

Dear Miss Tina Artemis and Attorney Margaret Livingston,

2012 NOV -8 AM 10: 50

I am requesting that the penalty being assed against me as an individual be denied.

As the individual who owns the property, 6 N, Piney Rd. in Story Wyoming, more commonly known as the lodore, I have no knowledge or evidence that it is my responsibility for the laws that govern the business that operates as a restaurant at this address.

FILED
EPA REGION VIII
HEARING CLERK

Enclosed is a copy of the section of the lease that requires tenants to adhere to any and all such laws required to operate their business as a condition of lease.

During the period of time listed in the complaint, the restaurant changed names and owners on 4 different occasions. When the restaurant is not in operation there should be no obligation to test the water.

In addition the current tenants and owners of the business Lodore Supper Club and Saloon have produced evidence that the testing was done on 4 different occasions in 2011 when it is alleged in the complaint that 2 of the test required in 2011 were not done. The evidence (enclosed) should refute this.

This is a difficult business in a difficult location that has had little business since the recession began in 2008 and then tenant Kimmerley's moved out. Consumer water consumption on a busy day back then was very little and today it is even less! Possibly even below the requirements for monitoring. ?

I hope you can see by this evidence that I should not be held responsible for the violations that may or may not have occurred as I am not the owner operator of the business that is responsible for this monitoring.

If the penalty assed against me is not waived or eliminated based on this evidence, then I request a hearing in this matter.

Sincerely



Richard Smith

Enclosed are copies of 4 different water test done by tenants in 2011 along with pages 2 and 8 of lease I have with tenant at 6 N. Piney Rd Story, WY who is the actual owner and operator of the Restaurant known as Lodore Supper Club & Saloon since January 2010.

Tenant.

- b. A late fee of five percent (5%) of the late payment will be assessed on all payments required to be made by the Tenant under this Agreement that are not made within ten (10) days of the date due. Such late fee will be immediately due and payable to the Landlord. It is specifically agreed that late payments accepted by the Landlord will not operate to change or modify any of the due dates or other payments due from the Tenant to the Landlord.
- c. The rent shall be paid on or before the first day of April, 2011, and rent for each succeeding month shall be payable the first day of each and every month thereafter.

5. Security Deposit. Landlord waives the requirement of a security deposit under this Lease in consideration for Tenant accepting the leased premises "AS IS" and assuming maintenance and repair obligations set forth in Section 9 below.

6. Ordinances, Statutes and Covenants. Tenant shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force or which may thereafter be in force pertaining to the use of the premises and shall comply with any and all covenants and restrictions pertaining to the leased premises.

7. Non-Waiver. Receipt by Landlord of rent without knowledge of a breach of any provision of this Agreement shall not be deemed as a waiver of such breach. No provision of this Agreement shall be deemed to have been waived by any act or conduct by Landlord unless such waiver be in writing signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of rent herein stipulated shall be deemed to be other than on account of the rent earliest due, and Landlord may accept any payment without prejudice to Landlord's right to recover any other sums due from the Tenant or pursue any other remedy provided in this Agreement, regardless of any endorsement or statement accompanying such payment. No acceptance of money by Landlord from Tenant after termination of this Agreement or after the services of any notice or after the commencement of any suit, or after final judgment or possession of the premises shall renew, reinstate, continue, or extend the term of this Agreement, or affect any such notice, demand or suit.

8. Smoke Free Premises. The parties agree that there shall be no smoking in the building, except for events sponsored where smoking shall be limited to said event and area of the event only and such is allowed by state or local law. Tenant shall be responsible for enforcing the non smoking

20. Insurance. The Tenant shall be required to carry business liability and risk insurance during the term of this Lease. In addition, Landlord may, but is not required to, carry casualty insurance on the building and those contents owned by the Landlord.

