



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

FEB - 7 2013

Ref: 8ENF-W

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

M. Cole Bormuth, Registered Agent
Elephant Head Lodge, Inc.
1632 Beck Ave.
P.O. Box 550
Cody, WY 82414

Re: Administrative Order
Elephant Head Lodge Public Water System
Docket No. **SDWA-08-2013-0011**
PWS ID #WY5600461

Dear Mr. Bormuth:

Enclosed is an Administrative Order (Order) issued by the Environmental Protection Agency (EPA) under the authority of section 1414(g) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(g). Among other things, the Order alleges that the Elephant Head Lodge, Inc., as owner and/or operator of the Elephant Head Lodge public water system, has violated the National Primary Drinking Water Regulations at 40 C.F.R. part 141 (Drinking Water Regulations).

The Order is effective upon the date received. Please review the Order and within 10 days provide the EPA with any pertinent information you believe the EPA may not have. If you comply with the Order, the EPA may close the Order without further action. Failure to comply with the Order may lead to substantial civil penalties and/or a federal court injunction ordering compliance.

The Small Business Regulatory Enforcement and Fairness Act (SBREFA) may apply to this situation. Enclosed is a small business information sheet, outlining compliance assistance resources available to small businesses and small governments, in case these are relevant. SBREFA does not eliminate the responsibility to comply with the Order or the drinking water regulations.

The Order requires the Elephant Head Lodge, Inc., to notify the public of having violated the drinking water regulations. Enclosed please find a public notice template explaining the public notice requirements in more detail.

To submit information or request an informal conference with the EPA, please contact Mario Mérida at the above address (with the mailcode 8ENF-W) or by phone at (800) 227-8917, extension 6297 or (303)

312-6297. Any questions from the Respondent's attorney should be directed to Marc Weiner, Enforcement Attorney, who may be reached at the above address (with the mailcode 8ENF-L) or by phone at (800) 227-8917, extension 6913 or (303) 312-6913.

We urge your prompt attention to this matter.

Sincerely,



Arturo Palomares, Director
Water Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Order
SBREFA Information Sheet
Public Notice Template

cc: WY DEQ/DOH (via email)
Tina Artemis, EPA Regional Hearing Clerk
Anita Harper, Natural Resource Specialist, Shoshone National Forest (via email)
Kevin and Debra Millard, Owners

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)
)
Elephant Head Lodge, Inc.)
)
)
)
Respondent.)

2013 FEB -7 AM 11:03
Docket No. **SDWA-08-2013-0011**
ADMINISTRATIVE ORDER
FILED
EPA REGION VIII
HEARING CLERK

1. This Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by section 1414(g) of the Safe Drinking Water Act (Act), 42 U.S.C. § 300g-3(g), as properly delegated to the undersigned officials.
2. Elephant Head Lodge, Inc., (Respondent) is a Wyoming corporation that owns and/or operates the Elephant Head Lodge Water System (System), which provides piped water to the public in Park County, Wyoming, for human consumption.
3. The System is supplied by a groundwater source consisting of one spring and one collection box; water at the System is not treated.
4. The System has approximately 17 service connections and/or regularly serves an average of approximately 55 individuals daily at least 60 days out of the year. Therefore, the System is a "public water system" as defined in section 1401(4) of the Act, 42 U.S.C. § 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. Respondent is subject to the Act and the National Primary Drinking Water Regulations (Drinking Water Regulations) at 40 C.F.R. part 141. The Drinking Water Regulations are "applicable requirements" as defined in section 1414(i) of the Act, 42 U.S.C. § 300g-3(i).
6. The Drinking Water Regulations include monitoring requirements. The EPA has sent Respondent annual notifications of the specific monitoring requirements that apply to the System.

