



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

COPY

MAR - 7 2007

Ref: 8ENF-W

CERTIFIED MAIL LETTER
RETURN RECEIPT REQUESTED

Mayor Rick Scheele
The Town of Darby
P.O. Box 37
Darby, MT 59829

Re: Administrative Order
Docket No. SDWA-08-2007-0021
The Town of Darby
PWS ID #MT0000195

Dear Mayor Scheele:

Enclosed you will find an Administrative Order (the 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 Town of Darby Water System is a supplier of water as defined by the Act and that it has violated the National Primary Drinking Water Regulations (NPDWRs) at 40 Code of Federal Regulations (C.F.R.) §§ 141.63(a)(2), 141.63(b), 141.21(a), 141.21(b)(5), 141.86(d)(1)(ii), 141.81(e), 141.83, 141.87(b), 141.201, 141.31(b), 141.21(g)(1), and 141.21(g)(2) for: exceeding the maximum contaminant level (MCL) for total coliform bacteria, exceeding the acute MCL for total coliform bacteria, 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 lead and copper, failure to submit an optimal corrosion control treatment (OCCT) plan, failure to submit source water treatment plan, failure to monitor for water quality parameters, failure to provide public notice, and failure to notify the State of the violations.

If The Town of Darby complies 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 Town of Darby 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, please ask your attorney to 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: John Arrigo, MT DEQ
Kate Miller, MT DEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2007 MAR -7 AM 8:12

IN THE MATTER OF)
The Town of Darby)
Darby, MT)
Respondent)
)
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-08-2007-0021

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. The Town of Darby (Respondent) is a municipality and therefore a "person" within the meaning of 40 C.F.R. § 141.2.
2. Respondent owns and/or operates a system, the Town of Darby Water System, located in Ravalli County, Montana, for the provision to the public of piped water for human consumption.

3. The Town of Darby Water System (the System) has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents 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 "community water system" within the meaning of 40 C.F.R. § 141.2.
4. Respondent owns and/or operates a public water system and is 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. Respondent is therefore subject to the requirements of part B of the Act, 42 U.S.C. § 300g, et seq., and its implementing regulations, 40 C.F.R. part 141, also known as the National Primary Drinking Water Regulations (NPDWRs).
5. According to an August 31, 2006 Sanitary Survey, Respondent operates a system that is supplied solely by a ground water source consisting of three wells. The System serves approximately 700 persons daily through 346 service connections and is operational year-round.
6. The Montana Department of Environmental Quality (the State) has primary enforcement authority for the public water supply protection provisions of the Act in the State of Montana. On January 30, 2007, EPA sent a Notice of Violation pursuant to section 1414(a) of the Act, 42 U.S.C. § 300g-3(a), to the State and the System regarding the System's failure to comply with NPDWRs. The State elected not to commence an enforcement action against the System for the failure to comply with NPDWRs 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 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 the State pursuant to section 1414(g)(2) of the Act, 42 U.S.C. § 300g-3(g)(2).

FINDINGS OF VIOLATION

I

1. 40 C.F.R. § 141.63(a)(2) imposes and defines the maximum contaminant level (MCL) for total coliform bacteria, applicable to public water systems collecting fewer than 40 samples per month, as allowing no more than one sample collected during a month to be positive for total coliform bacteria.
2. Monitoring results submitted by Respondent for the System during July and August 2002, September and November 2004, and August 2005 exceeded the MCL for total coliform bacteria for each of those months, in violation of 40 C.F.R. § 141.63(a)(2).

II

1. 40 C.F.R. § 141.63(b) imposes and defines the acute 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 Respondent for the System during September 2005 exceeded the acute MCL for total coliform bacteria, in violation of 40 C.F.R. § 141.63(b).

III

1. 40 C.F.R. § 141.21(a) requires a community public water system to monitor its water at least once per month that the system serves water to the public to determine compliance with the MCL for total coliform bacteria as stated in 40 C.F.R. § 141.63(a)(2).
2. Respondent failed to monitor the System's water for contamination by total coliform bacteria during July 2004, in violation of 40 C.F.R. § 141.21(a).

IV

1. 40 C.F.R. § 141.21(b)(5) requires public water systems that collect fewer than 5 routine samples per month and have one or more total coliform positive samples to collect at least 5 routine samples during the next month they provide water to the public.
2. Respondent failed to collect at least 5 routine samples in September and November 2002 and December 2004 after a total coliform positive sample in each preceding month, in violation of 40 C.F.R. § 141.21(b)(5).

V

1. 40 C.F.R. § 141.86 (d)(1)(ii) requires community and non-transient, non-community water systems to monitor their tap water for lead and copper during two consecutive six-month compliance periods.

2. Respondent last monitored for lead and copper in December 2006, but failed to monitor during two consecutive six-month compliance periods for January – June and July – December for the years 2002, 2003, and 2004, and July – December in 2005 (the Respondent failed to take the correct number of samples in the January – June 2004 and July – December 2005 monitoring periods), in violation of 40 C.F.R. § 141.86(d)(1)(ii).

