



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-W

MAR 5 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bill and Hayli Thompson, Owners
The Ranch House of Dupuyer
P.O. Box 142
Dupuyer, MT 59432

Re: Complaint and Notice of Opportunity for Hearing
Docket No. **SDWA-08-2009-0036**
The Ranch House of Dupuyer Water System
PWS ID #MT0002032

Dear Mr. and Mrs. Thompson:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against you as owners and/or operators of the Ranch House of Dupuyer public water system (System) under section 1414 of the Safe Drinking Water Act (Act), 42 U.S.C. § 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that you failed to comply with an Administrative Order, Docket No. SDWA-08-2007-0052, issued on June 27, 2007, under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), for alleged violations of the Act and the National Primary Drinking Water Regulations.

By law, you have the right to request a hearing regarding the matter 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 you do 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. You may request a hearing in your answer. You have the right to be represented by an attorney at any stage of these proceedings.

Whether or not you request a hearing, you or an authorized representative 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 of a final order incorporating a consent agreement shall constitute a waiver of your right to request a hearing on any matter to which you stipulate in that agreement.



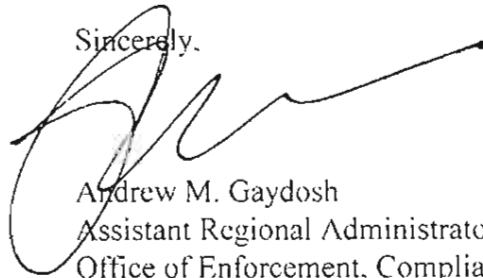
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A request for an informal conference does not extend the 30-day period during which you must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory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

Enclosures: Complaint w/ Exhibits

cc: John Arrigo, MT DEQ
Shelly Nolan, MT DEQ
Tina Artemis, EPA Region 8 Regional Hearing Clerk



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bcc: Amy Swanson, 8ENF-L
Kimberly Pardue-Welch, 8ENF-W
Brenda Cazier, 8ENF-PJ
Lisa Kahn, 8ENF-W
Reading File

cc addresses:

VIA REGULAR MAIL:

John Arrigo
Montana Department of Environmental Quality
1520 E. Sixth Avenue
Helena, MT 59620-0901

Shelley Nolan
Montana Department of Environmental Quality
1520 E. Sixth Avenue
Helena, MT 59620-0901



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF)
)
Bill and Hayli Thompson, Owners/Operators)
The Ranch House of Dupuyer)
Dupuyer, MT,)
)
Respondents.)
)
Proceedings under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))
)

Docket No. SDWA 08-2009-0036

COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

COMPLAINT

This civil administrative Complaint and Notice of Opportunity for Hearing (Complaint) is issued under the authority vested in the Administrator of the United States 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, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is subject to 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 (Consolidated Rules of Practice) (Complainant's Exhibit 1).

GENERAL ALLEGATIONS

The following general allegations apply to each count of this Complaint:

1. Respondents Bill and Hayli Thompson are individuals and therefore “persons” as that term is defined in section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2, for purposes of federal enforcement.
2. Respondents own and/or operate a system, the Ranch House of Dupuyer Water System (System), located in Pondera County, Montana, for the provision to the public of piped water for human consumption.
3. 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” as that term is defined in section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2, and a “transient, non-community water system” as that term is defined in section 1401(16) of the SDWA, 42 U.S.C. § 300f(16), and 40 C.F.R. § 141.2.
4. As the owners and/or operators of a public water system, the Respondents are “suppliers of water” as that term is defined in section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. The Respondents are therefore subject to the requirements of Part B of the SDWA, 42 U.S.C. § 300g et seq., and its implementing regulations, 40 C.F.R. Part 141 (also known as the “National Primary Drinking Water Regulations” or “NPDWRs”).

5. The source of the System's water is ground water. Water is supplied from a single well located on-site to a residence and a restaurant year-round. The System provides water to approximately 25 people per day in the winter, and 50 people per day in the summer.
6. On June 27, 2007, in accordance with sections 1414(a)(2) and (g)(1) of the SDWA, 42 U.S.C. §§ 300g-3(a)(2) and (g)(1), the EPA issued an Administrative Order, Docket No. SDWA-08-2007-0052 (Order), to the Respondents, citing various violations of the NPDWRs including, but not limited to: exceeding the total coliform Maximum Contaminant Level (MCL); failing to monitor for bacteriological quality; and failing to notify the public, EPA, and the State of Montana of these violations. A copy of the Order is attached to and incorporated in this Complaint as Complainant's Exhibit 2.
7. On December 19, 2007, EPA issued an Administrative Order Violation letter to the Respondents, noting that they were in violation of the Order, the Act, and the NPDWRs for failing monitor for total coliform in September 2007; failing to notify EPA and the State within 10 days of discovering the September 2007 failure to monitor violation; and failing to provide public notice for the violations set forth in the Order within thirty days from the Order's effective date. A copy of EPA's December 19, 2007 letter is attached to and incorporated in this Complaint as Complainant's Exhibit 3.

