



January 31, 2017

Mac Smith, Acting Mayor
Town of Whitehall
P.O. Box 529
Whitehall, MT 59759

RE: Executed Administrative Order on Consent, Docket No. PWS-16-13, to address violations of the Public Water Supply Laws at The Town of Whitehall public water supply system (PWSID MT0000359; FID 2488)

Dear Mayor Smith:

The Department of Environmental Quality has received your signed Administrative Order on Consent (Consent Order). Enclosed for your records is a fully executed copy of the Consent Order to address the public water supply violations that occurred at the above-referenced public water supply system. Please note that the effective date of the Consent Order is January 31, 2017

According to the terms of the Consent Order, the Town of Whitehall is required to complete corrective actions. Please refer to Section III of the Consent Order for a description of the required actions.

If you have any questions, please contact me at the phone number or email address listed below.

Sincerely,

A handwritten signature in black ink, appearing to read "John Rasmann", is written over a horizontal line.

John Rasmann
Environmental Enforcement Specialist
Enforcement Division
(406) 444-5328; Fax (406) 444-1923
Email: jrasmann2@mt.gov

Enclosure

cc w/enc via email: Aaron Pettis, DEQ Legal Unit
Jon Dilliard/Andrea Vickory, DEQ PWSSB
Carson Coate, EPA-Montana
Jefferson County Sanitarian
Matt Haus, GNP Law

A xibn999A

1 BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

2 OF THE STATE OF MONTANA

3 IN THE MATTER OF:
4 VIOLATIONS OF THE PUBLIC WATER SUPPLY
5 LAWS BY THE TOWN OF WHITEHALL AT THE
6 TOWN OF WHITEHALL PUBLIC WATER
SUPPLY, PWSID MT0000359, WHITEHALL,
JEFFERSON COUNTY, MONTANA (FID 2488)

ADMINISTRATIVE ORDER ON
CONSENT

Docket No. PWS-16-13

7 **I. NOTICE OF VIOLATION**

8 Pursuant to the authority of Section 75-6-109(1), Montana Code Annotated (MCA), the
9 Department of Environmental Quality (Department) hereby gives notice to the Town of
10 Whitehall (Whitehall) of the following Findings of Fact and Conclusions of Law with respect to
11 violations of the Public Water Supply Laws (PWSL) (Title 75, chapter 6, part 1, MCA) and
12 Administrative Rules of Montana (ARM) (Title 17, chapter 38) adopted thereunder.

13 **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

14 The Department hereby makes the following Findings of Fact and Conclusions of Law:

- 15 1. The Department is an agency of the executive branch of government of the State
16 of Montana, created and existing under the authority of Section 2-15-3501, MCA.
- 17 2. The Department administers the PWSL.
- 18 3. Whitehall is a "person" as defined in Section 75-6-102(11), MCA.
- 19 4. Whitehall operates the public water supply system that serves the customers of the
20 Town of Whitehall (System), PWSID MT0000359, Whitehall, Montana. The System regularly
21 serves water to at least 25 persons daily for any 60 or more days in a calendar year. Whitehall is
22 therefore a "supplier of water" and subject to the requirements of the PWSL and the rules
23 adopted thereunder. ARM 17.38.202.

24 //

1 5. The System regularly serves water to at least 25 year-round residents. Therefore,
2 the system is a community water system within the meaning of Section 75-6-102, MCA.

3 6. The System is supplied by ground water with two active wells.

4 *Uranium maximum contaminant level (MCL) violation*

5 7. The MCL for uranium is 30 micrograms per liter ($\mu\text{g/l}$). ARM 17.38.206.

6 8. For systems monitoring more than once per year, compliance with the MCL is
7 determined by a running annual average at each sampling point. If the running annual average of
8 uranium at any sampling point is greater than the MCL, then the system is out of compliance
9 with the MCL. ARM 17.38.216(3)(c).

10 9. The Department notified Whitehall in writing on December 16, 2014 that the
11 System would be placed on quarterly monitoring for uranium for exceeding the MCL of 15
12 pCi/L for Gross Alpha.

13 10. On February 4, 2015, Whitehall collected a sample from the System at EP502
14 (Division Street Well) that contained a uranium concentration of 31 $\mu\text{g/l}$, and a sample from the
15 System at EP503 (Firehall Well) that contained a uranium concentration of 43 $\mu\text{g/l}$.

16 11. Considering the February 4, 2015 samples from EP502 and EP503, the System
17 exceeded the uranium MCL based on the running annual average at EP502 and EP503 for the
18 2nd, 3rd and 4th Quarter 2015, and the 1st and 2nd Quarter 2016 monitoring periods. The following
19 tables provide the uranium sample results from EP502 and EP503 that were reported to the
20 Department, along with the corresponding running annual averages:

21 //

22 //

23 //

24 //

Collection Point EP502		
Uranium Running Annual Average (RAA)		
Sample Date (Quarter)	Results (µg/l)	RAA (MCL 30 µg/l)
2/4/2015 (1 st Quarter)	31	---
4/22/2015 (2 nd Quarter)	31.2	---
7/21/2015 (3 rd Quarter)	45	35.7
11/17/2015 (4 th Quarter)	35	38.3
2/8/2016 (1 st Quarter)	31	37
5/17/2016 (2 nd Quarter)	31	32.3

Collection Point EP503		
Uranium Running Annual Average (RAA)		
Sample Date (Quarter)	Results (µg/l)	RAA (MCL 30 µg/l)
2/4/2015 (1 st Quarter)	43	---
4/22/2015 (2 nd Quarter)	38.1	---
7/21/2015 (3 rd Quarter)	51	44
11/17/2015 (4 th Quarter)	38.1	45
2/8/2016 (1 st Quarter)	43	44
5/17/2016 (2 nd Quarter)	46	42.3

12. The Department notified Whitehall in writing on August 25, September 8, and December 30, 2015, and March 3, and May 17, 2016 that the System had exceeded, and thus violated, the uranium MCL based on the running annual averages during the 3rd and 4th Quarters of 2015, and the 1st and 2nd Quarter 2016 monitoring periods. The letters advised Whitehall that it was required to continue monitoring the System quarterly for uranium and to implement a corrective action to reduce uranium levels below the MCL.

