



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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

AUG 22 2012

Ref: 8ENF-L

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Niki Smoker, Owner  
Horseshoe Bar  
P.O. Box 432  
Frazer, MT 59225

Re: Docket No. SDWA-08-2011-0043  
Complaint and Notice of Opportunity for  
Hearing

Dear Ms. Smoker:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" filed against you as owner of the Horseshoe Bar, under section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300g-3. The U.S. Environmental Protection Agency alleges in the complaint that you failed to comply with an Administrative Order issued on May 16, 2011 under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), for alleged violations of the SDWA and the National Primary Drinking Water Regulations (NPDWRs) at the Horseshoe Bar public water system. The violations are specifically set out 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 respond 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. You may request a hearing in your answer. You have the right to be represented by an attorney at any stage of these proceedings.

Whether or not a hearing is requested, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. The 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. The issuance of a final order incorporating a consent agreement shall constitute a waiver of the right to request a hearing on any matter to which you stipulate in that agreement.

A request for an informal conference does not extend the 30-day period during which you must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing. Please note that you may be subject to

a default order requiring payment of the full penalty proposed in the complaint if you do not file an answer, even if you request an informal conference.

If you have any questions specific to the violations or penalty, you may contact Sienna Meredith, who can be reached at 1-866-457-2690 extension 5026, or (406) 457-5026. If you are represented by an attorney who has questions, please ask your attorney to contact Jean Belille, Enforcement Attorney, who can be reached at 1-800-227-8917 extension 6556 or (303) 312-6556 or at the following address:

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

We urge your prompt attention to this matter.

Sincerely,

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

Enclosures

1. Administrative Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice (Complainant's Exhibit 1)
3. Administrative Order (Complainant's Exhibit 2)
4. Violation of Administrative Order letter (Complainant's Exhibit 3)
5. 2<sup>nd</sup> Violation of Administrative Order letter (Complainant's Exhibit 4)
6. 3<sup>rd</sup> Violation of Administrative Order letter (Complainant's Exhibit 5)

cc: Tina Artemis, Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2012 AUG 22 PM 1:41

IN THE MATTER OF \_\_\_\_\_ )  
Niki Smoker )  
Respondent, )  
Proceeding under section 1414(g) )  
of the Safe Drinking Water Act, )  
42 U.S.C. § 300g-3(g) )  
\_\_\_\_\_ )

FILED  
EPA REGION VIII  
PROGRAMS & SERVICES  
Docket No. SDWA-08-2011-0043

**COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**COMPLAINT**

The United States Environmental Protection Agency (Complainant) proposes to assess a civil administrative penalty against Niki Smoker (Respondent).

This 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 section 1414(g)(3) of the Safe Drinking Water Act, as amended (SDWA), 42 U.S.C. § 300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes the Administrator of EPA to assess an administrative civil penalty against any person who violates, or fails or refuses to comply with, an order issued under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g). The Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, 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. Niki Smoker (Respondent) is an individual and, therefore, a "person" as that term is defined in section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. Respondent owns and/or operates the Horseshoe Bar public water system (the System), located in Frazer, Montana, for the provision of piped water to the public for human consumption.
3. The System has one service connection or regularly serves at least 50 individuals at least 60 days out of the year and is therefore a "public water system" as that term is defined in section 1401(4) of 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 that term is defined in 40 C.F.R. § 141.2.
4. As an owner and/or operator of a public water system, Respondent is a "supplier of water" as that term is defined in section 1401(5) of SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent is therefore subject to 40 C.F.R. part 141 (also known as the National Primary Drinking Water Regulations or NPDWRs), each of which is an "applicable requirement" as that term is defined in section 1414(i) of the SDWA, 42 U.S.C. § 300g-3(i).
5. The source of the System's water is ground water from one well which provides water that is not treated for disinfection.
6. On May 16, 2011 in accordance with section 1414(g) of SDWA, 42 U.S.C. § 300g-3(g), EPA issued an Administrative Order, Docket No. SDWA-08-2011-0043 (the Order) to Respondent, citing violations of the NPDWRs.
7. A copy of the Order is attached to this Complaint (Complainant's Exhibit 2).
8. By letter dated September 13, 2011, EPA notified Respondent that she was in violation of the Order.

