



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-W

JUL 2 2007

CERTIFIED MAIL LETTER
RETURN RECEIPT REQUESTED

Debra Kearns, Registered Agent
Hitching Post LLC
PO Box 67
Melrose, MT 59743

Re: Administrative Order
Hitching Post
Docket No. SDWA-08-2007- 0051
PWS ID #MT0002143

Dear Ms. Kearns:

Enclosed you will find an Administrative Order (Order), which the Environmental Protection Agency (EPA) has issued under the authority of the Safe Drinking Water Act (the Act), 42 U.S.C. Section 300f *et seq.*, and its implementing regulations. Among other things, the Administrative Order finds that The Hitching Post Water System is a supplier of water as defined by the Act and that it has violated Montana's "Public Water Supply Requirements" and the National Primary Drinking Water Regulations (NPDWRs) at Administrative Rules of Montana (ARM) 17.38.215(1)(b) and 40 Code of Federal Regulations (C.F.R.) §§ 141.21(a), 141.23(d), 141.201, 141.21(g)(2), and 141.31(b) for: failure to monitor for bacteriological quality, failure to monitor for nitrate, failure to provide public notice, and failure to notify the State of the violations.

If The Hitching Post complies with the enclosed Order for a period of at least twelve months, EPA may choose to close the Order. Violating the enclosed Order may lead to (1) a penalty of up to \$32,500 per day of violation of the Order, (2) a separate such penalty for violating the regulations themselves, and/or (3) a court injunction ordering compliance.

Among other things, the Order requires The Hitching Post to provide a public notification of violations of the Act. For your convenience, we have enclosed some template forms to assist in providing the required public notice. If you have any questions or comments concerning the form of public notice, please do not hesitate to contact Kimberly Pardue Welch of EPA, whose telephone number is provided below.

Please note that the effective date of the enclosed Order is the date of issuance. Within the next 10 days, please provide EPA with any new information that you believe the Agency is not aware of relating to the alleged violations in the Order. The information may be sent to Kimberly Pardue Welch at the address on the letterhead, include the mailcode 8ENF-W, or you may call Ms. Pardue Welch at (800) 227-8917, extension 6983, or (303) 312-6983. If you wish to have an informal conference with EPA, you may also call or write Ms. Pardue Welch. If you are represented by an attorney or have legal questions, please have your attorney call Amy Swanson at the above 800 number, extension 6906, or at (303) 312-6906.

We urge your prompt attention to this matter.

Sincerely,



Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

Order
Public Notice template

cc: Jenny Chambers, MT DEQ
Kate Miller, MT DEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)
)
Hitching Post, LLC)
The Hitching Post)
Melrose, MT)
)
Respondent)
)
Proceedings under Section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))
_____)

ADMINISTRATIVE ORDER

Docket No. SDWA-08-2007-0051

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by section 1414(g) of the Safe Drinking Water Act ("the Act"), 42 U.S.C. § 300g-3(g), and its implementing regulations, as properly delegated to the Supervisors of the Technical and Legal Enforcement Programs of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

FINDINGS

1. Hitching Post LLC ("Respondent") is a limited liability company under the laws of Montana, and is therefore a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. Respondent owns and/or operates a system, the Hitching Post Water System (the "System"), located in Silverbow County, Montana, 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" within the meaning of section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "transient, non-community" water system within the meaning of 40 C.F.R. § 141.2.
4. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of section 1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. Part 141, also known as the National Primary Drinking Water Regulations ("NPDWRs").
5. According to a March 31, 2003 sanitary survey conducted by the Butte-Silver Bow Health Department, Respondent operates a system that is supplied solely by a ground water source consisting of one well located on site. The System includes 1 service connection and provides water to approximately 75 – 100 persons per day year-round.
6. Montana Department of Environmental Quality ("MDEQ" or the "State") has primary enforcement authority for the Act in the State of Montana. On May 8, 2007, EPA issued a Notice of Violation pursuant to section 1414(a) of the Act, 42 U.S.C. § 300g- 3(a), to MDEQ regarding the violations at the System. MDEQ elected not to commence an appropriate enforcement action against the System for the violations within the thirty-day time frame set forth in section 1414(a) of the Act, 42 U.S.C. § 300g- 3(a).

7. EPA has provided the State, through MDEQ, with an opportunity to confer with EPA regarding this Order pursuant to section 1414(g)(2) of the Act, 42 U.S.C. § 300g-3(g)(2).
8. EPA has provided a copy of this Order to MDEQ pursuant to section 1414(g)(2) of the Act, 42 U.S.C. § 300g-3(g)(2).
9. EPA is issuing this Order requiring the System to comply with the “applicable requirements” it violated pursuant to section 1414(g) of the Act, 42 U.S.C. § 300g-3(g).
10. An “applicable requirement” includes requirements of an applicable approved State program, such as Montana’s “Public Water Supply Requirements” at Administrative Rules of Montana (“ARM”) 17.38.101 through 703. 42 U.S.C. § 300g-3(i).

FINDINGS OF VIOLATION

I

1. 40 C.F.R. § 141.21(a)(3)(i) requires non-community water systems using only ground water and serving 1,000 persons or fewer to monitor for total coliform each calendar quarter that the system provides water to the public to determine compliance with the maximum contaminant level (“MCL”) for total coliform bacteria as stated in 40 C.F.R. § 141.63.
2. The State requires non-community public water systems to sample for total coliform once each month, as set forth in ARM 17.38.215(1)(b), which adopted portions of 40 C.F.R. § 141.21.