VIOLATIONS

7. Respondent is required to monitor the System's water during the 2nd (April – June) and 3rd (July – September) quarters for total coliform bacteria. 40 C.F.R. § 141.21(a). Respondent failed to monitor the System's water for total coliform bacteria during the 3rd quarter of 2011 and during the 3rd quarter of 2012, and, therefore, violated this requirement.
8. Within 24 hours of being notified that any routine sample of the System's water is positive for total coliform, Respondent is required to collect a set of four repeat samples. 40 C.F.R. § 141.21(b). Respondent failed to take the required four repeat samples of the System's water within 24 hours of being notified that a sample collected on September 29, 2010, was positive for total coliform and, therefore, violated this requirement.
9. If the System has one or more sampling results that are positive for total coliform, Respondent is required to collect at least five routine samples during the next month the System provides water to the public. 40 C.F.R. § 141.21(b)(5). After the System's water tested positive for total coliform on

September 29, 2010, Respondent failed to take at least five routine samples of the System's water in October 2010 or April 2011, the next month the system was open to the public, and, therefore, violated this requirement.

10. If two or more samples collected in any month from the System's water are positive for total coliform, then the System has not complied with the maximum contaminant level (MCL) for total coliform bacteria. 40 C.F.R. § 141.63(a)(2). The System's water tested positive for total coliform on September 29, 2009. All four repeat samples collected on October 21, 2009, from the System were positive for total coliform, and, therefore, Respondent violated this requirement.

11. Respondent is required to notify the public of certain violations of the Drinking Water Regulations. 40 C.F.R. §§ 141.201-141.211. Respondent failed to notify the public of the 3rd quarter 2011 violation cited in paragraph 7 and the violations cited in paragraphs 8 through 10, above, and, therefore, violated this requirement.

12. Respondent is required to report any failure to comply with any coliform monitoring requirement to the EPA within 10 days after discovering the violation. 40 C.F.R. § 141.21(g)(2). Respondent failed to report the violations cited in paragraphs 7 through 9, above, to EPA and, therefore, violated this requirement.

13. Respondent is required to report any coliform MCL violation to the EPA no later than the end of the next business day after learning of it. 40 C.F.R. § 141.21(g)(1). Respondent did not notify the EPA of the MCL violation cited in paragraph 10, above, and, therefore, violated this requirement.

14. Respondent is required to report any failure to comply with any Drinking Water Regulation to the EPA within 48 hours (except where the Drinking Water Regulations specify a different time period). 40 C.F.R. § 141.31(b). Respondent failed to report the violation cited in paragraph 11, above, to the EPA and, therefore, violated this requirement.

ORDER

Based on the above violations, Respondent is ordered to perform the following actions upon Respondent's receipt of this Order (unless a different deadline is specified below):

15. Respondent shall monitor the System's water during the 2nd and 3rd quarters for total coliform bacteria, collecting one sample per quarter, and, if any sample is positive for total coliform, conduct repeat and additional routine monitoring, as required by 40 C.F.R. § 141.21. Respondent shall report any violation of coliform monitoring requirements in 40 C.F.R. part 141 to the EPA within 10 days after discovering the violation, as required by 40 C.F.R. § 141.21(g)(2).

16. Respondent shall report analytical results to the EPA within the first 10 days following the month in which Respondent receive sample results, as required by 40 C.F.R. § 141.31(a).

17. Respondent shall comply with the total coliform MCL. If the System's water does not comply with the total coliform MCL in 40 C.F.R. § 141.63, Respondent shall report this violation to the EPA by the end of the business day after discovering the violation, as required by 40 C.F.R. § 141.21(g)(1).



18. Within 30 days after opening to the public during the 2013 season, Respondent shall notify the public of all violations cited in paragraphs 7 through 10, following the instructions provided with the public notice templates provided to Respondent with this Order. Thereafter, following any future violation of the Drinking Water Regulations, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 days after providing public notice, Respondent shall submit a copy of the notice to the EPA.

19. Respondent shall report any violation of the Drinking Water Regulations to the EPA within 48 hours of the violation occurring, as required by 40 C.F.R. § 141.31(b). However, if a different time period for reporting is specified in this Order or the Drinking Water Regulations, Respondent shall report within that different period.

