



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

Phone 800-227-8917

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

Ref: 8ENF-W

JAN 20 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7008 3230 0003 0730 0040

Paul and Cathy Schulte, Owners
Oasis Bar and Café
220 Recreation Road
Wolf Creek, MT 59648

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7008 3230 0003 0730 0057

Robert D. Montanye, Registered Agent
Bob and Janey, LLC
250 Recreation Road
Wolf Creek, MT 59648

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. **SDWA-08-2010-0014**

Dear Mr. and Ms. Schulte and Mr. Montanye:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against Mr. Schulte, Ms. Schulte, and Bob and Janey, LLC under section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that Mr. Schulte, Ms. Schulte, and Bob and Janey, LLC (the Respondents) failed to comply with an Administrative Order, Docket No. SDWA-08-2007-0018, issued on March 22, 2007, under § 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g). The violations are specifically set out in the complaint.

By law, each Respondent has the right to request a hearing regarding the matters set forth in the complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If the Respondents do not file an answer to this complaint within 30 days of receipt, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In the answer, each Respondent may request a hearing. Each Respondent has the right to be represented by an attorney at any stage of these proceedings.



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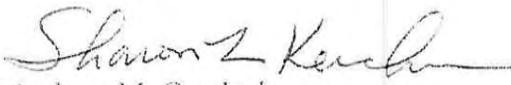
Whether or not any Respondent requests a hearing, any Respondent may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. A request for an informal conference does not extend the 30-day period during which a written answer and a request for a hearing must be filed. The parties may confer informally even if an adjudicatory hearing has been requested or scheduled.

EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. If any Respondent signs a consent agreement, this will waive that Respondent's right to request a hearing on any matter to which it has stipulated in that agreement.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Mario Mérida, Environmental Protection Specialist, who can be reached at 800/227-8917 extension 6297, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917 extension 6858.

We urge your prompt attention to this matter.

Sincerely,


for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc: John Arrigo, MT DEQ
Tina Artemis, Regional Hearing Clerk
Shelley Nolan, MT DEQ



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 JAN 20 AM 8:37

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)
)
Paul and Cathy Schulte)
Bob & Janey, LLC)
(Oasis Bar and Café))

Respondents)

Proceedings under § 1414(g))
of the Safe Drinking Water Act.)
42 U.S.C. § 300g-3(g))
_____)

) Docket No. **SDWA-08-2010-0014**

) **COMPLAINT AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**

COMPLAINT

This civil administrative Complaint and Notice of Opportunity for Hearing (complaint) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by § 1414(g)(3) of the Safe Drinking Water Act, as amended (the SDWA), 42 U.S.C. § 300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes the Administrator of the EPA to assess an administrative civil penalty against any person who violates, or fails or refuses to comply with, an order issued under § 1414(g)(1) of the SDWA.

The complainant in this action is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22 (Consolidated Rules of Practice) (Complainant's Exhibit 1).

GENERAL ALLEGATIONS

The following general allegations apply to each count of this complaint:

1. Respondents Paul and Cathy Schulte are individuals. Respondent Bob and Janey, LLC is a Montana corporation. Each Respondent is therefore a "person" as that term is defined in § 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. Respondents own and/or operate a system, the Oasis Bar and Café water system (the System), located in Lewis and Clark County, Montana, for the provision to the public of piped water for human consumption.
3. 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" as that term is defined in § 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2. It is also a "transient, non-community water system" as that term is defined in 40 C.F.R. § 141.2.
4. As an owner and/or operator of a public water system, each Respondent is a "supplier of water" as that term is defined in § 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Each Respondent is therefore subject to the requirements of part B of the SDWA, 42 U.S.C. § 300g *et seq.*, and 40 C.F.R. part 141 (also known as the National Primary Drinking Water Regulations or NPDWRs), and to title 17, chapter 38, subchapter 2 of the Administrative Rules of Montana (ARM).

