



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

Ref: 8ENF-W

DEC 14 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Debra L. Scott
Beaverhead County Clerk and Recorder
2 South Pacific Street, Ste. #3
Dillon, MT 59725

Re: Administrative Order
Beaverhead County Jackson Water
and/or Sewer District
Public Water System
Docket No. SDWA-08-2010-0004
PWS ID #MT0002590

Dear Ms. Scott:

Enclosed is an Administrative Order (Order) issued by the Environmental Protection Agency (EPA) under the authority of the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq. Among other things, the Order alleges that Beaverhead County Jackson Water and Sewer District (the district) has violated the National Primary Drinking Water Regulations (the 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 district complies with the Order, 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.

The Small Business Regulatory Enforcement and Fairness Act (SBREFA) may apply to this situation. Enclosed is a small business information sheet, outlining compliance assistance resources available to small businesses and small governments, in case these are relevant. SBREFA does not eliminate the responsibility to comply with the Order or the drinking water regulations.

The Order requires the district to notify the public of having violated the drinking water regulations. Enclosed please find a public notice template explaining the public notice requirements in more detail.

To submit information, or to request an informal conference with EPA, please contact Shawn McCaffrey at the above address (with the mailcode 8ENF-W) or by phone at (800) 227-8917, extension 6515 or (303) 312-6515. Any questions from the company's attorney should be directed to Peggy Livingston, Senior Enforcement Attorney, 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,



Darcy O'Connor, Acting Director
Water Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Order
SBREFA Information Sheet
Public Notice Template

cc: Tina Artemis, EPA Regional Hearing Clerk
Laverne Jackson, Beaverhead Jackson Water and Sewer
District (via certified mail/return receipt requested)
Joan Hullett, Operator, Beaverhead Jackson Water and Sewer
District (via certified mail/return receipt requested)
Jeanette Robertson, Beaverhead Jackson Water and Sewer
District (via certified mail/return receipt requested)
John Arrigo, MT DEQ
Shelley Nolan, MT DEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2009 DEC 14 AM 11: 25

IN THE MATTER OF:)
)
Beaverhead County Jackson Water)
and/or Sewer District,)
)
Respondent.)

FILED
EPA REGION VIII
Docket No. SDWA-08-2010-0004
ADMINISTRATIVE ORDER

1. This Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.* (the Act), as properly delegated to the undersigned officials.

2. Beaverhead County Jackson Water and/or Sewer District is a public body created by or pursuant to Montana law that owns and/or operates the Beaverhead Jackson public water system (the system), which provides piped water to the public in Beaverhead County, Montana, for human consumption.

3. The system is supplied by the Jardine Hot Springs, which has been classified as a groundwater source. The water is not treated.

4. The system has approximately 26 service connections used by year-round residents and/or regularly serves at least 30 year-round residents. Therefore, the system is a "public water system" and a "community water system" as defined in 40 C.F.R. § 141.2 and § 1401 of the Act, 42 U.S.C. § 300f.

5. Respondent is subject to the Act and the National Primary Drinking Water Regulations (drinking water regulations) at 40 C.F.R. part 141. The drinking water regulations are "applicable requirements" as defined in § 1414(i) of the Act, 42 U.S.C. § 300g-3(i).

6. The Montana Department of Environmental Quality has primary enforcement authority for the public water system supervision provisions of the Act in the State of Montana (the State). EPA issued a notice of the system's violations to the State on November 10, 2009. The State elected not to commence an enforcement action against the Respondent for the violations listed in the notice of violation within the thirty-day time frame set forth in § 1414(a) of the Act, 42 U.S.C. § 300g-3(a). EPA has provided a copy of this Order to the State and has provided the State the opportunity to confer with EPA regarding this Order.

7. The maximum contaminant level (MCL) for arsenic was changed from 0.050 milligrams per liter (mg/L) to 0.010 beginning January 23, 2006. Because the system's water historically contained arsenic in levels greater than the new MCL, Respondent requested an exemption from the arsenic MCL on January 13, 2006. The State granted this exemption on January 3, 2008, with an arsenic MCL compliance date of January 23, 2009. A condition of the exemption required Respondent to sample the system's water quarterly for arsenic beginning in the 1st (January-March) quarter of 2008. (Systems that exceed the arsenic MCL as calculated in 40 C.F.R. § 141.23(i) are also required to monitor quarterly for arsenic. 40 C.F.R. § 141.23(c)(7).) The requirement to monitor quarterly for arsenic is an "applicable requirement" as defined in § 1414(i) of the Act, 42 U.S.C. § 300g-3(i) and the condition of the exemption requiring quarterly monitoring is also enforceable pursuant to § 1416(b)(3) of the Act, 42 U.S.C. § 300g-5(b)(3).

VIOLATIONS

8. Respondent is required to monitor the system's water for arsenic quarterly beginning in the 1st quarter of 2008, as a condition of the State's exemption. See also 40 C.F.R. §§ 141.23(c)(7) and 141.23(g). Respondent failed to monitor the system's water for arsenic during the 1st quarter of 2008, 2nd (April-June) quarter of 2008, 3rd (July-September) quarter of 2008, and 1st quarter of 2009, and, therefore, violated this requirement.

