



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

**SEP 18 2013**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
NO.

Mr. Jamie Mackay, Registered Agent for  
Mackay Investments, LLC  
2780 N. Moose Wilson Rd  
P.O. Box 1827  
Wilson, WY 83014

Re: Complaint and Notice of Opportunity for Hearing  
Docket No. SDWA-08-2013-0058

Dear Mr. Mackay:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (Complaint) filed against Mackay Investments, LLC (Mackay) under section 1414(g)(3) of the Safe Drinking Water Act (SDWA), 42 U.S.C § 300g-3(g)(3). The U.S. Environmental Protection Agency (EPA) alleges in the Complaint that Mackay failed to comply with an administrative order issued by the EPA on May 5, 2011. The violations are described in the Complaint.

By law, Mackay 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 Mackay does not file an answer to the Complaint within 30 days of receipt, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In its answer Mackay may request a hearing. Mackay has the right to be represented by an attorney at any stage of these proceedings.

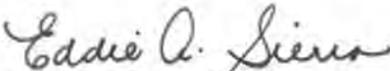
The EPA encourages all parties against whom it files any complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. If a representative of Mackay signs a consent agreement that is finalized by a final order, Mackay will waive its right to request a hearing on any matter to which it has stipulated in that agreement.

Whether or not Mackay requests a hearing, its representative(s) may confer informally with the EPA concerning the alleged violation and/or the amount of the proposed penalty. However, an informal settlement conference does **not** substitute for filing a written answer and requesting a hearing. A request for an informal conference also does not extend the 30-day period during which Mackay must submit a written answer and a request for a hearing. Mackay may pursue settlement and have an informal conference even if it is also litigating the case.

For any questions specific to the violations or penalty, the most knowledgeable people at the EPA regarding this matter are Mario Mérida, Environmental Protection Specialist, who can be reached at 1-800-227-8917, extension 6297, and, for questions from counsel, if any, Dana Stotsky, Enforcement Attorney, who can be reached at 1-800-227-8917, extension 6905.

We urge your prompt attention to this matter.

Sincerely,

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

Enclosure

cc: Tina Artemis, EPA Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

Docket No. SDWA-08-2013- 0058

2013 SEP 18 AM 10: 37

IN THE MATTER OF )  
 )  
Mackay Investments, LLC )  
(Jackson Hole Campground )  
Public Water System) )  
 )  
PWS ID # WY5600520 )  
 )  
Respondent. )  
\_\_\_\_\_ )

FILED  
EPA REGION VIII  
HEARING CLERK  
**COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

In this Complaint and Notice of Opportunity for Hearing (Complaint), the United States Environmental Protection Agency (EPA) proposes to assess a civil administrative penalty against Mackay Investments, LLC (Respondent).

**I. JURISDICTIONAL ALLEGATIONS**

1. This Complaint is issued under the authority vested in the Administrator of the EPA by section 1414(g)(3)(B) of the Safe Drinking Water Act (the SDWA), 42 U.S.C. § 300g-3(g)(3)(B). The undersigned EPA official has been duly authorized to institute this action.
2. This proceeding is subject to the 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, a copy of which is attached to this Complaint as Complainant's Exhibit 1.

**II. GENERAL ALLEGATIONS**

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

3. Respondent is Mackay Investments, LLC, a Wyoming limited liability corporation formed on July 25, 2006, and is currently active and in good standing with the Wyoming Secretary of State's office. Consequently, Respondent is therefore, a "person" as defined in section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.
4. Respondent owns, operates, or both owns and operates a public water system, the Jackson Hole Campground public water system (System), located in Teton County, WY, for the

