6983, or Amy Swanson, Enforcement Attorney, who can be reached at 800-227-8917 extension 6906.

We urge your prompt attention to this matter.

Sincerely,



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

Enclosure

cc: Tina Artemis, Regional Hearing Clerk



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

| | | |
|--------------------|---|-------------------------------------|
| IN THE MATTER OF |) | Docket No. SDWA-08-2009-0020 |
| |) | |
| Hitching Post, LLC |) | COMPLAINT AND NOTICE OF |
| The Hitching Post |) | OPPORTUNITY FOR HEARING |
| Melrose, MT |) | |
| PWS ID #MT0002143 |) | |
| |) | |
| Respondent. |) | |

COMPLAINT

This civil administrative Complaint and Notice of Opportunity for Hearing (Complaint) is issued under the authority vested in the Administrator of the Environmental Protection Agency (EPA) by section 1414(g)(3) of the Safe Drinking Water Act, as amended (SDWA), 42 U.S.C. § 300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes the Administrator of the EPA to assess an administrative civil penalty against any person who violates, or fails or refuses to comply with, an order issued under section 1414(g)(1) of the SDWA.

The Complainant in this action is the Assistant Regional Administrator for the Office of Enforcement, Compliance, and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits (Consolidated Rules) set forth at 40 C.F.R. Part 22 (Complainant's Exhibit 1).

GENERAL ALLEGATIONS

1. The following general allegations apply to and are incorporated into each of the counts alleged in this Complaint:
2. Respondent Hitching Post, LLC (Respondent), is a limited liability company under the laws of the State of Montana, and therefore a "person" within the meaning of section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
3. Respondent owns and/or operates a system, the Hitching Post Public Water System (System), located in Silverbow County, Montana, for the provision to the public of piped water for human consumption.
4. 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 SDWA, 42 U.S.C. § 300f(4), and a "non-community water system" within the meaning of 40 C.F.R. § 141.2.
5. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of part B of the SDWA, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. part 141.
6. Respondent operates a system that is supplied solely by a ground water source consisting of one well. The system serves approximately 75 to 100 persons per day year-round through one service connection.

7. On July 2, 2007, EPA issued an Administrative Order (Order) to the Respondent pursuant to section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1), citing violations of the National Primary Drinking Water Regulations (NPDWRs) (40 C.F.R. part 141).

8. The Order required Respondent to achieve compliance with the NPDWRs that EPA alleged Respondent violated including, but not limited to, 1) monitor the water monthly for total coliform and report results to EPA and the State within 10 days following the end of the monitoring period; 2) comply with nitrate monitoring requirements and report results to EPA and the State within 10 days following the month in which the samples were received; 3) comply with requirements to report total coliform rule monitoring and reporting violations to EPA and the State within 10 days of discovery; 4) comply with requirements to report to EPA and the State any failure to comply with the NPDWRs within 48 hours; and (5) provide public notice of the violations within 30 days of the effective date of the Order.

9. On December 19, 2007, EPA sent Respondent a "Violation of Administrative Order" letter citing the following noncompliance by Respondent with the Order and the NPDWRs: 1) failure to monitor for total coliform bacteria in September and November 2007; 2) failure to report to EPA the September and November 2007 total coliform monitoring violations; and 3) failure to provide public notice of the violations set forth in the Order.

10. On October 7, 2008, EPA sent Respondent a "2nd Violation of Administrative Order" letter citing the following noncompliance by Respondent with the Order and the NPDWRs: 1) failure to monitor for total coliform bacteria or report the results to EPA in January, March, and August 2008; 2) failure to report to EPA the January, March, and August 2008 total

coliform monitoring violations; and 3) failure to provide public notice of the violations set forth in the Order.

11. Pursuant to Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), and 40 C.F.R. part 19, the Administrator may assess an administrative civil penalty not to exceed \$27,500 for each day of violation occurring after March 15, 2004, whenever the Administrator determines that any person has violated, or fails or refuses to comply with, an order under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g).

VIOLATIONS

Count I

Failure to Monitor for Total Coliform Bacteria

12. 40 C.F.R. § 141.21 requires public water systems to monitor the water at least once per quarter to determine compliance with the Maximum Contaminant Level (MCL) for total coliform bacteria as stated in 40 C.F.R. § 141.63.