9. A copy of that letter is attached to this Complaint (Complainant's Exhibit 3).
10. By letter dated January 11, 2012, EPA again notified Respondent that she was in violation of the Order.
11. A copy of that letter is attached to this Complaint (Complainant's Exhibit 4).
12. By letter dated April 23, 2012, EPA again notified Respondent that she was in violation of the Order.
13. A copy of that letter is attached to this Complaint. (Complainant's Exhibit 5).

### **VIOLATIONS**

#### **Count I**

#### **Failure to Monitor for Nitrate**

14. According to 40 C.F.R. § 141.23 Respondent is required to monitor the System's water annually for nitrate.
15. Paragraph 19 of the Order required Respondent to monitor the System's water for nitrate within 30 days of receipt of the Order, and per the regulations thereafter as required by 40 C.F.R. § 141.23.
16. The Order was mailed on May 17th, 2011, and was accepted by Respondent on May 20, 2012.
17. Respondent failed to monitor the System's water for nitrate by June 20, 2011, in violation of the Order and 40 C.F.R. § 141.23.

#### **Count II**

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

18. According to 40 C.F.R. § 141.21, non-community public water systems using ground water are required to monitor their water at least quarterly to determine compliance with the Maximum Contaminate Level (MCL) established for total coliform bacteria pursuant to 40 C.F.R. § 141.21.
19. Paragraph 18 of the Order required Respondent to perform quarterly bacteriological monitoring

as required by 40 C.F.R. § 141.21.

20. Respondent failed to monitor the System's water for total coliform bacteria during the 3rd quarter (July-September) of 2011 and therefore violated the Order and 40 C.F.R. § 141.21.
21. Respondent failed to monitor the System's water for total coliform bacteria during the 1st quarter (January-March) of 2012 and therefore violated the Order and 40 C.F.R. § 141.21.

**Count III**  
**Failure to Report Coliform Monitoring Violations to EPA**

22. According to 40 C.F.R. § 141.21(g)(2) Respondent is required to report any failure to comply with any total coliform monitoring requirement to the EPA within 10 days after discovering the violation.
23. Paragraph 22 of the Order, required Respondent to report any failure to comply with total coliform monitoring requirements to EPA within ten days after the System's discovery of the violation as required by 40 C.F.R. § 141.21(g)(2).
24. Respondent failed to report to EPA that total coliform sampling was not completed for the third quarter of 2011 and therefore violated the Order and 40 C.F.R. § 141.21(g)(2).
25. Respondent failed to report to EPA that total coliform sampling was not completed for the first quarter of 2012 and therefore violated the Order and 40 C.F.R. § 141.21(g)(2).

**Count IV**  
**Failure to Issue Public Notice**

26. According to 40 C.F.R. § 141, subpart Q, Respondent is required to notify the public of the violations cited in the Order, and thereafter, following any future violations of the drinking water regulations, Respondent shall comply with the applicable public notice provisions. Within 10 days of providing public notice, Respondent shall submit a copy of the notice to EPA.

27. Paragraph 21 of the Order, required Respondent to notify the public of the violations cited in the Order within 30 days of receiving the Order and thereafter, following any future violations of the drinking water regulations. Respondent shall also submit a copy of the notice to EPA within 10 days of providing the notice.
28. Respondent violated the Order and 40 C.F.R. § 141 subpart Q, by failing to issue public notice of the failure to monitor the system's water for nitrate within 30 days of receiving the Order.
29. Respondent violated the Order and 40 C.F.R. § 141 subpart Q, by failing to issue public notice of the failure to monitor for total coliform bacteria within 30 days of receiving the Order.

#### **PROPOSED PENALTY**

This Complaint proposes that EPA assess an administrative penalty against 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 violation of 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.)

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 Respondent's degree of willfulness and/or negligence, history of noncompliance, and ability to pay, as known to EPA at this time, EPA proposes to assess an administrative civil penalty of \$1,250.00 against Respondent for her 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), Respondent has 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 she is entitled to judgment as a matter of law.

If Respondent wishes to request a hearing, Respondent 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, Respondent has an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.7(c), in which to file her answer.

If Respondent requests a hearing in her answer, 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, 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 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. (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:

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

A copy of the answer must also be sent to the attorney whose name and address are provided in the signature block at the end of this Complaint.