20. Respondent shall direct all reporting required by this Order to:

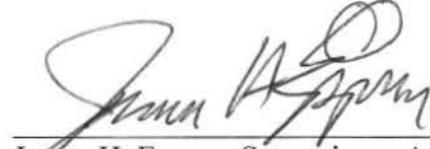
U.S. EPA Region 8 (8P-W-DW)
1595 Wynkoop St.
Denver, CO 80202-1129

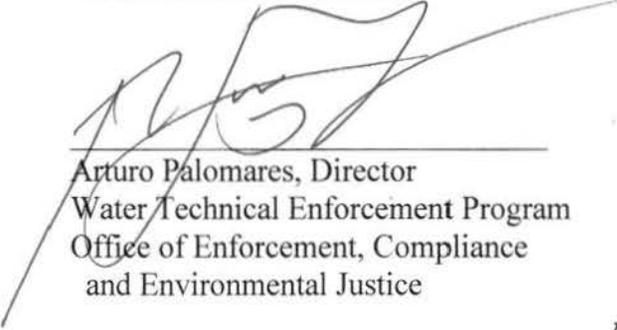
GENERAL PROVISIONS

21. This Order shall not constitute a waiver, suspension, or modification of any requirement of the Act or Drinking Water Regulations. Issuance of this Order is not an election by the EPA to forgo any civil or criminal action.

22. Violation of any part of this Order or the Drinking Water Regulations may subject Respondent to a civil penalty of up to \$37,500 (as adjusted for inflation) per day of violation. 42 U.S.C. § 300g-3; 40 C.F.R. part 19.

Issued: February 7, 2013.


James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice


Arturo Palomares, Director
Water Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice



Instructions for Resolved Total Coliform Notice – Template 2-2

Template on Reverse

Since exceeding the total coliform bacteria maximum contaminant level is a Tier 2 violation, you must provide public notice to persons served as soon as practical but within 30 days after you learn of the violation [40 CFR 141.203(b)]. Some states have more stringent requirements for coliform violations. Check with your primacy agency to make sure you meet all its requirements.

Community systems must use one of the following methods [40 CFR 141.203(c)]:

- Hand or direct delivery
- Mail, as a separate notice or included with the bill

Noncommunity systems must use one of the following methods [40 CFR 141.203(c)]:

- Posting in conspicuous locations
- Hand delivery
- Mail

In addition, both community and noncommunity systems must use another method reasonably calculated to reach others if they would not be reached by the first method [40 CFR 141.203(c)]. Such methods could include newspapers, e-mail, or delivery to community organizations. If you mail, post, or hand deliver, print your notice on your system's letterhead, if available.

The notice on the reverse is appropriate for mailing, posting, or hand delivery. If you modify this notice, you must still include all required PN elements from 40 CFR 141.205(a) and leave the mandatory language unchanged (see below).

Mandatory Language

Mandatory language on health effects (from Appendix B to Subpart Q) must be included as written (with blanks filled in) and is presented in this notice in italics and with an asterisk on either end.

You must also include standard language to encourage the distribution of the public notice to all persons served, where applicable [40 CFR 141.205(d)]. This language is also presented in this notice in italics and with an asterisk on either end.

Description of the Violation

Make sure that the notice is clear about the fact that the coliform problem has been resolved, and there is no current cause for concern. The description of the violation and the MCL vary depending on the number of samples you take. The following table should help you complete the second paragraph of the template.

<u>If You Take Less Than 40 Samples a Month</u>	<u>If You Take at Least 40 Samples a Month</u>
State the number of samples testing positive for coliform. The standard is that no more than one sample per month may be positive.	State the percentage of samples testing positive for coliform. The standard is that no more than five percent of samples may test positive each month.

