

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 SEP 19 AM 9:58
Linda Westervelt, owner
Big Sky Corner Melville
Melville, Montana

IN THE MATTER OF)
)
Linda Westervelt, owner)
Big Sky Corner Melville)
Melville, Montana)
PWS ID# MT0001683)
)
Respondent)
)
Proceedings under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))
_____)

ADMINISTRATIVE ORDER
Docket No. **SDWA-08-2008-0105**

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 (SDWA or the Act), 42 U.S.C. § 300g-3(g) and its implementing regulations, as properly delegated to the Supervisors of the Legal Enforcement Program of the Office of Enforcement, Compliance and Environmental Justice and the Director of the EPA Montana Office, EPA Region 8.

FINDINGS

1. Linda Westervelt (Respondent) is an individual and therefore a "person" within the meaning of 40 C.F.R. § 141.2.
2. Respondent owns and/or operates the Big Sky Corner Melville Public Water System (the System), located in Sweet Grass County, Montana, for the provision of water to the public for human consumption.
3. According to records maintained by the Montana Department of Environmental Quality

- (MDEQ), 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). The System is a "transient, non-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 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. Respondent is subject to the requirements of Part B of the Act, 42 U.S.C. § 300g, and its implementing regulations found at 40 C.F.R. Part 141.
 5. According to records maintained by MDEQ, the System is supplied solely by a groundwater source consisting of one well and serves an average of approximately 25 persons daily, year round.
 6. MDEQ has primary enforcement authority for the Act in the State of Montana. On March 11, 2008, EPA issued a Notice of Violation pursuant to section 1414(a) of the Act, 42 U.S.C. § 300g-3(a) to the MDEQ regarding the violations at the System. The MDEQ elected not to commence an appropriate 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 SDWA, 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 SDWA, 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 requirements of an applicable approved State program, such as Montana’s “Public Water Supply Requirements,” at Administrative Rules of Montana (ARM) 17.38.101 through 703. See 42 U.S.C. § 300g-3(l).

FINDINGS OF VIOLATION

I. Failure to sample for Nitrate.

- A. 40 C.F.R. § 141.23(d) requires the owner and/or operator of a public water system to collect one water sample per year to determine compliance with the Maximum Contaminant Level (MCL) for nitrate, as stated in 40 C.F.R. § 141.62.
- B. Respondent failed to sample for nitrate in calendar year 2004, in violation of 40 C.F.R. § 141.23(d).

II. Failure to sample for total coliform monthly, as directed by the State.

- A. Administrative Rules of Montana (ARM) 17.38.215(1)(b) requires transient, non-community public water systems to sample for total coliform monthly when so directed by the State. Said Montana requirement is part of Montana’s approved State program and an “applicable requirement” pursuant to section 1414(g) of the Act, 42 U.S.C. § 300g-3(g). Respondent was directed by the State to begin monthly sampling for total coliform bacteria in December, 1998.
- B. Respondent failed to sample for total coliform as directed by the State during November and December 2005; September and December 2006; January, March, April, June, August, September, November, December 2007; and March, April, and May 2008; in violation of ARM 17.38.215(1)(b).

III. Failure to sample for repeat total coliform samples after experiencing a positive total coliform test result.

- A. 40 C.F.R. § 141.21(b) requires public water systems that normally collect one total coliform sample per month and that experience a positive total coliform test result to collect at least 4 repeat samples within 24 hours of being notified of the positive result.
- B. Respondent failed to collect repeat total coliform samples during the months of June and July 2006 following total coliform positive samples, in violation of 40 C.F.R. 141.21(b).

IV. Failure to sample for sufficient total coliform samples during a month following a positive total coliform test result.

- A. 40 C.F.R. § 141.21(b)(5) requires public water systems that collect fewer than 5 routine total coliform samples per month and that experience a positive test result to collect at least 5 routine samples during the month following the positive test result.
- B. Respondent failed to collect 5 total coliform samples during the months of July and August 2006 following total coliform positive samples in the preceding months, in violation of 40 C.F.R. 141.21(b)(5).

V. Failure to provide public notice of a violation.

- A. 40 C.F.R. § 141.201 et. seq. requires owners and/or operators of public water systems to notify the public of any violations of the national primary drinking water regulations (NPDWR).
- B. Respondent has not provided public notice of the violations detailed in Sections I

through IV above, in violation of 40 C.F.R. § 141.201 et. seq. Public notice for the September, November, and December 2007; and March, April, and May 2008 violations listed in Section IIB is not yet overdue.

VI. Failure to report total coliform monitoring violations to the State

- A. 40 C.F.R. § 141.21(g)(2) requires public water systems to report any failure to comply with a coliform monitoring violation to the State within 10 days after the system discovers the violation.
- B. Respondent failed to report to MDEQ the violations detailed in Sections II through IV above, in violation of 40 C.F.R. § 141.21(g)(2).

VII. Failure to report other NPDWR violations to the State.

- A. 40 C.F.R. § 141.31(b) requires public water systems to report any failure to comply with any other NPDWR to the State within 48 hours.
- B. Respondent failed to report to the State the violations described in Sections I and V above, 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. Not later than 30 days from the effective date of this Order, Respondent shall comply with the nitrate sampling requirements, as stated in 40 C.F.R. § 141.23(d), for calendar year 2008. Thereafter, Respondent shall comply annually with the requirements to sample and report sample results for nitrate.
2. Upon the effective date of this Order, Respondent shall comply with total coliform

monitoring requirements, including requirements for monthly routine monitoring as required by the State, as stated in ARM 17.38.215(1)(b).

3. Upon the effective date of this Order, Respondent shall collect at least 4 repeat total coliform samples within 24 hours after a positive total coliform sample result is received, as required by 40 C.F.R. § 141.21(b).
4. Upon the effective date of this Order, Respondent shall collect at least 5 total coliform samples during the month following a positive total coliform result, as required by 40 C.F.R. § 141.21(b)(5).
5. 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 a coliform monitoring requirement to EPA and MDEQ within 10 days.
6. 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 other NPDWR to EPA and MDEQ within 48 hours.
7. Upon the effective date of this Order, Respondent shall comply with the public notice requirements at 40 C.F.R. § 141.201, et seq., following any future NPDWR violation.
8. No later than 30 days from the effective date of this Order, Respondent shall return to compliance with 40 C.F.R. § 141.201 et seq. by providing public notice of the violations specified in Findings of Violation I through V in this Order. 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) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by

the System or by mail or direct delivery to each customer and service connection; 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 required above, 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 deliver to community organizations. The System must repeat the notice annually for as long as the violation persists. If the public notice is posted, the notice must remain in place for as long as the violation persists, but in no case less than seven days.

9. Documents, certifications, analytical results, and public notices required by this Order shall be sent by certified mail to:

Eric Finke	and	Shelley Nolan, Chief
EPA Montana Office		PWS Compliance Section
10 West 15 th Street, Suite 3200		Public Water and Subdivisions Bureau
Helena, MT 59626		MT Dept. of Environmental Quality
		P.O. Box 200901
		Helena, MT 59620


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

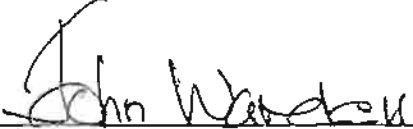
appropriate U.S. District Court under section 1414(g)(3)(C) of the Act, 42 U.S.C. § 300g-3(g)(3)(C).

3. Violation of any requirement of the SDWA 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 the date of issuance of this Order.

Issued this 18 day of Sept, 2008.



David J. Janik, Director
Matthew Cohn, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice



John F. Wardell, Director
EPA Montana Office