### **FAILURE TO FILE AN ANSWER**

**If Respondent does not file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this Complaint, Respondent may be subject to a default order requiring payment of the full penalty proposed in this Complaint.**

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

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, Respondent need not file an answer. Alternatively, as allowed by 40 C.F. R. § 22.18(b), 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 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 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, 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:

Sienna Meredith  
U.S. EPA, Region 8  
10 West 15<sup>th</sup> Street, Suite 3200  
Helena, MT 59626

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

Payment of the penalty in this manner does not relieve 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 Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

#### **SETTLEMENT CONFERENCE**

EPA encourages exploring settlement possibilities through informal settlement negotiations.

**However, 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 should be directed to the attorney named below.

Niki Smoker  
Complaint and Notice of Opportunity for Hearing  
Page 10 of 11

Dated this 22 day of August, 2012.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8  
Complainant.

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

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 true copies of the same were sent to the following addresses by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Niki Smoker, Owner  
Horseshoe Bar  
P.O. Box 432  
Frazer, MT 59225  
Certified mail, return receipt requested  
No.

Date: 8/22/2012

By: Judith M. McTernan

§21.13

40 CFR Ch. I (7-1-08 Edition)

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

2011 MAY 16 AM 10:37

IN THE MATTER OF: )  
 )  
Niki Smoker, )  
 )  
Respondent. )

Docket No. SDWA-08-2011-0043

FILED  
REGION VIII  
HEARING CLERK

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. Niki Smoker (Respondent) is an individual who owns and/or operates the Horseshoe Bar (the system), which provides piped water to the public in Valley County, Montana, for human consumption.

3. The system is supplied by a ground water source consisting of one well. The water is not treated.

4. The system has 1 service connection and/or regularly serves at least 50 individuals daily at least 60 days 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. If two or more samples collected in any month from the system's water are positive for total coliform, then Respondent has violated the maximum contaminant level (MCL) for total coliform bacteria. 40 C.F.R. § 141.63(a)(2). During the month of December 2010, two or more samples from the system were positive for total coliform, and, therefore, Respondent violated this requirement.

8. If the system has one or more total coliform positive samples, Respondent is required to collect at least 5 routine samples during the next month the system provides water to the public. 40 C.F.R. § 141.21(b)(5). After the system's water tested positive for total coliform on December 1, 2010 and December 27, 2010, Respondent failed to take at least 5 routine samples of the system's water in January 2011 and, therefore, violated this requirement.

9. 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 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2009 and, therefore, violated this requirement.

10. Respondent is required to monitor the system's water annually for nitrate. 40 C.F.R. § 141.23(d). Respondent failed to monitor the system's water for nitrate during 2010, and, therefore, violated this requirement.

11. Respondent is required to notify the public of certain violations of the drinking water regulations. 40 C.F.R. §§ 141.201 *et seq.* Respondent did not notify the public of the violations cited in paragraphs 7 and 9, and, therefore, violated this requirement. Public notice for the 2010 failure to monitor nitrate and the January 2011 violation for failure to collect at least 5 routine samples following a positive sample in the previous month is not yet overdue.

12. Respondent is required to report any coliform MCL violation to EPA no later than the end of the first business day after learning of it. 40 C.F.R. § 141.21(g)(1). Respondent did not notify EPA of the MCL violation cited in paragraph 7, above, and, therefore, violated this requirement.

13. Respondent is required to report any failure to comply with any coliform monitoring requirement to EPA within ten days of discovering the violation. 40 C.F.R. § 141.21(g)(2). Respondent failed to report the violations listed in paragraphs 8 and 9, above, to EPA and, therefore, violated this requirement.

14. Respondent is required to report any failure to comply with any of the drinking water regulations to EPA within 48 hours (except where a different reporting period is specified in the drinking water regulations). 40 C.F.R. § 141.31(b). Respondent failed to report the violations cited in paragraphs 10 and 11, above, to EPA and, therefore, violated this requirement.

**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):

15. Respondent shall comply with the total coliform MCL. 40 C.F.R. § 141.63. If the system's water does not comply with the total coliform MCL, Respondent shall notify EPA of this violation by the end of the business day after discovering the violation, as required by 40 C.F.R. § 141.21(g)(1).