5. The Montana Department of Environmental Quality (MDEQ or State) has primary enforcement authority for the public water supply protection provisions of the Act in the State of Montana.
6. As regulations that EPA promulgated under § 1412 of the Act, 42 U.S.C. § 300g-1, the NPDWRs are “applicable requirements” as defined in § 1414(i) of the Act, 42 U.S.C. § 300g-3(i).
7. As part of an applicable state program that EPA has approved pursuant to § 1413 of the Act, 42 U.S.C. § 300g-2, ARM §§ 17.38.207 and 17.38.215 are “applicable requirements” as defined in § 1414(i) of the Act, 42 U.S.C. § 300g-3(i).
8. The source of the System’s water is ground water, from one well. The System’s water has not been determined by EPA or the MDEQ to be ground water under the direct influence of surface water. The System supplies water to the Oasis Bar and Café. Year-round, the System serves an average of approximately 100 individuals daily, although not necessarily the same individuals each day. The System also supplies water year-round to a residence.
9. The MDEQ has not granted the System permission to monitor its water for total coliform less frequently than monthly.
10. On January 17, 2007, EPA issued a Notice of Violation (NOV) pursuant to § 1414(a) of the Act, 42 U.S.C. § 300g-3(a), to MDEQ regarding violations of the NPDWRs and ARM § 17.38.215 at the System. MDEQ elected not to commence an enforcement action against the Respondents for the violations cited in the NOV

within the thirty-day time frame set forth in § 1414(a) of the Act, 42 U.S.C. § 300g-3(a).

11. On March 22, 2007, in accordance with § 1414 of the SDWA, 42 U.S.C. § 300g-3, the EPA issued an Administrative Order, Docket No. SDWA-08-2007-0018 (the Order) to Respondents, citing various violations of the NPDWRs, including, but not limited to
 - exceeding the acute Maximum Contaminant Level (MCL) for total coliform bacteria, in violation of 40 C.F.R. § 141.63(b);
 - exceeding the MCL for total coliform bacteria, in violation of 40 C.F.R. § 141.63(a)(2);
 - failing to sample for total coliform in violation of ARM § 17.38.215(1)(b) and 40 C.F.R. § 141.21;
 - failing to collect a set of repeat samples within 24 hours of being notified of a total coliform positive result, in violation of 40 C.F.R. § 141.21(b)(1);
 - failing to take at least five routine samples in the month following a positive coliform sample, in violation of 40 C.F.R. § 141.21(b)(5);
 - failing to monitor for nitrate, in violation of 40 C.F.R. § 141.23(d);
 - failing to notify the State of the System's MCL violations, in violation of 40 C.F.R. § 141.21(g)(1);
 - failing to notify the State that the System had failed to monitor for coliform, in violation of 40 C.F.R. § 141.21(g)(2);

- failing to notify the public of the total coliform MCL and monitoring violations, in violation of 40 C.F.R. § 141.201; and
 - failing to notify the State that the System had failed to monitor for nitrate and failed to notify the public of the System's coliform violations, in violation of 40 C.F.R. § 141.31(b).
12. A copy of the Order is attached to this complaint (Complainant's Exhibit 2).
 13. By letter dated January 7, 2008, EPA notified the Respondents that they had violated the Order by failing to submit total coliform monitoring results for September of 2007, by failing to report to EPA that they had failed to monitor the System's water for coliform in that month, and by failing to submit any public notice for the violations listed in the Order.
 14. A copy of EPA's January 7, 2008, letter is attached to this Complaint (Complainant's Exhibit 3).
 15. By letter dated July 9, 2009, EPA notified the Respondents that they had violated the Order by failing to monitor for total coliform in September of 2008 and April of 2009, failing to report to EPA that they had failed to monitor for coliform in April of 2009, and continuing to fail to submit to EPA any public notice for the violations listed in the Order.
 16. By letters dated January 24, 2006, July 19, 2006, October 27, 2008, and May 15, 2009, the MDEQ notified Respondent Bob and Janey, LLC that the System had failed to monitor its water for total coliform bacteria, in violation of ARM

§ 17.38.215, in December of 2005, June of 2006, September of 2008, and April of 2009, respectively.

17. By letter April 10, 2006, the MDEQ notified the System that the System had violated the MCL for total coliform bacteria, in violation of ARM § 17.38.207 (a state regulation that adopted 40 C.F.R. § 141.63(a)-(c) by reference), in March of 2006.

COUNTS OF VIOLATION

Count I

Failure to Monitor for Total Coliform

1. The Order (on page 8, in par. 4 of the "Order" section) required Respondents to monitor the System's water monthly for total coliform monitoring, as required by ARM § 17.38.215(1)(b).
2. Respondents violated the Order by failing to monitor the System's water for total coliform in September of 2007, September of 2008, and April of 2009.

