



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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

2010 FEB -8 AM 9:07

FILED  
EPA REGION VIII  
HEARING CLERK

Ref: 8ENF-W

FEB 08 2010

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Niki Smoker, Owner  
Horseshoe Bar  
P.O. Box 432  
Frazer, MT 59225

Re: Administrative Order  
Horseshoe Bar  
Public Water System  
Docket No. **SDWA-08-2010-0017**  
PWS ID #083090056

Dear Ms. Smoker:

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 you have 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 you comply 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, in case these are relevant. SBREFA does not eliminate the responsibility to comply with the Order or the drinking water regulations.

The drinking water regulations require you to notify the public of violations. EPA has provided copies of forms and instructions for providing public notice as an attachment to this document. In the future, public

notices can easily be accomplished with the assistance of the automated system available at the [www.pniwriter.org](http://www.pniwriter.org) website.

To submit information or to request an informal conference with EPA, please 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. Any questions from your attorney should be directed to Amy Swanson, Enforcement Attorney, who may be reached at the above address (with the mailcode 8ENF-L) or by phone at (800) 227-8917, extension 6906 or (303) 312-6906.

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 templates

cc:

Tina Artemis, EPA Regional Hearing Clerk  
Chairman Stafne, Assiniboine & Sioux Tribes  
Deb Madison, Environmental Director, Fort Peck Tribes

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

2010 FEB -8 AM 10:17  
REGION 8

IN THE MATTER OF:

Niki Smoker,

Respondent.

FILED  
EPA REGION VIII  
HEARING CLERK

Docket No. SDWA-08-2010-0017

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. Niki Smoker (Respondent) is an individual who owns and/or operates the Horseshoe Bar (the system), which provides piped water to the public in Valley County, Montana, for human consumption.

3. The system is supplied by a ground water source consisting of one well. The water is not treated.

4. The system has 1 service connection and/or regularly serves at least 50 individuals daily at least 60 days out of the year. Therefore, the system is a "public water system" as defined in § 1401(4) of the Act, 42 U.S.C. § 300f (4), and 40 C.F.R. § 141.2. The system is also a "transient, non-community water system" as defined in 40 C.F.R. § 141.2.

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 drinking water regulations include monitoring requirements. EPA has sent Respondent annual notifications of the specific monitoring requirements that apply to the system.

**VIOLATIONS**

7. Respondent is required to monitor the system's water quarterly for total coliform bacteria. 40 C.F.R. § 141.21. Respondent failed to monitor the system's water for total coliform bacteria during the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2009 and, therefore, violated this requirement.

8. Respondent is required to report any failure to comply with any coliform monitoring requirement to EPA within ten days of discovering the violation. 40 C.F.R. § 141.21(g)(2). Respondent failed to report the violations listed in paragraph 7, above, to EPA 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):

9. Respondent shall monitor the system's water quarterly for total coliform bacteria, as required by 40 C.F.R. § 141.21. Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results were received, as required by 40 C.F.R. § 141.31(a). Respondent shall report any violation of the total coliform monitoring requirements to EPA within 10 days of discovery, as required by 40 C.F.R. § 141.21(g)(2).

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

U.S. EPA, Region 8  
10 West 15th St, Suite 3200  
Helena, MT 59626

**GENERAL PROVISIONS**

11. 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.

12. 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: 8 February, 2010.



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



Darcy O'Connor, Acting 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 Notice Template 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.

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.

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.]

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 primary 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 \_\_\_\_\_  
(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 Horseshoe Bar**

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 monitor for total coliform during the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2009 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>
Total coliform	1 sample every quarter	2 <sup>nd</sup> , 3 <sup>rd</sup> and 4 <sup>th</sup> quarters of 2009	

**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 **Horseshoe Bar**  
 State Water System ID#: **083090056**

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