

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
2012 DEC 11 AM 9:52
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

Coyote Creek Mutual Domestic
Water Users Association,

Respondent

§ Docket No. SDWA-06-2011-1212
§
§
§ CONSENT AGREEMENT
§ AND
§ FINAL ORDER
§
§
§ Proceedings under Section
§ 1414(g)(3) of the Safe Drinking
§ Water Act, 42 U.S.C. § 300g-3(g)(3)

I. STATUTORY AUTHORITY

This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) pursuant to Section 1414(g)(3), 42 U.S.C. § 300h-2, of the Safe Drinking Water Act (“Act”). This CAFO is issued in accordance with 40 C.F.R. § 22.18, as set forth in the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. §§ 22.1 through 22.52.

II. CONSENT AGREEMENT

1. The EPA and Coyote Creek Mutual Domestic Water Users Association, (“Respondent”) (collectively, “Parties”) agree that settlement of this matter without litigation will save time and resources, that it is in the public interest, and that the entry of this CAFO is the most appropriate means of resolving this matter. Compliance with all terms of this CAFO resolves only those violations alleged by EPA in the Administrative Complaint (“Complaint”) issued on October 18, 2011.

2. Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the Complaint or this CAFO. This CAFO states a claim upon which relief may be granted.

3. Respondent expressly waives any right to a hearing regarding penalty assessment or any other issue of law or fact relevant to this proceeding. Respondent further waives all defenses which have been or could have been raised to the claims set forth in the previously issued Complaint and waives the right to judicial review of this administrative penalty assessment.

4. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

5. Coyote Creek Mutual Domestic Water Users Association is a “person,” as that term is defined at Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

6. At all times relevant, Respondent owned or operated a public water system (“PWS”), as defined by Section 1401(4) of the Act, 42 U.S.C. § 300f(4). The PWS is located in Quemado, Catron County, New Mexico and designated as PWS number NM3500402.

7. At all times relevant to the violations alleged herein, Respondent’s PWS was a “community water system” as defined by Section 1401(15) of the Act, 42 U.S.C. § 141.66.

8. At all times relevant to the violations alleged herein, Respondent’s PWS was subject to the requirements of the Total Coliform Rule (“TCR”) as described by 40 C.F.R. § 141.63, and the requirements of the Radionuclide Rule as described by 40 C.F.R. § 141.66.

9. On August 25, 2008, the EPA issued Administrative Order Docket No. SDWA-06-2007-1294 (“Order”) to Respondent, pursuant to EPA’s authority under Section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), citing violation of the TCR, the Radionuclides Rule, and public water system deficiencies. The EPA Order required Respondent to comply with the requirements of the TCR, the Radionuclides Rule in accordance with 40 C.F.R. § 141, and included corrective action requirements to address the water system deficiencies in order to protect the water system from potential contamination from the environment and/or wildlife and install a treatment technology to remove uranium and protect public health.

10. Pursuant to the EPA Order, Respondent violated the following requirements:

- 1) exceeded the maximum contaminant level (“MCL”) for total coliform set forth in 40 C.F.R. § 141.63 on monthly routine samples, special monitoring samples, and repeat water samples on August 2006, December 2006, March 2007, July 2007, August 2007, September 2007, August 2008, August 2010;
- 2) exceeded the MCL for uranium set forth in 40 C.F.R. § 141.66 on January 2006, January 2007, April 2007, October 2007, January 2008, April 2008, July 2008, October 2008, January 2009, April 2009, October 2009, January 2010, April 2010, July 2010, and October 2010;
- 3) failed to provide the chlorine contact time to achieve 4 log treatment for viruses;
- 4) failed to provide a corrective action plan which would achieve and assure 99.99% (4 log) inactivation of viruses from all chlorinators at maximum flow if the Coyote Creek does not meet 4 log; and
- 5) failed to meet the milestones and timelines set forth in the Order which would have addressed water system deficiencies in order to comply with the TCR. This included protecting wells and storage tanks by installing 6’ fences and burying transmission lines at Well #2, Snell Well, and Homestead Well.

11. Pursuant to Section 1414(g) of the Act, 42 U.S.C. § 300f et seq., Respondent is liable for an administrative civil penalty in an amount not to exceed \$37,500 for violation of the Order.

IV. PENALTY ORDER

12. Based on the foregoing stipulations, EPA, Region 6, having taken into account the factors used for assessment of civil penalties found in Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), hereby orders, and Respondent agrees, that Respondent shall pay to the United States a civil penalty in the amount of one thousand dollars (\$1,000.00) plus interest to settle the violations alleged in the Complaint.

13. Payments shall be made in accordance with the schedule in the table below with the first payment being made by December 1, 2012.