Count II

Failure to Report Coliform Monitoring Violation to EPA and State

1. The Order (on page 9, in par. 9 of the "Order" section) required Respondents to comply with 40 C.F.R. § 141.21(g)(2) by reporting to EPA any failure to comply with coliform monitoring requirements within ten days of the Respondents' discovery of the violation.

2. Respondents violated the Order by failing to report to EPA that in September of 2007, September of 2008, and April of 2009 they failed to monitor the System's water for total coliform.

Count III
Failure to Provide Public Notice

1. The Order (on page 10, in par. 11 of the "Order") section, directed the Respondents to provide public notice of violations listed in the Order no later than 30 days from the effective date of the Order and to submit a copy of the public notice to EPA within ten days of completing public notice.
2. Respondents violated the Order by failing to provide EPA with copies of public notice of the violations listed in the Order.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

This complaint proposes that EPA assess an administrative penalty against Respondents. EPA is authorized to assess an administrative penalty according to § 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), for violation of an administrative order issued under § 1414(g)(1) of the SDWA. The amount may be up to \$27,500 for violations occurring after March 15, 2004 through January 12, 2009, and \$32,500 for violations occurring after January 12, 2009.¹

EPA has determined the proposed penalty amount in accordance with § 1414 of the SDWA, 42 U.S.C. § 300g-3. Taking into account the seriousness of the violations, the population at risk, and other appropriate factors, including Respondents' degree of willfulness

¹The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19. See 74 Fed. Reg. 626, January 7, 2009.

and/or negligence, history of noncompliance, if any, and ability to pay, as known to EPA at this time, EPA proposes to assess an administrative civil penalty of \$3,500 against Respondents for their violations of the Order.

OPPORTUNITY TO REQUEST A HEARING

As provided in § 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), Respondents have the right to request a public hearing to contest any material fact alleged in this complaint, to contest the appropriateness of the proposed penalty and/or to assert that they are entitled to judgment as a matter of law.

If Respondents wish to request a hearing, Respondents must file a written answer in accordance with 40 C.F.R. §§ 22.15 and 22.42 within thirty (30) calendar days after this complaint is served. If this complaint is served by mail, Respondents have an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.7(c), in which to file their answer. Respondents may answer as a group or separately.

If Respondents request a hearing in their answer(s), the procedures provided in 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, Respondents have the right under the SDWA to elect a hearing on the record in accordance with § 554 of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq. (APA). To exercise this right, the answer must include a specific request for a hearing on the record in accordance with 5 U.S.C. § 554. Upon such request, the Regional Hearing Clerk will re-title the pleadings and documents in the record as necessary. (See 40 C.F.R. § 22.42.) Pursuant to such a

request, subpart I will not apply to the proceedings and an Administrative Law Judge from Washington, D.C., will preside.

The answer must be in writing. An original and one copy of the answer must be sent to the following:

Tina Artemis
Region 8 Hearing Clerk (8RC)
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202

A copy of the answer must also be sent to the Enforcement Attorney named at the end of this complaint.

FAILURE TO FILE AN ANSWER

If Respondents do not file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this complaint, they may be subject to a default order requiring payment of the full penalty proposed in this complaint. If no Respondent answers, all Respondents may be held jointly and severally liable for the full proposed penalty. If only one Respondent files an answer, the other Respondents may be subject to a default judgment. EPA may obtain a default order according to 40 C.F.R. § 22.17.

REQUIREMENTS FOR ANSWER

The answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this complaint with regard to which Respondents have any knowledge. The answer must state (1) any circumstances or arguments which the Respondents allege to constitute grounds of defense, (2) any facts the Respondents dispute, (3) whether and on what

basis the Respondents oppose the proposed penalty, and (4) whether the Respondents request a hearing. **Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of that allegation.**

QUICK RESOLUTION

Respondents may resolve this action by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this complaint, Respondents need not file an answer. Alternatively, as allowed by 40 C.F.R. § 22.18(b), Respondents may file a statement with the Regional Hearing Clerk within thirty (30) days of receipt of the complaint agreeing to pay the full assessed penalty and may make the penalty payment within sixty (60) days of receiving the complaint.

