



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET  
DENVER, COLORADO 80202-1129

Phone 800-227-8917

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

SEP 25 2012

Ref: 8ENF-L

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

NO. 7003-2260-0001-7778-2228

Mr. Rick Smith, Owner  
Lodore Supper Club and Saloon  
P.O. Box 6044  
Sheridan, Wyoming 82801-1444

Re: Complaint and Notice of  
Opportunity for Hearing  
Docket No. **SDWA-08-2012-0056**

Dear Mr. Smith:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (Complaint) under section 1414(g)(3) of the Safe Drinking Water Act (SDWA), 42 U.S.C § 300g-3(g)(3). The U.S. Environmental Protection Agency (EPA) alleges in the Complaint that you failed to comply with an administrative order issued by the EPA. The violations are described in the Complaint.

By law, you have 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 you do not file an answer to the Complaint within 35 days of receipt of this letter, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In your answer you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings.

The EPA encourages efforts to settle administrative penalty proceedings. Please see the section of the Complaint entitled "Settlement Negotiations" for further information on settlement. Please note that requesting or participating in an informal settlement conference does **not** substitute for filing a written answer and requesting a hearing.

For any questions specific to the violations or penalty, the most knowledgeable people at the EPA regarding this matter are Kathelene Brainich, Environmental Protection Specialist, who can be reached at 1-800-227-8917, extension 6481, and, for questions from your attorney, if any, Peggy Livingston, Enforcement Attorney, who can be reached at 1-800-227-8917, extension 6858.



Printed on Recycled Paper

We urge your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew M. Gaydosh', with a long horizontal flourish extending to the right.

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

Enclosure

cc: Tina Artemis, EPA Regional Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2012 SEP 25 AM 8:35

IN THE MATTER OF )  
 )  
 )  
Richard Smith, Owner )  
Lodore Supper Club and Saloon )  
 )  
Respondent ) Docket No. SDWA-08-2012-0056  
 )  
 ) **COMPLAINT AND NOTICE OF**  
 ) **OPPORTUNITY FOR HEARING**  
 )  
Proceeding under section 1414(g) )  
of the Safe Drinking Water Act, )  
42 U.S.C. § 300g-3(g) )  
 )

FILED  
EPA REGION VIII  
RECEIVED IN ENK

In this Complaint and Notice of Opportunity for Hearing (Complaint), the United States Environmental Protection Agency (EPA) proposes to assess a civil administrative penalty against Richard Smith (Respondent).

This Complaint is issued under the authority vested in the Administrator of the EPA by section 1414(g)(3)(B) of the Safe Drinking Water Act (the SDWA), 42 U.S.C. § 300g-3(g)(3)(B). The undersigned EPA official has been duly authorized to institute this action.

This proceeding is subject to the 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, a copy of which is attached to this Complaint as Complainant's Exhibit 1.

**GENERAL ALLEGATIONS**

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

1. The Respondent is an individual and, therefore, a "person" as defined in section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.

2. The Respondent owns and/or operates the Lodore Supper Club and Saloon public water system (the System), located in Sheridan County, Wyoming, for the provision to the public of piped water for human consumption.
3. The source of the System's water is ground water from one well. The System serves an average of between 50 to 200 persons per day for at least six months of the year from one service connection.
4. Because the System has at least 15 service connections and/or regularly serves at least 25 individuals at least 60 days out of the year, the System is a "public water system" as defined in section 1401(4) of the SDWA, 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. As an owner and/or operator of a public water system, the Respondent is a "supplier of water" as defined in section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. The Respondent is, therefore, subject to the requirements of part B of the SDWA, 42 U.S.C. §§ 300g through 300g-9, and the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. part 141, each of which is an "applicable requirement" as defined in section 1414(i) of the SDWA, 42 U.S.C. § 300g-3(i).
6. The NPDWRs include requirements to monitor drinking water for various contaminants, to report the results to the EPA, and to notify the EPA and the public of failures to comply with monitoring requirements.

