

District Court, El Paso County, State of Colorado  
270 South Tejon  
Colorado Springs, CO 80903

**FILED Document**

**CO El Paso County District Court 4th JD**  
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**WOODMEN HILLS METROPOLITAN DISTRICT  
PLAINTIFF**

**V.**

**PAINT BRUSH HILLS METROPOLITAN DISTRICT  
DEFENDANT**

**▲ COURT USE ONLY ▲**

Case Number:

Div.:

Ctrm:

Peter M. Susemihl (#494)  
Jason Downie (27256)  
Susemihl, McDermott & Cowan, P.C.  
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**COMPLAINT**

COMES NOW the Plaintiff, above named, by and through its counsel Susemihl, McDermott & Cowan, P.C., and for it complaint in this matter states as follows:

1. The Plaintiff and the Defendant are both quasi-municipal corporations and political subdivisions of the State of Colorado formed pursuant to Title 32, Colorado Revised Statutes.
2. The Plaintiff and the Defendant are co-owners of the Paint Brush Hills Regional Waste Water Treatment Facility (“WWTF”) pursuant to an agreement dated February 25, 1988 (the “Agreement”).
3. The WWTF operates pursuant to the Colorado Discharge Permit System under Permit No. CO-0047091 (the “Discharge Permit”). This Discharge Permit is in the name of the Defendant although the Plaintiff operates and manages the same.

4. In 2007 and 2008 at the WWTF there were violations of the Discharge Permit where the WWTF exceeded BOD and Fecal Coliform Bacterial effluent limitations and the Defendant had received notice of significant non-compliance by the Colorado Department of Public Health and Environment. In 2008 as a condition of a permit extension to 2011 a compliance schedule was required and the Defendant has failed to meet this schedule.
5. On or about May 5, 2009 the Defendant was served with a Notice of Violation/Cease and Desist Order (a copy of which is attached) and unless the compliance schedule is met and followed, the Plaintiff and Defendant will face serious criminal and civil penalties.
6. The discharge violations are due to the fact that a 4<sup>th</sup> cell was required but never built by the Defendant. The Defendant refuses to pay for the cost of the installation of the 4<sup>th</sup> cell and has no money to do so.
7. The Plaintiff is prepared to design, construct, and finance the 4<sup>th</sup> cell which it has a right to do under the Agreement. The Plaintiff is also prepared to design, construct and finance a new treatment facility which will be required in 2011 when the present Discharge Permit expires.
8. The Agreement in Exhibit C guaranteed to the Plaintiff that the WWTF as designed would meet the treatment standards described in Exhibit C. The Defendant commissioned an engineering study in 1997 by Martin and Martin and their report confirms the need for a 4<sup>th</sup> cell. The WWTF cannot meet treatment standards stated in Exhibit C without the 4<sup>th</sup> cell and cannot operate legally as warranted in Exhibit C.
9. Exhibit D of the Agreement states that "If construction costs exceed the sums set forth in Exhibit D, those amounts will be paid by" the Defendant." Construction of the fourth cell would have exceeded those costs.
10. URS Engineering designed a 500,000 gallon per day expansion relying on the 1988 Agreement for treatment standards as stated in Exhibit C of the Agreement and relied upon the 1997 Martin and Martin Engineering study to put in the 4th cell and relied upon the Defendant to construct the 4th cell if needed.
11. In order to proceed, the Plaintiff needs the cooperation of the Defendant and the Defendant should be required to assign the Discharge Permit to the Plaintiff.
12. The Defendant is also in default of its agreements with the Plaintiff by failing to pay its fair share of the cost of WWTF operations, treatment, maintenance, and repair.
13. The Plaintiff and the Defendant had the opportunity to close the WWTF and without cost, connect onto the new Cherokee/Meridian treatment facility. However, the Defendant would not cooperate in this endeavor thus forcing the Plaintiff and the Defendant to have to incur approximately \$12,000,000 in building a new facility.

14. The Defendant has failed to install, maintain, and calibrate a flow meter so that its portion of effluent can be properly measured and this failure is due to the fact that the Defendant has allowed storm waters to mix with its effluent discharge which violates State requirements.

15. The Defendant has also failed to properly maintain its own lift station and this contributes to the WWTF violations by discharging septic sewage in the WWTF.

16. As the Discharge Permit holder, the Defendant has the responsibility of meeting State compliance schedules and it has failed to do so.

17. The Agreement recognized the rights of either party to serve outside customers. The Defendant should be restrained from interfering with this right and in particular to respect the Plaintiff's relationship with Sterling Ranch.

**FIRST CLAIM FOR RELIEF  
(INJUNCTION AND EQUITABLE RELIEF)**

18. The Plaintiff is entitled to an order of this Court requiring the Defendant to cease and desist from all activities that are in violation of the Discharge Permit.

19. The Plaintiff is entitled to an order of this Court which recognizes the right of the Plaintiff to repair, expand, and modernize the WWTF at Plaintiff's expense, subject to later reimbursement from the Defendant, and the Defendant should be ordered to transfer the Discharge Permit to the Plaintiff or in the alternative, to cooperate with the State of Colorado in allowing a new permit to be issued to the Plaintiff.

20. The Plaintiff is entitled to an order of this Court requiring that the Defendant cooperate in the construction of the 4<sup>th</sup> cell and pay its share of the costs.

21. The Plaintiff is entitled to an order of this Court restraining the Defendant from interfering with any of the Plaintiff's outside customers.

**SECOND CLAIM FOR RELIEF  
(DAMAGES)**

22. The Defendant owes the Plaintiff its share of the cost of maintenance, operations, and repairs which sums exceed \$450,000 and the millions of dollars in lost opportunity to the Plaintiff because of the failure to cooperate with the Cherokee/Meridian plan and judgment should be entered against the Defendant for the amounts to be proved.

**THIRD CLAIM FOR RELIEF  
(FORECLOSURE)**

23. In the alternative, should the Defendant refuse and fail to pay its share of the above-referenced costs, pursuant to the agreement of the parties, Plaintiff is entitled to foreclose the interest of the Defendant in the ownership of the WWTF and intends to serve a notice of intent to lien the property of the Defendant.

**FOURTH CLAIM FOR RELIEF  
(BREACH)**

24. The actions of the Defendant are in violation of the terms of the agreements between the parties including but not limited to the implied covenant of good faith and fair dealing.

WHEREFORE, it is respectfully requested that the Court grant to the Plaintiff the requested relief set forth in this Complaint and such other and further relief as to the Court seems just and proper.

Respectfully submitted this 27<sup>th</sup> day of May 2009.

SUSEMIHL, MCDERMOTT & COWAN, P.C.

\_\_\_\_\_/s/ Peter M. Susemihl

Peter M. Susemihl

Jason Downie

Plaintiff's Address:

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