If made by check, the payment shall be made by remitting a cashier's or certified check, including the name and docket number of the case, referencing the Docket Number given on the first page of this complaint and payable to the Environmental Protection Agency.

The check shall be sent to EPA in one of the following ways:

| | |
|---|---|
| By first class | US Environmental Protection Agency |
| US postal service mail: | Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, MO 63197-9000 |
| By Federal Express, Airborne, or other commercial carrier: | US Bank 1005 Convention Plaza Mail Station SL-MO-C2GL St. Louis, MO 63101 |

The payment may also be made by wire transfer or on-line via the internet, as follows:

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
"D68010727 Environmental Protection Agency "

On-Line Payment: WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

A copy of the check, wire transfer, or record of on-line payment shall be simultaneously sent to:

Mario Mérida (8ENF-W)
Technical Enforcement Program
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Payment of the penalty in this manner does not relieve Respondents of their obligation to comply with the requirements of the Act and its implementing regulations. Payment of the penalty pursuant to 40 C.F.R. § 22.18 shall constitute consent by Respondents to the assessment of the proposed penalty and a waiver of Respondents' right to a hearing on this matter.

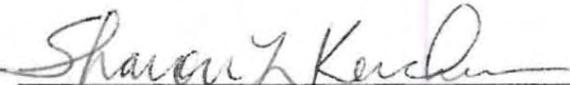
SETTLEMENT NEGOTIATIONS

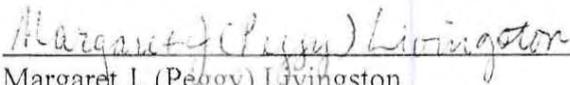
EPA encourages exploring settlement possibilities through informal settlement negotiations. Requesting, scheduling, or participating in settlement discussions **does not** substitute for an answer or extend the deadline for filing an answer and a request for a hearing. Failing to file an answer may lead to a default order, even if settlement negotiations occur. The parties may simultaneously pursue settlement and proceed with administrative litigation.

If a settlement is reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Presiding Officer. Any request for settlement negotiations, or any questions that Respondents may have regarding this complaint, should be directed to the attorney named below.

Dated this 20th day of January, 2010.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant


for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice


Margaret J. (Peggy) Livingston
Enforcement Attorney
Office of Enforcement, Compliance
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202
Telephone Number: (303) 312-6858
Facsimile Number: (303) 312-7202

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with all Exhibits were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent to each of the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Paul and Cathy Schulte, Owners
Oasis Bar and Café
220 Recreation Road
Wolf Creek, MT 59648
Certified Mail # 7008 3230 0003 0730 0040

Robert D. Montanye, Registered Agent
Bob and Janey, LLC
250 Recreation Road
Wolf Creek, MT 59648
Certified Mail # 7008 3230 0003 0730 0057

Date: 1/20/2010

By: Judith McTernan
Judith McTernan

§21.13

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 *Ex parte* discussion of proceeding.
- 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 MAR 22 AM 8:53

IN THE MATTER OF)
)
 Paul and Cathy Schulte, Owners/Operators)
 Bob & Janey, LLC, Owner/Operator)
 Oasis Bar and Café)
 Wolf Creek, MT)
)
 Respondents)
)
 Proceedings under Section 1414(g))
 of the Safe Drinking Water Act,)
 42 U.S.C. § 300g-3(g))
 _____)

EPA REGION VIII
HEADING CLERK

ADMINISTRATIVE ORDER

Docket No. SDWA-08-2007-0018

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

FINDINGS

1. Paul Schulte, Cathy Schulte, each of whom is an individual, and Bob & Janey, LLC, which is a limited liability company under the laws of the State of Montana ("Respondents"), are "persons" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12) and 40 C.F.R. § 141.2.
2. Respondents own and/or operate a system, the Oasis Bar and Café Water System (the "System"), located in Lewis and Clark County, Montana, for the provision to the public of piped water for human consumption.

