

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 APR 30 PM 1:05

IN THE MATTER OF)
)
Bank of the Rockies N.A.,)
China Wok, Inc., and)
Herman Chan)
(China Wok Restaurant)) Docket No. SDWA-08-2009-0029
)
Respondents) **MOTION TO DISMISS**
) **TWO RESPONDENTS**
) **WITHOUT PREJUDICE**
)
Proceeding under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. §300g-3(g))
_____)

Region 8 of the United States Environmental Protection Agency (EPA) moves to dismiss Respondents China Wok, Inc. and Herman Chan without prejudice.

EPA has reached a settlement in principle with Respondent Bank of the Rockies, N.A. (the Bank). EPA requests that the Respondents China Wok, Inc. and Herman Chan be dismissed, so that EPA and the Bank may execute a consent agreement without needing to obtain signatures from any other parties.

The Bank has advised EPA that Respondent Herman Chan is no longer affiliated with the China Wok Restaurant and that the Bank does not know his whereabouts. Mr. Chan has not responded to the EPA's complaint. There appears to be little utility in finding Mr. Chan and asking him to sign the consent agreement.

Similarly, although the Bank and EPA have been in contact with China Wok, Inc., there appears to be little utility in asking a representative of China Wok, Inc. to sign the consent agreement, inasmuch as the Bank has agreed to pay the entire agreed-upon penalty amount.

EPA requests that this dismissal be without prejudice to EPA's right to file a penalty complaint against Respondents China Wok, Inc. and/or Herman Chan, if appropriate, at some later time.

Dated this 29th day of April, 2009.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the MOTION TO DISMISS TWO RESPONDENTS WITHOUT PREJUDICE were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent to each of the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Joel E. Guthals, Attorney
Guthals, Hunnes & Reuss, P.C.
P.O. Box 1977
Billings, MT 59103-1977
Certified Mail # 7005 1820 0005 4856 4559

Hoa Vien, Registered Agent
China Wok, Inc.
188 Hwy 12 E
Townsend, MT 59644
Certified Mail # 7005 1820 0005 4856 4290

Herman Chan
China Wok Restaurant
4309 Morning Sun Drive
Bozeman, MT 59715
Certified Mail # 7005 1820 0005 4856 4306

Date: 4/30/2009

By: Judith McTernan
Judith McTernan

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 1:07
REGION 8

RECEIVED
EPA REGION 8
DENVER, CO

IN THE MATTER OF)
)
Bank of the Rockies N.A.,)
China Wok, Inc., and)
Herman Chan)
(China Wok Restaurant))
)
Respondents)
)
Proceeding under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. §300g-3(g))
_____)

Docket No. SDWA-08-2009-0029
**ORDER DISMISSING
TWO RESPONDENTS
WITHOUT PREJUDICE**

For the reasons given in the Motion to Dismiss Two Respondents Without Prejudice,
Respondents China Wok, Inc. and Herman Chan are hereby dismissed without prejudice.

Dated: _____, 2009.

Hon. Elyana R. Sutin
Regional Judicial Officer
U.S. Environmental Protection Agency
1595 Wynkoop St.
Denver, CO 80202-1129

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Order Dismissing Two Respondents Without Prejudice was delivered as shown below to each of the following:

Joel E. Guthals, Attorney
Guthals, Hunnes & Reuss, P.C.
P.O. Box 1977
Billings, MT 59103-1977
By U.S. Mail

Hoa Vien, Registered Agent
China Wok, Inc.
188 Hwy 12 E
Townsend, MT 59644
By U.S. Mail

Herman Chan
China Wok Restaurant
4309 Morning Sun Drive
Bozeman, MT 59715
By U.S. Mail

Margaret J. (Peggy) Livingston, 8ENF-L
Enforcement Attorney
U.S. Environmental Protection Agency
1595 Wynkoop St.
Denver, CO 80202-1129
By Hand Delivery

Date: _____

By: _____
Tina Artemis, Regional Hearing Clerk