7. The EPA has provided the Respondent with written, annual summaries of the monitoring requirements for the System. These notifications were sent, at a minimum, in February of 2007, February of 2008, January of 2009, January of 2010, and February of 2011. Each notification referenced the requirement to monitor the System's water quarterly for total coliform bacteria.
8. On July 28, 2010, in accordance with section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), the EPA issued an Administrative Order, Docket No. SDWA-08-2010-0062 (the Order) to the Respondent, citing violations of the NPDWRs. A copy of the Order is attached to this Complaint as Complainant's Exhibit 2.
9. By letter dated December 15, 2010, the EPA notified the Respondent that he was in violation of the Order. A copy of that letter is attached to this Complaint as Complainant's Exhibit 3.
10. By letter dated June 14, 2011, the EPA again notified the Respondent that he was in violation of the Order. A copy of that letter is attached to this Complaint as Complainant's Exhibit 4.
11. By letter dated December 19, 2011, the EPA once again notified Respondent that he was in violation of the Order. A copy of that letter is attached to this Complaint as Complainant's Exhibit 5.
12. Because Wyoming has not sought primary authority for enforcing the public water supply supervision program, the EPA directly implements this program in Wyoming. Consequently, as provided by the definition of "state" in 40 C.F.R.

§ 141.2, the EPA is the “state” for purposes of enforcing the NPDWRs in Wyoming.

### **COUNTS OF VIOLATION**

#### **Count I**

##### **Failure to Monitor for Total Coliform Bacteria**

1. Paragraph 11 of Order directed the Respondent to monitor the System's water for total coliform as required by 40 C.F.R. § 141.21.
2. The Respondent violated the Order by failing to monitor the system's water for total coliform bacteria during the third quarter of 2010 and the first and third quarters of 2011.

#### **Count II**

##### **Failure to Report Coliform Monitoring Violations to EPA**

1. Paragraph 11 of the Order directed the Respondent to 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 EPA within ten days after discovering the violation.
2. The Respondent violated the Order by failing to report to EPA that no total coliform sampling was done in the third quarter of 2010 or the first or third quarters of 2011.

#### **Count III**

##### **Failure to Provide Public Notice of Violations**

1. Paragraph 12 of the Order directed the Respondent to notify the public of having failed to monitor the System's water for total coliform during the fourth quarter of

2008 and the second and fourth quarters of 2009. This provision also directed the Respondent to provide public notice of any future NPDWR violations.

2. The Respondent violated the Order by failing to provide public notice of the failures to monitor for total coliform during the fourth quarter of 2008, the second and fourth quarters of 2009, the third quarter of 2010, and the first and third quarters of 2011.

### **PROPOSED ADMINISTRATIVE CIVIL PENALTY**

This Complaint proposes that EPA assess an administrative penalty against the Respondent. The EPA is authorized to assess an administrative civil penalty according to section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), for violating an administrative order issued under section 1414(g) of the SDWA. The amount may be up to \$32,500 for violations occurring after January 12, 2009. (The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19.)

The EPA has determined the proposed penalty amount in accordance with section 1414 of the SDWA, 42 U.S.C. § 300g-3. Taking into account the seriousness of the violation, the population at risk, and other appropriate factors, including the Respondent's degree of willfulness and/or negligence, history of noncompliance, and ability to pay, as known to the EPA at this time, the EPA proposes to assess an administrative civil penalty of **\$1,200.00** against the Respondent for his violations of the Order.

### **OPPORTUNITY TO REQUEST A HEARING**

As provided in section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), the Respondent has the right to request a public hearing in this matter.

If the Respondent wishes to request a hearing, the Respondent must file a written answer in accordance with 40 C.F.R. §§ 22.15 and 22.42 within 30 calendar days after this Complaint is served. If this Complaint is served by mail, the Respondent has an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.7(c), in which to file his answer.