3. 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), and a "transient, non-community" water system within the meaning of 40 C.F.R. § 141.2.
4. Respondents own and/or operate a public water system and are therefore each 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. Respondents are therefore subject to the requirements of part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. part 141, also known as the National Primary Drinking Regulations ("NPDWRs").
5. According to a March 31, 2003 sanitary survey conducted by the Cadmus Group, Inc. on behalf of the Montana Department of Environmental Quality ("MDEQ" or the "State"), the System is supplied solely by a ground water source consisting of one well located on site. Water is supplied to a residence and a bar year-round. The System provides water to approximately 100 persons year-round.
6. MDEQ has primary enforcement authority for the Act in the State of Montana. On January 17, 2007, EPA issued a Notice of Violation pursuant to section 1414(a) of the Act, 42 U.S.C. § 300g- 3(a) to MDEQ regarding the violation at the public water system. 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 Act, 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 Act, 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. 42 U.S.C. § 300g-3(i).

FINDINGS OF VIOLATION

I.

1. 40 C.F.R. § 141.63(b) imposes and defines the acute maximum contaminant level (“MCL”) for total coliform bacteria as a fecal coliform positive or E. coli positive repeat sample, or any total coliform positive repeat sample following a fecal coliform positive or E. coli positive routine sample.
2. Monitoring results submitted by the Respondents for the System during July 2003 exceeded the acute MCL for total coliform bacteria, in violation of 40 C.F.R. § 141.63(b).

II.

1. 40 C.F.R. § 141.63(a)(2) imposes and defines the MCL for total coliform bacteria, applicable to public water systems collecting fewer than 40 samples per month, as prohibiting more than one sample collected during any month from being positive for total coliform bacteria.
2. Monitoring results submitted by Respondents for the System exceeded the MCL for total coliform bacteria in August 2003, June 2004 and April 2006, in violation of 40 C.F.R. § 141.63(a)(2).

III.

1. 40 C.F.R. § 141.21(a)(3)(i) requires a non-community water system using only ground water and serving 1,000 or fewer persons to monitor for total coliform each calendar quarter that the system provides water to the public to determine compliance with the MCL for total coliform bacteria as stated in 40 C.F.R. § 141.63.
2. The State requires non-community public water systems to sample for total coliform once each month, as set forth in ARM 17.38.215(1)(b), which adopted portions of 40 C.F.R. § 141.21.
3. Respondents failed to monitor the System's water for total coliform for the following months: February – April 2002, April 2004, September 2004, November – December 2004, April 2005, July 2005, September – December 2005, and June 2006, in violation of ARM 17.38.215(1)(b) and 40 C.F.R. § 141.21.

IV.

1. 40 C.F.R. § 141.21(b)(1) requires a public water system which collects one routine sample per month or fewer to collect a set of repeat samples within 24 hours of being notified of a total coliform positive result.
2. Respondents failed to collect repeat samples following the total coliform positive sample in May 2003, in violation of 40 C.F.R. § 141.21(b)(1).

V.

1. 40 C.F.R. § 141.21(b)(5) requires each public water system that collects fewer than five routine samples per month and has one or more total coliform positive sample(s) to collect at least five routine samples during the next month the system provides water to the public.
2. Respondents failed to collect at least five routine samples in the following months after a total coliform positive sample in the preceding month: October 2002, May 2003, September 2005 and May 2006, in violation of 40 C.F.R. § 141.21(b)(5).

VI.

1. 40 C.F.R. § 141.23(d) requires public water systems to monitor annually for nitrate to determine compliance with the nitrate MCL as stated in 40 C.F.R. § 141.62.
2. Respondents failed to monitor for nitrate in 2005, in violation of 40 C.F.R. § 141.23(d).

VII.

1. 40 C.F.R. § 141.21(g)(1) requires any public water system that has exceeded the MCL for total coliform in 40 C.F.R. § 141.63 to report the violation to the State

no later than the end of the next business day after the system learns of the violation.

2. Respondents failed to report to the State the instances of noncompliance detailed in Sections I and II, in violation of 40 C.F.R. § 141.21(g)(1).

VIII.

1. 40 C.F.R. § 141.21(g)(2) requires each public water system to report any failure to comply with a coliform bacteria monitoring requirement to the State within ten business days after the system discovers the violation.
2. Respondents failed to report to the State instances of noncompliance detailed in Sections III through V, in violation of 40 C.F.R. § 141.21(g)(2).

IX.

1. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any violations of the NPDWRs, including violations of the MCL, maximum residual disinfection level ("MRDL"), treatment technique ("TT"), monitoring requirements, and testing procedures in 40 C.F.R. Part 141.
2. Respondents have not provided public notice of the violations outlined in sections I through VI, in violation of 40 C.F.R. § 141.201.