21. Indemnity. The Tenant shall indemnify, defend and hold the Landlord, his agents and employees harmless from and against any and all claims, judgments, costs, expenses (including attorney's fees), causes of action, or suits for damages or injuries arising out of or occasioned by the Tenant's use or occupation of the leased premises. The Tenant's obligation to defend (including the obligation to costs, expenses and attorney's fees incurred by the Landlord) shall be diminished or relieved by the fact that the Landlord is also at fault; provided, however, that the Tenant shall have no obligation to indemnify Landlord to the extent of liability directly attributable to the Landlord's fault. The Tenant's obligations and covenants set out in this paragraph shall survive the termination of this Agreement.

22. Notice. Tenant shall give Landlord at least ninety (90) days written notice of Tenant's intent to vacate the leased premises by placing a notice in the mail to the address shown above. The giving of such notice shall not, reduce the terms of this lease or relieve Tenant of Tenant's obligations under this lease, and Landlord may continue this lease in full force and effect even if Tenant gives such notice of intent to vacate.

LANDLORD: Richard Lee Smith



TENANT: Peri J. Thomas





Date: 11/22/2010

CLIENT: Lodore Supper Club /Mojo Risin Coffee House
Project: SDWA
Lab Order: S1011197

CASE NARRATIVE
Report ID: S1011197001

Sample Utility Sink was received on November 10, 2010.

All samples were received and analyzed within the EPA recommended holding times, except those noted in this case narrative. Samples were analyzed using the methods outlined in the following references:

U.S.E.P.A. 600 "Methods for Chemical Analysis of Water and Wastes", 1993
"Standard Methods For The Examination of Water and Wastewater", 20th ed., 1998
Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW846, 3rd Edition
Methods indicated with the Monday, March 12, 2007 Federal Register, 40 CFR Part 122, 136 et al.

All Quality Control parameters met the acceptance criteria defined by EPA and Inter-Mountain Laboratories except as indicated in this case narrative.

Reviewed by:

Lacey Ketron, Water Lab Supervisor



Sample Analysis Report

CLIENT: Lodore Supper Club /Mojo Risin Coffee House
P. O. Box 6044
Sheridan, WY 82801

Date Reported: 11/22/2010
Report ID: S1011197001

Project: SDWA
Lab ID: S1011197-001
Client Sample ID: Utility Sink
PWS ID: 5600545

Work Order: S1011197
Collection Date: 11/10/2010 3:30:00 PM
Date Received: 11/10/2010 5:00:00 PM
Sampler: RS
Matrix: Water

Analyses	Result	RL	Qual	Units	Date Analyzed/Init	Method
General Parameters						
Total Coliform	negative	1		MPN/100mL	11/10/2010 1701 AS	SM 9223B
E.coli	negative	1		MPN/100mL	11/10/2010 1701 AS	SM 9223B
Anions						
Nitrogen, Nitrate-Nitrite (as N)	ND	0.1		mg/L	11/18/2010 1018 AS	EPA 353.2

These results apply only to the samples tested.

RL - Reporting Limit

- Qualifiers:**
- * Value exceeds Maximum Contaminant Level
 - C Calculated Value
 - H Holding times for preparation or analysis exceeded
 - L Analyzed by a contract laboratory
 - ND Not Detected at the Reporting Limit
 - S Spike Recovery outside accepted recovery limits

- B Analyte detected in the associated Method Blank
- E Value above quantitation range
- J Analyte detected below quantitation limits
- M Value exceeds Monthly Ave or MCL
- O Outside the Range of Dilutions

Reviewed by: 
Lacey Ketron, Water Lab Supervisor



Date: 5/18/2011

CLIENT: Lodore Supper Club /Mojo Risin Coffee House
Project: SDWA
Lab Order: S1104358

CASE NARRATIVE
Report ID: S1104358001

Sample Kitchen Sink was received on April 27, 2011.