Payment	Date Due	Payment Amount	Principal	Interest	Principal Balance
1	February 1, 2013	83.79	\$82.93	\$0.86	\$917.07
2	March 1, 2013	83.79	83.03	0.76	834.04
3	April 1, 2013	83.79	83.07	0.72	750.97
4	May 1, 2013	83.79	83.16	0.63	667.81
5	June 1, 2013	83.79	83.21	0.58	584.60
6	July 1, 2013	83.79	83.29	0.50	501.31
7	August 1, 2013	83.79	83.40	0.39	417.91
8	September 1, 2013	83.79	83.43	0.36	334.48
9	October 1, 2013	83.79	83.51	0.28	250.97
10	November 1, 2013	83.79	83.57	0.22	167.40
11	December 1, 2013	83.79	83.65	0.14	83.75
12	January 1, 2014	83.79	83.75	0.07	-0-
Totals		\$1005.51	\$1000.00	\$5.51	

14. Each payment shall be made by one of the following methods:
- a. By mailing a bank check, cashier's check, or certified check payable to "Treasurer, United States," to the following address:

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

- b. By wire transfer to:

Federal Reserve Bank of New York
 ABA: 021030004
 Account Number: 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"

c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone: 314-418-1028

d. By credit card payments to <https://www.pay.gov/paygov/>

“In the Matter of Coyote Creek Mutual Domestic Water Users Association, Docket No. SDWA-06-2011-1212” should be clearly marked on the check, or other remittance, to ensure proper credit is given when payment is received.

15. Respondent shall send simultaneous notices of payments, including copies of each check or instrument of payment, to each of the following:

- a. Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- b. Chief, Water Legal Branch (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

16. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

17. If the United States does not receive payment within the thirty (30) days from the due date specified above, interest will accrue on the amount due from the due date at the current annual rate prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin, per annum, through the date of payment. Late payments and final payments shall include all accrued interest or penalties.

18. If all or part of a payment is overdue, EPA will impose a late-payment handling charge of fifteen dollars (\$15.00), with an additional delinquent notice charge of fifteen dollars (\$15.00) for each subsequent thirty (30)-day period. EPA will also apply a six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date. Penalties under other federal statutes for failure to make timely payment may also apply.

19. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest or penalties.

20. In the event a collection action is necessary, Respondent shall pay, in addition to any applicable penalty, fees, and interest described herein, all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder. In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO, shall not be subject to review.

V. GENERAL PROVISIONS

21. To execute this Agreement, Respondent shall sign and forward a copy of this CAFO, with original signature, to:

Ms. Ellen Chang-Vaughan
Office of Regional Counsel (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

22. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of any applicable permits or other requirements of the Act by actions under the authority of the Act, except as to any requirement to pay any penalty or perform any corrective action not described herein for the violations alleged in the Complaint.

23. The provisions of this CAFO shall be binding upon Respondent, its officers, directors, managers, agents, representatives, employees, successors and assignees. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO.

24. Each undersigned representative of the Parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms of this agreement and legally bind that party to it.

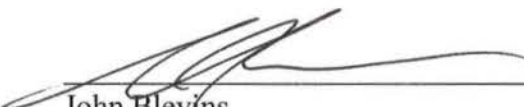
In recognition and acceptance of the foregoing:



For Coyote Creek Mutual Domestic
Water Users Association

11-18-12

Date



John Blevins
Director
Compliance Assurance and
Enforcement Division

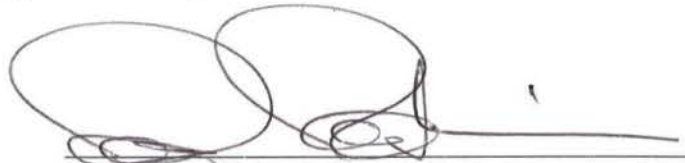
12-4-12

Date

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This CAFO shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO shall resolve only those causes of action alleged in the Complaint. Nothing in this CAFO shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations subject to this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 C.F.R. § 2231(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Issuance Date: 12-7-12



Regional Judicial Officer
EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December, 2012, the original of the foregoing CAFO was hand-delivered to the Regional Hearing Clerk (6RC-D), EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that true and correct copies were placed in the United States mail, first class, postage prepaid, addressed to each of the following:

Copy by certified mail
return receipt requested:

Ms. Elizabeth Thayer
Coyote Creek Mutual Domestic
Water Users Association
HC 32, Box 565
Quemado, NM 87829

Copy:

Ms. Margaret Ryan, Bureau Chief
Drinking Water Bureau
New Mexico Environment Department
525 Camino de los Marquez, Suite 4
Santa Fe, NM 87501

Copy hand-delivered:

Ms. Ellen Chang-Vaughan
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Date: 12/11/12

