



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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

JUL 23 2007

Ref: 8ENF-W

CERTIFIED MAIL LETTER
RETURN RECEIPT REQUESTED

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

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

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

Re: Administrative Order
China Wok Restaurant Public Water System
Docket No. SDWA-08-2007- 0060
PWS ID #MT0000965

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

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 the persons named as Respondents in this Order are suppliers of water as defined by the Act and have violated Montana's "Public Water Supply Requirements" at Administrative Rules of Montana (ARM) 17.38.215(1)(b) and the National Primary Drinking Water Regulations (NPDWRs) and 40 Code of Federal Regulations (C.F.R.) §§ 141.21(a), 141.21(b)(5), 141.23(d), 141.23(d)(2), 141.201, 141.21(g)(2), and 141.31(b) for: failure to monitor for bacteriological quality, failure to take five routine samples following a total coliform positive sample the preceding month, failure to monitor for nitrate, failure to provide public notice, and failure to notify the State of the violations.

If the Respondents 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.

Among other things, the Order requires the Respondents to provide a public notification of violations of the Act. For your convenience, we have enclosed some template forms to assist in providing the required public notice. If you have any questions or comments concerning the form of public notice, please do not hesitate to contact Kimberly Pardue Welch of EPA, whose telephone number is provided below.

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 Kimberly Pardue Welch at the address on the letterhead, include the mailcode 8ENF-W, or you may call Ms. Pardue Welch at (800) 227-8917, extension 6983, or (303) 312-6983. If you wish to have an informal conference with EPA, you may also call or write Ms. Pardue Welch. If you are represented by an attorney or have legal questions, please have your attorney call 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

Enclosures

Order
Public Notice template

cc: Jenny Chambers, MT DEQ
Kate Miller, MT DEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 JUL 23 PM 1:34

IN THE MATTER OF)
)
Bank of the Rockies N.A.,)
China Wok, Inc., and)
Herman Chan)
(China Wok Restaurant))
Townsend, MT)
)
Respondents)
)
Proceedings under Section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))
_____)

FILED
EPA REGION VIII
HEARING CLERK

ADMINISTRATIVE ORDER

Docket No. SDWA-08-2007-0060

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. Respondents Bank of the Rockies N.A. and China Wok, Inc. are each a corporation under the laws of Montana. Respondent Herman Chan is an individual. Therefore all 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 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" 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. Each Respondent owns and/or operates a public water system and is therefore 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. Each Respondent is 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 Water Regulations ("NPDWRs").
5. According to a sanitary survey conducted on January 20, 2006 and August 15, 2006 by 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. The System provides water to approximately 30-50 persons per day year-round.
6. MDEQ has primary enforcement authority for the public water supply protection provisions of the Act in the State of Montana. On June 8, 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 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, among other things, a requirement of an applicable approved State program, such as Montana’s “Public Water and Sewage System Requirements” at Administrative Rules of Montana (“ARM”) 17.38.201 through 17.38.271. 42 U.S.C. § 300g-3(i).

FINDINGS OF VIOLATION

I

1. 40 C.F.R. § 141.21(a)(3)(i) requires any non-community water system using only ground water and serving 1,000 or fewer persons (with certain exceptions not relevant here) to monitor for total coliform each calendar quarter that the system provides water to the public to determine compliance with the maximum contaminant level (“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 periods: July 2005, August 2005, September 2005, October 2005, November 2005, December 2005, January 2006, February 2006, March 2006, April 2006, May 2006, June 2006, December 2006, and January 2007, in violation of ARM 17.38.215(1)(b) and for the 3rd quarter 2005, 4th quarter 2005, 1st quarter 2006, and 2nd quarter 2006 in violation of 40 C.F.R. § 141.21.

II

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 September 2006 after a total coliform positive sample in August 2006, in violation of 40 C.F.R. § 141.21(b)(5).

III

1. 40 C.F.R. § 141.23(d) requires each public water system 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 the System's water for nitrate in 2005, in violation of 40 C.F.R. § 141.23(d).

IV

1. 40 C.F.R. § 141.23(d)(2) requires all public water systems to monitor their water for nitrate quarterly for at least one year following any one sample in which the

nitrate monitoring results were equal to or greater than 50% of the MCL as stated in 40 C.F.R. § 141.62(b).

2. The System's last known nitrate monitoring result, dated May 15, 2002, is 9.43 mg/L, which is greater than 50% of the nitrate MCL as stated in 40 C.F.R. § 141.62(b).
3. Due to the System's historical record of exceeding 50% of the MCL, on September 1, 2006, MDEQ sent written notice to Respondents Bank of the Rockies N.A. and Hoa Vien that quarterly nitrate sampling would be required at the System beginning with the 3rd quarter of 2006 (July through September).
4. Respondents failed to monitor for nitrate during the 3rd and 4th quarters of 2006, and the 1st and 2nd quarters of 2007, in violation of 40 C.F.R. § 141.23(d)(2).

V

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 IV, in violation of 40 C.F.R. § 141.201.

VI

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 I and II, in violation of 40 C.F.R. § 141.21(g)(2).

VII

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 failure to comply with monitoring and public notice requirements, unless a different reporting period is specified in the regulations.
2. Respondents failed to report to the State instances of noncompliance detailed in Sections III through V, in violation of 40 C.F.R. § 141.31(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 monitor the water monthly for total coliform as required by ARM 17.38.215(1)(b) to determine compliance with the total coliform MCL appearing at ARM 17.38.207(l) 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).
2. 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 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).

3. Upon the effective date of this Order, Respondents shall comply with the nitrate monitoring requirements as stated in 40 C.F.R. § 141.23 to determine compliance with the nitrate MCL appearing at 40 C.F.R. § 141.62(b). Respondents shall monitor for nitrate quarterly for at least one year or until directed in writing by the State that the System may reduce nitrate monitoring frequency. Respondents shall report analytical results to EPA and the State within the first ten days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).
4. 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 EPA and the State within ten days after the Respondents discover the violation.
5. 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 EPA and the State within 48 hours.
6. Within 30 days from the effective date of this Order, Respondents must provide public notice of the violation(s) specified under the Findings of Violation Sections I through IV 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 EPA and the State 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 public water system must repeat the notice every three months as long as the violation or situation persists.

7. 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: Kimberly Pardue Welch

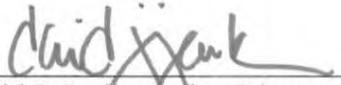
Montana Department of
Environmental Quality – PWSS
P.O. Box 200901
Helena, MT 59620-0901
Attn: Kate Miller

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 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 section 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 23RD day of July, 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