X.

1. 40 C.F.R. § 141.31(b) requires owners and/or operators of public water systems to notify the State within 48 hours of any failure to comply with any NPDWR, including public notice requirements, unless a different reporting period is specified in the regulations.

2. Respondent failed to report to the State instances of noncompliance detailed in Sections VI and IX, 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. Upon the effective date of this Order, Respondents shall comply with the total coliform MCL as stated in ARM 17.38.207(l) and 40 C.F.R. § 141.63(a)(2). If the System has an MCL violation while this Order is in effect, Respondents shall submit to EPA and the State, within 30 days of the MCL violation, detailed plans for bringing the System into compliance with the MCL for coliform bacteria at 40 C.F.R. § 141.63(a)(2). The plans shall include all proposed system modifications necessary to comply with the MCL, estimated costs of modifications, and a schedule for construction of the project and compliance with the MCL for coliform bacteria. The proposed schedule shall include specific milestone dates, a final compliance date (that shall be within 90 days from the first MCL violation after this Order) and shall be submitted to the State and EPA for approval. The plans must be approved by EPA and the State before construction can commence.
2. The schedule for construction and completion of modifications will be incorporated into this Order upon written approval by EPA and the State.

3. If plans are required as stated in paragraph 1 above, Respondents shall submit to EPA and the State monthly reports on the progress made toward bringing the System into compliance with the coliform bacteria MCL at 40 C.F.R. § 141.63.
4. Upon the effective date of this Order, Respondent shall monitor the System's water for total coliform monthly as required by ARM 17.38.215(1)(b) to determine compliance with the total coliform MCL appearing at ARM 17.38.207(1) and 40 C.F.R. § 141.63(a)(2). Respondents shall report results to EPA and the State within ten days following the end of each monitoring period, as required by 40 C.F.R. § 141.31(a).
5. Upon the effective date of this Order, Respondents shall comply with all repeat sampling requirements specified in 40 C.F.R. § 141.21(b). This requires that Respondents take no fewer than four repeat samples within 24 hours of being notified of a total coliform positive routine sample. Each repeat sample is to be analyzed for total coliform bacteria. At least one repeat sample must be taken from each of the following: a) the tap where the original total coliform positive sample was taken, b) within five service connections upstream of the original total coliform positive tap, and c) within five service connections downstream from the original total coliform positive tap. The fourth repeat sample is to be taken anywhere within five service connections upstream or downstream of the original total coliform positive tap. Respondents shall report analytical results to EPA and the State within the first ten days following the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).

6. Upon the effective date of this Order, Respondents shall comply with all sampling requirements specified in 40 C.F.R. § 141.21(b)(5). If the System has one or more total coliform positive samples in a month, Respondents shall collect at least five routine samples during the next month the System provides water to the public. Respondents shall report analytical results to the State and EPA within the first ten days following the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).
7. Within 30 days of the date of this Order, and annually thereafter, Respondents shall comply with the nitrate monitoring requirements as stated in 40 C.F.R. § 141.23(d) to determine compliance with the nitrate MCL appearing at 40 C.F.R. § 141.62(b). Respondents shall report analytical results to the State and EPA within the first ten days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).
8. Upon the effective date of this Order, Respondents shall comply with 40 C.F.R. § 141.21(g)(1) by reporting any total coliform MCL violation under 40 C.F.R. § 141.63 to the State and EPA no later than the end of the next business day after Respondents learn of the violation.
9. Upon the effective date of this Order, Respondents shall comply with 40 C.F.R. § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R. § 141.21 to the State and EPA within ten days after Respondents discover the violation.
10. Except where a different reporting period is specified above, upon the effective date of this Order, Respondents shall comply with 40 C.F.R. § 141.31(b) by

reporting any failure to comply with any NPDWR (40 C.F.R. part 141) to the State and EPA within 48 hours.