- provision of water for human consumption to the public through pipes or other constructed conveyances.
5. The source of the System's water is ground water from one well. The System serves an average of approximately 178 individuals per day through 78 service connections and is operational seasonally.
  6. Because the System has at least 15 service connections and/or regularly serves at least 25 individuals at least 60 days out of the year, the System is a "public water system" as defined in section 1401(4) of the SDWA, 42 U.S.C. § 300f (4), and 40 C.F.R. § 141.2. The System is also a "transient, non-community water system" as defined in 40 C.F.R. § 141.2.
  7. As an owner, operator, or both an owner and operator of a public water system, Respondent is a "supplier of water" as defined in section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent is, therefore, subject to 40 C.F.R. part 141 (also known as the National Primary Drinking Water Regulations or NPDWRs), each of which is an "applicable requirement" as defined in section 1414(i) of the SDWA, 42 U.S.C. § 300g-3(i).
  8. On May 5, 2011, in accordance with section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), the EPA issued an Administrative Order, Docket No. SDWA-08-2011-0037 (the Order) to Respondent, citing violations of the NPDWRs, specifically:
    - failure to monitor total coliform bacteria during the 3<sup>rd</sup> quarter of 2006;
    - failure to monitor total coliform bacteria during the 4<sup>th</sup> quarter of 2008;
    - failure to monitor total coliform bacteria during the 3<sup>rd</sup> quarter of 2010;
    - failure to monitor total coliform bacteria during the 4<sup>th</sup> quarter of 2010;
    - failure to monitor nitrate during Calendar Year 2010;
    - failure to notify the public of certain violations;
    - failure to report TCR monitoring requirements to EPA; and
    - failure to report to the EPA other violations of the drinking water regulations.
  9. On December 21, 2011, the EPA notified Respondent by letter that it was in violation of the Order (First AOV), and also in violation of the NPDWRs, specifically:
    - failure to monitor for total coliform bacteria during the 3<sup>rd</sup> quarter of 2011;
    - failure to report to EPA the system's failure to monitor for total coliform during the 3<sup>rd</sup> quarter of 2011; and
    - failure to notify the public of various violations.
  10. On August 27, 2012, the EPA notified Respondent by letter that it was in violation of the Order (Second AOV), and also in violation of the NPDWRs, specifically:
    - failure to monitor for total coliform bacteria during the 2<sup>nd</sup> quarter of 2012; and
    - failure to notify the public of various violations.
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11. On May 9, 2013, the EPA notified Respondent by letter that it was in violation of the Order (Third AOV), and also in violation of the NPDWRs, specifically:
  - failure to monitor the water for nitrate during calendar year 2012; and
  - failure to notify the public of various violations.
12. Since the EPA issued the Third AOV noted in the above paragraph, the EPA has found the system to have failed to monitor for total coliform bacteria during the 1<sup>st</sup> quarter of 2013.
13. Because Wyoming has not sought primary authority for enforcing the public water supply supervision program, the EPA directly implements this program in Wyoming. Consequently, as provided by the definition of “state” in 40 C.F.R. § 141.2, the EPA is the “state” for purposes of the NPDWRs in Wyoming.

### **III. VIOLATIONS**

#### **Count I**

##### **Failure to Monitor for Total Coliform Bacteria**

14. According to 40 C.F.R. § 141.21, non-community public water systems using ground water are required to monitor their water at least quarterly to determine compliance with the Maximum Contaminant Level (MCL) established for total coliform bacteria pursuant to 40 C.F.R. § 141.63.
15. Paragraph 13 of the Order required Respondent to perform quarterly bacteriological monitoring as required by 40 C.F.R. § 141.21.
16. Respondent failed to monitor the System’s water for total coliform bacteria contamination during the 3<sup>rd</sup> quarter of 2006; the 4<sup>th</sup> quarter of 2008; the 3<sup>rd</sup> quarter of 2010; the 4<sup>th</sup> quarter of 2010; the 3<sup>rd</sup> quarter of 2011; the 2<sup>nd</sup> quarter of 2012; and the 1<sup>st</sup> quarter of 2013, in violation of the Order and 40 C.F.R. § 141.21.

