



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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

Ref: 8ENF-L

SEP 25 2012

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

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

Re: Second Complaint and Notice of  
Opportunity for Hearing  
In the Matter of Hitching Post LLC  
Docket No. **SDWA-08-2012-0055**

Dear Ms. Kearns:

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

By law, you have 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 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. In your answer you may request a hearing. 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 your designated representatives may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty.

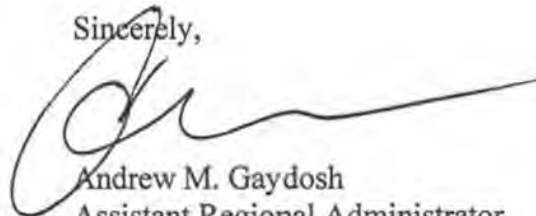
The EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. The issuance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

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 payment of 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 Sienna Meredith, who can be reached in the EPA Region 8 Montana Office at 1-866-457-2690, extension 5026 or (406) 457-5026, or Amy Swanson, Enforcement Attorney, who can be reached at 800-227-8917 extension 6906 or (303) 312-6906.

We urge your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew M. Gaydosh', with a long horizontal flourish extending to the right.

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

Enclosures

1. Administrative Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice (Complainant's Exhibit 1)

cc: Tina Artemis, Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2012 SEP 25 AM 8:26

FILED  
EPA REGION VIII  
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IN THE MATTER OF: )

Hitching Post, LLC )  
The Hitching Post )  
Melrose, MT )  
PWS ID #MT0002143, )

Respondent. )

Docket No. SDWA-08-2012-0055

**SECOND COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**COMPLAINT**

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

This Second 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.

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. (Complainant's Exhibit 1)

**GENERAL ALLEGATIONS**

The following general allegations apply to and are incorporated into each count in this Second Complaint:

1. Respondent Hitching Post, LLC (Respondent), is a limited liability company under the laws of the State of Montana (State), 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.

2. 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.

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" within the meaning of section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and a "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. 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 subject to the requirements of 40 C.F.R. part 141 (also known as the National Primary Drinking Water Regulations or NPDWRs) and the Administrative Rules of Montana (ARM), each of which is an "applicable requirement" as defined in section 1414(i) of the SDWA, 42 U.S.C. § 300g-3(i).

5. The source of the System's water is ground water supplied by a single well. The System was classified as a year-round system until October 2011, when the Montana Department of Environmental Quality (MDEQ) reclassified it as seasonal.

6. 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 applicable requirements.

7. The Order required Respondent to achieve compliance with the applicable requirements allegedly 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 report 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.

8. On December 19, 2007, EPA sent Respondent a "Violation of Administrative Order" letter citing the following noncompliance by Respondent with the Order and the applicable requirements: 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.

9. On October 7, 2008, EPA sent Respondent a "2<sup>nd</sup> Violation of Administrative Order" letter citing the following noncompliance by Respondent with the Order and the applicable requirements: 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.

10. On November 26, 2008, EPA filed a civil administrative Complaint and Notice of Opportunity for Hearing (Complaint) proposing a civil penalty for alleged violations of the Order and applicable requirements cited in the 1<sup>st</sup> and 2<sup>nd</sup> Violation of Administrative Order letters. The Complaint alleged: 1) failure to monitor for total coliform bacteria in September 2007, November 2007, January 2008, March 2008 and August 2008, and failure to report analytical results to EPA for the same time frames within the first 10 days of the end of the monitoring period; 2) failure to report noncompliance with total coliform rule to EPA; and 3) failure to provide public notice for the violations included in the Administrative Order and the September 2007 total coliform failure to monitor violation. The Complaint proposed a civil penalty.

11. On March 24, 2009, the presiding officer issued a Final Order approving a Consent Agreement filed by EPA and the Respondent resolving the violations alleged in the Complaint. The Order remains in full force and effect.

12. On March 9, 2010, EPA sent Respondent a "3<sup>rd</sup> Violation of Administrative Order" letter citing the following noncompliance by Respondent with the Order and the applicable requirements: 1) failure to monitor for total coliform bacteria and/or report the results to EPA and the State in November 2009; and 2) failure to report to EPA the November 2009 total coliform monitoring violation.

13. On March 2, 2011, EPA sent Respondent a "4<sup>th</sup> Violation of Administrative Order" letter citing the following noncompliance by Respondent with the Order and the



applicable requirements: 1) failure to monitor for total coliform bacteria and/or report the results to EPA and the State in December 2010; and failure to report to EPA the December 2010 total coliform monitoring violation.