Corrective Action

In your notice, describe corrective actions you have taken. Listed below are some steps commonly taken by water systems with total coliform violations. Depending on the corrective action you are taking, you can use one or more of the following statements, if appropriate, or develop your own text:

- We have increased sampling for coliform bacteria to catch the problem early if it happens again.
- The well and/or distribution system has been disinfected and additional samples do not show the presence of coliform bacteria.

After Issuing the Notice

Make sure to send a copy of each type of notice along with a certification that you have met all the public notice requirements to your primacy agency within ten days after issuing the notice [40 CFR 141.31(d)].

IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER

Tests Showed Coliform Bacteria in Elephant Head Lodge

During 2009 our water system violated a drinking water standard. Although this incident was not an emergency, as our customers, you have a right to know what happened and what we did to correct this situation.

We routinely monitor for drinking water contaminants. We took four samples to test for the presence of coliform bacteria during October 2009. All four of those samples showed the presence of total coliform bacteria. The standard is that no more than 1 sample per month may do so.

What should I do?

- You do not need to boil your water or take other corrective actions. However, if you have specific health concerns, consult your doctor.
- If you have a severely compromised immune system, have an infant, are pregnant, or are elderly, you may be at increased risk and should seek advice from your health care providers about drinking this water. General guidelines on ways to lessen the risk of infection by microbes are available from EPA's Safe Drinking Water Hotline at 1-800-426-4791.

What does this mean?

This is not an emergency. If it had been you would have been notified within 24 hours. Total coliform bacteria are generally not harmful themselves. **Coliforms are bacteria which are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.**

Usually, coliforms are a sign that there could be a problem with the system's treatment or distribution system (pipes). Whenever we detect coliform bacteria in any sample, we do follow-up testing to see if other bacteria of greater concern, such as fecal coliform or *E. coli*, are present. **We did not find any of these bacteria in our subsequent testing.**

What is being done?

[Describe corrective action.]

Further testing shows that this problem has been resolved.
For more information, please contact Debra or Kevin Millar at 307-587-3980.

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

This notice is being sent to you by Elephant Head Lodge.
State Water System ID#: WY5600461 Date distributed: _____.

Tier 3 Templates

Tier 3 notices are required for the following violations or situations:

- **Monitoring violations** (except for the following: failure to monitor for fecal coliform or *E. coli* when repeat samples are positive for coliform, failure to take a confirmation sample for nitrate or nitrite within 24 hours, and failure to take required samples for chlorine dioxide in the distribution system, which require Tier 1 notice; failure to collect 3 or more samples for *Cryptosporidium*, which requires Tier 2 notice; and any monitoring violations elevated to Tier 1 or 2 by the primacy agency);
- **Testing procedure violations**, except where elevated to Tier 2 by the primacy agency;
- Operation under a **variance or exemption**;
- Special notice for **availability of unregulated contaminant monitoring data**; and
- Special notice for **fluoride** secondary maximum contaminant level (SMCL) exceedances.

The pages that follow contain templates for Tier 3 violations and situations. Along with the templates are instructions, including the required method of delivery and suggestions for completing individual sections of the notices. These instructions are designed to supplement Chapter 7, so you may see much of the information repeated here.

Mandatory language on unknown risk for monitoring violations, which must be included as written with blanks filled in, is presented in italics (141.205(d)). All the language in the fluoride SMCL template (except the language discussed below) is mandatory (141.208).

You must also include the following italicized language in all notices, where applicable (141.205(d)). Use of this language does not relieve you of your obligation to take steps reasonably calculated to notify all persons served:

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

Templates

Monitoring Violations Annual Notice—Template 3-1A

Monitoring Violations Annual Notice—Template 3-1B

Failure to Comply with a Testing Procedure Notice – Template 3-2

Operating Under an Exemption Notice – Template 3-3

Special Notice for Availability of Unregulated Contaminant Monitoring Data – Template 3-4

Instructions for Monitoring Violations Annual Notice – Template 3-1A

Template on Reverse

If you are required to provide Tier 3 notification, you must provide public notice to persons served within one year after you learn of the violation (141.204(b)). Multiple monitoring violations can be serious, and your primacy agency may have more stringent requirements. Check with your primacy agency to make sure you meet its requirements.