All samples were received and analyzed within the EPA recommended holding times, except those noted in this case narrative. Samples were analyzed using the methods outlined in the following references:

- U.S.E.P.A. 600 "Methods for Chemical Analysis of Water and Wastes", 1993
- "Standard Methods For The Examination of Water and Wastewater", 20th ed., 1998
- Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW846, 3rd Edition
- Methods indicated with the Monday, March 12, 2007 Federal Register, 40 CFR Part 122, 136 et al.

All Quality Control parameters met the acceptance criteria defined by EPA and Inter-Mountain Laboratories except as indicated in this case narrative.

Reviewed by:

Lacey Ketron, Water Lab Supervisor



Sample Analysis Report

CLIENT: Lodore Supper Club /Mojo Risin Coffee House
P. O. Box 6044
Sheridan, WY 82801

Date Reported: 5/18/2011
Report ID: S1104358001

Project: SDWA
Lab ID: S1104358-001
Client Sample ID: Kitchen Sink
PWS ID: WY5600545NC

Work Order: S1104358
Collection Date: 4/27/2011 9:45:00 AM
Date Received: 4/27/2011 10:14:00 AM
Sampler: RS
Matrix: Water

Analyses	Result	RL	Qual	Units	Date Analyzed/Init	Method
General Parameters						
Total Coliform	negative	1		MPN/100mL	04/27/2011 1020 KB	SM 9223B
E.coli	negative	1		MPN/100mL	04/27/2011 1020 KB	SM 9223B
Anions						
Nitrogen, Nitrate-Nitrite (as N)	ND	0.1		mg/L	05/12/2011 1606 LJK	EPA 353.2

These results apply only to the samples tested.

RL - Reporting Limit

- Qualifiers:**
- * Value exceeds Maximum Contaminant Level
 - C Calculated Value
 - H Holding times for preparation or analysis exceeded
 - L Analyzed by a contract laboratory
 - ND Not Detected at the Reporting Limit
 - S Spike Recovery outside accepted recovery limits

- B Analyte detected in the associated Method Blank
- E Value above quantitation range
- J Analyte detected below quantitation limits
- M Value exceeds Monthly Ave or MCL
- O Outside the Range of Dilutions

Reviewed by: 
Lacey Ketron, Water Lab Supervisor



Date: 11/21/2011

CLIENT: Mojo Risin Coffee House
Project: SDWA
Lab Order: S1111109

CASE NARRATIVE
Report ID: S1111109001

Sample Faucet was received on November 7, 2011.

All samples were received and analyzed within the EPA recommended holding times, except those noted in this case narrative. Samples were analyzed using the methods outlined in the following references:

U.S.E.P.A. 600 "Methods for Chemical Analysis of Water and Wastes", 1993
"Standard Methods For The Examination of Water and Wastewater", 20th ed., 1998
Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW846, 3rd Edition
Methods indicated with the Monday, March 12, 2007 Federal Register, 40 CFR Part 122, 136 et al.

All Quality Control parameters met the acceptance criteria defined by EPA and Inter-Mountain Laboratories except as indicated in this case narrative.

Reviewed by:

Lacey Ketron, Water Lab Supervisor



Sample Analysis Report

CLIENT: Mojo Risin Coffee House
6 1/2 S Piney Creek Rd.
PO Box 406
Story, WY 82842

Date Reported: 11/21/2011
Report ID: S1111109001

Project: SDWA
Lab ID: S1111109-001
Client Sample ID: Faucet

Work Order: S1111109
Collection Date: 11/7/2011 10:30:00 AM
Date Received: 11/7/2011 10:50:00 AM
Sampler:
Matrix: Drinking Water

Analyses	Result	RL	Qual	Units	Date Analyzed/Init	Method
General Parameters						
Total Coliform	Negative	1		MPN/100mL	11/07/2011 1125 JD	SM 9223B
E.coli-	Negative	1		MPN/100mL	11/07/2011 1125 JD	SM 9223B

These results apply only to the samples tested.