16. If Respondent's total coliform sample results exceed the MCL while this Order is in effect, Respondent shall, within 30 days of learning of this violation, provide EPA with a compliance plan and schedule for the system to come into compliance with the MCL for total coliform as stated in 40 C.F.R. § 141.63(a). The plan shall include proposed system modifications, estimated costs of modifications, and a schedule for completion of the project and compliance with the total coliform MCL. The proposed schedule shall include specific milestone dates and a final compliance date. The final compliance date shall be within 3 months from the date of EPA's approval of the plan and schedule. The proposed plan and schedule must be approved by EPA before construction or modifications may begin.

17. If any routine sample for the system is total coliform positive, Respondent shall collect at least 5 routine samples during the next month in which the system provides water to the public, following the procedures in 40 C.F.R. § 141.21.

18. Respondent shall monitor the system's water quarterly for total coliform bacteria, as required by 40 C.F.R. § 141.21.

19. Within 30 days of receipt of this Order, and annually thereafter, Respondent shall monitor the system's water for nitrate. 40 C.F.R. § 141.23.

20. 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).

21. Within 30 days of receiving this Order, Respondent shall notify the public of the violations cited in paragraphs 7 through 10, above, 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. Within 10 days of providing public notice, Respondent shall submit a copy of the notice to EPA.

22. 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).

23. Respondent shall report any violation of the drinking water regulations to EPA within 48 hours of the violation occurring or, if another time period for reporting is specified in this Order or the drinking water regulations, within that other time period. 40 C.F.R § 141.31(b).

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

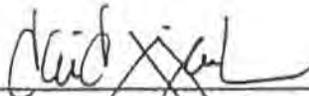
Barbara Burkland  
U.S. EPA, Region 8  
10 West 15th St, Suite 3200  
Helena, MT 59626

**GENERAL PROVISIONS**

25. This Order does shall 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.

26. 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: May 16, 2011.

  
\_\_\_\_\_  
Michael T. Risner, Director  
David Janik, 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

## 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 Notice—Template 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:

- 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.
- 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.]
- We plan to take the required samples soon, as described in the last column of the table above.

**After Issuing the Notice**

**Make sure to send your primacy agency a copy of each type of notice and a certification that you have met all the public notice requirements within ten days after issuing the notice (141.31(d)).**

Please send a copy of your notice and dates posted to:

Barbara Burkland  
U.S. EPA, Region 8  
10 West 15th St, Suite 3200  
Helena, MT 59626

Or, you may fax a copy to: Attn: Kimberly Pardue Welch at 303-312-7518.

**Certification of Public Notification**

I \_\_\_\_\_ certify that the attached public notification was issued from  
(PWS Operator / Responsible Party)

\_\_\_\_\_ to \_\_\_\_\_  
(Date) (Date)

The attached notice was issued by \_\_\_\_\_  
(Method of delivery)

Signature \_\_\_\_\_ Date \_\_\_\_\_

**IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER**  
**Monitoring Requirements Not Met for Horseshoe Bar**

Our water system violated several drinking water standards over the past several years. Even though these were not emergencies, as our customers, you have a right to know what happened and what we did to correct these situations.

We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not our drinking water meets health standards. We failed to monitor for total coliform during the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2009 and therefore cannot be sure of the quality of our drinking water during that time.

**What should I do?**

**There is nothing you need to do at this time.**

The table below lists the contaminant(s) we did not properly test for during the previous years, how often we are supposed to sample for [this contaminant/these contaminants] and how many samples we are supposed to take, how many samples we took, when samples should have been taken, and the date on which follow-up samples were (or will be) taken.

Contaminant	Required sampling frequency	When all samples should have been taken	When samples were or will be taken
Failure to take 5 routine total coliform samples in the month following a total coliform positive sample	-----	5 samples in January 2011 following total coliform samples in the preceding months.	
Total coliform	1 sample every quarter	2 <sup>nd</sup> , 3 <sup>rd</sup> and 4 <sup>th</sup> quarters of 2009	March and December 2010
Nitrate	1 sample annually	2010	

**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 Horseshoe Bar  
 State Water System ID#: 083090056

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

## Instructions for Resolved Total Coliform Notice –(Tier 2)

### Template on Reverse

Since exceeding the total coliform bacteria maximum contaminant level is a Tier 2 violation, you must provide public notice to persons served as soon as practical but within 30 days after you learn of the violation (141.203(b)). Check with the Division of Drinking Water to make sure you meet all the public notification requirements.

