



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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2008 NOV 12 AM 8:41

EPA REGION VIII
HEARING CLERK

NOV 12 2008

Ref: 8ENF-W

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Beverly Kudrna, Registered Agent
Pryor Creek Bar, LLC
5948 Haynes Road
Shepherd, MT 59079

Re: Administrative Order
Pryor Creek Bar
Public Water System
Docket No. SDWA-08-2009-0002
PWS ID # MT0002045

Dear Ms. Kudrna:

Enclosed is an Administrative Order (Order) issued by the Environmental Protection Agency (EPA) under the authority of the Safe Drinking Water Act (the Act), 42 U.S.C. section 300f *et seq.* On March 18, 2008, EPA issued an Administrative Order, Docket No. SDWA-08-2008-0017 to Keith Wolff as the owner of Sam's Café Pryor Creek Bar water system. Recently EPA has learned that Pryor Creek Bar, LLC is the owner of the Pryor Creek Bar public water system. Therefore, EPA is closing the previous Administrative Order and this Order is being issued to Pryor Creek Bar, LLC which was organized on January 25, 2008. While EPA has added violations for failure to monitor total coliform bacteria in February 2008, May 2008, August 2008, and September 2008, the violations of the previous Order (prior to re-organization) are included here and the Order requirements remain unchanged. Among other things, the Order describes how Pryor Creek Bar, LLC has violated the National Primary 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 Pryor Creek Bar, LLC complies with the Order for twelve months, 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.

To submit information or request an informal conference with EPA, 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. For legal questions, the attorney assigned to this matter is Marc Weiner, who may be reached at the above address (with the mailcode 8ENF-L) or by phone at (800) 227-8917, extension 6913 or (303) 312-6913.

We urge your prompt attention to this matter.

Sincerely,



Diane L. Sipe, Director
Water Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

Order

Public notice samples/templates

cc: Keith Wolff, Pryor Creek Bar
John Arrigo, MT DEQ
Shelly Nolan, MT DEQ
Tina Artemis, EPA Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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| | | |
|-------------------------|---|------------------------------|
| <u>IN THE MATTER OF</u> |) | |
| |) | |
| Pryor Creek Bar, LLC |) | |
| Huntley, MT |) | ADMINISTRATIVE ORDER |
| |) | |
| <u>Respondent</u> |) | Docket No. SDWA-08-2009-0002 |

LPA REGION VIII
HEARING CLERK

1. This Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by section 1414(g) of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300g-3(g), as properly delegated to the undersigned officials.

2. Pryor Creek Bar, LLC (Respondent) is a corporation which owns and/or operates the Pryor Creek Bar Water System (the system) in Yellowstone County, Montana which provides piped water to the public for human consumption. The system is supplied by a purchased surface water source and serves approximately 30 - 50 people per day through 2 service connections year round. The system is a "transient non-community" water system as defined in 40 C.F.R. § 141.2. Respondent is subject to the requirements of the Act and the National Primary Drinking Water Regulations (drinking water regulations), at 40 C.F.R. part 141. The Respondent received annual notification from the Montana Department of Environmental Quality (MDEQ or the State) regarding the system's monitoring requirements.

3. The MDEQ has primary enforcement authority for the Act in the State of Montana. On February 12, 2008, EPA issued a Notice of Violation to MDEQ regarding the violations at the system. MDEQ elected not to commence an 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). On March 18, 2008, EPA issued an Administrative Order (Docket No. SDWA-08-2008-0017) to Keith Wolff as the owner of Sam's Café Pryor Creek Bar, which was the presumed owner of the facility at that time. EPA has determined that the Administrative Order (Order) was incorrectly issued to Keith Wolff and therefore issued a new Notice of Violations to MDEQ on October 9, 2008 and is reissuing this Order to the correct owner. EPA has provided a copy of this Order to MDEQ and has provided the State, through MDEQ, 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). EPA is issuing this Order requiring the system to comply with the "applicable requirements" it violated. 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. 42 U.S.C. § 300g-3(i).