RL - Reporting Limit

- Qualifiers:**
- * Value exceeds Maximum Contaminant Level
 - C Calculated Value
 - H Holding times for preparation or analysis exceeded
 - L Analyzed by a contract laboratory
 - ND Not Detected at the Reporting Limit
 - S Spike Recovery outside accepted recovery limits

- B Analyte detected in the associated Method Blank
- E Value above quantitation range
- J Analyte detected below quantitation limits
- M Value exceeds Monthly Ave or MCL
- O Outside the Range of Dilutions

Reviewed by: 
Lacey Ketron, Water Lab Supervisor

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2012 SEP 25 AM 8:35

IN THE MATTER OF)
)
)
Richard Smith, Owner)
Lodore Supper Club and Saloon)
)
Respondent)
Proceeding under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))
_____)

FILED
EPA REGION VIII
HEARING IN ERK

) Docket No. SDWA-08-2012-0056

) **COMPLAINT AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**

In this Complaint and Notice of Opportunity for Hearing (Complaint), the United States Environmental Protection Agency (EPA) proposes to assess a civil administrative penalty against Richard Smith (Respondent).

This Complaint is issued under the authority vested in the Administrator of the EPA by section 1414(g)(3)(B) of the Safe Drinking Water Act (the SDWA), 42 U.S.C. § 300g-3(g)(3)(B). The undersigned EPA official has been duly authorized to institute this action.

This proceeding is subject to the 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, a copy of which is attached to this Complaint as Complainant's Exhibit 1.

GENERAL ALLEGATIONS

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

1. The Respondent is an individual and, therefore, a "person" as defined in section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.

*F DON'T KNOW
WHAT THESE
STATUES SAY*

DENY

2. The Respondent owns and/or operates the Lodore Supper Club and Saloon public water system (the System), located in Sheridan County, Wyoming, for the provision to the public of piped water for human consumption.

3. The source of the System's water is ground water from one well. The System serves an average of between 50 to 200 persons per day for at least six months of the year from one service connection. *DO NOT HAVE THE INFORMATION TO VERIFY THIS HIGH*

4. Because the System has at least 15 service connections and/or regularly serves at least 25 individuals at least 60 days out of the year, the System is a "public water system" as defined in section 1401(4) of the SDWA, 42 U.S.C.

DENY TO MY KNOWLEDGE
VERY LITTLE WATER IS EVER CONSUMED BY THE PUBLIC

§ 300f(4), and 40 C.F.R. § 141.2. The System is also a "transient, non-community water system" as defined in 40 C.F.R. § 141.2.

5. As an owner and/or operator of a public water system, the Respondent is a "supplier of water" as defined in section 1401(5) of the SDWA, 42 U.S.C.

I HAVE NO IDEA WHAT IS DEFINED IN THE SECTION'S LISTED MEANS.

§ 300f(5), and 40 C.F.R. § 141.2. The Respondent is, therefore, subject to the requirements of part B of the SDWA, 42 U.S.C. §§ 300g through 300g-9, and the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. part 141, each of which is an "applicable requirement" as defined in section 1414(i) of the SDWA, 42 U.S.C. § 300g-3(i).

BUT I DO NOT OWN OR OPERATE

DENY

THE RESPONDENT THAT IS RESPONSIBLE FOR THESE REQUIREMENTS

6. The NPDWRs include requirements to monitor drinking water for various contaminants, to report the results to the EPA, and to notify the EPA and the public of failures to comply with monitoring requirements.

7. The EPA has provided the Respondent with written, annual summaries of the monitoring requirements for the System. These notifications were sent, at a minimum, in February of 2007, February of 2008, January of 2009, January of 2010, and February of 2011. Each notification referenced the requirement to monitor the System's water quarterly for total coliform bacteria.
8. On July 28, 2010, 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-08-2010-0062 (the Order) to the Respondent, citing violations of the NPDWRs. A copy of the Order is attached to this Complaint as Complainant's Exhibit 2.
9. By letter dated December 15, 2010, the EPA notified the Respondent that he was in violation of the Order. A copy of that letter is attached to this Complaint as Complainant's Exhibit 3.
10. By letter dated June 14, 2011, the EPA again notified the Respondent that he was in violation of the Order. A copy of that letter is attached to this Complaint as Complainant's Exhibit 4.
11. By letter dated December 19, 2011, the EPA once again notified Respondent that he was in violation of the Order. A copy of that letter is attached to this Complaint as Complainant's Exhibit 5.
12. Because Wyoming has not sought primary authority for enforcing the public water supply supervision program, the EPA directly implements this program in Wyoming. Consequently, as provided by the definition of "state" in 40 C.F.R.

