



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET  
DENVER, COLORADO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

Ref: 8ENF-T

FEB 19 2009

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mike Grove, President  
Bank of the Rockies  
205 West Main  
White Sulphur Springs, MT 59545

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Hoa Vien, Registered Agent  
China Wok, Inc.  
188 Hwy 12 E  
Townsend, MT 59644

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Herman Chan  
China Wok Restaurant  
4309 Morning Sun Drive  
Bozeman, MT 59715

Re: Complaint and Notice of  
Opportunity for Hearing  
Docket No. **SDWA-08-2009-0029**

Dear Mr. Grove, Mr. Vien, and Mr. Chan:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against each of you under section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C. §300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that you failed to comply with an Administrative Order, Docket No. SDWA-08-2007-0060, issued on July 23, 2007, under section 1414(g) of the SDWA, 42 U.S.C. §300g-3(g). The violations are specifically set out in the complaint.



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By law, you have the right to request a hearing regarding the matters set forth in the complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If you do not respond to this complaint within 30 days of receipt, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In your answer you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty.

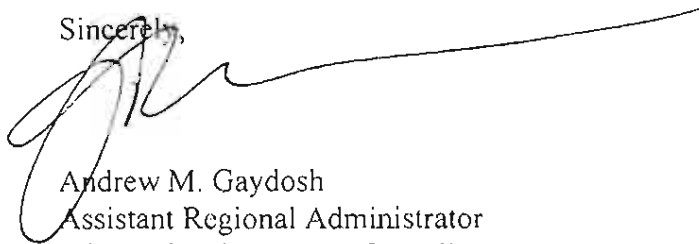
EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. The issuance of a consent agreement shall constitute a waiver of your right to request a hearing on any matter to which it has stipulated in that agreement.

A request for an informal conference does not extend the 30-day period during which you must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kimberly Pardue Welch, Environmental Protection Specialist, who can be reached at 800/227-8917 extension 6983, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917 extension 6858.

We urge your prompt attention to this matter.

Sincerely,



Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure

cc: John Arrigo, MT DEQ  
Tina Artemis, Regional Hearing Clerk  
Joel Guthals, Bank of the Rockies (via certified mail, return receipt requested)  
Wendy Holman, China Wok Restaurant  
Shelley Nolan, MT DEQ



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

IN THE MATTER OF	)	
	)	
Bank of the Rockies N.A.,	)	
China Wok, Inc., and	)	
Herman Chan	)	
(China Wok Restaurant)	)	Docket No. <b>SDWA-08-2009-0029</b>
	)	
Respondents	)	<b>COMPLAINT AND NOTICE OF</b>
	)	<b>OPPORTUNITY FOR HEARING</b>
Proceedings under section 1414(g)	)	
of the Safe Drinking Water Act,	)	
42 U.S.C. §300g-3(g)	)	

**COMPLAINT**

This civil administrative Complaint and Notice of Opportunity for Hearing (complaint) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by section 1414(g)(3) of the Safe Drinking Water Act, as amended (the SDWA), 42 U.S.C. §300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes the Administrator of the EPA to assess an administrative civil penalty against any person who violates, or fails or refuses to comply with, an order issued under section 1414(g)(1) of the SDWA.

The complainant in this action is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is subject to 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 (Consolidated Rules of Practice)(Complainant’s Exhibit 1).

### **GENERAL ALLEGATIONS**

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

1. Respondent Bank of the Rockies N.A. is a Montana corporation. Respondent China Wok, Inc. is a Montana corporation. Respondent Herman Chan is an individual. Each Respondent is therefore a “person” as that term is defined in section 1401(12) of the SDWA, 42 U.S.C. §300f(12), and 40 C.F.R. §141.2.
2. Respondents own and/or operate a system, the China Wok Restaurant Water System (the System), located in Broadwater 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” as that term is defined in section 1401(4) of the SDWA, 42 U.S.C. §300f(4), and 40 C.F.R. §141.2, and a “transient, non-community water system” as that term is defined in 40 C.F.R. §141.2.
4. As an owner and/or operator of a public water system, each Respondent is a “supplier of water” as that term is defined in section 1401(5) of the SDWA, 42 U.S.C. §300f(5), and 40 C.F.R. §141.2. Each Respondent is therefore subject to the requirements of part B of the SDWA, 42 U.S.C. §300g et seq., and 40 C.F.R. part 141 (also known as the National Primary Drinking Water Regulations or

NPDWRs), and to title 17, chapter 38, subchapter 2 of the Administrative Rules of Montana (ARM).

