



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET  
DENVER, COLORADO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

Ref: 8ENF-T

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

AUG 18 2008

Bitterroot Ranch, LLC  
Addison E. Winter, Registered Agent  
205 South Broadway  
Riverton, WY 82501

Mel and Bayard Fox, Operators  
1480 East Fork Road  
Dubois, WY 82513

Re: Complaint and Notice of  
Opportunity for Hearing  
Docket No. **SDWA-08-2008-0090**

Dear Mr. Winter and Ms. and Mr. Fox:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against Bitterroot Ranch, LLC and Mel and Bayard Fox ("Bitterroot Ranch") under section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C § 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that Bitterroot Ranch failed to comply with an Administrative Order, Docket No. SDWA-08-2004-0027, issued on May 25, 2004, under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g). The violations are specifically set out in the complaint.

By law, Bitterroot Ranch has 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 Bitterroot Ranch does 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 Bitterroot Ranch's answer it may request a hearing. Bitterroot Ranch has the right to be represented by an attorney at any stage of these proceedings.

Whether or not Bitterroot Ranch requests a hearing, its representatives may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty.

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 consent agreement shall constitute a waiver of Bitterroot Ranch's right to request a hearing on any matter to which it has stipulated in that agreement.



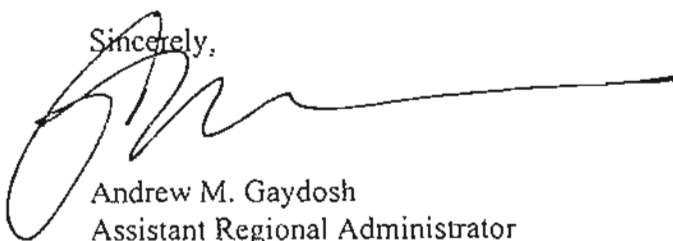
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A request for an informal conference does not extend the 30-day period during which Bitterroot Ranch must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kathelene Brainich, Environmental Protection Specialist, who can be reached at 800/227-8917 extension 6481, or Jean Belille, Enforcement Attorney, who can be reached at 800/227-8917 extension 6556.

We urge your prompt attention to this matter.

Sincerely,



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

Enclosure

cc: WY DEQ  
WY DOH



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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IN THE MATTER OF )  
 )  
Bitterroot Ranch, LLC )  
Mel Fox and Bayard Fox, Operators )  
Dubois, Wyoming )  
 ) Docket No. SDWA-08-2008-0090  
 )  
Respondents, ) **COMPLAINT AND NOTICE OF**  
 ) **OPPORTUNITY FOR HEARING**  
Proceedings under section 1414(g) )  
of the Safe Drinking Water Act, )  
42 U.S.C. § 300g-3(g) )  
\_\_\_\_\_ )

**COMPLAINT**

This civil administrative Complaint and Notice of Opportunity for Hearing (complaint) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by section 1414(g)(3) of the Safe Drinking Water Act, as amended (the SDWA), 42 U.S.C. § 300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes the Administrator of the EPA to assess an administrative civil penalty against any person who violates, or fails or refuses to comply with, an order issued under section 1414(g)(1) of the SDWA.

The complainant in this action is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is subject to 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 (Consolidated Rules of Practice)(Complainant’s Exhibit 1).

### GENERAL ALLEGATIONS

The following general allegations apply to each count of this complaint:

1. Bitterroot Ranch, LLC is a corporation under the laws of the State of Wyoming as of December, 1995 and therefore a “person” as that term is defined in section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2. Mel Fox and Bayard Fox are individuals and therefore “person(s)” as that term is defined in section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. Bitterroot Ranch, LLC, and Mel and Bayard Fox (“Respondents”) own and/or operate a system, the Bitterroot Ranch Water System (the “System”), located in Fremont County, Wyoming 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” as that term is defined in 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. As an owner and/or operator of a public water system, Respondents are a “supplier of water” as that term is defined in section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondents are therefore subject to the

requirements of part B of the SDWA, 42 U.S.C. § 300g et seq., and its implementing regulations, 40 C.F.R. part 141 (also known as the “National Primary Drinking Water Regulations” or “NPDWRs”).

5. The source of the System’s water is ground water from five wells. The System serves an average of approximately 20 transient persons and 20 staff per year from early May through late September, and 2 year-round residents, through 16 service connections.
6. On May 25, 2004, in accordance with section 1414(g) of the SDWA, 42 U.S.C. §§ 300g-3(g), the EPA issued an Administrative Order, Docket No. SDWA-08-2004-0027 (the “Order”) to Respondents, citing violations of the NPDWRs.
7. A copy of the Order is attached to this complaint (Complainant’s Exhibit 2).
8. By letter dated August 16, 2006, EPA notified the Respondents that they were in violation of the Order.
9. A copy of the August 16, 2006 letter is attached to this complaint (Complainant’s Exhibit 3).

### **COUNTS OF VIOLATION**

#### **Count I**

#### **Failure to Monitor for Total Coliform Bacteria**

1. 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.

2. Page 11 of the Order, paragraph 1 of the Order section, requires Respondents to comply with the total coliform bacteria monitoring requirements of 40 C.F.R. § 141.21.
3. The Respondents' sampling requirements changed over time, and include the following frequency during the open season (May through September): during the 2006 season, Respondents were required to collect four samples each quarter. During the 2007 season, Respondents were required to collect one sample per month. During the 2008 season, Respondents were required to collect three samples per month.
4. During the 2006 season, (May through September) Respondents failed to monitor the System's water for total coliform bacteria contamination during the 2<sup>nd</sup> quarter (May through June) in violation of the Order and 40 C.F.R. § 141.21.
5. During the 2007 season, (May through September) Respondents failed to monitor the System's water for total coliform bacteria contamination in June in violation of the Order and 40 C.F.R. § 141.21.
6. During the 2008 season (May through September) Respondents failed to monitor the System's water for total coliform bacteria contamination in May and June in violation of the Order and 40 C.F.R. § 141.21.