VIOLATIONS

4. Respondent is required to monitor the system's water at least once per quarter to determine compliance with the maximum contaminant level (MCL) for total coliform bacteria. 40 C.F.R. § 141.21. As of January 1, 2008, Respondent is required by the MDEQ to monitor the system's water at least once per month to determine compliance with the MCL for total coliform bacteria. ARM 17.38.215(1)(b). Respondent failed to monitor the water for contamination of total coliform bacteria during the following monitoring periods: 3rd quarter 2006 (July – September), 4th quarter 2006 (October – December), 1st quarter 2007 (January – March), 3rd quarter 2007, February 2008, May 2008, August 2008, and September 2008 and, therefore, violated this requirement.

5. The law requires Respondents to notify the public of certain violations of the drinking water regulations, in the manner specified by the regulations. 40 C.F.R. § 141.201 et seq. Respondent failed to notify the public of the 2006 and 2007 violations listed in paragraph 4 above and, therefore, violated the requirement. Public notice for the 2008 failure to monitor total coliform violations is not yet past due.

6. Respondent is required to report any failure to comply with a coliform monitoring requirement to the State within ten days after the system learned of the violation. 40 C.F.R. § 141.21(g)(2). Respondent failed to report to the State the failure to monitor total coliform violations listed in paragraph 4 above and, therefore, violated this requirement.

7. Respondent is required to report any failure to comply with any of the drinking water regulations (except where a different reporting period is specified in paragraph 6 above) to the State within 48 hours. 40 C.F.R. § 141.31(b). Respondent failed to report the violations listed in paragraph 5 above to the State and, therefore, violated this requirement.

ORDER

Based on the above violations, Respondent is ordered to perform the following actions:

8. Upon receipt of this Order, Respondent shall monitor monthly for

total coliform bacteria. ARM 17.38.215(1)(b). Respondent shall report analytical results to EPA and the State within the first 10 days following the month in which sample results are received, as required by the drinking water regulations. 40 C.F.R. § 141.31(a). Any violation of the total coliform monitoring requirements shall be reported to EPA and the State within ten days after Respondent learns of it. 40 C.F.R. § 141.21(g)(2).

9. Within 30 days of the effective date of this Order, Respondent must provide public notice of the violation(s) specified in Paragraph 4 in this Order. 40 C.F.R. §§ 141.201, 141.202 and 141.205. Respondent shall submit a copy of the public notice to EPA and the State within ten days of completion of the public notice. 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 (2) by mail or direct delivery to each customer and service connection; AND (3) 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 or newsletter distributed to customers; use of E-mail to notify employees or students; or delivery of multiple copies in central locations. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but for no less than seven days. The public water system must repeat the notice every three months as long as the violation or situation persists. Upon the effective date of this Order, Respondent shall comply with the public notification requirements following any future drinking water regulations violation. 40 C.F.R. § 141.201 et seq.

10. Respondent shall report any other violation of the drinking water regulations to EPA and the State within 48 hours of discovery.

11. 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 80202-1129

AND

Shelly Nolan
Montana Department of
Environmental Quality- PWSS
P.O. Box 200901
Helena, MT 59620-0901

GENERAL PROVISIONS

12. 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.

13. Violation of any part of this Order, the Act, or the drinking water regulations may subject Respondent to a civil penalty of up to \$32,500 (as adjusted for inflation) per day of violation, 42 U.S.C. § 300g-3(g)(3); 40 C.F.R. part 19.

11/10/08
Date

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

7 November 2008
Date

Diane L. Sipe
Diane L. Sipe, 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 NoticeBTemplate 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)):

- X Hand or direct delivery
- X Mail, as a separate notice or included with the bill

Non-community systems must use one of the following (141.204(c)):

- X Posting in conspicuous locations
- X Hand delivery
- X 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:

- X 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.
- X 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.]
- X 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 primacy 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 issued from
(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 Pryor Creek Bar, LLC

Our water system violated several drinking water standards over the past few 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 3rd quarter 2006, 4th quarter 2006, 1st quarter 2007, 3rd quarter 2007, February 2008, May 2008, August 2008, and September 2008 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.

| Contaminant | Required sampling frequency | When all samples should have been taken | When samples were or will be taken |
|---------------------------------------|---|--|---|
| Failure to monitor for total coliform | 3 rd Q 2006, 4 th Q 2006, 1 st Q 2007, 3 rd Q 2007, February 2008, May 2008, August 2008, and September 2008, | 1 sample each month (as of January 2008) | |

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 **Pryor Creek Bar**
 State Water System ID#: **MT0002045**

Date distributed or dates posted: _____