5. The Montana Department of Environmental Quality (MDEQ) has primary enforcement authority for the public water supply protection provisions of the Act in the State of Montana.
6. As regulations that EPA promulgated under section 1412 of the Act, 42 U.S.C. §300g-1, the NPDWRs are “applicable requirements” as defined in section 1414(i) of the Act, 42 U.S.C. §300g-3(i).
7. As part of an applicable state program that EPA has approved pursuant to section 1413 of the Act, 42 U.S.C. §300g-2, the requirements of ARM title 17, chapter 38, subchapter 2, including ARM section 17.38.215, are “applicable requirements” as defined in section 1414(i) of the Act, 42 U.S.C. §300g-3(i).
8. The source of the System’s water is ground water, from one well. The System’s water has not been determined by EPA or the MDEQ to be ground water under the direct influence of surface water. The System serves an average of approximately 30-50 persons daily, although not necessarily the same persons each day, year-round.
9. The MDEQ has not granted the System permission to monitor its water for total coliform less frequently than monthly.
10. On June 8, 2007, EPA issued a Notice of Violation (NOV) pursuant to section 1414(a) of the Act, 42 U.S.C. §300g-3(a), to MDEQ regarding violations at the

System. MDEQ elected not to commence an enforcement action against the Respondents for the violations cited in the NOV within the thirty-day time frame set forth in section 1414(a) of the Act, 42 U.S.C. §300g-3(a).

11. On July 23, 2007, in accordance with section 1414 of the SDWA, 42 U.S.C. §300g-3, the EPA issued an Administrative Order, Docket No. SDWA-08-2007-0060 (the Order) to Respondents, citing various violations of the NPDWRs, including, but not limited to
  - failing to monitor monthly for total coliform,
  - failing to take at least five routine samples in the month following a positive coliform sample,
  - failing to monitor for nitrate in 2005,
  - failing to monitor for nitrate in four quarters during 2006 and 2007, the quarterly monitoring requirement having come into effect due to the System's water having had nitrate levels of more than 50% of the Maximum Contaminant Level (MCL) for nitrate,
  - failing to notify the public and EPA of the previously cited violations,
  - failing to notify the State that the System had failed to monitor for coliform, and
  - failing to notify the State that the System had failed to monitor for nitrate and failed to notify the public of the System's violations.
9. A copy of the Order is attached to this complaint (Complainant's Exhibit 2).

10. On February 13, 2008, after the System's water had exceeded the MCL for nitrate on October 15, 2007, and November 15, 2007, EPA amended the Order to require nitrate treatment. That amendment did not pertain to the requirements cited in the Counts of Violation included in this complaint.
11. By letter dated March 18, 2008, EPA notified the Respondents that they had violated the Order by failing to submit total coliform monitoring results for December of 2007 and by failing to report to EPA that they had failed to monitor the System's water for coliform in that month.
12. A copy of EPA's March 18, 2008 letter is attached to this Complaint (Complainant's Exhibit 3).
13. On December 29, 2008, EPA issued a second Addendum to the Order, which incorporated the nitrate treatment schedule into the Order. That amendment did not pertain to the requirements cited in the following Counts of Violation.

### **COUNTS OF VIOLATION**

#### **Count I** **Failure to Monitor for Total Coliform**

1. The Order (on page 6, in par. 1 of the "Order" section) required Respondents to monitor the System's water monthly for total coliform monitoring, as required by ARM §17.38.215(1)(b).
2. Respondents violated the Order by failing to monitor the System's water for total coliform in December of 2007.

**Count II**

**Failure to Report Coliform Monitoring Violation to EPA and State**

1. The Order (on page 7, in par. 4 of the "Order" section) required Respondents to report to EPA and the State any failure to comply with coliform monitoring requirements within ten days of the Respondents' discovery of the violation, as required by 40 C.F.R. §141.21(g)(2).
2. Respondents violated the Order by failing to report that in December of 2007 they failed to monitor the System's water for total coliform.

**Count III**

**Failure to Monitor for Nitrate**

1. The Order (on page 7, in par. 3 of the "Order" section) required Respondents to monitor quarterly for nitrate for at least one year or until directed in writing by the State that the System could reduce its monitoring frequency, as required by 40 C.F.R. §141.23(d).
2. The State has not directed any Respondent in writing that the System's water can be monitored any less frequently than quarterly for nitrate.
3. Respondents violated the Order by failing to monitor the System's water for nitrate during the third quarter of 2008.

**Count IV**

**Failure to Report Nitrate Monitoring Violation to EPA and State**

1. The Order (on page 7, in par. 5 of the "Order" section) required Respondents to report any failure to comply with any NPDWR (40 C.F.R. part 141) to EPA and



the State within 48 hours, except where a different period was specified in the Order.