If the Respondent requests a hearing in his answer, 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, the Respondent has the right under the SDWA to elect a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq. (APA). For the Respondent 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-caption the pleadings and documents in the record as necessary, subpart I will not apply to the proceedings, and an Administrative Law Judge from Washington, D.C., will preside. (See 40 C.F.R. § 22.42.)

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

Ms. 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 following attorney:

Margaret J. Peggy Livingston  
Enforcement Attorney (8ENF-L)  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, Colorado 80202



### FAILURE TO FILE AN ANSWER

If the Respondent does not file a written answer with the Regional Hearing Clerk at the address above within 30 days of receipt of this Complaint (or within a 35-day period of receipt of this Complaint, as allowed by 40 C.F.R. § 22.7(c)), the Respondent may be subject to a default order requiring payment of the full penalty proposed in this Complaint.

The 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 the Respondent has any knowledge. The answer must state (1) any circumstances or arguments the Respondent alleges to constitute grounds of defense, (2) any facts the Respondent disputes, (3) whether and on what basis the Respondent opposes the proposed penalty, and (4) whether the Respondent requests 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

The Respondent 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, the Respondent need not file an answer. Alternatively, as allowed by 40 C.F.R. § 22.18(b), the Respondent may file a statement with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint agreeing to pay the full assessed penalty and may make the penalty payment within sixty (60) days of receiving this 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 "Treasurer, United States of America."

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

By first class  
US postal service mail: US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

By Federal Express, Airborne,  
or other commercial carrier: US Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 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, New York 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:

Kathelene Brainich, 8ENF-W  
Office of Enforcement, Compliance and  
Environmental Justice  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, Colorado 80202

Payment of the penalty in this manner does not relieve the Respondent of the obligation to comply with the requirements of the SDWA and its implementing regulations. Payment of the penalty in this manner does, however, constitute consent by the Respondent to the assessment of the proposed penalty and a waiver of the Respondent's right to a hearing on this matter.

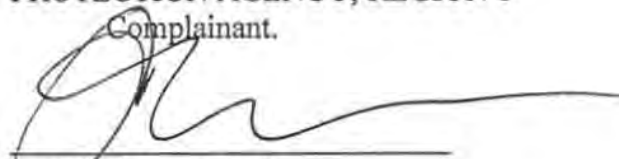
### SETTLEMENT CONFERENCE

The EPA encourages exploring settlement possibilities through informal settlement negotiations. **However, if the Respondent fails to file an answer, this 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 to be signed by the parties and incorporated into a final order signed by the Presiding Officer. Any request for settlement negotiations should be directed to the attorney named above.

Dated this 25<sup>th</sup> day of September, 2012.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8

Complainant.



Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

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 the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Richard Smith, Owner  
Lodore Supper Club and Saloon  
P.O. Box 6044  
Sheridan, Wyoming 82801-1444  
Certified mail, return receipt requested  
No. 7003-2260-0001-7778-2228

Date: 9/25/2012

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

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

**COMPLAINANT'S  
EXHIBIT NO. 2**

JUL 28 2010

Ref: 8ENF-W

CERTIFIED MAIL LETTER  
RETURN RECEIPT REQUESTED

Richard Smith, Owner  
Lodore Supper Club and Saloon  
P. O. Box 6044  
Sheridan, WY 82801-1444

Re: Administrative Order  
Lodore Supper Club and Saloon  
Public Water System  
Docket No. SDWA-08-2010-0062  
PWS ID# WY5600545

Dear Mr. Smith:

Enclosed is an Administrative Order (Order) issued by the United States Environmental Protection Agency (EPA) under the authority of the Safe Drinking Water Act (SDWA), 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.