**Count II**

**Failure to Report Total Coliform Monitoring Requirements**

1. According to 40 C.F.R. § 141.21 (g) (2) a public water system which has failed to comply with a coliform monitoring requirement must report the monitoring violation to the EPA within 10 days after the system discovers the violation.
2. Page 13 of the Order, in paragraph 4 of the Order section, requires Respondents to comply with the reporting requirements of 40 C.F.R. § 141.21 (g) (2) for coliform bacteria monitoring.
3. Respondents failed to report the total coliform bacteria monitoring violations during the 3<sup>rd</sup> quarter of 2006, June of 2007, and May and June in 2008, in violation of the Order and 40 C.F.R. § 141.21 (g) (2).

**Count III**

**Failure to Provide Public Notice**

1. According to 40 C.F.R. §§ 141.201 et seq. each owner or operator of a public water system must give notice for all violations of national primary drinking water regulations.
2. Pages 11 and 12 of the Order, paragraph 3 of the Order section, require Respondents to provide public notice of any national primary drinking water regulation violations.
3. Respondent failed to provide public notice for the failure to monitor for total coliform bacteria violation during the 3<sup>rd</sup> quarter of 2006 in violation of the Order and 40 C.F.R. §§ 141.201 et seq.

**Count IV**  
**Failure to Report Violations of NPDWRs**

1. According to 40 C.F.R. § 141.31(b) a supplier of water must report to the EPA within 48 hours the failure to comply with any national primary drinking water regulation.
2. Page 13 of the Order in paragraph 5 of the Order section, requires Respondents to report any failure to comply with any national primary drinking water regulation.
3. Respondents failed to provide public notice of the 2006 3<sup>rd</sup> quarter total coliform monitoring violation, and failed to report this violation to the EPA within 48 hours in violation of the Order and 40 C.F.R. § 141.31(b).

**PROPOSED ADMINISTRATIVE CIVIL PENALTY**

This complaint proposes that EPA assess an administrative penalty from Respondents. EPA is authorized to assess an administrative penalty according to section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3) for violation of an administrative order issued under section 1414(g)(1) of the SDWA. The amount may be up to \$27,500.<sup>1</sup>

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 violation, the population at risk, and other appropriate factors, including Respondents' degree of willfulness and/or

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<sup>1</sup>The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19.



negligence, history of noncompliance, if any, and ability to pay, as known to EPA at this time, EPA proposes to assess an administrative civil penalty of \$1,825 against Respondents for their violations of the Order.

#### **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), Respondents have the right to request a public hearing to contest any material fact alleged in this 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 Respondents wish to request a hearing, Respondents must file a written answer in accordance with 40 C.F.R. §§ 22.15 and 22.42 within thirty (30) calendar days after this complaint is served. If this complaint is served by mail, Respondents have an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.7(c), in which to file its answer.

If Respondents request 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, Respondents have 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"). 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. Upon such request, the Regional Hearing Clerk will recaption the pleadings and documents in the record as necessary. (~~See~~ 40 C.F.R. § 22.42.) 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 of the answer must be sent to the EPA Regional Hearing Clerk, whose name and address are listed below, and one copy must be sent to the attorney whose name and address are provided in the signature block at the end of this complaint:

Tina Artemis  
Region 8 Hearing Clerk (8RC)  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, Colorado 80202

#### **FAILURE TO FILE AN ANSWER**

**If Respondents do not file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this complaint, Respondents may be subject to a default order requiring payment of the full penalty proposed in this complaint.**

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 complaint with regard to which Respondents have any knowledge. The answer must state (1) any circumstances or arguments which the Respondents allege to constitute grounds of defense, (2) any facts the Respondents dispute, (3) whether and on what basis the Respondents oppose the proposed penalty, and (4) whether the Respondents request a hearing. **Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of that allegation.**

#### **SETTLEMENT CONFERENCE**

EPA encourages exploring settlement possibilities through an informal settlement conference. Filing an answer does not preclude settlement negotiations. **However, failing to file a timely answer**

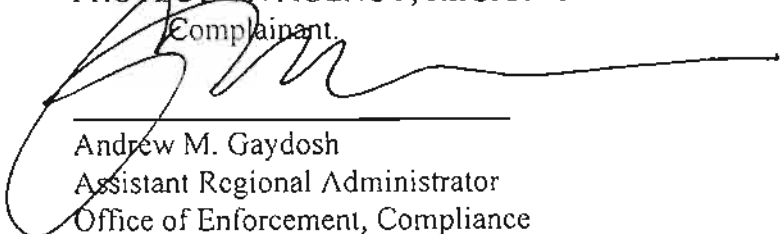
may lead to a default order, even if Respondents request, schedule, or participate in a settlement conference.

If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Presiding Officer. A request for a settlement conference, or any questions that Respondents may have regarding this complaint, should be directed to the attorney named below.


Dated this 17<sup>th</sup> day of August, 2008.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8

Complainant



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



Jean Belille,  
Enforcement Attorney  
Office of Enforcement, Compliance  
and Environmental Justice  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202  
Telephone Number: (303) 312-6556  
Facsimile Number: (303) 312-7519

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with all Exhibits 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 sent to the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Bitterroot Ranch, LLC  
Addison E. Winter, Registered Agent  
205 South Broadway  
Riverton, WY 82501

Mel and Bayard Fox, Operators  
1480 East Fork Road  
Dubois, WY 82513

Date: 8/19/08

By: Judith M. McTernan  
Judith McTernan