13. The Administrative Rules of Montana (ARM) 17.38.215(1)(b) imposes a more stringent monitoring requirement for total coliform of at least once per month to determine compliance with the MCL for total coliform bacteria.

14. Pages 5-6, paragraph 1 of the "Order" section of the Order requires Respondent to monitor the water monthly for total coliform as required by the ARM 17.38.215(1)(b) to determine compliance with the total coliform MCL appearing at ARM 17.38.207(1) and 40 C.F.R. § 141.63(a)(2). The paragraph also requires Respondent to report analytical results to EPA within the first 10 days of the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).

15. Respondent failed to monitor the System's water for contamination by total coliform bacteria in September 2007, November 2007, January 2008, March 2008, and August 2008, and failed to report analytical results to EPA for the same time frames within the first 10 days of the end of the monitoring period, in violation of the Order, ARM 17.38.215(1)(b), and 40 C.F.R. §§ 141.21 and 141.31(a).

Count II
Failure to Report Noncompliance
with Total Coliform Rule to EPA

16. 40 C.F.R. § 141.21(g)(2) requires public water systems that have failed to comply with a coliform monitoring requirement under 40 C.F.R. § 141.21 to report the monitoring violation to EPA within ten days after the system discovers the violation.

17. Page 6, paragraph 3 of the "Order" section of the Order requires Respondent to comply with 40 C.F.R. § 141.21(g)(2) by reporting to EPA any failure to comply with coliform monitoring requirements within 10 days after the system discovers the violation.

18. Respondent failed to report to EPA the instances of noncompliance detailed in Count I, as set forth above, in violation of the Order and 40 C.F.R. § 141.21(g)(2).

Count III
Failure to Provide Public Notice

19. Page 6, paragraph 5 of the "Order" section of the Order requires Respondent to Comply with the public notice requirements at 40 C.F.R. § 141.201, et seq., by providing public notice of the violations specified under the Findings of Violation Section I and II of the Order within 30 days of the effective date of the Order and following any future NPDWR violation, and submit a copy of the public notice to EPA and the State within 10 days of completion of the

public notice as required by 40 C.F.R. § 141.31(d).

20. The Respondent violated the Order and 40 C.F.R. §§ 141.31(d) and 141.201, et seq., by failing to provide public notice of the violations included in the order and the September 2007 violation included in Count I above.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

This complaint proposes that EPA assess an administrative penalty. EPA is authorized to assess an administrative penalty according to section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3) for violation of an administrative order issued under section 1414(g)(1) of the SDWA. The amount may be up to \$27,500 (adjusted upwards for inflation from the original statutory amount of \$25,000 pursuant to 40 C.F.R. part 19).

EPA has determined the proposed penalty amount in accordance with section 1414 of the SDWA, 42 U.S.C. § 300g-3. Taking into account the seriousness of the violations, the population at risk, and other appropriate factors, including the Respondent's degree of willfulness and/or negligence, history of non-compliance, if any, and ability to pay, as known to EPA at this time, EPA proposed to assess an administrative civil penalty of \$7,500 against the Respondent for its violations of the Order.

TERMS OF PAYMENT FOR QUICK RESOLUTION

If Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within 30 calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30

days of receipt of the Complaint, then pay the money within 60 days of such receipt. Payment shall be made by remitting a cashier's or certified check for the amount, including the name and docket number of the case, payable to the "**Environmental Protection Agency**" to:

US checks by regular

US postal service mail: US Environmental Protection Agency
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

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

Kimberly Pardue-Welch (8ENI)-W)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall

constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

As provided in the SDWA, you have the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with sections 22.15 and 22.38 of the Consolidated Rules within 30 calendar days after receipt of this Complaint. Your Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis for opposing the proposed relief; and (5) specifically request an administrative hearing, if desired. Failure to admit, deny or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The Answer and one copy must be sent to:

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

and a copy must be sent to the following attorney:

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

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 CFR §22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

SETTLEMENT CONFERENCE

The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the SDWA and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Amy Swanson at (303) 312-6906. Please note that a request for scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,
Complainant.

Date: _____

11/21/08

By: _____

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

Date: 4/24/13

By: [Signature]
Amy Swanson, Enforcement Attorney
U.S. EPA, Region 8
1595 Wynkoop St. (8ENF-L)
Denver, CO 80202-1129
Telephone: 303/312-6906
Facsimile: 303/312-6953