2. The Respondents violated the Order by failing to report within 48 hours to EPA and the State that the Respondents had failed to monitor the System's water for nitrate in the third quarter of 2008.

### **PROPOSED ADMINISTRATIVE CIVIL PENALTY**

This complaint proposes that EPA assess an administrative penalty from Respondents. EPA is authorized to assess an administrative penalty according to section 1414(g)(3) of the SDWA, 42 U.S.C. §300g-3(g)(3), for violation of an administrative order issued under section 1414(g)(1) of the SDWA. The amount may be up to \$27,500 for violations occurring after March 15, 2004 through January 12, 2009, and \$32,500 for violations occurring after January 12, 2009.<sup>1</sup>

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 Respondents' degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay, as known to EPA at this time, EPA proposes to assess an administrative civil penalty of \$1,200.00 against Respondents for their violations of the Order.

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<sup>1</sup>The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19. See 74 Fed. Reg. 626, January 7, 2009.

### **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), Respondents have the right to request a public hearing to contest any material fact alleged in this complaint, to contest the appropriateness of the proposed penalty and/or to assert that they are entitled to judgment as a matter of law.

If Respondents wish to request a hearing, Respondents must file a written answer in accordance with 40 C.F.R. §§22.15 and 22.42 within thirty (30) calendar days after this complaint is served. If this complaint is served by mail, Respondents have an additional five (5) calendar days, pursuant to 40 C.F.R. §22.7(c), in which to file their answer. Respondents may answer as a group or separately.

If Respondents request a hearing in their answer(s), the procedures provided in 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, Respondents have 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). 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-title the pleadings and documents in the record as necessary. (See 40 C.F.R. §22.42.) Pursuant to such a request, subpart I will not apply to the proceedings and an Administrative Law Judge from Washington, D.C., will preside.

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

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 Enforcement Attorney named at the end of this complaint.

### **FAILURE TO FILE AN ANSWER**

**If Respondents do not file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this complaint, they may be subject to a default order requiring payment of the full penalty proposed in this complaint.** If no Respondent answers, all Respondents may be held jointly and severally liable for the full proposed penalty. If only one Respondent files an answer, the other Respondents may be subject to a default judgment. EPA may obtain a default order according to 40 C.F.R. §22.17.

### **REQUIREMENTS FOR ANSWER**

The answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this complaint with regard to which Respondents have any knowledge. The answer must state (1) any circumstances or arguments which the Respondents allege to constitute grounds of defense, (2) any facts the Respondents dispute, (3) whether and on what basis the Respondents oppose the proposed penalty, and (4) whether the Respondents request a hearing. **Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of that allegation.**

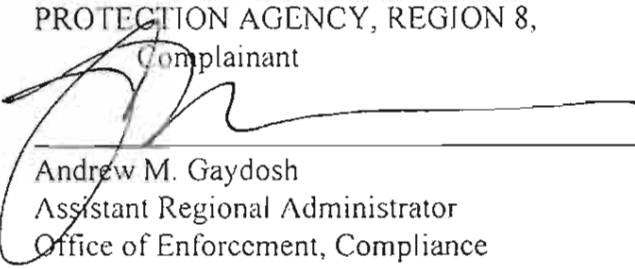
**SETTLEMENT NEGOTIATIONS**

EPA encourages exploring settlement possibilities through informal settlement negotiations. Requesting, scheduling, or participating in settlement discussions **does not** substitute for an answer or extend the deadline for filing an answer and a request for a hearing. Failing to file an answer may lead to a default order, even if settlement negotiations occur. The parties may simultaneously pursue settlement and proceed with administrative litigation.


If a settlement is reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Presiding Officer. Any request for settlement negotiations, or any questions that Respondent may have regarding this complaint, should be directed to the attorney named below.

Dated this 18 day of February, 2009.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant



Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice



Margaret J. (Peggy) Livingston, Enforcement Attorney  
Office of Enforcement, Compliance  
and Environmental Justice

U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202  
Telephone Number: (303) 312-6858  
Facsimile Number: (303) 312-7202

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with all Exhibits were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent to each of the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Mike Grove, President  
Bank of the Rockies  
205 West Main  
White Sulfur Springs, MT 59545  
Certified Mail # 7004-1350-0001-5669-8629

Hoa Vien, Registered Agent  
China Wok, Inc.  
188 Hwy 12 E  
Townsend, MT 59644  
Certified Mail # 7004-1350-0001-5669-8636

Herman Chan  
China Wok Restaurant  
4309 Morning Sun Drive  
Bozeman, MT 59715  
Certified Mail # 7004-1350-0001-5669-8643

Date: 2/19/09

By: Judith McTernan  
Judith McTernan