



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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HEARING CLERK

Ref: 8 ENF-W

MAY 11 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

CT Corporation System, Registered Agent
Bear Harbour Limited Partnership
P.O. Box 7054
401 N 31st Street
STE 1650
Billings, MT 59103-7054

Re: 2nd Violation of Administrative
Order
Fazooli's Family Italian
Docket No. SDWA-08-2010-0003
PWS ID # MT0000889

To whom it may concern:

On November 19, 2009, the US Environmental Protection Agency (EPA) issued an Administrative Order, Docket No. SDWA-08-2010-0003, ordering Bear Harbour Limited Partnership (Respondent) as owner of the Fazooli's Family Italian public water system, to comply with various regulations issued by EPA under the Safe Drinking Water Act (SDWA), 42 U.S.C. section 300f *et seq.* EPA issued an initial Violation of Administrative Order letter on January 27, 2010, outlining violations of the Order. This second Violation of Administrative Order letter describes subsequent violations of the Order.

Our records indicate that Bear Harbour Limited Partnership is in violation of the Order. Among other things, the Order included the following requirements (quoted from items 15, 20 and 22 of the "Order" section on pages 3 and 4 of the Order):

1. Within 30 days of receipt of this Order, Respondent shall provide EPA with a compliance plan and schedule for the system to come into compliance with the nitrate maximum contaminant level (MCL) at 40 C.F.R. § 141.62(b).

On March 4, 2010, EPA spoke with Mr. Josh Townsley, on behalf of Bear Harbour Limited Partnership, regarding Respondent's failure to provide EPA with a compliance plan and schedule for bringing the system into compliance with the nitrate MCL within 30 days of receipt of the Order (by December 23, 2009). EPA has still not received the compliance plan and schedule. Please submit to EPA a plan and schedule for bringing the system into compliance with the nitrate MCL as soon as possible.

2. Respondent shall comply with all confirmation sampling requirements found in 40 C.F.R. § 141.23(f)(2). This requires public water systems that exceed the MCL for nitrate to either 1) take a confirmation sample within 24 hours of notification of the analytical results or, if that is not possible, 2) immediately notify the consumers served by the system and take a confirmation sample within two weeks of notification of the analytical results of the first sample.

Respondent failed to take a confirmation sample following the March 29, 2010 nitrate MCL exceedance.

3. Within 30 days of receiving this Order, Respondent shall notify the public of the violations cited in paragraphs 8 through 11, as required by 40 C.F.R. part 141, subpart Q. Thereafter, following any future violation of the drinking water regulations, Respondent shall comply with the applicable public notice provisions of 40 C.F.R. part 141, subpart Q.

Respondent failed to submit a public notice to EPA. In addition, Respondent was required to complete a Tier 1 public notification within 24 hours of the March 29, 2010 nitrate MCL violation. If public notice has not been completed, please do so immediately and submit a copy to EPA. If public notice has been conducted, please provide EPA a copy.

EPA is considering additional enforcement action, including penalties, 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 Kimberly Pardue Welch at 1-800-227-8917, extension 6983 or (303) 312-6983. If you are represented by an attorney who has questions, please ask your attorney to contact Amy Swanson, Enforcement Attorney, at 1-800-227-8917, extension 6906 or (303) 312-6906 or at the following address:

Amy Swanson
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, MDEQ
Shelley Nolan, MDEQ
Josh Townsley, Operator (via certified mail w/ return receipt)
Tina Artemis, EPA Regional Hearing Clerk