



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

2014 SEP 23 PM 3:22

EPA REGION VIII
HEARING CLERK

SEP 23 2014

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7009 3410 0000 2596 5265

Ms. Margaret Q. Thompson
Registered Agent
Beaverhead County Jackson Water and/or Sewer District
Dillon, Montana 59725

Re: Complaint and Notice of Opportunity for Hearing
Docket No. **SDWA-08-2014-0048**

Dear Ms. Thompson:

Enclosed is an administrative Complaint and Notice of Opportunity for Hearing (Complaint) filed against the Beaverhead County Jackson Water and/or Sewer District (District) under section 1414(g)(3) of the Safe Drinking Water Act (SDWA), 42 U.S.C § 300g-3(g)(3). The United States Environmental Protection Agency (EPA) alleges in the Complaint that the District failed to comply with an administrative order issued by the EPA on December 14, 2009, as subsequently amended. The violations are described in the Complaint.

By law, the District 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 the District 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 the District may request a hearing. The District 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 the District signs a consent agreement that is finalized by a final order, the District will waive its right to request a hearing on any matter to which it has stipulated in that agreement.

Whether or not the District requests a hearing, its representative(s) may confer informally with the EPA concerning the alleged violations and/or the amount of the proposed penalty. However, an informal



Printed on Recycled Paper

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 the District must submit a written answer and a request for a hearing. The District may pursue settlement and have informal conferences with the EPA 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 Sienna Meredith, Environmental Protection Specialist, who can be reached at 406-457-5026, and, for questions from counsel, if any, Peggy Livingston, Enforcement Attorney, who can be reached at 1-800-227-8917, extension 6858.

We urge your prompt attention to this matter.

Sincerely,

for *Eddie A. Sierra*
Suzanne J. Bohan
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

Complaint and Notice of Opportunity for Hearing

cc: Tina Artemis, EPA Regional Hearing Clerk

2014 SEP 23 PM 3: 22

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)	
)	
)	
Beaverhead County Jackson Water and/or Sewer District)	Docket No. SDWA-08-2014-0048
)	
)	COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING
)	
Respondent.)	
_____)	

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 Beaverhead County Jackson Water and/or Sewer District (Respondent).

JURISDICTIONAL ALLEGATIONS

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 (SDWA), 42 U.S.C. § 300g-3(g)(3)(B). The undersigned EPA official has been duly authorized to institute this action.

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 being provided to Respondent with this Complaint.

GENERAL ALLEGATIONS

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

1. Respondent is a public body created by or pursuant to Montana law. It is listed on the website of the Montana Secretary of State as having been incorporated on April 7, 1988.

According to that website, Respondent's registered agent for service of process is Margaret Q. Thompson, Dillon, Montana, 59725. Respondent is a "person" as defined in section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.

2. Respondent owns and/or operates a system, the Beaverhead Jackson public water system (System), located in Beaverhead County, Montana, for the provision of water for human consumption to the public through pipes or other constructed conveyances.
3. The source of the System's water is ground water from the Jardine Hot Springs. The water is not treated.
4. The System has approximately 29 service connections used by year-round residents and/or regularly serves at least 21 year-round residents.
5. Because the System has at least 15 service connections used by year-round residents and/or regularly serves at least 25 year-round residents, the System is a "public water system" and a "community water system" as those terms are defined in 40 C.F.R. § 141.2 and section 1401 of the SDWA, 42 U.S.C. § 300f.
6. As an owner and/or 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).
7. The Montana Department of Environmental Quality (MDEQ) has primary enforcement authority for the public water system supervision provisions of the Act in the State of

Montana. On August 31, 2009, MDEQ referred Respondent to the EPA for enforcement of the violations cited in the Order referenced in paragraph 8, below.

8. On December 14, 2009, 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-08-2010-0004 (Order) to Respondent, citing violations of the NPDWRs.
9. On April 17, 2013, in accordance with section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), the EPA issued an Amended Administrative Order to Respondent (Amended Order), with the same docket number as the Order.

VIOLATIONS

Count I

Failure to Submit Compliance Plan and Schedule Within 60 Days of Receiving Order

1. Paragraph 9 of the Order cited two instances in which Respondent had violated the Maximum Contaminant Level (MCL) for arsenic, which is set forth in 40 C.F.R. §§ 141.62(b) and 141.23(i)(1). Paragraph 14 of the Order directed Respondent, within 60 days of receiving the Order, to provide the EPA with a compliance plan and schedule for the System to come into compliance with the arsenic MCL.
2. Respondent received the Order on December 15, 2009.
3. Respondent failed to submit a compliance plan and schedule for attaining the arsenic MCL until April 8, 2010, which was over 60 days after Respondent received the Order. This was in violation of paragraph 14 of the Order.

Count II

Failure to Submit Revised Preliminary Engineering Report Within Deadline

1. On June 24, 2010, the EPA approved the compliance schedule for attaining the arsenic MCL that Respondent had submitted on April 8, 2010. This approval, as provided by paragraph 15 of the Order, made the schedule an enforceable requirement of the Order. Among other things, the EPA-approved schedule required Respondent to prepare a draft Preliminary Engineering Report (PER) by April 30, 2011. Respondent prepared the draft by that date.
2. On January 17, 2012, the EPA issued a 2nd Administrative Order Addendum, requiring Respondent, by December 31, 2011, to revised its draft PER to address comments from MDEQ and the United States Department of Agriculture Rural Development. On November 13, 2012, the EPA issued a 3rd Administrative Order Addendum, extending this deadline to March 15, 2013. On April 17, 2013, the EPA issued the Amended Order to Respondent, extending this deadline to October 1, 2013. On August 26, 2013, the EPA issued a 4th Administrative Order Addendum (4th Addendum), extending this deadline to December 15, 2013.
3. Respondent did not submit a revised PER to the EPA until July 15, 2014, approximately 212 days after the extended deadline. This was in violation of the 4th Addendum, which, as indicated above, was an enforceable part of the Order.

