



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
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<http://www.epa.gov/region08>

MAR 22 2007

Ref: 8ENF-W

CERTIFIED MAIL LETTER # 7003 2260 0002 0331 6991
RETURN RECEIPT REQUESTED

Paul and Cathy Schulte, Owners
Oasis Bar and Café
220 Recreation Road
Wolf Creek, MT 59648

Robert D. Montanye, Registered Agent
Bob & Janey, LLC
250 Recreation Road
Wolf Creek, MT 59648

Re: Administrative Order
Docket No. SDWA-08-2007-0018
ID # MT0001489

Dear Mr. and Ms. Schulte and Mr. Montanye:

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 Order finds that Paul Schulte, Cathy Schulte, and Bob & Janey, LLC are suppliers of water as defined by the Act and that they have violated the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. §§ 141.63(a)(2), 141.63(b), 141.21, 141.21(b), 141.21(b)(5), 141.23(d), 141.201, 141.21(g)(1), 141.21(g)(2) and 141.31(b), for: exceeding the maximum contaminant level (MCL) for total coliform; exceeding the acute MCL for total coliform; failing to monitor for bacteriological quality; failing to conduct repeat sampling for each total coliform-positive routine sample; failing to conduct five routine samples the month after a total coliform-positive routine sample; failing to monitor nitrate/nitrite; failing to provide public notice of the violations; and failing to notify the State of the violations.

If the Respondents named in the Order comply 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.

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 Darcy O'Connor at the address on the letterhead, with the mailcode 8ENF-W, or you may call Ms. O'Connor at (800) 227-8917, extension 6392, or (303) 312-6392. If you wish to have an informal conference with EPA, you may also call or write Ms. O'Connor. If you are represented by an attorney, please feel free to ask your attorney to contact Peggy Livingston at the above 800 number, extension 6858, or at (303) 312-6858.

We urge your prompt attention to this matter.

Sincerely,



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

Enclosure

cc: John Arrigo, MT DEQ
Kate Miller, MT DEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 MAR 22 AM 8:53

IN THE MATTER OF)
)
Paul and Cathy Schulte, Owners/Operators)
Bob & Janey, LLC, Owner/Operator)
Oasis Bar and Café)
Wolf Creek, MT)
)
Respondents)
)
Proceedings under Section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))
_____)

EPA REGION VIII
HEARING CLERK

ADMINISTRATIVE ORDER

Docket No. SDWA-08-2007-0018

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. Paul Schulte, Cathy Schulte, each of whom is an individual, and Bob & Janey, LLC, which is a limited liability company under the laws of the State of Montana ("Respondents"), are "persons" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12) and 40 C.F.R. § 141.2.
2. Respondents own and/or operate a system, the Oasis Bar and Café Water System (the "System"), located in Lewis and Clark 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. Respondents own and/or operate a public water system and are therefore each 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. Respondents are 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 Regulations ("NPDWRs").
5. According to a March 31, 2003 sanitary survey conducted by the Cadmus Group, Inc. on behalf of the Montana Department of Environmental Quality ("MDEQ" or the "State"), the System is supplied solely by a ground water source consisting of one well located on site. Water is supplied to a residence and a bar year-round. The System provides water to approximately 100 persons year-round.
6. MDEQ has primary enforcement authority for the Act in the State of Montana. On January 17, 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 violation at the public water 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. § 141.63(b) imposes and defines the acute maximum contaminant level (“MCL”) for total coliform bacteria as a fecal coliform positive or E. coli positive repeat sample, or any total coliform positive repeat sample following a fecal coliform positive or E. coli positive routine sample.
2. Monitoring results submitted by the Respondents for the System during July 2003 exceeded the acute MCL for total coliform bacteria, in violation of 40 C.F.R. § 141.63(b).

II.

1. 40 C.F.R. § 141.63(a)(2) imposes and defines the MCL for total coliform bacteria, applicable to public water systems collecting fewer than 40 samples per month, as prohibiting more than one sample collected during any month from being positive for total coliform bacteria.
2. Monitoring results submitted by Respondents for the System exceeded the MCL for total coliform bacteria in August 2003, June 2004 and April 2006, in violation of 40 C.F.R. § 141.63(a)(2).

III.

1. 40 C.F.R. § 141.21(a)(3)(i) requires a non-community water system using only ground water and serving 1,000 or fewer persons to monitor for total coliform each calendar quarter that the system provides water to the public to determine compliance with the 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. Respondents failed to monitor the System's water for total coliform for the following months: February – April 2002, April 2004, September 2004, November – December 2004, April 2005, July 2005, September – December 2005, and June 2006, in violation of ARM 17.38.215(1)(b) and 40 C.F.R. § 141.21.

IV.

1. 40 C.F.R. § 141.21(b)(1) requires a public water system which collects one routine sample per month or fewer to collect a set of repeat samples within 24 hours of being notified of a total coliform positive result.
2. Respondents failed to collect repeat samples following the total coliform positive sample in May 2003, in violation of 40 C.F.R. § 141.21(b)(1).

V.