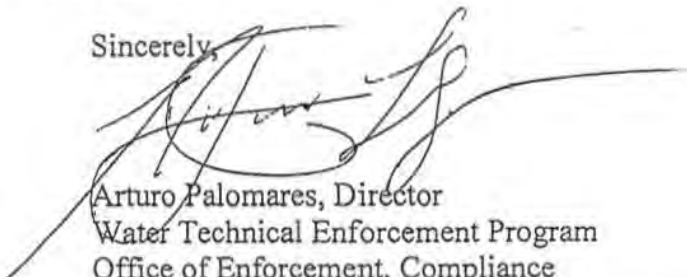
The Small Business Regulatory Enforcement and Fairness Act (SBREFA) may apply to this situation. Enclosed is a small business information sheet, outlining compliance assistance resources available to small businesses and small governments, in case these are relevant. SBREFA does not eliminate the responsibility to comply with the Order or the drinking water regulations.

The Order requires you to notify the public of having violated the drinking water regulations. Enclosed please find a public notice template explaining the public notice requirements in more detail.

To submit information or request an informal conference with EPA, please contact Shawn McCaffrey at the above address (with the mailcode 8ENF-W) or by phone at (800) 227-8917, extension 6515 or (303) 312-6515. Any questions from your attorney should be directed to David Janik, Senior Enforcement Attorney, who may be reached at the above address (with the mailcode 8ENF-L) or by phone at (800) 227-8917, extension 6917 or (303) 312-6917.

We urge your prompt attention to this matter.

Sincerely,



Arturo Palomares, Director  
Water Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice  
U.S. Environmental Protection Agency-Region 8

Enclosures:

Order  
SBREFA Information Sheet  
Public Notice Template

cc:

Tina Artemis, EPA Regional Hearing Clerk  
Wyoming DEQ/DOH (via email)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2010 JUL 28 AM 8:44

IN THE MATTER OF: )  
 )  
Richard Smith aka "Rick Smith", )  
 )  
Respondent. )

FILED  
EPA REGION VIII  
RECORDS CLERK  
Docket No. SDWA-08-2010-0062  
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. Richard Smith is an individual who owns and/or operates the Lodore Supper Club and Saloon Water System (the system), which provides piped water to the public in Sheridan County, Wyoming, for human consumption.
3. The system is supplied by a ground water source consisting of one well which provides water that is not treated.
4. The system has 1 service connection and/or regularly serves an average of approximately 210 individuals daily for at least 6 months 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 4<sup>th</sup> (October – December) quarter of 2008, 2<sup>nd</sup> (April – June) quarter of 2009, and the 4<sup>th</sup> quarter of 2009, and, therefore, violated this requirement.
8. Respondent is required to report any failure to meet a coliform monitoring requirement to EPA no later than 10 days after learning of this violation. 40 C.F.R. § 141.21(g)(2). Respondent did not notify EPA of the violations cited in paragraph 7, above, and, therefore, violated this requirement.



9. Respondent is required to report the results of testing for total coliform bacteria to EPA no later than (1) the first 10 days following the month in which the result is received, or (2) the first 10 days following the end of the required monitored period, whichever is earlier. 40 C.F.R. § 141.31(a). Respondent sampled the water for contamination of total coliform bacteria on February 17, 2009, but failed to report the analytical results to EPA until September 1, 2009, and therefore, violated this requirement.

10. Respondent is required 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 paragraph 7, above, and, therefore, violated this requirement. Public notice for the 4<sup>th</sup> quarter 2009 failure to monitor total coliform violation cited in paragraph 7 is not yet overdue.

### 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):

11. 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).

12. Within 30 days after receiving this Order, Respondent shall notify the public of the violations cited in paragraph 7, above, following the instructions provided with the public notice templates provided to Respondent with this Order. Thereafter, following any future violation of the drinking water regulations, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 days after providing public notice, Respondent shall submit a copy of the notice to EPA.

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

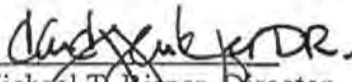
U.S. EPA Region 8 (8P-W-DW)  
1595 Wynkoop Street  
Denver, CO 80202-1129




**GENERAL PROVISIONS**

14. 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.
15. 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: July 28, 2010.