3. From at least March 2002 until June 2005, the System was given authorization by MDEQ to monitor for total coliform quarterly to determine compliance with the MCL for total coliform bacteria as state in 40 C.F.R. § 141.63.
4. MDEQ required the System to begin monthly monitoring for total coliform bacteria in July 2005.
5. Respondent failed to monitor for total coliform during the following time periods: 2nd and 4th quarters 2002, 1st and 3rd quarters 2003, 1st, 2nd, 3rd, and 4th quarters 2004, 1st and 2nd quarters 2005, July 2005, August 2005, September 2005, November 2005, December 2005, February 2006, March 2006, April 2006, May 2006, June 2006, July 2006, August 2006, September 2006, October 2006, November 2006, December 2006, January 2007, February 2007, March 2007, April 2007, and May 2007, in violation of ARM 17.38.215(1)(b) and 40 C.F.R. § 141.21.

II

1. 40 C.F.R. § 141.23(d) requires public water systems to monitor annually for nitrate to determine compliance with the nitrate MCL as stated in 40 C.F.R. § 141.62.
2. Respondent failed to monitor for nitrate in 2003 and 2004, in violation of 40 C.F.R. § 141.23(d).

III

1. 40 C.F.R. § 141.21(g)(2) requires public water systems to report any failure to comply with a coliform bacteria monitoring requirement to the State within ten business days after the system discovers the violation.

2. Respondent failed to report to the State instances of noncompliance detailed in Section I, in violation of 40 C.F.R. § 141.21(g)(2).

IV

1. 40 C.F.R. § 141.31(b) requires owners and/or operators of public water systems to report any failure to comply with any NPDWR to the State within 48 hours, including MCL and monitoring requirements.
2. Respondent failed to report to the State instances of noncompliance detailed in Sections II and IV, in violation of 40 C.F.R. § 141.31(b).

V

1. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any violations of the NPDWRs, including violations of the MCL, maximum residual disinfection level ("MRDL"), treatment technique ("TT"), monitoring requirements, and testing procedures in 40 C.F.R. Part 141.
2. Respondent has not provided public notice of the violation outlined in Sections I and II, in violation of 40 C.F.R. § 141.201.

ORDER

Based on the foregoing Findings, and pursuant to section 1414(g) of the Act,
IT IS ORDERED:

1. Upon the effective date of this Order, Respondent shall monitor the water monthly for total coliform as required by ARM 17.38.215(1)(b) to determine compliance with the total coliform MCL appearing at ARM 17.38.207(l) and 40 C.F.R. § 141.63(a)(2). Respondent shall report results to EPA and the State

within ten days following the end of each monitoring period, as required by 40 C.F.R. § 141.31(a).

2. Upon the effective date of the Order, Respondent shall comply with the nitrate monitoring requirements as stated in 40 C.F.R. § 141.23(d) to determine compliance with the nitrate MCL appearing at 40 C.F.R. § 141.62(b).
Respondent shall report analytical results to the State and EPA within the first ten days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).
3. Upon the effective date of the Order, Respondent shall comply with 40 C.F.R. § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R. § 141.21 to EPA and the State within ten days after the Respondent discovers the violation.
4. Except where a different reporting period is specified above, upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.31(b) by reporting any failure to comply with any NPDWR to EPA and the State within 48 hours.
5. Within 30 days of the effective date of this Order, Respondent must provide public notice of the violation(s) specified under the Findings of Violation Section I and II in this Order, to return to compliance with 40 C.F.R. §§ 141.201, 141.202 and 141.205. Upon the effective date of this Order, Respondent shall comply with the public notification requirements at 40 C.F.R. § 141.201 et seq. following any future NPDWR violation. Respondent shall submit a copy of the public notice to EPA and the State within ten days of completion of the public notice, as

required by 40 C.F.R. § 141.31(d). This notice shall be given by (1) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the System OR (2) by mail or direct delivery to each customer and service connection; AND (3) any other method reasonably calculated to reach other persons served by the System if they would not normally be reached by the notice required above, such as publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or delivery of multiple copies in central locations. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but for no less than seven days. The public water system must repeat the notice every three months as long as the violation or situation persists.

6. Reporting requirements specified in this Order shall be provided by certified mail to the following addresses:

U. S. EPA Region 8 (8ENF-W)
1595 Wynkoop Street
Denver, Colorado 80202
Attn: Kimberly Pardue Welch

Montana Department of
Environmental Quality – PWSS
P.O. Box 200901
Helena, MT 59620-0901
Attn: Kate Miller

GENERAL PROVISIONS

1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 et seq., or the Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
2. Violation of any term of this Order may subject the Respondent to an administrative civil penalty of up to \$27,500, under section 1414(g)(3)(B) of the Act, 42 U.S.C.

§ 300g-3(g)(3)(B), or a civil penalty of not more than \$32,500 per day of violation, assessed by an appropriate U.S. district court under section 1414(g)(3)(A) and (C) of the Act, 42 U.S.C. § 300g-3(g)(3)(A) and (C).

3. Violation of any requirement of the Act or its implementing regulations may subject Respondent to a civil penalty of not more than \$32,500 per day of violation, assessed by an appropriate U.S. district court under section 1414(b) of the Act, 42 U.S.C. § 300g-3(b).
4. The effective date of this Order shall be the date of issuance of this Order.

Issued this 2nd day of July, 2007.

David Rock
David J. Janik, Acting Director
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Diane L. Sipe
Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice