



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

2013 MAR -6 PM 3: 20

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: SDWA-08-2011-0043

IN THE MATTER OF:

NIKI SMOKER, OWNER  
HORSESHOE BAR  
Frazer, Montana

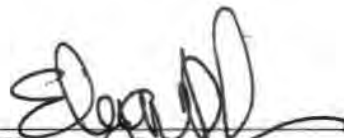
RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 6<sup>th</sup> DAY OF March, 2013.

  
\_\_\_\_\_  
Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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IN THE MATTER OF: )

Niki Smoker, Owner )

Horseshoe Bar )

Frazer, Montana )

Respondent. )

) Docket No. SDWA-08-2011-0043

) **CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Niki Smoker, Owner, Horseshoe Bar (Respondent), hereby consent and agree as follows:

**FACTUAL AND PROCEDURAL BACKGROUND**

1. On August 22, 2012, Complainant issued a Complaint and Notice of Opportunity for Hearing (Complaint) alleging that the Respondent violated an Administrative Order that EPA had previously issued under § 1414(g) of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300g-3(g). Specifically, the Complaint cites Respondent for failing to monitor for nitrate and total coliform bacteria, failure to report to EPA Respondent's failure to report for total coliform bacteria, and failure to issue a public notice. The Complaint proposes a civil penalty for the violations alleged therein.

2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.

3. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in the Complaint or this Consent Agreement.

4. This Consent Agreement contains all terms of the settlement agreed to by the Complainant and the Respondent (hereafter referred to collectively as "the parties"). Upon incorporation into a final order, this Consent Agreement applies to and is binding upon EPA and upon Respondent and Respondent's successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.

5. Pursuant to § 1414(g) of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300g-3(g), taking into account the nature, circumstances, extent and gravity of the violations; any economic benefit or savings gained resulting from the violations; Respondent's history of such violations; Respondent's culpability for the violations; Respondent's good-faith efforts to comply with applicable requirements; the economic impact of the penalty on the Respondent; and other factors that justice may require, EPA has determined that an appropriate civil penalty to settle this action is in the amount of SIX HUNDRED FIFTY dollars (\$650).

#### **TERMS OF SETTLEMENT**

6. Respondent consents to the issuance of the Consent Agreement and consents to the payment of the civil penalty cited in paragraph 5 above. Respondent shall pay the civil penalty cited in paragraph 5 above by making a total of two (2) payments as set forth in this Consent Agreement. Respondent shall make an initial payment in the amount of THREE HUNDRED TWENTY FIVE Dollars (\$325) in the manner described below:

- a. The first payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer that adopts this consent agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. The date the payment is made is considered to be the date of the deposit ticket (standard form 215) issued by the US Bank. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

- b. The payment shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case for this amount, payable to "**Environmental Protection Agency,**" to:

**US checks by regular  
US postal service mail:**

U.S. EPA Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

**Federal Express, Airborne,  
or other commercial carrier:**

US Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

**Wire transfers:**

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire  
message should read "D 68010727  
Environmental Protection Agency"

**On Line Payment:**

WWW.PAY.GOV  
Enter sfo 1.1 in the search field

Open form and complete required  
fields.

Copies of the check or wire transfer shall be simultaneously sent to:

Tina Artemis, Regional Hearing Clerk  
U.S. EPA Region 8 (8RC)  
1595 Wynkoop Street  
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the payment due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C.

§ 3717, and will continue to accrue until the payment is received in full (i.e., on the 1<sup>st</sup> late day of the first payment, 30 days of interest accrues; interest will accrue back to the Final Order date to the date of receipt for any subsequent late installment payments).

- d. In addition to the accrual of interest specified in paragraph 6(c) of this Agreement, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31<sup>st</sup> day from the date of the Final Order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if any penalty payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. Payment of the Initial Payment shall be due thirty days after the Final Order is issued in this matter, but in any event, no later than April 1, 2013.

7. Respondent shall make ONE ADDITIONAL PAYMENT in the amount of \$325, in the same manner as referenced in Paragraph 6 above, no later than June 1, 2013.

#### **GENERAL PROVISIONS**

8. This Consent Agreement shall not relieve Respondent of its obligation to comply with the Act and its implementing regulations.

9. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of the Consent Agreement.

10. The undersigned representative for Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.

11. The parties agree to submit this Consent Agreement to the presiding officer with a request that it be incorporated into a final order.

12. Each party shall bear its own costs and attorney fees in connection with this matter.

13. Failure by Respondent to comply with any of the terms of the Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of the Consent Agreement and for such other relief as may be appropriate in federal district court.

14. Respondent agrees that the penalty shall never be claimed as a Federal or other tax deduction or credit.

15. The Consent Agreement, upon incorporation into a final order by the presiding officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,**  
Complainant.

Date: 3/16/2013

By: Edue A. Sierra  
for Andrew M. Gaydosh,  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

In the Matter of: Niki Smoker, Owner, Horseshoe Bar  
Docket No: SDWA-08-2011-0043  
(Continued)

Niki Smoker, Owner, Horseshoe Bar  
Respondent.

Date: 12-14-2012

By: Niki R. Smoker

Name: Niki R. Smoker

Title: Owner, Horseshoe Bar

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **NIKI SMOKER, OWNER, HORSESHOE BAR; DOCKET NO.: SDWA-08-2011-0043** was filed with this office on March 6, 2013.

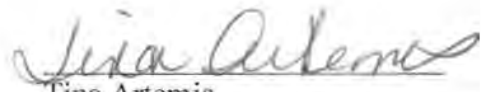
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Dana Stotsky, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were sent via email and placed in the United States mail certified/return receipt on March 6, 2013 to:

Niki Smoker, Owner  
Horseshoe Bar  
P. O. Box 432  
57777 Hwy. 2  
Frazer, MT 59225  
E-mail: niki\_smoker1@yahoo.com

And emailed to:

Kim White  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

March 6, 2013

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