The Requirements to monitor the water is the responsibility of the owner & operators of the Restaurant.

DO NOT KNOW OR RECALL IN July & Aug of 2010 I WAS RECOVERING FROM SURGERY

RESTAURANT CLOSED IN DEC AFTER SEVERAL MONTHS & SLOW & NO BUSINESS

NEW OWNERS. 1st of 2011

NEW OWNERS.

ackmt

§ 141.2, the EPA is the "state" for purposes of enforcing the NPDWRs in Wyoming.

COUNTS OF VIOLATION

Count I

Failure to Monitor for Total Coliform Bacteria

DENY

1. Paragraph 11 of Order directed the Respondent to monitor the System's water for total coliform as required by 40 C.F.R. § 141.21.
2. The Respondent violated the Order by failing to monitor the system's water for total coliform bacteria during the third quarter of 2010 and the first and third quarters of 2011.

FALSE

DENY

Count II

Failure to Report Coliform Monitoring Violations to EPA

1. Paragraph 11 of the Order directed the Respondent to 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 the EPA within ten days after discovering the violation.
2. The Respondent violated the Order by failing to report to EPA that no total coliform sampling was done in the third quarter of 2010 or the first or third quarters of 2011.

DENY
I HAVE NO
EVIDENCE OF
THIS

I HAVE NO
EVIDENCE
THIS

Count III

Failure to Provide Public Notice of Violations

DENY

1. Paragraph 12 of the Order directed the Respondent to notify the public of having failed to monitor the System's water for total coliform during the fourth quarter of

2008 and the second and fourth quarters of 2009. This provision also directed the Respondent to provide public notice of any future NPDWR violations.

The Respondent violated the Order by failing to provide public notice of the failures to monitor for total coliform during the fourth quarter of 2008, the second and fourth quarters of 2009, the third quarter of 2010, and the first and third quarters of 2011.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

This Complaint proposes that EPA assess an administrative penalty against the Respondent. The EPA is authorized to assess an administrative civil penalty according to section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), for violating an administrative order issued under section 1414(g) of the SDWA. The amount may be up to \$32,500 for violations occurring after January 12, 2009. (The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19.)

The 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 the Respondent's degree of willfulness and/or negligence, history of noncompliance, and ability to pay, as known to the EPA at this time, the EPA proposes to assess an administrative civil penalty of \$1,200.00 against the Respondent for his 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), the Respondent has the right to request a public hearing in this matter.

FALSE

KIM ECKERMAN GOT 2 DO THIS # REMEMBER!

FALSE 2

FALSE!

NO KNOWLEDGE NEW OWNERS

WEDDING WAS CLOSED!

If the Respondent wishes to request a hearing, the Respondent must file a written answer in accordance with 40 C.F.R. §§ 22.15 and 22.42 within 30 calendar days after this Complaint is served. If this Complaint is served by mail, the Respondent has an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.7(c), in which to file his answer.

If the Respondent requests a hearing in his answer, 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, the Respondent has 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). For the Respondent 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 re-caption the pleadings and documents in the record as necessary, subpart I will not apply to the proceedings, and an Administrative Law Judge from Washington, D.C., will preside. (See 40 C.F.R. § 22.42.)

The answer must be in writing. An original and one copy of the answer must be sent to:

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

A copy of the answer must also be sent to the following attorney:

Margaret J. Peggy Livingston
Enforcement Attorney (8ENF-L)
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202