



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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

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EPA REGION VIII  
HEARING CLERK

Ref: 8ENF-W

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Wesley Fisk, Owner  
Red Rooster Bar  
5429 Carey Street  
Shepherd, MT 59079

Re: Administrative Order  
Red Rooster Bar  
Public Water System  
Docket No. SDWA-08-2008-0016  
PWS ID# MT0001763

Dear Mr. Fisk:

Enclosed is an Administrative Order (Order) issued by the Environmental Protection Agency (EPA) under the authority of the Safe Drinking Water Act (the Act), 42 U.S.C. section 300f et seq. Among other things, the Order describes how you have violated the National Primary Drinking Water Regulations.

The Order is effective upon the date received. Please review the Order and within 10 days provide EPA with any information you believe EPA may not have. If Red Rooster Bar complies with the Order for twelve months, 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.

To submit information or request an informal conference with EPA, contact Kimberly Pardue Welch at the above address (with the mailcode 8ENF-W) or by phone at (800) 227-8917, extension 6983 or (303) 312-6983. For legal questions, the attorney assigned to this matter is

Marc Weiner, 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,



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

Enclosures:

Order  
Public notice samples/templates

cc:

John Arrigo, MT DEQ  
Jon Dilliard, MT DEQ  
Andrea Vickory, MT DEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

IN THE MATTER OF

Red Rooster Bar  
Shepherd, MT

Respondent

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ADMINISTRATIVE ORDER

Docket No. SDWA-08-2008-0016

1. This Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) in the Public Health Service Act (as amended by and hereafter referred to as the "Safe Drinking Water Act" or the "Act"), 42 U.S.C. § 300f, as properly delegated to the undersigned officials.

2. Wesley Fisk (Respondent) is a person who owns and/or operates the Red Rooster Bar Water System (the system) in Yellowstone County, Montana which provides piped water to the public for human consumption. The system is supplied by a groundwater source and serves approximately 20 – 40 people per day through 1 service connection year round. The system is a "non-community" water system as defined in 40 C.F.R. § 141.2. Respondent is subject to the requirements of the Act and the National Primary Drinking Water Regulations (drinking water regulations), at 40 C.F.R. part 141. The Respondent received annual notification from the State regarding the system's monitoring requirements.

3. Montana Department of Environmental Quality (MDEQ or the State) has primary enforcement authority for the Act in the State of Montana. On February 12, 2008, EPA issued a Notice of Violation to MDEQ regarding the violations at the system. MDEQ elected not to commence an 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). EPA has provided a copy of this Order to MDEQ and 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). EPA is issuing this Order requiring the system to comply with the "applicable requirements" it violated. 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).

### **VIOLATIONS**

4. Respondent is required to monitor the system's water at least once per quarter to determine compliance with the maximum contaminant level (MCL) for total coliform bacteria. 40 C.F.R. § 141.21. Respondent failed to monitor the water for contamination of total coliform bacteria during the following monitoring periods: 3<sup>rd</sup> quarter 2006 (July – September), 4<sup>th</sup> quarter 2006 (October – December), 1<sup>st</sup> quarter 2007 (January – March), 2<sup>nd</sup> quarter 2007 (April – June), and 3<sup>rd</sup> quarter 2007 and therefore violated this requirement. As of December 5, 2007, Respondent is required by the MDEQ to monitor the system's water at least once per month to determine compliance with the MCL for total coliform bacteria. ARM 17.38.215(1)(b). Respondent failed to monitor the water for contamination of total coliform bacteria during February 2008 and therefore violated this requirement.

5. Respondent is required to monitor the system's water annually to determine compliance with the MCL for nitrate. 40 C.F.R. § 141.23(d). Respondent failed to monitor the water for nitrate during 2006 and 2007 and therefore violated this requirement.

6. Respondent is required to notify the public of any violations of the drinking water regulations, including violations of the MCL, maximum residual disinfection level (MRDL), treatment technique (TT), monitoring requirements and testing procedures. 40 C.F.R. § 141.201. Respondent failed to notify the public of the violations outlined in Paragraphs 4 - 5 above and therefore violated this requirement. Public notice for failure to monitor total coliform violations for 2007 and failure to monitor nitrate in 2007 are not yet overdue.

7. Respondent is required to report any failure to comply with a coliform monitoring requirement to the State within ten days after the system learned of the violation. 40 C.F.R. § 141.21(g)(2). Respondent failed to report to the State the failure to monitor total coliform violations listed in paragraph 4 above and therefore violated this requirement.

8. Respondent is required to report any failure to comply with any of the drinking water regulations (except where a different reporting period is specified in paragraph 7 above) to the State within 48 hours. 40 C.F.R. § 141.31(b). Respondent failed to report the violations listed in paragraphs 5 and 6 above to the State and therefore violated this requirement.

**ORDER**

Based on the above violations, Respondent is ordered to perform the following actions:

9. Upon receipt of this Order, Respondent shall monitor monthly for total coliform bacteria. ARM 17.38.215(1)(b). Respondent shall report analytical results to EPA and the State within the first 10 days following the month in which sample results are received, as required by the drinking water regulations. 40 C.F.R. § 141.31(a). Any violation of the total coliform monitoring requirements shall be reported to EPA and the State within ten days after Respondent learns of it. 40 C.F.R. § 141.21(g)(2).

10. Within 30 days of the effective date of this Order, Respondent shall monitor the system's water for nitrate. Thereafter, Respondent shall monitor as required by the drinking water regulations. 40 C.F.R. § 141.23(d). Respondent shall report analytical results to EPA and the State within the first ten days following the month in which sample results are received. 40 C.F.R. § 141.31(a).

11. Within 30 days of the effective date of this Order, Respondent must provide public notice of the violation(s) specified in Paragraphs 4 – 5 in this Order. 40 C.F.R. §§ 141.201, 141.202 and 141.205. Respondent shall submit a copy of the public notice to EPA and the State within ten days of completion of the public notice. 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. Upon the effective date of this Order, Respondent shall comply with the public notification requirements following any future drinking water regulations violation. 40 C.F.R. § 141.201 et seq.

12. Respondent shall report any other violation of the drinking water regulations to EPA and the State within 48 hours of discovery.

13. Reporting requirements specified in this Order shall be provided by certified mail to:

Kimberly Pardue Welch  
U. S. EPA Region 8 (8ENF-W) **AND**  
1595 Wynkoop Street  
Denver, CO 80202-1129

Andrea Vickory  
Montana Department of  
Environmental Quality- PWSS  
P.O. Box 200901  
Helena, MT 59620-0901

### **GENERAL PROVISIONS**

14. This Order does 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 EPA to forgo any civil or criminal action.

15. Violation of any part of this Order, the Act, or the drinking water regulations may subject Respondent to a civil penalty of up to \$32,500 (as adjusted for inflation) per day of violation, 42 U.S.C. § 300g-3(g)(3); 40 C.F.R. part 19.

5-2-08

Date

Alicia N. Haeger for

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

FEB 15 2008

Date

Diane L. Sipe

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