

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 MAY -7 PM 3:25

Docket No.: SDWA-08-2007-0094

In the Matter of:)

Nancy Haugan d/b/a)
Mountain Vista Veterinary Services)

Respondent.)

**UNOPOSED MOTION TO
AMEND THE COMPLAINT**

The United States Environmental Protection Agency, Region 8 (EPA), by its undersigned attorney, with the concurrence of Ms. Elizabeth A. O'Halloran, counsel for Nancy Haugan d/b/a Mountain Vista Veterinary Services, hereby moves to amend the complaint in this action and such amended complaint is attached hereto.

The following are the substantive changes from the original complaint filed by EPA on September 27, 2007:

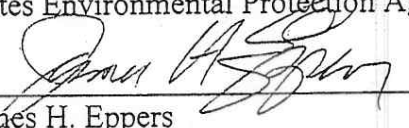
1. The caption has been changed to identify the correct entity as Respondent (see Paragraph 2 of Respondent's Answer dated November 1, 2007) and is now Valley Enterprises d/b/a Mountain Vista Veterinary Services, also represented by Ms. O'Halloran;
2. Paragraph 3 has been changed to identify the correct Respondent;
3. Paragraph 5 has been changed to reflect that pursuant to 40 C.F.R. §22.14 the Answer for an amended complaint is due within 20 calendar days from date of receipt;
4. Paragraph 7 has been changed to describe the correct Respondent; and
5. Paragraph 27 has been changed to provide a more appropriate compliance date.

The parties have agreed in principle to settle this case and will use the time in which the Respondent has to Answer the Amended Complaint to work on the terms of the Consent Agreement.

RESPECTFULLY SUBMITTED this 7th day of May, 2008.

United States Environmental Protection Agency, Region 8

By: _____


James H. Eppers
Senior Enforcement Attorney
Counsel for EPA

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 MAY -7 PM 3:26

Docket No. SDWA-08-2007-0094

U.S. REGION VIII
HEARING CLERK

In the Matter of:)
)
Valley Enterprises d/b/a) **FIRST AMENDED**
Mountain Vista Veterinary Services) **PENALTY COMPLAINT AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**
)
Respondent)
)

INTRODUCTION

1. This civil administrative enforcement action is authorized by Congress in section 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water Act (the Act). 42 U.S.C. § 300h-2(c). The Environmental Protection Agency (EPA) regulations authorized by the Act are set out in part 144 of title 40 of the Code of Federal Regulations (40 C.F.R.), and violations of EPA regulations constitute violations of the Act. The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.
2. The undersigned EPA official has been properly delegated the authority to issue this First Amended Penalty Complaint and Notice of Opportunity for Hearing (complaint).
3. EPA alleges that Valley Enterprises d/b/a Mountain Vista Veterinary Services (hereinafter referred to as "Respondent" or "Mountain Vista Veterinary Services") has violated the regulations and therefore the Act and proposes the assessment of a civil penalty and compliance measures, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge to disagree with any factual allegation made by EPA in the complaint or the appropriateness of the proposed penalty, or to present the grounds for any legal defense it may have.

5. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Region 8 Hearing Clerk at the following address:

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

within 20 calendar days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in the answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 20 CALENDAR DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.

SETTLEMENT NEGOTIATIONS

6. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact the attorney listed at the end of this complaint. **Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action, and to each violation of this complaint:

7. The Respondent is a Montana corporation which does business in the State of Montana under the assumed business name of Mountain Vista Veterinary Services.

8. Respondent is a "person" as defined in the Act, and therefore subject to the requirements of the statute and/or regulations. 42 U.S.C. § 300f (11).

