

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 AUG 17 PM 1:03

FILED
EPA REGION VIII
HEARING CLERK

Docket No. SDWA-08-2010-0061

In the matter of:)
)
J-W Wireline Company)
)
)
)
Respondent.)

**ANSWER AND
REQUEST FOR HEARING**

J-W Wireline Company ("J-W"), through its attorneys, Welborn Sullivan Meck & Tooley, P.C., answers the Proposed Compliance Order, Penalty Complaint and Notice of Opportunity for Hearing ("Complaint") filed by the Environmental Protection Agency ("EPA") as follows:

GENERAL ALLEGATIONS

1. In response to paragraph 7 of the Complaint, J-W admits that it is a corporation doing business in the State of Colorado, but denies that it is an individual.
2. In response to paragraph 8, J-W admits that it is a "person" as defined in the Safe Drinking Water Act ("Act") and that it is subject to the requirements of the Act and regulations to the extent they apply, but otherwise denies the allegations of paragraph 8.
3. In response to paragraph 9, J-W admits that it leases and operates a facility located at 14291 Highway 14, but otherwise denies the allegations of paragraph 9.
4. J-W admits the allegations in paragraph 10.
5. In response to paragraph 11, J-W is without information sufficient to form a belief as to the truth of the allegations and legal conclusions of paragraph 11 and therefore denies the same.

6. In response to paragraph 12, J-W is without information sufficient to form a belief as to the truth of the allegations and legal conclusions of paragraph 12 and therefore denies the same.

7. In response to paragraph 13, J-W is without information sufficient to form a belief as to the truth of the allegations of paragraph 13 and therefore denies the same.

8. J-W denies the allegations of paragraph 14.

9. Except as expressly admitted above, J-W denies the allegations of the Complaint.

PROPOSED COMPLIANCE ORDER

10. In response to paragraph 15, J-W states that it has submitted to EPA, in writing, a schedule for permanently closing the septic system, and a plan for alternative disposal of the waste. J-W plans to permanently close the septic system and provide documentation of the closure to EPA.

PROPOSED CIVIL PENALTY

11. In response to paragraph 17, J-W submits that no penalty is appropriate because: (i) there has not been any damage to the environment; (ii) J-W has not gained any economic benefit; (iii) J-W has not had any past environmental violations; (iv) J-W has promptly and in good faith responded to EPA's request to close the septic system; and (v) J-W has fully cooperated with EPA's inspection and request to close the septic system.

AFFIRMATIVE DEFENSES

12. J-W asserts the affirmative defense of laches because J-W has suffered prejudice from the delay between the inspection in July 2009 and filing the Complaint in July 2010.

13. J-W asserts the affirmative defense of estoppel because J-W relied to its detriment on prior communications with EPA in not closing the septic system sooner than it did.

14. The claims against J-W should be dismissed and no penalty assessed because there is no impact to groundwater that may be a source of drinking water.

REQUEST FOR SETTLEMENT CONFERENCE

15. J-W requests a settlement conference for the parties to discuss the allegations, compliance and any penalty.

REQUEST FOR HEARING

16. J-W requests a hearing on this matter if it is not settled beforehand.

For the reasons set forth above, J-W requests that the Complaint be dismissed and that no penalty be assessed.

Dated: August 16, 2010

Respectfully submitted,

WELBORN SULLIVAN MECK & TOOLEY, P.C.

By: Stephen Bain

Stephen A. Bain, #18198
821 17th Street, Suite 500
Denver, CO 80202
303-830-2500

*Attorneys for Respondent
J-W Wireline Company*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ANSWER AND REQUEST FOR HEARING were hand delivered to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202, and to Andrew Gaydosh/Eduardo Quintana (Mail Code 8ENF-L), U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202.

August 17, 2010

Katherine E. Gifford