  
Michael T. Risner, Director  
David Rochlin, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

  
Arturo Palomares, Director  
Water Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice  
U.S. Environmental Protection Agency-Region 8

# 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)):

- 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:

- 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 EPA Region 8 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:

Shawn McCaffrey  
US EPA Region 8  
8ENF-W  
1595 Wynkoop Street  
Denver, CO 80202-1129

Or, you may fax a copy to: Attn: Shawn McCaffrey at 303-312-7202.

**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 Lodore Supper Club and Saloon**

Our water system violated a drinking water standard over the past two years. Even though this was not an emergency, as our customers, you have a right to know what happened and what we did to correct the situation.

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 4<sup>th</sup> quarter of 2008, and the 2<sup>nd</sup> and 4<sup>th</sup> quarters of 2009.

**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	Quarterly	4 <sup>th</sup> quarter of 2008 2 <sup>nd</sup> and 4 <sup>th</sup> quarters of 2009	1 sample each quarter during the year

**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 **Lodore Supper Club and Saloon**  
 State Water System ID#: WY5600545

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



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

2010 DEC 15 AM 9:54

EPA REGION VIII  
READING CLERK

DEC 15 2010

Ref: 8 ENF-W

CERTIFIED MAIL #  
RETURN RECEIPT REQUESTED

Richard Smith, Owner  
Lodore Supper Club and Saloon  
P. O. Box 6044  
Sheridan, WY 82801-1444

Re: Violation of Administrative Order  
Docket No. SDWA-08-2010-0062  
Lodore Supper Club and Saloon  
PWS ID # WY5600545

Dear Mr. Smith:

On July 28, 2010, the US Environmental Protection Agency (EPA) issued an Administrative Order (the Order), Docket No. SDWA-08-2010-0062, ordering you as owner and/or operator of the Lodore Supper Club and Saloon Public Water System (the system) to comply with various drinking water regulations issued by EPA under the Safe Drinking Water Act (the Act), 42 U.S.C. Section 300f et seq.

Our records indicate that you (Respondent) are in violation of the Administrative Order. Among other things, the Order included the following requirements (quoted from items 11 and 12. of the Order section on page 2 of the Order):

1. 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).

You did not monitor for total coliform bacteria at the system during the 3<sup>rd</sup> quarter (July - September) of 2010 and failed to report this violation to EPA.

2. Within 30 days after receiving this Order, Respondent shall notify the public of the violations cited in paragraph 7, above, following the instructions provided with the public notice templates provided to Respondent with this Order. Thereafter, following any future violation of the drinking water regulations, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 days after providing public notice, Respondent shall submit a copy of the notice to EPA.


EPA has not received Respondent's public notice of the above-mentioned violations. Please conduct the public notice as required in the Order and submit a copy to EPA.

EPA is considering additional enforcement action as a result of the non-compliance with the Order. Violating an administrative order may lead to (1) a penalty of up to \$37,500 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 Shawn McCaffrey at 1-800-227-8917, extension 6515 or (303) 312-6515. Any questions from your attorneys should be directed to David Rochlin, Senior Enforcement Attorney, at (303) 312-6892 or at the following address:

David Rochlin  
Senior 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: Tina Artemis, EPA Regional Hearing Clerk  
Wyoming DEQ (via email)  
Wyoming DOH (via email)





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. 4

2011 JUN 14 AM 11:04

JUN 14 2011

EPA REGION 8  
DENVER, CO

Ref: 8 ENF-W

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Richard Smith, Owner  
Lodore Supper Club and Saloon  
P. O. Box 6044  
Sheridan, WY 82801-1444

Re: Violation of Administrative Order  
Docket No. SDWA-08-2010-0062  
Lodore Supper Club and Saloon  
PWS ID # WY5600545

Dear Mr. Smith:

On July 28, 2010, the US Environmental Protection Agency (EPA) issued an Administrative Order (the Order), Docket No. SDWA-08-2010-0062, ordering you as owner and/or operator of the Lodore Supper Club and Saloon Public Water System (the system) to comply with various drinking water regulations issued by EPA under the Safe Drinking Water Act (the Act), 42 U.S.C. Section 300f et seq.