VI

1. 40 C.F.R. §§ 141.81(e) and 141.83 require small and medium size public water systems that exceed the lead or copper action level to recommend corrosion control and source water treatment within six months of exceeding the lead or copper action level, and to install optimum corrosion control treatment and, if applicable, source water treatment within 24 months after the State designates such treatment.
2. Respondent did not recommend treatment for corrosion control or source water after the System's monitoring results first exceeded the copper action level during the January – June 2004 monitoring period. Therefore, Respondent has been in continuous violation of 40 C.F.R. §§ 141.81(e) and 141.83 from January 2005 to the present.

VII

1. 40 C.F.R. § 141.87(b) requires all large water systems, and all small and medium-sized systems that exceed the lead or copper action level to monitor water quality parameters (WQPs) in addition to lead and copper in accordance with that regulation.

2. Respondent failed to monitor for WQPs during the period January – June and July – December for the years 2002, 2003, 2004, 2005, and July – December in 2006 (the System failed to take the correct number of samples in July – December 2005), in violation of 40 C.F.R. § 141.87 (b).

VIII

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. Respondent has not provided public notice of the violations outlined in Sections I through VII (except the failure to monitor for lead and copper violation in 2004 and the total coliform MCL violations in July 2002 and September 2004), in violation of 40 C.F.R. § 141.201.

IX

1. 40 C.F.R. 141.21(g)(1) requires a public water system that has exceeded the MCL for total coliforms 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. Respondent failed to report to the State the total coliform MCL violations detailed in Sections I and II, in violation of 40 C.F.R. § 141.21(g)(1).

X

1. 40 C.F.R. § 141.21(g)(2) requires public water systems that have failed to comply with a coliform monitoring requirement under 40 C.F.R. § 141.21 to report the violation to the State within ten days after the system discovers the violation.

2. Respondent failed to report to the State the noncompliance detailed in Sections III and IV, in violation of 40 C.F.R. § 141.21(g)(2).

XI

1. 40 C.F.R. § 141.31(b) requires public water systems to report any failure to comply with any NPDWRs to the State within 48 hours.
2. Respondent failed to report to the State the noncompliance detailed in Sections V through VIII, 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, Respondent shall comply with the total coliform MCL as stated in 40 C.F.R § 141.63(a)(2).
2. Upon the effective date of this Order, Respondent shall comply with the acute total coliform MCL as stated in 40 C.F.R § 141.63(b).
3. Upon the effective date of this Order, Respondent shall comply with the requirements of 40 C.F.R § 141.21(a) to perform monthly bacteriological monitoring to determine compliance with the MCL for total coliform as stated in 40 C.F.R § 141.63(a)(2). 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 40 C.F.R. § 141.31(a).
4. Upon the effective date of this Order, Respondent shall comply with all sampling requirements specified in 40 C.F.R. § 141.21(b)(5). If Respondent's water system

has one or more total coliform positive samples in a month, Respondent shall collect at least 5 routine samples during the next month the system provides water to the public. 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 40 C.F.R. § 141.31(a).

5. Upon the effective date of this Order, and per the regulation thereafter, Respondent shall monitor the water for lead and copper as required by the State and by 40 C.F.R. § 141.86. Respondent shall report results and other information to EPA and the State within the first 10 days following the end of each applicable monitoring period, as required by 40 C.F.R. § 141.90(a).
6. Within 4 months from the effective date of this Order, Respondent shall provide optimal corrosion control and source water treatment recommendations to the State and EPA. Within 8 months of obtaining the State's approval of the treatment recommendations, Respondent shall install optimal corrosion control and, if applicable, source water treatment. Within one week of project completion, Respondent shall notify the State and EPA in writing that the project is complete.
7. After installation of optimal corrosion control treatment as outlined in paragraph 6 above, Respondent shall collect 20 tap samples for lead and copper during each two consecutive 6-month monitoring periods (January-June and July-December) immediately following treatment installation, in accordance with 40 C.F.R. part 141 subpart I and as follows:

- a. Collect 20 samples that are first-draw, one-liter in volume, and have stood motionless in the plumbing system for at least 6 hours in accordance with 40 C.F.R. § 141.86(b) at sampling sites selected in accordance with 40 C.F.R. § 141.86(a);
- b. Have samples analyzed by a State or EPA-certified laboratory, in accordance with 40 C.F.R. § 141.89;
- c. Report the results of the tap water monitoring to EPA and the State within 10 days of receiving the results, including:
 - i. the location of each site and criteria under which the site was selected for the system's sampling pool;
 - ii. certification that each first draw sample collected is one-liter in volume, and to the best of one's knowledge, has stood motionless in the service line, or in the interior plumbing of a sampling site, for at least 6 hours;
 - iii. where residents collected the samples, a certification that each tap sample collected by the residents was taken after the water system informed them of proper sampling procedures specified in 40 C.F.R. § 141.86(b)(2);
 - iv. the 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period calculated in accordance with 40 C.F.R. § 141.80(c)(3).