13. Whitehall violated ARM 17.38.206 four times by exceeding the MCL for uranium during the 3rd and 4th Quarter 2015, and the 1st and 2nd Quarter 2016 monitoring periods.

III. ADMINISTRATIVE ORDER ON CONSENT

This Administrative Order on Consent (Consent Order) is issued to Whitehall pursuant to the authority vested in the State of Montana, acting by and through the Department under the PWSL, Section 75-6-101, *et seq.*, MCA, and administrative rules adopted thereunder, ARM Title

1 | 17, chapter 38. NOW, THEREFORE, THE DEPARTMENT ORDERS AND WHITEHALL

2 | AGREES AS FOLLOWS:

3 | 14. Within 60 days after the effective date of this Consent Order, Whitehall shall
4 | submit to the Department for its review and approval, a compliance plan and schedule (Plan) to
5 | come into compliance with the uranium MCL. The Plan must include an implementation
6 | schedule for the chosen corrective action and a final compliance date. The Plan shall be sent to:

7 | John Rasmann
8 | Enforcement Division
9 | Department of Environmental Quality
10 | 1520 East Sixth Avenue
11 | P.O. Box 200901
12 | Helena, MT 59620-0901

11 | 15. The Department shall review the Plan for approval and provide written comments
12 | to Whitehall. Whitehall shall respond to any noted deficiencies in the Plan and resubmit the Plan
13 | by the date specified in the Department's review letter. Whitehall may not start construction or
14 | installation of any corrective action prior to receiving written approval from the Department.

15 | 16. Compliance actions and dates from the Department-approved Plan will be
16 | incorporated by reference into this Consent Order as enforceable requirements as of the date of
17 | written notification from the Department to Whitehall.

18 | 17. Any modifications to the System must be conducted in accordance with ARM 17.38.101,
19 | *et seq.*, including but not limited to, the submittal of a design report, plans, specifications, as-built
20 | drawings, and an engineer's certification letter.

21 | 18. Whitehall must achieve compliance with the uranium MCL by the final compliance date
22 | specified in the Department-approved Plan. If implementation of the Plan fails to achieve compliance
23 | with the uranium MCL by the compliance date, the Department will require Whitehall to implement
24 | additional corrective action under this Consent Order.

1 19. If any event occurs that may prevent Whitehall from meeting a compliance deadline
2 required by this Consent Order, Whitehall shall notify the Department in writing within ten (10) days
3 after Whitehall becomes aware of the event. The notice of delay must include: (a) an explanation of the
4 reasons for the delay; (b) the expected duration of the delay; and (c) a description of all action taken or
5 to be taken to prevent or minimize the delay and a schedule for implementation of those actions. The
6 notice must be sent to the address listed in Paragraph 14.

7 20. The Department shall review any notices of delay sent by Whitehall under Paragraph 19
8 and if appropriate, modify the Department-approved Plan.

9 **IV. CONSENT TO ADMINISTRATIVE ORDER**

10 21. Whitehall waives the right to administrative appeal or judicial review of the
11 Findings of Fact and Conclusions of Law and Administrative Order on Consent set forth herein
12 and agrees that this Consent Order is the final and binding resolution of the issues raised.

13 22. The terms of this Consent Order constitute the entire agreement between the
14 Department and Whitehall with respect to the issues addressed herein notwithstanding any other
15 oral or written agreements and understandings made and entered into between the Department
16 and Whitehall prior to the effective date of this Consent Order.

17 23. Except as herein provided, no amendment, alteration, or addition to this Consent
18 Order shall be binding unless reduced to writing and signed by both parties.

19 24. Each of the signatories to this Consent Order represents that he or she is
20 authorized to enter into this Consent Order and to bind the parties represented by him or her to
21 the terms of this Consent Order.

22 25. None of the requirements in this Consent Order are intended to relieve Whitehall
23 from the obligation to comply with all applicable state, federal, and local statutes, rules,
24 ordinances, orders, and permit conditions

1 26. Whitehall agrees to waive defenses based upon the statute of limitations for the
2 violations alleged herein and not to challenge the Department's right to seek judicial relief in the
3 event Whitehall fails to fully and satisfactorily comply with the terms of this Consent Order.

4 27. Failure to fulfill the requirements of this Consent Order by the specified
5 timeframes, as ordered herein, constitutes a violation of Title 75, chapter 5, part 6, MCA, and
6 may result in the Department seeking a court order requiring additional corrective action and
7 assessing civil penalties.

8 28. Each party shall bear its own costs incurred in this action, including attorney fees.

9 29. This Consent Order becomes effective upon signature of the Department.

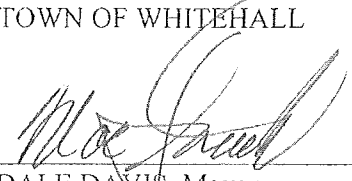
10 IT IS SO ORDERED:

IT IS SO AGREED:

11 STATE OF MONTANA
12 DEPARTMENT OF ENVIRONMENTAL QUALITY

TOWN OF WHITEHALL

13 
14 JOHN L. ARRIGO, Administrator
Enforcement Division


DALE DAVIS, Mayor

Mac Smith, Council President
Acting Mayor

15 1/31/17

01/25/17

Date

16 _____
17 Date

