



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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

**MAR 18 2009**

Ref: 8ENF-W

CERTIFIED MAIL LETTER  
RETURN RECEIPT REQUESTED

Honorable Robert DeArmond, Mayor  
Town of Bearcreek  
P.O. Box 1082  
Bearcreek, MT 59007

Re: Administrative Order  
Bearcreek Municipal Water System  
Public Water System  
Docket No. SDWA-08-2009-0026  
PWS ID # MT0000063

Dear Mayor DeArmond:

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 the Bearcreek Municipal Water System has 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 the Bearcreek Municipal Water System complies with the Order for at least 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

Peggy Livingston, who may be reached at the above address (with the mailcode 8ENF-L) or by phone at (800) 227-8917, extension 6858 or (303) 312-6858.

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:

Dean Webb, Operator

John Arrigo, MT DEQ

Shelley Nolan, MT DEQ

Tina Artemis, EPA Regional Hearing Clerk (via e-mail)

2009 MAR 10 AM 3:13

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

REGIONAL OFFICE  
MONTANA  
1500 W. 10TH ST.  
BOZEMAN, MT 59717

\_\_\_\_\_  
IN THE MATTER OF )  
 )  
Town of Bearcreek, Owner )  
Bearcreek Municipal )  
Water System )  
Bearcreek, MT )  
 )  
Respondent )  
\_\_\_\_\_

ADMINISTRATIVE ORDER

Docket No. SDWA-08-2009-0026

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 (the Act), 42 U.S.C. § 300g-3(g), as properly delegated to the undersigned officials.

2. The Town of Bearcreek (Respondent) is a municipality that owns and/or operates the Bearcreek Municipal Water System (the system) in Carbon County, Montana, which provides piped water to the public for human consumption. The system is supplied by two springs and serves approximately 200 people per day through 90 service connections year round. The system is a "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 has received annual notifications from the Montana Department of Environmental Quality (MDEQ or the State) regarding the system's monitoring requirements.

3. The MDEQ has primary enforcement authority for the public water supply protection provisions of the Act in the State of Montana. On January 27, 2009, 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).

### **VIOLATIONS**

4. Respondent is required to monitor the system's water at least once per month to determine compliance with the maximum contaminant level (MCL) for total coliform bacteria. 40 C.F.R. § 141.21. If more than one sample collected during a month tests positive for such bacteria, it is a violation of the MCL. 40 C.F.R. § 141.63. Respondent's sampling results in September 2007 exceeded the MCL for total coliform bacteria and, therefore, violated this requirement.

5. During 2002 through 2007, Respondent was required to monitor the system's water every three years to determine whether the system had reached the action levels for lead and copper. 40 C.F.R. § 141.86(d). Based on the population served by the Respondent's system, Respondent was required to collect at least 5 samples during each monitoring period. 40 C.F.R. § 141.86(c). Respondent failed to collect the required number of samples during the 2002 – 2004 and the 2005 – 2007 monitoring periods and, therefore, violated this requirement. (Since February 12, 2009, Respondent has been required by the MDEQ to monitor the system's water at least once per year to determine whether the system has reached the action levels for lead and copper.)

6. During 2004 through 2007, Respondent was required to monitor the system's water annually for volatile organic contaminants (VOCs). 40 C.F.R. § 141.24(f). Respondent monitored the system's water for VOCs in 2005 but failed to monitor the water for VOCs during 2004 and, therefore, violated this requirement. (Since January of 2008, Respondent has been required by the MDEQ to monitor the system's water every three years for VOCs.)

7. The law requires Respondent to notify the public of certain violations of the drinking water regulations, in the manner specified by the regulations. 40 C.F.R. § 141.201 et seq. Respondent failed to notify the public of the violations listed in paragraph 5 above (except the 2005 – 2007 failure to monitor for lead and copper) and, therefore, violated this requirement.

8. Respondent is required to report any sampling results that exceed the MCL for total coliform to the State by the end of the next business day after the system learns of the violation. 40 C.F.R. § 141.21(g)(1). Respondent failed to report to the State the MCL violation listed in paragraph 4 above and, therefore, violated this requirement.

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

### **ORDER**

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

10. Upon receipt of this Order, Respondent shall comply with the total coliform MCL as stated in 40 C.F.R. § 141.63. Any violation of the total coliform MCL shall be reported to EPA and the State no later than the end of the next business day after Respondent learns of it. 40 C.F.R. § 141.21(g)(1).

