



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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MAY 29 2008

CERTIFIED MAIL LETTER
RETURN RECEIPT REQUESTED

Randy Gordon, Owner
Kozy Korner Steakhouse
6070 Woodworth Road
Greenough, MT 59823

Re: Administrative Order
Kozy Korner Steakhouse
Public Water System
Docket No. SDWA-08-2008-0039
PWS ID # MT0000866

Dear Mr. Gordon:

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. Among other things, the Order describes how you have 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 Kozy Korner Steakhouse complies with the Order for at least 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:

John Arrigo, MT DEQ

Shelly Nolan, MT DEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF)	
)	
Kozy Korner Steakhouse)	
Greenough, MT)	ADMINISTRATIVE ORDER
)	
Respondent)	Docket No. SDWA-08-2008-0039

1. This Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) in the Public Health Service Act (as amended by and hereafter referred to as the "Safe Drinking Water Act" or the "Act"), 42 U.S.C. § 300f, as properly delegated to the undersigned officials.

2. Randy Gordon (Respondent) is a person who owns and/or operates the Kozy Korner Steakhouse Water System (the system) in Missoula County, Montana which provides piped water to the public for human consumption. The system is supplied by a groundwater source consisting of one well and serves approximately 111 people per day through 3 service connections year round. The system is a "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 State has primary enforcement authority for the Act in the State of Montana. On April 14, 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). 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. Respondents who collect fewer than 40 total coliform samples per month and have more than one total coliform positive sample during the monthly monitoring period are determined to be in violation of the maximum contaminant level (MCL) for total coliform bacteria. 40 C.F.R. § 141.63(a)(2). Respondent exceeded the MCL for total coliform bacteria during April 2007 and therefore violated this requirement.

5. The drinking water regulations define the acute 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. 40 C.F.R. § 141.63(b). Respondent's sampling results during April 2007, May 2007, and February 2008 exceeded the acute MCL for total coliform bacteria and therefore violated this requirement.

6. Respondent is required to monitor the system's water at least once per month to determine compliance with the MCL for total coliform bacteria. 40 C.F.R. § 141.21 and A.R.M. 17.38.215(a). Respondent failed to monitor the water for contamination of total coliform bacteria during November 2006, December 2006, and November 2007 and therefore violated this requirement.

7. Respondent is required to collect a set of four repeat samples within 24 hours of being notified of a total coliform positive routine sample. 40 C.F.R. § 141.21(b). Respondent failed to collect a set of repeat samples following the May 2007 total coliform positive routine sample and therefore violated this requirement.

8. Respondent is required to monitor the system's water annually for nitrate to determine compliance with the nitrate MCL. 40 C.F.R. § 141.23(d). Respondent failed to monitor the water for nitrate contamination in 2006 and therefore violated this requirement.

9. The law requires Respondent 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 violations listed in paragraphs 6 and 8 above and therefore violated this requirement. Public notice for 2007 violations are not yet overdue.

10. Respondent is required to report any sampling results that exceed the MCL for total coliform to the State by the end of the next business day after the system learns of the violation. 40 C.F.R. §§ 141.21(g)(1), 141.63. Respondent failed to report to the State the MCL violations listed in paragraphs 4 and 5 above and therefore violated this requirement.

11. Respondent is required to report 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 paragraphs 6 and 7 above and therefore violated this requirement.

12. 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 paragraphs 10 and 11 above) to the State within 48 hours. 40 C.F.R. § 141.31(b). Respondent failed to report the violations listed in paragraphs 8 and 9 above to the State and therefore violated this requirement.

ORDER

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

13. Upon receipt of this Order, Respondent shall comply with the total coliform acute MCL and the total coliform MCL as stated in 40 C.F.R. §§ 141.63(a) and 141.63(b). Any violation of the total coliform acute MCL or total coliform MCL shall be reported to EPA and the State no later than the end of the next business day after Respondent learns of it. 40 C.F.R. § 141.21(g)(1).

14. Within 30 days of the effective date of this Order, Respondent shall provide EPA with a compliance plan and schedule for the system to come into compliance with the MCL for total coliform bacteria as stated in 40 C.F.R. §§ 141.63(a) and 141.63(b). The plan shall include proposed system modifications, estimated costs of modifications, and a schedule for completion of the project and compliance with the above-mentioned regulations. The proposed schedule shall include specific milestone dates and a final compliance date (to be within 120 days from the date of EPA's approval of the plan). The plan and schedule must be approved by EPA before construction or modifications can commence. EPA's approval of Respondents' plan and schedule does not substitute for any State of

Montana approvals of plans and specifications that are also required before modifications can be made to the system.

15. The plan and schedule required by paragraph 14, above, will be incorporated into this Order as enforceable requirements upon written approval by EPA.

16. Respondent must achieve and maintain compliance with 40 C.F.R. §§ 141.63(a) and 141.63(b), by the final date specified in the approved plan, or no later than 120 days after receiving EPA's approval of the plan and schedule required by paragraph 14, above, whichever is earliest. If implementation of the plan fails to achieve permanent compliance, EPA may order further steps and/or seek penalties for noncompliance.

17. 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 10 days after Respondent learns of it. 40 C.F.R. § 141.21(g)(2).

18. Upon the effective date of this Order, Respondent shall comply with all total coliform repeat sampling requirements. 40 C.F.R. § 141.21(b). This requires that Respondent take no fewer than four repeat total coliform bacteria samples within 24 hours of being notified of a total coliform positive routine sample.

19. Upon the effective date of this Order, Respondent shall monitor for nitrate as required by the drinking water regulations. 40 C.F.R. § 141.23(d). Respondent shall report analytical results to EPA and the State within the first 10 days following the month in which sample results were received, as required by the drinking water regulations. 40 C.F.R. § 141.31(a). Any violation of nitrate monitoring requirements shall be reported to EPA within 48 hours. 40 C.F.R. § 141.31(b).

20. Within 30 days of the effective date of this Order, Respondent must provide public notice of the violation(s) specified in Paragraphs 6 through 8 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 10 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.

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

22. Reporting requirements specified in this Order shall be provided by certified mail to:

Kimberly Pardue Welch
U. S. EPA Region 8 (8ENF-W) **AND**
1595 Wynkoop Street
Denver, CO 80202-1129

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

GENERAL PROVISIONS

23. 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.

24. 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.

5/29/08
Date

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

5/21/08
Date

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