9. Respondent owns and operates a Class V well located at 551 Highway 37 in Eureka, Montana (facility).
10. The Class V well is located in the facility's x-ray room where the floor drain is connected to a septic system.
11. Authorized EPA employees entered the facility with the consent of Respondent on October 4, 2004 to inspect it for compliance with the law. For the purposes of this complaint, as of that date, Respondent owned and was operating a "Class V Injection Well" as defined by 40 C.F.R. § 144.6 and § 146.5.
12. Respondent is subject to the applicable Underground Injection Control (UIC) requirements of 40 C.F.R. §§ 124, 144 and 146.
13. By letter dated November 22, 2005, EPA directed Respondent to either permit or close the well by March 9, 2006.
14. On June 14, 2006, authorized EPA employees entered the facility with the consent of Respondent to inspect it for compliance with the law. This inspection revealed that the Class V system was still in use.
15. On June 14, 2006, Respondent admitted to an EPA representative that she did not respond to the November 22, 2005 letter.
16. On August 16, 2006, authorized EPA employees entered the facility with the consent of Respondent to inspect it for compliance with the law. This inspection revealed that the Class V system was still in use. EPA representatives told Respondent that she was to have stopped disposing of x-ray processing waste fluids into the Class V system in March of 2006, and she must submit a proposal to EPA as to how she was going to dispose of these fluids.
17. On September 5, 2006, EPA received a letter from Respondent stating that Mountain Vista Veterinary Services "purchased chemgone [sic] fixer and developer disposal system and will use those to dispose of our used fixer and developer until we get the automatic processor...At that time we will contract with Montana Territory Xray Inc. to service the processor and dispose of used processor fluids."
18. By Information Request authorized by section 1445 of the Safe Drinking Water Act, 42 U.S.C. § 300j-4 and 40 C.F.R. § 144.17, dated May 8, 2007, EPA directed Respondent to provide information concerning the operation of Mountain Vista Veterinary Services Class V disposal system.

19. On June 1, 2007, EPA received a response to the May 8, 2007 Information Request. Included in this response were copies of invoices showing that Mountain Vista Veterinary Services purchased Chemgon on August 29, 2006 and purchased and installed an automatic x-ray processor on September 15, 2006.

20. On September 20, 2007, an EPA employee contacted Respondent by telephone. Respondent stated that Mountain Vista Veterinary Services purchased the Chemgon system to use until the automatic x-ray processor was purchased and installed. She stated that Mountain Vista Veterinary Services discontinued use of the Chemgon system when the automatic x-ray processor was put into use. Additionally, Respondent stated that Mountain Vista Veterinary Services was, at that time, pouring used fixer and developer through a silver recovery bucket and then discharging the filtered fluids into its septic system.

21. As of September 20, 2007, Respondent has not permitted or closed the well as directed by EPA in its November 22, 2005 letter.

22. Lying underneath the disposal system are underground sources of drinking water (USDWs), including but not limited to unconsolidated sand and gravel aquifers approximately 100 to 200 feet below land surface.

23. Respondent's owning and/or operating of the well is in violation of EPA regulations and therefore the Act, 42 U.S.C. § 3000h-2 (c)(1), as follows:

- for owning and/or operating, and maintaining a Class V disposal facility from March 9, 2006 through September 20, 2007 which, through injection activity, allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 C.F.R. part 142 or may otherwise adversely affect the health of persons. 40 C.F.R. §144.12(a) and 40 C.F.R. §144.82(a)(1); and
- for failure from March 9, 2006 through September 20, 2007 to close or retrofit the Class V disposal system in a manner that would keep contaminants from entering a USDW. 40 C.F.R. §144.12(c)(1) and (2) and 40 C.F.R. §144.88(b).

PROPOSED CIVIL PENALTY

24. For an administrative proceeding, the Act authorizes the assessment of a civil penalty of up to \$11,000.00 per day, for each violation of the Act, up to a maximum of \$157,500.00. 42 U.S.C. § 300h-2(c)(1). The Act requires EPA to take into account the

following factors in assessing a civil penalty: the seriousness of the violations, the economic benefit resulting from the violations, any history of the Respondent of such violations; any good-faith efforts to comply with the Act's requirements, the economic impact on the violator, and such other matters as justice may require. 42 U.S.C. § 300h-2(c)(4)(B)

25. In light of the statutory factors and the specific facts of this case, EPA proposes that the Respondent be ordered to pay a penalty of twenty-nine thousand nine hundred dollars (\$29,900.00) for owning and operating the prohibited Class V well, as explained below:

Seriousness of the Violations

Respondent's owning and operating the prohibited Class V well is serious because the injection of dangerous x-ray processing constituents have been shown to be hazardous to human health and the environment and can render an underlying USDW unfit for human consumption. The more than 18 month duration of noncompliance makes it even more serious. Respondent has been responsible for maintaining compliance and has been in complete control of the facility from the effective date of the program, for purposes of calculating a proposed penalty. Despite this, for penalty purposes EPA is only considering Respondent's non-compliance from the required closure date of March 9, 2006 (specified in the Permit or Close Letter dated November 22, 2005) through the date by which we estimate Respondent will document the closure of the system (October 15, 2007).