Community systems must use one of the following methods (141.203(c)):

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

Non-community systems must use one of the following methods (141.203(c)):

- Posting in conspicuous locations for at least 7 days
- 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 (141.203(c)). Such methods could include newspapers, e-mail, or delivery to community organizations. If you mail, post, or hand deliver, print your notice on letterhead, if available.

The notice on the reverse is appropriate for hand delivery or mail. However, you may wish to modify it before using it for posting. If you do, you must still include all the required elements and leave the health effects language in italics unchanged. This language is mandatory (141.205(d)).

### Description of the Violation

Make sure that the notice is clear about the fact that the coliform problem has been resolved, and there is no current cause for concern. The description of the violation and the MCL vary depending on the number of samples you take. The following table should help you complete the second paragraph of the template.

<u>If You Take Less Than 40 Samples a Month</u>	<u>If You Take More Than 40 Samples a Month</u>
State the number of samples testing positive for coliform. The standard is that no more than one sample per month may be positive.	State the percentage of samples testing positive for coliform. The standard is that no more than five percent of samples may test positive each month.

### Corrective Action

In your notice, describe corrective actions you have taken. Listed below are some steps commonly taken by water systems with total coliform violations. Use one or more of the following actions, if appropriate, or develop your own:

- We have increased sampling for coliform bacteria to catch the problem early if it recurs.
- The well and/or distribution system has been disinfected and additional samples do not show presence of coliform bacteria.

### After Issuing the Notice

Make sure to send a copy of each type of notice along with a certification that you have met all the public notice requirements to EPA and your Primacy Agency within ten days after issuing the notice (141.31(d)).

## IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER

Tests Showed Coliform Bacteria in the Horseshoe Bar public water system

Our water system violated a drinking water standard in December 2010. Although this incident was not an emergency, as our customers, you have a right to know what happened and what we did to correct this situation.

We routinely monitor for drinking water contaminants. Horseshoe Bar has exceeded the maximum contaminant level for total coliform bacteria. This violation is listed below with the number of samples taken and the number of samples which tested positive.

<u>Violation Date</u>	<u>Number of samples taken</u>	<u>Number of positive samples</u>
December 2010	5	2

The standard is that no more than 1 sample per month may do so.

### What should I do?

- **You do not need to boil your water or take other corrective actions.** However, if you have specific health concerns, consult your doctor.
- People with severely compromised immune systems, infants, and some elderly may be at increased risk. These people should seek advice about drinking water from their health care providers. General guidelines on ways to lessen the risk of infection by microbes are available from EPA's Safe Drinking Water Hotline at 1 (800) 426-4791.

### What does this mean?

This is not an emergency. If it had been, you would have been notified immediately. Coliform bacteria are generally not harmful themselves. *Coliforms are bacteria which are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.*

Usually, coliforms are a sign that there could be a problem with the system's treatment or distribution system (pipes). Whenever we detect coliform bacteria in any sample, we do follow-up testing to see if other bacteria of greater concern, such as fecal coliform or *E. coli*, are present.

### What happened? What was done?

[Describe corrective action here.]

For more information, please contact \_\_\_\_\_ at \_\_\_\_ - \_\_\_\_ - \_\_\_\_ or [mailing 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 Horseshoe Bar

State Water System ID#: 083090056

Date distributed: \_\_\_\_\_



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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

2011 SEP 13 AM 8:55

FILED  
EPA REGION VIII  
RECORDING CLERK

Ref: 8 ENF-W

SEP 13 2011

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Niki Smoker, Owner  
Horseshoe Bar  
P.O. Box 432  
Frazer, MT 59225

Re: Violation of Administrative Order  
Docket No. SDWA-08-2011-0043  
Horseshoe Bar  
PWS ID #083090056

Dear Mrs. Smoker:

On May 16, 2011, the US Environmental Protection Agency (EPA) issued an Administrative Order (Order), Docket No. SDWA-08-2011-0043, ordering you (Respondent) 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 you are in violation of the Order. Among other things, the Order included the following requirements (quoted from items 19 and 21 of the "Order" section on page 3 of the Order):

1. Within 30 days of receipt of this Order, and annually thereafter, Respondent shall monitor the system's water for nitrate. 40 C.F.R. § 141.23.

Respondent failed to monitor the system's water for nitrate within 30 days of receiving the Order (by June 20, 2011).

2. Within 30 days of receiving this Order, Respondent shall notify the public of the violations cited in paragraphs 7 through 10, above, 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. Within 10 days of providing public notice, Respondent shall submit a copy of the notice to EPA.