14. On October 3, 2011, EPA sent Respondent a "5<sup>th</sup> Violation of Administrative Order" letter citing the following noncompliance by Respondent with the Order and the applicable requirements: 1) failure to monitor for total coliform bacteria and/or report the results to EPA and the State in July 2011; 2) failure to report to EPA the July 2011 total coliform monitoring violation; and 3) failure to public notice for the November 2009 failure to monitor total coliform violation.

15. On July 25, 2012, EPA sent Respondent a "6<sup>th</sup> Violation of Administrative Order" letter citing the following noncompliance by Respondent with the Order and the applicable requirements: 1) failure to monitor for total coliform bacteria and/or report the results to EPA and the State in March 2012; 2) failure to report to EPA the March 2012 total coliform monitoring violation; and 3) failure to public notice the November 2009 failure to monitor total coliform violation.

16. Beginning March 2010, prior to issuing the 3<sup>rd</sup> Violation of Administrative Order letter, EPA sought to assist the Respondent with complying with the Order and the applicable requirements to prevent another penalty action. During several phone calls with Respondent's authorized representative Ms. Debra Kearns between 2010 and 2012, EPA provided sampling suggestions for improved compliance, provided lists of local contractors and water systems available for sampling assistance, identified labs in closer proximity to the Respondent, and

helped the Respondent re-designate the System as seasonal with the MDEQ based on Ms. Kearns' representation that the System does not regularly serve at least 25 persons daily between the months of November and February. EPA also notified Ms. Kearns that the Order would remain open and the Respondent at risk for another penalty if it did not consistently monitor for at least 18 months.

17. As of October 2011, MDEQ reclassified the system as seasonal and Respondent's monthly total coliform monitoring requirement was reduced to March through October beginning 2012.

18. Pursuant to section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), and 40 C.F.R. part 19, the Administrator may assess an administrative civil penalty not to exceed \$32,500 for each day of violation occurring after January 12, 2009, 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**

19. 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.



20. Section 17.38.215(1)(b) of the ARM 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.

21. 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).

22. Respondent failed to monitor the System’s water for contamination by total coliform bacteria and/or report analytical results to EPA within the first 10 days of the end of the monitoring period for the months of November 2008, November 2009, December 2010, July 2011, and March 2012, 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**

23. According to 40 C.F.R. § 141.21(g)(2), a public water system that has failed to comply with a coliform monitoring requirement under 40 C.F.R. § 141.21 must report the monitoring violation to EPA within 10 days after the system discovers the violation.

24. 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.

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

**Count III**  
**Failure to Provide Public Notice**

26. 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 any future NPDWR violation(s), 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).

27. The Respondent violated the Order and 40 C.F.R. §§ 141.31(d) and 141.201, et seq., by failing to provide timely public notice of the November 2009 total coliform monitoring violation included in the 3<sup>rd</sup> Administrative Order Violation letter. Respondent submitted a copy of the public notice to EPA on September 5, 2012, approximately 21 months past the due date of December 1, 2010.

**PROPOSED PENALTY**

This Second Complaint proposes that the EPA assess an administrative penalty against Respondent. The EPA is authorized to assess an administrative 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 may be up to \$32,500 (adjusted upwards for inflation from the original statutory amount of \$25,000 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 violations, 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 EPA at this time, the EPA proposes to assess an administrative civil penalty of \$3,485 against Respondent for its continued violations of the Order.

### 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 Second 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 Second Complaint agreeing to pay the full assessed penalty and may make the penalty payment within sixty (60) days of receiving this Second 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 Second Complaint and payable to "Treasurer, United States of America."

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

**US postal service mail:** US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

**Federal Express, Airborne,  
Or other commercial carrier:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

**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:

Sienna Meredith (8MO)  
U.S. EPA Region 8, Montana Office  
Federal Building  
10 W. 15<sup>th</sup> Street, Suite 3200  
Helena, Montana 59626

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply  
with the requirements of the SDWA and its implementing 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 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

In the Matter of Hitching Post LLC  
Second Complaint - 10

Second 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 Second Complaint is served. If this Second 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. 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 must be sent to:

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

A copy of the answer also must be sent to:

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

### 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 Second Complaint, Respondent may be subject to a default order requiring payment of the full penalty proposed in this Second 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 Second 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 Second Complaint shall constitute an admission of that allegation.**

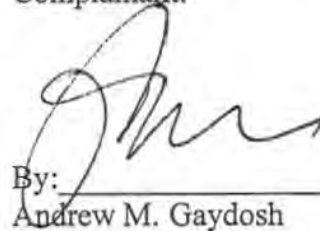
### SETTLEMENT CONFERENCE

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 enforcement attorney named above, who can also be reached by telephone at (303) 312-6906.



Dated this 25 day of September, 2012.

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



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

§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.

(1) 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.