#### **Count II**

##### **Failure to Report Total Coliform Monitoring Violations**

17. According to 40 C.F.R. § 141.21(g) (2), a public water system that has failed to comply with a coliform monitoring requirement must report the monitoring violation to the EPA within 10 days after the system discovers the violation.
18. Paragraph 15 of the Order required Respondent to report any failure to comply with coliform monitoring requirements to the EPA within ten days of discovering the violation.
19. Respondent failed to report to the EPA that the total coliform bacteria monitoring requirements for the System’s water had been violated during the 3<sup>rd</sup> quarter of 2006; the

4<sup>th</sup> quarter of 2008; the 3<sup>rd</sup> quarter of 2010; the 4<sup>th</sup> quarter of 2010; the 3<sup>rd</sup> quarter of 2011; the 2<sup>nd</sup> quarter of 2012; and the 1<sup>st</sup> quarter of 2013, in violation of the Order and 40 C.F.R. § 141.21(g)(2).

**Count III**  
**Failure to Monitor for Nitrate**

20. According to 40 C.F.R. § 141.23(d) and Paragraph 12 of the Order, Respondent was required to monitor the System's water for nitrate during Calendar Year 2012.
21. Respondent failed to monitor the System's water for nitrate during 2012, and, therefore, violated this requirement.

**Count IV**  
**Failure to Issue Public Notice**

22. According to Paragraph 17 of the Order, Respondent was required to provide the EPA with a representative copy of each public notice given of the violations specified in Paragraphs 7 to 11 inclusively of the Order, and a certification of having provided public notice of each such violation.
23. In violation of Paragraph 17 of the Order, Respondent failed to provide the EPA with a representative copy of each public notice given of the violations specified in the Order.

**PROPOSED PENALTY**

This Complaint proposes that the EPA assess an administrative penalty against Respondent. The EPA is authorized to assess an administrative civil penalty according to section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), for violation of an administrative order issued under section 1414(g) of the SDWA. The amount of the administrative penalty may not exceed \$27,500 for violations occurring after March 15, 2004, through January 12, 2009, and \$32,500 for violations occurring after January 12, 2009. (The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19. See 74 *Fed. Reg.* 626, January 7, 2009.)

The 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 violation, the population at risk, and other appropriate factors, including Respondent's degree of willfulness and/or negligence, history of noncompliance, and ability to pay, as known to the EPA at this time, the EPA proposes to assess an administrative civil penalty of **\$7,400.00** against Respondent for its violations of the Order, First AOV, Second AOV, Third AOV, and the violation noted in Paragraph 12 above.

## OPPORTUNITY TO REQUEST A HEARING

As provided in section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), Respondent has the right to request a public hearing to contest any material fact alleged in this Complaint, to contest the appropriateness of the proposed penalty, and/or to assert that it is entitled to judgment as a matter of law.

If Respondent wishes to request a hearing, Respondent must file a written answer in accordance with 40 C.F.R. §§ 22.15 within thirty (30) calendar days after this Complaint is served. If this Complaint is served by mail, Respondent has an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.7(c), in which to file its answer.

If Respondent requests a hearing in its answer, the procedures provided in 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, Respondent has the right under the SDWA to elect a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq. (APA). For Respondent to exercise this right, the answer must include a specific request for a hearing on the record in accordance with 5 U.S.C. § 554. Upon such request, the Regional Hearing Clerk will place new captions on the pleadings and documents in the record as necessary. (See 40 C.F.R. § 22.42.) Pursuant to such a request, subpart I will not apply to the proceedings and an Administrative Law Judge from Washington, D.C., will preside.

The answer must be in writing. An original and one copy of the answer must be sent to:

Tina Artemis, 8RC  
Regional Hearing Clerk (8RC)  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

A copy of the answer must also be sent to:

Dana Stotsky, 8ENF-L  
Enforcement Attorney  
Office of Enforcement, Compliance and Environmental Justice  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

## FAILURE TO FILE AN ANSWER

**IF RESPONDENT DOES NOT FILE A WRITTEN ANSWER WITH THE REGIONAL HEARING CLERK AT THE ADDRESS ABOVE WITHIN THIRTY (30) DAYS OF RECEIPT OF THIS COMPLAINT, RESPONDENT MAY BE SUBJECT TO A DEFAULT ORDER REQUIRING PAYMENT OF THE FULL PENALTY PROPOSED IN THIS COMPLAINT. THE EPA MAY OBTAIN A DEFAULT ORDER ACCORDING TO 40 C.F.R. § 22.17.**