Community systems must use one of the following (141.204(c)):

- Hand or direct delivery
- Mail, as a separate notice or included with the bill

Non-community systems must use one of the following (141.204(c)):

- Posting in conspicuous locations
- Hand delivery
- Mail

In addition, both community and non-community systems must use another method reasonably calculated to reach others if they would not be reached by the first method (141.204(c)). Such methods could include newspapers, e-mail, or delivery to community organizations. If you post the notice, it must remain posted until the violation is resolved. If the violation has been resolved, you must post the notice for at least seven days (141.204(b)). If you mail, post, or hand deliver, print your notice on letterhead, if available.

The notice on the reverse is appropriate for insertion in an annual notice or the Consumer Confidence Report (CCR), as long as public notification timing and delivery requirements are met (141.204(d)). You may need to modify the template for a notice for individual monitoring violations. This example presents violations in a table; however, you may write out an explanation for each violation if you wish. For any monitoring violation for volatile organic compounds (VOCs) or other groups, you may list the group name in the table, but you must provide the name of every chemical in the group on the notice, e.g., in a footnote.

You may need to modify the notice if you had any monitoring violations for which monitoring later showed a maximum contaminant level or other violation. In such cases, you should refer to the public notice you issued at that time.

Include in your notice the standard language for monitoring and testing procedure violations in italics (141.205(d)(2)). If you modify the notice, you may not alter this mandatory language.

Corrective Actions

In your notice, describe corrective actions you took or are taking. Listed below are some steps commonly taken by water systems with monitoring violations. You can use the following language, if appropriate, or develop your own:

- We have since taken the required samples, as described in the last column of the table above. The samples showed we are meeting drinking water standards.
- We have since taken the required samples, as described in the last column of the table above. The sample for [contaminant] exceeded the limit. [Describe corrective action; use information from public notice prepared for violating the limit.]
- We plan to take the required samples soon, as described in the last column of the table above.

After Issuing the Notice

Make sure to send your primacy agency a copy of each type of notice and a certification that you have met all the public notice requirements within ten days after issuing the notice (141.31(d)).

IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER

Monitoring Requirements Not Met for Elephant Head Lodge Public Water System

Our water system violated drinking water standards over the past year and before. Even though these were not emergencies, as our customers, you have a right to know what happened and what we did to correct these situations.

We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not our drinking water meets health standards. During October 2010, May 2011, and the 3rd quarters (July – September) of 2011 and 2012, we did not complete monitoring and reporting requirements for total coliform bacteria, and therefore cannot be sure of the quality of our drinking water during those times.

What should I do?

There is nothing you need to do at this time.

The table below lists the contaminant(s) we did not properly test for during the last year, how often we are supposed to sample for [this contaminant/these contaminants] and how many samples we are supposed to take, how many samples we took, when samples should have been taken, and the date on which follow-up samples were (or will be) taken.

Contaminant	Required sampling frequency	Number of samples taken	When samples should have been taken	When samples were taken
Total Coliform Bacteria (routine sample)	1 sample collected during the 2 nd and 3 rd quarters each year	0	3 rd quarters of 2011 and 2012	10/3/2011 and 10/16/2012
Total Coliform Bacteria (repeat samples)	4 repeat samples within 24 hours of learning of a total coliform-positive routine sample	0	October 2010, following TC+ results of sample collected 9/29/2010	N/A
Total Coliform Bacteria (multiple routine samples)	5 routine samples collected the month following a total coliform-positive sample (or the first month after water is again provided to the public)	0	May 2011, following TC+ results of sample collected 9/29/2010	N/A

What is being done?

For more information, please contact Debbie or Kevin Millard at 307-587-3980 or 1170 Yellowstone Hwy, Cody, WY 82414

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

This notice is being provided to you by the Elephant Head Lodge public water system. State Water System ID#WY5600461. Date posted: _____.