1. 40 C.F.R. § 141.21(b)(5) requires each public water system that collects fewer than five routine samples per month and has one or more total coliform positive sample(s) to collect at least five routine samples during the next month the system provides water to the public.
2. Respondents failed to collect at least five routine samples in the following months after a total coliform positive sample in the preceding month: October 2002, May 2003, September 2005 and May 2006, in violation of 40 C.F.R. § 141.21(b)(5).

VI.

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. Respondents failed to monitor for nitrate in 2005, in violation of 40 C.F.R. § 141.23(d).

VII.

1. 40 C.F.R. § 141.21(g)(1) requires any public water system that has exceeded the MCL for total coliform in 40 C.F.R. § 141.63 to report the violation to the State

no later than the end of the next business day after the system learns of the violation.

2. Respondents failed to report to the State the instances of noncompliance detailed in Sections I and II, in violation of 40 C.F.R. § 141.21(g)(1).

VIII.

1. 40 C.F.R. § 141.21(g)(2) requires each public water system 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. Respondents failed to report to the State instances of noncompliance detailed in Sections III through V, in violation of 40 C.F.R. § 141.21(g)(2).

IX.

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. Respondents have not provided public notice of the violations outlined in sections I through VI, in violation of 40 C.F.R. § 141.201.

X.

1. 40 C.F.R. § 141.31(b) requires owners and/or operators of public water systems to notify the State within 48 hours of any failure to comply with any NPDWR, including public notice requirements, unless a different reporting period is specified in the regulations.

2. Respondent failed to report to the State instances of noncompliance detailed in Sections VI and IX, in violation of 40 C.F.R. § 141.31(b).

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, Respondents shall comply with the total coliform MCL as stated in ARM 17.38.207(l) and 40 C.F.R. § 141.63(a)(2). If the System has an MCL violation while this Order is in effect, Respondents shall submit to EPA and the State, within 30 days of the MCL violation, detailed plans for bringing the System into compliance with the MCL for coliform bacteria at 40 C.F.R. § 141.63(a)(2). The plans shall include all proposed system modifications necessary to comply with the MCL, estimated costs of modifications, and a schedule for construction of the project and compliance with the MCL for coliform bacteria. The proposed schedule shall include specific milestone dates, a final compliance date (that shall be within 90 days from the first MCL violation after this Order) and shall be submitted to the State and EPA for approval. The plans must be approved by EPA and the State before construction can commence.
2. The schedule for construction and completion of modifications will be incorporated into this Order upon written approval by EPA and the State.

3. If plans are required as stated in paragraph 1 above, Respondents shall submit to EPA and the State monthly reports on the progress made toward bringing the System into compliance with the coliform bacteria MCL at 40 C.F.R. § 141.63.
4. Upon the effective date of this Order, Respondent shall monitor the System's water for total coliform monthly as required by ARM 17.38.215(1)(b) to determine compliance with the total coliform MCL appearing at ARM 17.38.207(1) and 40 C.F.R. § 141.63(a)(2). Respondents 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).
5. Upon the effective date of this Order, Respondents shall comply with all repeat sampling requirements specified in 40 C.F.R. § 141.21(b). This requires that Respondents take no fewer than four repeat samples within 24 hours of being notified of a total coliform positive routine sample. Each repeat sample is to be analyzed for total coliform bacteria. At least one repeat sample must be taken from each of the following: a) the tap where the original total coliform positive sample was taken, b) within five service connections upstream of the original total coliform positive tap, and c) within five service connections downstream from the original total coliform positive tap. The fourth repeat sample is to be taken anywhere within five service connections upstream or downstream of the original total coliform positive tap. Respondents shall report analytical results to EPA and the State within the first ten days following the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).

6. Upon the effective date of this Order, Respondents shall comply with all sampling requirements specified in 40 C.F.R. § 141.21(b)(5). If the System has one or more total coliform positive samples in a month, Respondents shall collect at least five routine samples during the next month the System provides water to the public. Respondents shall report analytical results to the State and EPA within the first ten days following the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).
7. Within 30 days of the date of this Order, and annually thereafter, Respondents 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). Respondents 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).
8. Upon the effective date of this Order, Respondents shall comply with 40 C.F.R. § 141.21(g)(1) by reporting any total coliform MCL violation under 40 C.F.R. § 141.63 to the State and EPA no later than the end of the next business day after Respondents learn of the violation.
9. Upon the effective date of this Order, Respondents 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 the State and EPA within ten days after Respondents discover the violation.
10. Except where a different reporting period is specified above, upon the effective date of this Order, Respondents shall comply with 40 C.F.R. § 141.31(b) by

reporting any failure to comply with any NPDWR (40 C.F.R. part 141) to the State and EPA within 48 hours.

11. Within 30 days from the effective date of this Order, Respondents must provide public notice of the violations specified under the Findings of Violation Sections I through VI in this Order, to return to compliance with 40 C.F.R. §§ 141.201, 141.204 and 141.205. Upon the effective date of this Order, Respondents shall comply with the public notification requirements at 40 C.F.R. § 141.201 et seq. following any future NPDWR violation. Respondents shall submit a copy of the public notice to the State and EPA 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 Respondents must repeat the notice every three months as long as the violation or situation persists.
12. 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: Darcy O'Connor


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 Respondents 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 sections 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 Respondents 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 22nd day of March, 2007.



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



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