## REQUIREMENTS FOR ANSWER

The answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. The answer must state (1) any circumstances or arguments Respondent alleges to constitute grounds of defense, (2) any facts Respondent disputes, (3) whether and on what basis Respondent opposes the proposed penalty, and (4) whether Respondent requests a hearing. **Failure to admit, deny, or explain any material factual allegation contained in this Complaint shall constitute an admission of that allegation.**

## QUICK RESOLUTION

Respondent may resolve this action by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, Respondent need not file an answer. Alternatively, as allowed by 40 C.F.R. § 22.18(b), Respondent may file a statement with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint agreeing to pay the full assessed penalty and may make the penalty payment within sixty (60) days of receiving this Complaint.

If made by check, the payment shall be made by remitting a cashier's or certified check, including the name and docket number of the case, referencing the Docket Number given on the first page of this Complaint and payable to "*Treasurer, United States of America.*"

The check shall be sent to the EPA in one of the following ways:

By first class US postal service mail:	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, Missouri 63197-9000
By Federal Express, Airborne, or other commercial carrier:	US Bank 1005 Convention Plaza Mail Station SL-MO-C2GL

St. Louis, Missouri 63101

The payment may also be made by wire transfer or on-line via the internet, as follows:

Wire transfers: Federal Reserve Bank of New York  
ABA = 021030004; Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read  
"D68010727 Environmental Protection Agency "

On-Line Payment: WWW.PAY.GOV  
Enter sfo 1.1 in the search field  
Open form and complete required fields.

A copy of the check, wire transfer, or record of on-line payment shall be simultaneously sent to:

Mr. Mario Merida, 8ENF-W  
Office of Enforcement, Compliance and Environmental Justice  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

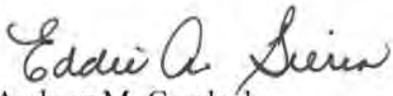
Payment of the penalty in this manner does not relieve Respondent of the obligation to comply with the requirements of the SDWA and its implementing regulations. Payment of the penalty in this manner does, however, constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

#### **SETTLEMENT CONFERENCE**

The EPA encourages exploring settlement possibilities through informal settlement negotiations. **HOWEVER, FAILING TO FILE AN ANSWER MAY LEAD TO A DEFAULT ORDER, EVEN IF SETTLEMENT NEGOTIATIONS OCCUR.** The parties may simultaneously pursue settlement and proceed with administrative litigation. If a settlement is reached, its terms shall be expressed in a written consent agreement to be signed by the parties and incorporated into a final order signed by the Presiding Officer. Any request for settlement negotiations should be directed to the attorney named above, who can also be reached by telephone at 303-312-6905.

Dated this 18<sup>th</sup> day of September, 20B.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8  
Complainant

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

**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 to the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Mr. Jamie Mackay, Registered Agent for  
Mackay Investments, LLC  
2780 N. Moose Wilson Rd  
P.O. Box 1827  
Wilson, WY 83014

Date: 9/18/13

By: Dayle Aldinger  
Ms. Andrea Reed

§21.13

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec. 22.1 Scope of this part. 22.2 Use of number and gender. 22.3 Definitions. 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment. 22.5 Filing, service, and form of all filed documents; business confidentiality claims. 22.6 Filing and service of rulings, orders and decisions. 22.7 Computation and extension of time. 22.8 Ex parte discussion of proceeding. 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances. 22.11 Intervention and non-party briefs. 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding. 22.14 Complaint. 22.15 Answer to the complaint. 22.16 Motions. 22.17 Default. 22.18 Quick resolution; settlement; alternative dispute resolution. 22.19 Prehearing information exchange; prehearing conference; other discovery. 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing. 22.22 Evidence. 22.23 Objections and offers of proof. 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard. 22.25 Filing the transcript. 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision. 22.28 Motion to reopen a hearing.