



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

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EPA REGION VIII
HEARING CLERK

December 16, 2009

Ref: 8ENF-L

SENT VIA REGULAR MAIL

Bill and Hayli Thompson, Owners
The Ranch House of Dupuyer
P.O. Box 142
Dupuyer, MT 59432

Re: In the Matter of Ranch House of Dupuyer Water System
Docket No. SDWA-08-2009-0036

Dear Mr. and Mrs. Thompson:

This letter responds to your letter to Mr. Andrew M. Gaydosh of the U.S. Environmental Protection Agency Region 8 (EPA) dated March 23, 2009, concerning the Administrative Complaint (Complaint) issued in the above-referenced matter. Because the violations alleged in the Complaint occurred while the Ranch House of Dupuyer Public Water System (system) was open to the public and listed as "active" in the State of Montana's (State) database, the penalty of \$3,000 proposed in the Complaint remains due and owing. Please contact me at your earliest convenience to discuss possible options for resolving this matter.

EPA's interest in returning the system to compliance with the Safe Drinking Water Act (Act) and National Primary Drinking Water Regulations dates back to May 8, 2007. At that time, EPA issued a Notice of Violation informing the State that EPA planned to commence an enforcement action against the system for drinking water violations that occurred between 2005 and 2006. On June 27, 2007, EPA issued the system an Administrative Order for compliance only for violations in 2005, 2006, and 2007. The system was notified that if it complied with the Order for at least twelve 12 months EPA may close the Order. Because the system continued to violate the drinking water regulations as well as the requirements of the Order, EPA issued two separate Administrative Order Violation (AOV) letters on December 19, 2007, and November 20, 2008, respectively. The system's violations set forth in the AOV letters and beyond resulted in the filing of the Complaint and assessment of penalties on March 5, 2009.

Based on EPA's information as well as input from the State, the violations included in the Complaint occurred while the system was listed as an active system open to the public. Specifically, the Complaint alleges that you failed to monitor monthly for total coliform bacteria during September 2007, November 2007, December 2007, August 2008, and October 2008; failed to perform public notice for the 2005 violations set forth in the Order; and failed to report to EPA and the State within ten days after discovering the total coliform violations. Based on the statutory factors set forth at § 1414(b) of the Act, 42 U.S.C. § 300g-3(b), EPA proposed a penalty of \$3,000.

Your letter of March 23, 2009, states that the Ranch House of Dupuyer is no longer in operation, that the business closed and will not be reopening, and that you have not been in operation since the fire in January 2008. While the State deactivated the system based on your correspondence, this action does not affect or nullify the penalty assessed for past violations. As stated above, and more specifically in the Complaint, the majority of the violations included in the Complaint occurred in 2007. One violation occurred as far back as 2005. Per EPA's and the State's records, a regular inspection was conducted at the system on April 12, 2007, at which time the system was open. Although in defense of the September 2007 violation you told Ms. Pardue-Welch of EPA that the restaurant was closed, EPA has knowledge that the restaurant was open and serving the public from September through December 2007. The system was inspected again on January 2, 2008, at which time it was open. As a courtesy, the State voided the system's violations from January 2008 through March 2008 due to the fire at the end of January 2008. Following your notice to the State that the system resumed operating in April 2008, EPA has verified that the system remained open and subject to the drinking water regulations through November 2008. During that time period, the system experienced two additional failure to monitor total coliform and related reporting violations in August and October 2008, respectively.

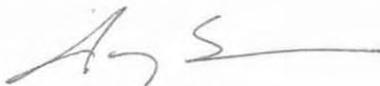
Please be aware that it is a system's responsibility to provide notice to the State and/or EPA of changes in its operating schedule that may impact the monitoring requirements. Please also be aware that while monitoring schedules may be adjusted to reflect seasonal operation, these changes may only be made if a system follows a regular, recurring annual operating schedule. Decisions to temporarily close a system at irregular times in the year do not warrant adjustments to a system's monitoring schedule or operational status. You never submitted a letter to EPA or requested that the State change the system's operation schedule as requested by Ms. Pardue-Welch when you spoke regarding the September 2007 violation. You also failed to complete and return to the State the inventory change sheet Sienna Paquin sent in March 2009 to document the change in the system's status from active to inactive. Prior to your March 23, 2009 communication with the State, the system did not qualify for permanent closure or deactivation. Because deactivation is not retroactive, you are responsible for the system's drinking water violations that occurred prior to the official deactivation date.

For the reasons stated above, the proposed penalty of \$3,000 remains owing. Although the thirty (30) day period set forth in the Complaint for filing an Answer expired in April 2009, EPA, subject to the presiding officer's approval, is willing to stipulate that your letter to Assistant Regional



Administrator Andrew M. Gaydosh suffices as an Answer. EPA also is willing to reduce the penalty to \$2,500 to expedite resolution of this matter. Please contact Ms. Pardue-Welch at 800-227-8917, extension 6983, or myself at 800-227-8917, extension 6906, if you have any questions. I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Amy Swanson', with a long horizontal line extending to the right.

Amy Swanson
Senior Enforcement Attorney
Office of Enforcement, Compliance
and Environmental Justice

cc: Tina Artemis, Regional Hearing Clerk