Respondent shall report the results of the tap water monitoring to EPA and the

State for lead and copper within 10 days following the end of each monitoring period, in accordance with 40 C.F.R. § 141.90(a).

8. If the System's water does not exceed the lead and copper action levels during both monitoring periods in paragraph 7, Respondent shall comply with the frequency and number of tap samples in accordance with State requirements and 40 C.F.R. § 141.86(d).
9. If the System's water exceeds the lead or copper action level during either monitoring period following treatment installation, the State will, based upon the WQP results collected during the previous twelve month period, establish WQP values that the Respondent must meet in all subsequent monitoring periods to remain in compliance, in accordance with 40 C.F.R. § 141.82(f). Immediately upon receipt of the State's instructions per 40 C.F.R. § 141.82(f), Respondent shall comply with the requirements of 40 C.F.R. §§ 141.82(g) and 141.87(d)-(f) to operate and maintain optimal corrosion control treatment, including maintaining WQPs, at or above minimum values designated by the State.
10. Within 30 days from the effective date of this Order, Respondent shall comply with all the requirements for WQP monitoring and reporting as specified in 40 C.F.R. §§ 141.87, 141.89, and 141.90 and for source water monitoring and reporting as specified in 40 C.F.R. §§ 141.88, 141.89, and 141.90. Respondent shall report results to the State and EPA within 10 days of receiving the results.
Respondent shall:
 - a) Collect 2 tap samples at 2 sites that are representative of water quality throughout the distribution system in accordance with

40 C.F.R. §§ 141.87(a)(1)(i) and 141.87 (a)(2)(i). Respondent may collect WQPs at the same locations as those used for coliform sampling under 40 C.F.R. § 141.21.

b) Collect 2 samples for each applicable WQP at each entry point(s) to the distribution system that are representative of water quality throughout the distribution system in accordance with 40 C.F.R. §§ 141.87(a)(1)(ii) and 141.87(a)(2)(ii). The applicable WQPs are specified in 40 C.F.R. § 141.87(b) and are:

- i. pH
- ii. alkalinity
- iii. orthophosphate (when an inhibitor containing phosphate compound is used)
- iv. silica (when an inhibitor containing a silicate compound is
- v. used)
- vi. calcium
- vii. conductivity, and
- viii. water temperature

c) Collect one source water sample from each entry point to the distribution system, in accordance with 40 C.F.R. §§ 141.88(a) and (b).

11. Respondent shall have samples analyzed by a State or EPA-certified laboratory, in accordance with 40 C.F.R. § 141.89.
12. Within 30 days from the effective date of this Order, Respondent must provide public notice of the violations specified under the Findings of Violation Sections I

through VII of this Order (except for failure to monitor violations for lead and copper in 2004 and total coliform MCL violations in July 2002 and September 2004) to return to compliance with 40 C.F.R. §§ 141.201, 141.204 and 141.205. Upon the effective date of this Order, Respondent shall comply with the public notification requirements at 40 C.F.R. § 141.201, et seq., following any future NPDWR violation. Respondent shall submit a copy of the public notice to EPA and the State within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d). 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. The Respondent must repeat the notice annually for as long as the violation, variance, exemption, or other situation persists. If the public notice is posted, the notice must remain in place for as long as the violation, variance, exemption, or other situation persists, but in no case less than seven days. Respondent may use the Consumer Confidence Report (CCR) to provide public notice as long as (1) the CCR is provided to persons served no later than 12 months after the system learns of the violation or situation; (2) the public notice contained in the CCR follows the content requirements under 40 C.F.R. § 141.205; AND (3) the CCR is distributed following the delivery requirements

under 40 C.F.R. § 141.204(c). The Respondent must repeat the notice every three months as long as the violation or situation persists.

13. Upon the effective date of this Order, Respondent 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 EPA and the State no later than the end of the next business day after Respondent learns of the violation.
14. Upon the effective date of this Order, Respondent 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 System discovers the violation.
15. Except where a different reporting period is specified in the paragraphs above, upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.31(b) by reporting any failure to comply with any NPDWR to EPA and the State within 48 hours.
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 80202-1126

AND

Kate Miller
MT Dept. of Environmental Quality –
PWSS
1520 E. Sixth Avenue
P.O. Box 20901
Helena, MT 59620-0901

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 Respondent 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 Respondent 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 its date of issuance.

Issued the 7th day of March, 2007.

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

Diane L. Sipe
Diane L. Sipe, Director
Technical 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 Notice–Template 3-1

IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER
Monitoring Requirements Not Met for [system name] _____

Our water system violated several drinking water standards over the past five 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 monitor for [list contaminants for all violations of the Order]

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 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.

Contaminant	Required sampling frequency	When all samples should have been taken	When samples were or will be taken

What happened? What is being done?

For more information, please contact [owner / operator name] _____, Owner / Operator,
at [phone] ____-____-____ 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 [system name] _____
State Water System ID#: MT _____

Date distributed or dates posted: _____