8. On November 20, 2008, EPA issued the Respondents a second Administrative Order Violation letter, noting that they were in violation of the Order, the Act, and the NPDWRs for failing to monitor for total coliform bacteria and report the results to EPA in November 2007, December 2007, August 2008, and October 2008; failing to report to EPA the failure to monitor violations; and failing to provide public notice for the violations set forth in the Order. A copy of EPA's November 20, 2008, letter is attached to and incorporated in this Complaint as Complainant's Exhibit 4.

COUNTS OF VIOLATION

Count I

Failure to Monitor for Total Coliform Bacteria

1. The Order (page 6, para. 2) requires the Respondents to monitor monthly for total coliform bacteria (ARM 17.38.215(1)(b) and 40 C.F.R. § 141.21(a)(3)(i)) to determine compliance with the total coliform MCL (40 C.F.R. § 141.63).
2. The Respondents failed to monitor monthly for total coliform bacteria during September 2007, November 2007, December 2007, August 2008, and October 2008, in violation of the Order, the Act, and the NPDWRs.

Count II

Failure to Provide Public Notice of Violations

1. The Order (page 6, para.3) requires the Respondents to provide public notice for the violations alleged in the Order under the Findings of Violation Section I and II (for 2005 violations) within thirty days from the Order's effective date.

2. The Order (page 6, para. 3) requires the Respondents to comply with the public notification requirements at 40 C.F.R. § 141.201, et seq., following any future NPDWR violations and submit a copy of the public notice to EPA and the State of Montana within 10 days of completion (40 C.F.R. § 141.31(d)).
3. The Respondents failed to provide public notice for the 2005 violations set forth in the Order within thirty days from the Order's effective date of July 5, 2007, in violation of the Order, the Act, and the NPDWRs.

Count III
Failure to Report to EPA Noncompliance of the NPDWRs

1. The Order (page 7, para. 5) requires the Respondents to report any failure to comply with coliform monitoring requirements under 40 C.F.R. § 141.21 to EPA and the State of Montana within ten days after discovering the violation(s) pursuant to 40 C.F.R. § 141.21(g)(2)).
2. The Respondents failed to report to EPA and the State within ten days after discovering the failure to monitor total coliform violations in September 2007, November 2007, December 2007, August 2008, and October 2008, in violation of the Order, the Act, and the NPDWRs.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), authorizes the Administrator to assess an administrative civil penalty of up to \$27,500 for violation of an administrative

order issued under section 1414(g)(1) of the SDWA.¹ EPA has determined the proposed penalty amount in accordance with the applicable statutory factors in section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b). Taking into account the seriousness of the violation, the population at risk, and other appropriate factors, including the Respondent's degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay, EPA proposes the assessment of an administrative civil penalty against the Respondents in the amount of \$3,000.

TERMS OF PAYMENT FOR QUICK RESOLUTION

If the Respondents do 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, including the name and docket number of the case, payable to "**Treasurer, United States of America,**" 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

¹The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19.

Bill and Hayli Thompson
Ranch House of Dupuyer
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**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 (8ENF-W)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Payment of the penalty in this manner does not relieve Respondents of their obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondents to the assessment of the proposed penalty and a waiver of Respondents' right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

As provided in the Act, 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.

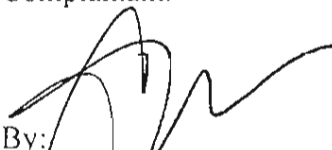
IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 CFR §22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

SETTLEMENT CONFERENCE

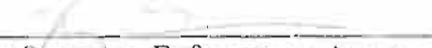
EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set forth above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. Part 22. If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the regional judicial officer. A request for a settlement conference or any questions that you may have regarding this Complaint should be directed to the attorney listed below.

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

Date: 3/5/05

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

Date: _____

By: 
Amy Swanson, Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop Street (8ENF-L)
Denver, Colorado 80202-1129
Telephone: (303) 312-6906
Facsimile: (303) 312-6953

Bill and Hayli Thompson
Ranch House of Dupuyer
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with all Exhibits were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent by CERTIFIED MAIL/RETURN RECEIPT REQUESTED to:

Bill and Hayli Thompson
Ranch House of Dupuyer
P.O. Box 142
Dupuyer, MT 59432

Date: 3/5/09

By: Judith M McTernan