9. The MCL for arsenic is 0.010 mg/L, based on a running annual average of quarterly samples. 40 C.F.R. §§ 141.62(b) and 141.23(i)(1). If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately. 40 C.F.R. § 141.23(i)(1). For samples taken in the 2nd quarter of 2009 (0.046 mg/L) and 3rd quarter of 2009 (0.047 mg/L), the system's water exceeded the MCL for arsenic, and, therefore, Respondent violated this requirement.

10. Respondent is required to prepare and deliver an annual Consumer Confidence Report (CCR) to the system's customers by July 1 of each year and to certify to the State of having done so. The CCR is to include information about the quality of the system's water using data collected during, or prior to, the previous calendar year. 40 C.F.R. §§ 141.152-141.155. Respondent failed to prepare and deliver an annual CCR for 2007 to the system's customers and to the State. Respondent also failed to provide a certification to the State for 2007. Therefore, Respondent violated these requirements. Respondent did submit its 2008 CCR to the State.



11. Respondent is required to notify the public of certain violations of the drinking water regulations. 40 C.F.R. §§ 141.201, 141.203, and 141.204. Respondent failed to notify the public of the violations listed in paragraphs 8 and 9, above, and, therefore, violated this requirement.

12. Respondent is required to report any failure to comply with any of the drinking water regulations to the State within 48 hours (except where a different reporting period is specified in the drinking water regulations). 40 C.F.R. § 141.31(b). Respondent failed to report the violations listed in paragraphs 8 through 10, above, to the State and, therefore, violated this requirement.

ORDER

Based on the above violations, Respondent is ordered to perform the following actions upon Respondent's receipt of this Order (unless a different deadline is specified below):

13. During each calendar quarter until a different monitoring frequency is determined by the State, Respondent shall monitor the system's water for arsenic. 40 C.F.R. § 141.23. Respondent shall report analytical results to EPA and the State within the first 10 days following the month in which sample results are received, in accordance with 40 C.F.R. §§ 141.23(i) and 141.31(a). Respondent shall report any violation of the arsenic monitoring requirements to EPA and the State within 48 hours. 40 C.F.R. § 141.31(b).

14. Within 60 days of receipt of this Order, Respondent shall provide EPA with a compliance plan and schedule for the system to come into compliance with the arsenic MCL. 40 C.F.R. § 141.62(b). The plan shall include proposed system modifications, estimated costs of modifications, and a schedule for completion of the project and compliance with the arsenic MCL. The proposed schedule shall include specific milestone dates, and a final compliance date (to be within 18 months from the date of EPA's approval of the plan). The proposed plan and schedule must be approved by EPA before construction or modifications can commence. EPA's approval of Respondents' plan and schedule does not substitute for any State of Montana approvals of plans and specifications that may also be required before modifications can be made to the system.



15. The plan and schedule required by paragraph 14, above, will be incorporated into this Order as enforceable requirements upon written approval by EPA.

16. Within 90 days of receiving EPA's approval of the plan and schedule required by paragraph 14, above, Respondent shall provide EPA with quarterly reports on the progress made toward bringing the system into compliance with the arsenic MCL. Each quarterly report is due by the 10th day of the month following the relevant quarter.

17. Respondent must achieve and maintain compliance with the arsenic MCL by the final date specified in the approved plan, or no later than 18 months after receiving EPA's approval of the plan and schedule required by paragraph 14, above, whichever is earliest. Respondent must meet that deadline even if the plan as approved does not achieve compliance. If implementation of the plan fails to achieve permanent compliance, EPA may order further steps and/or seek penalties for noncompliance.

18. Within 30 days of receipt of this Order, Respondent shall prepare an annual CCR (to include all information required by 40 C.F.R. §§ 141.153 and 154) for the system for 2007 and distribute the report to the system's customers, EPA, and the State. No later than 3 months thereafter, Respondent shall certify to EPA and the State that the CCR has been distributed to the system's customers and that its information is correct and consistent with monitoring data previously provided to EPA and the State. Thereafter, Respondent shall prepare and distribute annual CCRs and provide certifications as required by 40 C.F.R. §§ 141.152-141.155.

19. Within 30 days of receiving this Order, Respondent shall notify the public of the violations cited in paragraphs 8 and 9, above, as required by 40 C.F.R. part 141, subpart Q. Thereafter, following any future violation of the drinking water regulations, Respondent shall comply with the applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 days of providing public notice, Respondent shall submit a copy of the notice to EPA.

20. Respondent shall direct all reporting required by this Order to:

Shawn McCaffrey, 8ENF-W
U. S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

AND

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



GENERAL PROVISIONS

21. 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.

22. Violation of any part of this Order 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; 40 C.F.R. part 19.

Issued: Dec 14, 2009.

David Rochlin

David Rochlin, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Darcy O'Connor

Darcy O'Connor, Acting Director
Technical Water Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