Our records indicate that you (Respondent) are again in violation of the Administrative Order. Among other things, the Order included the following requirements (quoted from items 11 and 12, of the Order section on page 2 of the Order):

1. 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).

You did not monitor for total coliform bacteria at the system during the 1<sup>st</sup> quarter (January - March) of 2011 and failed to report this violation to EPA.

2. Within 30 days after receiving this Order, Respondent shall notify the public of the violations cited in paragraph 7, above, following the instructions provided with the public notice templates provided to Respondent with this Order. Thereafter, following any future violation of the drinking water regulations, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 days after providing public notice, Respondent shall submit a copy of the notice to EPA.

EPA has not received Respondent's public notice of the above-mentioned violations. Please conduct the public notice as required in the Order and submit a copy to EPA.

EPA is considering additional enforcement action as a result of the non-compliance with the Order. Violating an administrative order may lead to (1) a penalty of up to \$37,500 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 Shawn McCaffrey at 1-800-227-8917, extension 6515 or (303) 312-6515. Any questions from your attorneys should be directed to David Rochlin, Senior Enforcement Attorney, at (303) 312-6892 or at the following address:

David Rochlin  
Senior 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: Tina Artemis, EPA Regional Hearing Clerk  
Wyoming DEQ (via email)  
Wyoming DOH (via email)



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. 5

2011 DEC 19 AM 11:48

DEC 19 2011

Ref: 8 ENF-W

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Richard Smith, Owner  
Lodore Supper Club and Saloon  
P. O. Box 6044  
Sheridan, WY 82801-1444

Re: 3<sup>rd</sup> Violation of Administrative Order  
Docket No. SDWA-08-2010-0062  
Lodore Supper Club and Saloon  
PWS ID # WY5600545

Dear Mr. Smith:

On July 28, 2010, the US Environmental Protection Agency (EPA) issued an Administrative Order (the Order), Docket No. SDWA-08-2010-0062, ordering you as owner and/or operator of the Lodore Supper Club and Saloon Public Water System (the System) to comply with various drinking water regulations issued by EPA under the Safe Drinking Water Act (the Act), 42 U.S.C. Section 300f et seq.

Our records indicate that you (Respondent) are again in violation of the Administrative Order. Among other things, the Order included the following requirements (quoted from items 11 and 12. of the Order section on page 2 of the Order):

1. 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).

You did not monitor for total coliform bacteria at the System during the 3<sup>rd</sup> quarter (July - September) of 2011 and failed to report this violation to EPA.

2. Within 30 days after receiving this Order, Respondent shall notify the public of the violations cited in paragraph 7. above, following the instructions provided with the public notice templates provided to Respondent with this Order. Thereafter, following any future violation of the drinking water regulations, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 days after providing public notice, Respondent shall submit a copy of the notice to EPA.

EPA has not received Respondent's public notice of the above-mentioned violations. Please conduct the public notice as required in the Order, including new violations since the Order was issued, and submit a copy to EPA.

EPA is considering additional enforcement action as a result of continued non- compliance with the Order. Violating an administrative order may lead to (1) a penalty of up to \$37,500 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 Shawn McCaffrey at 1-800-227-8917, extension 6515 or (303) 312-6515. Any questions from your attorneys should be directed to David Rochlin, Senior Enforcement Attorney, at (303) 312-6892 or at the following address:

David Rochlin  
Senior Enforcement Attorney  
U.S. EPA, Region 8 (8-ENF-1.)  
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: Tina Artemis, EPA Regional Hearing Clerk  
Wyoming DEQ (via email)  
Wyoming DOH (via email)  
Rick Hall, Lodore Supper Club, General Manager