11. Upon receipt of this Order, Respondent shall monitor annually, or as directed by the State, for lead and copper. Respondent shall collect 5 samples during each sampling event, unless directed otherwise by the State. 40 C.F.R. §§ 141.86(c) and 141.86(d). Respondent's lead and copper sample for 2009 is to be taken between June 1 and September 30, 2009. Respondent shall report analytical results to EPA and the State within the first 10 days following the end of the monitoring period, as required by the drinking water regulations. 40 C.F.R. § 141.90.

12. Upon receipt of this Order, Respondent shall monitor for volatile organic contaminants per the regulations. 40 C.F.R. § 141.24(f). Respondent shall monitor the system's water for volatile organic contaminants at least once during the 2008 – 2010 monitoring period and 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).

13. Within 30 days of receipt of this Order, Respondent must provide public notice of the violations specified in paragraph 5 of this Order (except for the 2005 – 2007 failure to monitor lead and copper violation, for which notice was already provided). 40 C.F.R. §§ 141.201, 141.202 and 141.205. This notice shall be given by (1) mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the system; AND (2) any other method reasonably calculated to

reach other persons served by the system, if they would not normally be reached by the notice, such as publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others; posting in public places or on the Internet; or delivery to community organizations. Upon the effective date of this Order, Respondent shall comply with the public notification requirements following any future drinking water regulations violations that are subject to the public notice requirements. 40 C.F.R. § 141.201 et seq. 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).

14. Respondent shall report all analytical results to EPA and the State within the first 10 days following the month in which samples results are received, or within the first 10 days following the end of the monitoring period, whichever is shortest. 40 C.F.R. § 141.31(a).

15. Respondent shall report any other violation of the drinking water regulations to EPA and the State within 48 hours of discovery. 40 C.F.R. § 141.31(b).

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

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

**AND**

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

## **GENERAL PROVISIONS**

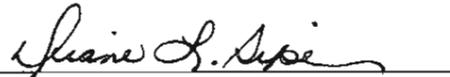
17. This Order does not constitute a waiver, suspension, or modification of any requirement of the Act or drinking water regulations. Issuance of this Order is not an election by EPA to forgo any civil or criminal action.

18. Violation of any part of this Order, the Act, 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(g)(3); 40 C.F.R. part 19.

Issued this 18<sup>th</sup> day of March, 2009.



Michael Risner, Director  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice



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

# TIER 3 TEMPLATES

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 instructions 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 exactly as written, is presented in *italics* (141.205(d)).**

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 NoticeBTemplate 3-1

## Instructions for Monitoring Violations Annual Notice--Template 3-1

### Template on Reverse

Since most monitoring violations are included in Tier 3, 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 one week (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 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. Choose the appropriate language, or develop your own:

- 1) 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.
- 2) 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.]
- 3) 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)).**

Please send a copy of your notice and dates posted to:

Kimberly Pardue Welch  
US EPA Region 8  
8ENF-W  
1595 Wynkoop Street  
Denver, CO 80202-1129

Or, you may fax a copy to: Attn: Kimberly Pardue Welch at 303-312-7518.

**Certification of Public Notification**

I \_\_\_\_\_ certify that the attached public notification was issued from  
(PWS Operator / Responsible Party)

\_\_\_\_\_ to \_\_\_\_\_  
(Date) (Date)

The attached notice was issued by \_\_\_\_\_  
(Method of delivery)

Signature \_\_\_\_\_ Date \_\_\_\_\_

**IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER**  
**Monitoring Requirements Not Met for Town of Bearcreek**

Our water system violated several drinking water standards over the past several years. 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. We failed to collect the correct number of lead and copper samples during the 2002 – 2004 sampling period and therefore cannot be sure of the quality of our drinking water during that time.

**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 previous years, 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.

<b>Contaminant</b>	<b>Required sampling frequency</b>	<b>When all samples should have been taken</b>	<b>When samples were or will be taken</b>
Lead and Copper	5 samples every three years	2002 – 2004 (Bearcreek municipal water system collected only 1 samples during this monitoring period listed)	

**What happened? What is being done?**

For more information, please contact [name and number of contact person] \_\_\_\_\_ or  
 [Address] \_\_\_\_\_

*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 **Town of Bearcreek**  
 State Water System ID#: **MT0000063**

Date distributed or dates posted: \_\_\_\_\_