11. Within 30 days from the effective date of this Order, Respondents must provide public notice of the violations specified under the Findings of Violation Sections I through VI in this Order, to return to compliance with 40 C.F.R. §§ 141.201, 141.204 and 141.205. Upon the effective date of this Order, Respondents shall comply with the public notification requirements at 40 C.F.R. § 141.201 et seq. following any future NPDWR violation. Respondents shall submit a copy of the public notice to the State and EPA within ten 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 (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 Respondents must repeat the notice every three months as long as the violation or situation persists.
12. Reporting requirements specified in this Order shall be provided by certified mail to the following addresses:

U. S. EPA Region 8 (8ENF-W)
1595 Wynkoop Street
Denver, Colorado 80202
Attn: Darcy O'Connor

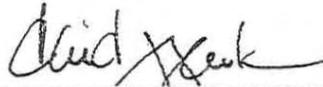
Montana Department of
Environmental Quality – PWSS
P.O. Box 200901
Helena, MT 59620-0901
Attn: Kate Miller

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 Respondents 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 sections 1414(g)(3)(A) and (C) of the Act, 42 U.S.C. § 300g-3(g)(3)(A) and (C).
3. Violation of any requirement of the Act or its implementing regulations may subject Respondents 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 22nd day of March, 2007.



David J. Janik, Acting Director
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice



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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

COMPLAINANT'S
EXHIBIT NO. 3

2008 JAN - 7 2008

Ref: 8 ENF-W

JAN - 7 2008

CERTIFIED MAIL LETTER
RETURN RECEIPT REQUESTED

Paul and Cathy Schulte, Owners
Oasis Bar and Café
220 Recreation Road
Wolf Creek, MT 59648

CERTIFIED MAIL LETTER
RETURN RECEIPT REQUESTED

Robert D. Montanye, Registered Agent
Bob & Janey, LLC
250 Recreation Road
Wolf Creek, MT 59648

Re: Violation of Administrative Order
Docket No. SDWA-08-2007-0018
Oasis Bar and Café
PWS ID # MT0001489

Dear Mr. and Ms. Schulte and Mr. Montanye:

On March 22, 2007, the US Environmental Protection Agency (EPA) issued an Administrative Order, Docket No. SDWA-08-2007-0018, ordering you (Respondents), as owners and/or operators of the Oasis Bar and Café, to comply with various regulations issued by EPA under the Safe Drinking Water Act (SDWA), 42 U.S.C. section 300f et seq.

Our records indicate that the Oasis Bar and Café (the System) is in violation of the Administrative Order (the Order). Among other things, the Order included the following requirements (quoted from items 4, 9 and 11 of the Order section on pages 8, 9 and 10 of the Order):

1. Upon the effective date of this Order, Respondents shall monitor the System's water for total coliform monthly as required by ARM 17.38.215(1)(b) to determine compliance with the total coliform MCL appearing at ARM 17.38.207(l) and 40 C.F.R. § 141.63(a)(2). Respondents

shall report results to EPA and the State within ten days following the end of each monitoring period, as required by 40 C.F.R. § 141.31(a).

Respondents have not submitted total coliform monitoring results for September 2007.

2. Upon the effective date of this Order, Respondents shall comply with 40 C.F.R. § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R. § 141.21 to the State and EPA within ten days after the Respondents discover the violation.

Respondents failed to report to EPA the noncompliance detailed in part 1 above, failure to monitor for total coliform bacteria.

3. Within 30 days of the effective date of this Order, Respondents must provide public notice of the violation(s) specified under the Findings of Violation Sections I through VI in this Order, to return to compliance with 40 C.F.R. §§ 141.201, 141.204 and 141.205. Respondents shall submit a copy of the public notice to the State and EPA within ten days of completion of the public notice, as required by 40 C.F.R. § 141.31(d).

Respondents failed to submit any public notice for violations listed in the Order within 30 days from the effective date of the Order (by April 22, 2007).

EPA is considering additional enforcement action as a result of the System's non-compliance with the Order. Violating an Administrative Order may lead to (1) a penalty of up to \$32,500 per day per violation of the Order, and/or (2) a court injunction ordering compliance.

If you have any questions or wish to have an informal conference with EPA, you may contact Kimberly Pardue Welch at 1-800-227-8917, extension 6983 or (303) 312-6983. If you are represented by an attorney or have legal questions, please contact Peggy Livingston, Enforcement Attorney at (303) 312-6858 or at the following address:

Peggy Livingston
Enforcement Attorney
U.S. EPA, Region 8 (8-ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge your prompt attention to this matter.



Lisa Kahn, Team Leader
Drinking Water Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc:

John Arrigo, MT DEQ
Kate Miller, MTDEQ