Respondent failed to provide public notice for violations included in the Order within 30 days of receiving the Order (by June 20, 2011).

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 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 Jean Belille, Enforcement Attorney, at 1-800-227-8917, extension 6556 or (303) 312-6556 or at the following address:

Jean Belille  
Enforcement Attorney  
U.S. EPA, Region 8 (8ENF-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  
Chairman Stafne, Assiniboine & Sioux Tribes  
Deb Madison, Environmental Director, Fort Peck Tribes





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, MONTANA OFFICE  
FEDERAL BUILDING, 10 W. 15<sup>th</sup> STREET, SUITE 3200  
HELENA, MONTANA 59626

COMPLAINANT'S  
EXHIBIT NO. 4

2012 JAN 11 AM 8:26

JAN 11 2012

FILED  
EPA REGION VIII  
HEARING CLERK

Ref: 8MO

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Niki Smoker, Owner  
Horseshoe Bar  
P.O. Box 432  
Frazer, MT 59225

Re: 2<sup>nd</sup> Violation of Administrative Order  
Docket No. SDWA-08-2011-0043  
Horseshoe Bar  
Public Water System  
PWS ID #083090056

Dear Mrs. Smoker:

On May 16, 2011, the US Environmental Protection Agency (EPA) issued an Administrative Order (Order), Docket No. SDWA-08-2011-0043, ordering Niki Smoker (Respondent) 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 Respondent is in violation of the Order. Among other things, the Order included the following requirements (quoted from items 18 and 22 of the "Order" section on pages 3 and 4 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 did not submit total coliform bacteria monitoring results for the third quarter of 2011 (July-September).

2. 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).

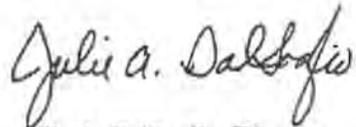
Respondent did not report the violation for failing to monitor for total coliform during the third quarter of 2011.

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 Sienna Meredith at 1-866-457-2690, extension 5026 or (406)457-5026. If you are represented by an attorney who has questions, please ask your attorney to contact Jean Belille, Enforcement Attorney, at 1-800-227-8917, extension 6556 or (303) 312-6556 or at the following address:

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

We urge your prompt attention to this matter.



Julie A. DalSoglio, Director  
EPA Region 8 Montana Office

cc:

Tina Artemis, EPA Regional Hearing Clerk  
Chairman Stafne, Assiniboine & Sioux Tribes  
Deb Madison, Environmental Director, Fort Peck Tribes



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, MONTANA OFFICE  
FEDERAL BUILDING, 10 W. 15<sup>TH</sup> STREET, SUITE 3200  
HELENA, MONTANA 59626

2012 APR 23 PM 2:55

REGION 8  
HELENA, MONTANA

APR 23 2012

Ref: 8MO

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Niki Smoker, Owner  
Horseshoe Bar  
P.O. Box 432  
Frazer, MT 59225

Re: 3rd Violation of Administrative Order  
Docket No. SDWA-08-2011-0043  
Horseshoe Bar  
Public Water System  
PWS ID #083090056

Dear Mrs. Smoker:

On May 16, 2011, the US Environmental Protection Agency (EPA) issued an Administrative Order (Order), Docket No. SDWA-08-2011-0043, ordering you (Respondent) 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 you are in violation of the Order. Among other things, the Order included the following requirements (quoted from items 18 and 22 of the "Order" section on pages 3 and 4 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 did not submit total coliform bacteria monitoring results for the first quarter of 2012 (January- March).

2. 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).

Respondent did not report the violation for failing to monitor for total coliform during the first quarter of 2012.

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 Sienna Meredith at 1-866-457-2690, extension 5026 or (406) 457-5026. If you are represented by an attorney who has questions, please ask your attorney to contact Jean Belille, Enforcement Attorney, at 1-800-227-8917, extension 6556 or (303) 312-6556 or at the following address:

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

We urge your prompt attention to this matter.

  
Julie A. DalSoglio, Director  
EPA Region 8 Montana Office

cc:  
Tina Artemis, EPA Regional Hearing Clerk  
Chairman Azure, Assiniboine & Sioux Tribes  
Deb Madison, Environmental Director, Fort Peck Tribes  
Jessica Burbank, Department of Revenue