Economic Benefit

Respondent enjoyed a minimal economic benefit by not expending money to come into compliance.

Prior Compliance History

EPA Region 8 has not taken any prior formal enforcement actions against Respondent requiring compliance with applicable UIC regulations.

Good-Faith Efforts to Comply

Given the relatively low cost of coming into compliance, together with the fact that Respondent has had over 18 months to come into compliance after formal notice and has still not yet done so, EPA did not reduce the proposed penalty for this factor.

Economic Impact on Respondent

Because little information is available at this time to document financial status, and the EPA's knowledge of the facility and surrounding area indicates it is a small business, EPA did reduce the proposed penalty due to this factor. EPA will consider information Respondent may present regarding Respondent's ability to pay the proposed penalty.

Other Matters that Justice May Require

EPA has made no additional adjustments to the penalty based on this factor.

26. Respondent's payment of the penalty shall be made by money order or certified check made payable to "Treasurer, United States of America" and mailed to the following address:

EPA - Region 8
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

A copy of said check shall be mailed to the following address:

Jim Eppers (8ENF-L)
Senior Enforcement Attorney
U.S. EPA - Region 8
1595 Wynkoop Street
Denver, Colorado 80202

PROPOSED COMPLIANCE ORDER

27. Respondent shall comply with the following:

By no later than June 2, 2008, Respondent shall submit to EPA a written plan and schedule for either the permanent closure of the well or the alternative disposal of the waste in accordance with the requirements of 40 C.F.R. § 144.12 (a), (c), and (d). EPA will promptly review the proposed plan and schedule and either approve them or provide Respondent with written comments. Once the Respondent has

permanently closed the well or started alternative disposal of the waste, Respondent must provide to EPA written evidence that the closure of the well was completed or the alternative disposal has been implemented.

28. Respondent shall submit all documentation to:

Britta Campbell Copt (MC 8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

GENERAL PROVISIONS

29. As required by the Act, prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for people to comment on the matter, and present evidence in the event a hearing is held. 42 U.S.C. § 300h-2(c)(3)(B).

30. The Presiding Officer will not be bound by EPA's penalty policy or the penalty proposed by EPA, and may assess a penalty above the proposed amount, up to \$11,000 per day per violation as authorized in the statute.

31. To discuss settlement or ask any questions you may have about this case or process, please contact Jim Eppers, Enforcement Attorney, at 303-312-6893, or the address below.

Complainant
United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice
1595 Wynkoop (ENF-L)
Denver, CO 80202

Date: _____

5/7/08

By: _____

Michael T. Resner
for

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

Nancy Haugan d/b/a/ Mountain Vista Veterinary Services.
Docket No. SDWA-08-2007-0094

CERTIFICATE OF SERVICE

I hereby certify that the original and one true copy of this Unopposed Motion to Amend the Complaint (with the signed First Amended Penalty Complaint and Notice of Opportunity for Hearing attached to the motion) were hand carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street Denver, Colorado, and that a true copy of the same was hand-carried to the:

Presiding Judicial Officer
EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and that a true copy was sent via Certified Mail Return Receipt Requested to counsel for both Nancy Haugan d/b/a/ Mountain Vista Veterinary Services and Valley Enterprises d/b/a Mountain Vista Veterinary Services:

Elizabeth A. O'Halloran
Milodragovich, Dale, Steinbrenner & Nygren, P.C.
620 High Park Way
P.O. Box 4947
Missoula, MT 59806-4947

Dated: May 7, 2008

By: Judith McTernan
Judith McTernan