Count III

Failure to Provide Timely Consumer Confidence Reports

1. According to 40 C.F.R. §§ 141.152-141.154, Respondent is required to prepare an annual consumer confidence report (CCR) and to deliver the CCR to the System's customers and

MDEQ by July 1 of each year. The CCR is to include information about the quality of the System's water using data collected during, or prior to, the previous calendar year.

2. Paragraph 18 of the Order directed Respondent to prepare and deliver a CCR for 2007 to the System's customers, the EPA, and MDEQ within 30 days of receiving the Order.
3. Respondent did not deliver a CCR for 2007 to the System's customers, the EPA, and MDEQ until November 1, 2010, which was approximately 290 days after Respondent received the Order. This was a violation of paragraph 18 of the Order.
4. Paragraph 18 of the Order directed Respondent to prepare and deliver an annual CCR to the System's customers for subsequent years in accordance with 40 C.F.R. §§ 141.152-141.155.
5. Respondent did not deliver an annual CCR for 2010 to MDEQ by July 1, 2011.
6. On September 7, 2011, the EPA notified Respondent that it had violated the Order by failing to provide MDEQ with a copy of the CCR for 2010 by July 1, 2011.
7. Respondent did not submit a copy of the 2010 CCR to MDEQ until December 2, 2011, which was approximately 155 days after the deadline of July 1, 2011. This was a violation of paragraph 18 of the Order.
8. Paragraph 21 of the Amended Order directed Respondent to prepare and distribute annual CCRs as required by 40 C.F.R. §§ 141.152-141.155.
9. Respondent did not deliver an annual CCR for 2012 to the System's customers and MDEQ until September 18, 2013, which was approximately 80 days after the deadline of July 1, 2013. This was a violation of paragraph 18 of the Order and paragraph 21 of the Amended Order.

Count IV
Failure to Provide Timely Public Notice

1. Respondent is required to notify the public of certain violations of the Drinking Water Regulations. 40 C.F.R. §§ 141.201-141.211.
2. Paragraph 22 of the Amended Order and paragraph 19 of the Order required Respondent to provide public notice of its violations as required by 40 C.F.R. §§ 141.201-141.211 and to provide the EPA with a copy of any public notice within 10 days. The Amended Order specifically directed Respondent to provide public notice for violations of the MCLs for combined radium and for arsenic that were cited in the Amended Order.
3. On February 10, 2014, the EPA notified Respondent that the EPA had not received a copy of any public notice for Respondent's arsenic MCL violations for all of 2012 and 2013 and its combined radium MCL violations for the fourth quarter of 2011 and all of 2012 and 2013.
4. To date, Respondent has not provided public notice of the arsenic and combined radium MCL violations cited in the preceding two paragraphs, in violation of paragraph 22 of the Amended Order and paragraph 19 of 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 \$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.)

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 **\$20,000** against for Respondent's violations of the Order (as amended).

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. Any request for a hearing shall be construed as a request for a hearing on the record in accordance with 5 U.S.C. § 554.

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) days after this Complaint is served. (Note: To compute the number of days in a time period for purposes of 40 C.F.R. part 22, please see 40 C.F.R. § 22.7(a).)

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:

Peggy Livingston, 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) 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.

The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall designate the name and docket number of this case, be in the amount

stated under "PROPOSED PENALTY," above, and be payable to "Treasurer, United States of America."

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency / Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox No. 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

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 "D 68010727 Environmental Protection Agency"

If remitted through the Automated Clearing House (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

Contacts: John Schmid (202-874-7026) and REX (Remittance Express)
1-866-234-5681

If remitted on-line with a debit card or credit card: No user name, password, or account number is necessary for this option. On-line payment can be accessed via WWW.PAY.GOV, entering 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Sienna Meredith, Environmental Protection Specialist
Montana Office
U.S. EPA Region 8
Federal Building
10 W. 15th St., Suite 3200
Helena, Montana 59626

and

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

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 303-312-6858.

Dated this ____ day of SEP 23 2014, 2014.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant

Eddie A. Sierra
for _____
Suzanne J. Bohan
Acting 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 (without a copy of 40 C.F.R. part 22) were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING (with a copy of 40 C.F.R. part 22) was sent to the following:

**Ms. Margaret Q. Thompson, Registered Agent
Beaverhead County Jackson Water &/or Sewer District
Dillon MT 59725
Cert # 7009 3410 0000 2596 5265**

Date: 9/23/2014

By: Dayle Aldinger

SEP 26 2014

*Certificate of service returned
due to lack of address
Resent to:*

**Ms. Margaret Q. Thompson, Registered Agent
Beaverhead County Jackson Water &/or Sewer District
2 South Pacific Street, Suite 3
Dillon, MT 59725
Cert # 7009 3410 0000 2596 5265**

By Dayle Aldinger

40 CFR Ch. I (7-1-10 Edition)

**PART 22—CONSOLIDATED RULES
OF PRACTICE GOVERNING THE
ADMINISTRATIVE ASSESSMENT OF
CIVIL PENALTIES AND THE REV-
OCATION/TERMINATION OR SUS-
PENSION 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.