

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 DEC 30 AM 10:20

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| <u>IN THE MATTER OF</u> |) | |
| |) | |
| Sutey Oil Company |) | |
| Butte, MT |) | ADMINISTRATIVE ORDER |
| |) | |
| Respondent |) | Docket No. SDWA-08-2009-0013 |

1. This Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by section 1414(g) of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300g-3(g), as properly delegated to the undersigned officials.

2. Sutey Oil Company (Respondent) is a corporation which owns and/or operates the Thriftway Super Stop Public Water System (the system) in Gallatin County, Montana which provides piped water to the public for human consumption. The system is supplied by a groundwater source consisting of one well and serves approximately 1,026 people per day through 1 service connection year round. The system is a "non-community" water system as defined in 40 C.F.R. § 141.2. Respondent is subject to the requirements of the Act and the National Primary Drinking Water Regulations (drinking water regulations), at 40 C.F.R. part 141. The Respondent received annual notification from the Montana Department of Environmental Quality (MDEQ or the State) regarding the system's monitoring requirements.

3. The MDEQ has primary enforcement authority for the Act in the State of Montana. On November 19, 2008, EPA issued a Notice of Violation to MDEQ regarding the violations at the system. MDEQ elected not to commence an enforcement action against the system for the violations within the thirty-day time frame set forth in section 1414(a) of the Act, 42 U.S.C. § 300g-3(a). EPA has provided a copy of this Order to MDEQ and has provided the State, through MDEQ, with an opportunity to confer with EPA regarding this Order pursuant to section 1414(g)(2) of the Act, 42 U.S.C. § 300g-3(g)(2). EPA is issuing this Order requiring the system to comply with the "applicable requirements" it violated. An "applicable requirement" includes requirements of an applicable approved State program, such as Montana's "Public Water Supply Requirements" at Administrative Rules of Montana (ARM) 17.38.101 through 703. 42 U.S.C. § 300g-3(i).

VIOLATIONS

4. Within 24 hours of receiving a positive test result for total coliform, Respondent is required to collect 3 repeat samples for each positive coliform test result received. 40 C.F.R. § 141.21(b). Respondent failed to collect such samples during October and December 2007, and during January through March 2008 and, therefore, violated this requirement.

5. Respondent is required to collect 5 routine total coliform samples during the month after receiving a positive result for total coliform. 40 C.F.R. § 141.21(b)(5). Respondent failed to collect such samples during February and May 2007 and, therefore, violated this requirement.

6. Respondents who collect fewer than 40 total coliform samples per month and have more than one total coliform positive sample during the monthly monitoring period are determined to be in violation of the maximum contaminant level (MCL) for total coliform bacteria. 40 C.F.R. § 141.63(a)(2). Respondent exceeded the MCL for total coliform bacteria during February, April, September, October and December 2007; and January through April 2008 and, therefore, violated this requirement.

7. Respondent is required to monitor the system's water at least once per year to determine compliance with the maximum contaminant level (MCL) for nitrate. 40 C.F.R. § 141.23(d). Respondent failed to monitor for nitrate during 2006 and, therefore, violated this requirement.

8. 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 total coliform monitoring violations during 2007 as specified in paragraphs 4 and 5 above, the MCL violations for total coliform as specified in paragraph 6, and the nitrate monitoring violation listed in paragraph 7 above and, therefore, violated this requirement. Public notice for the 2008 coliform monitoring violations as specified in paragraph 4 above is not yet overdue.

9. Respondent is required to report any failure to comply with a coliform monitoring requirement to the State within ten days after the system learned of the violation. 40 C.F.R. § 141.21(g)(2). Respondent failed to report to the State its failure to monitor for total coliform as listed in paragraphs 4 and 5 above and, therefore, violated this requirement.

10. Respondent is required to report any total coliform MCL violations to the State by the end of the next business day after the system learns of

the violation. 40 C.F.R. §§ 141.21(g)(1). Respondent failed to report to the State the MCL violations listed in paragraph 6 above and, therefore, violated this requirement.

11. Respondent is required to report any failure to comply with any other drinking water regulation to the State within 48 hours. 40 C.F.R. § 141.31(b). Respondent failed to report the violations listed in paragraphs 7 and 8 above to the State and, therefore, violated this requirement.

ORDER

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

12. Upon receipt of this Order, within 24 hours of receiving a positive test result for total coliform, Respondent shall collect 3 repeat samples for each positive total coliform test result received. 40 C.F.R. § 141.21(b). Respondent shall report analytical results to EPA and the State within the first 10 days following the month in which sample results are received, as required by the drinking water regulations. 40 C.F.R. § 141.31(a). Any violation of the total coliform monitoring requirements shall be reported to EPA and the State within ten days after Respondent learns of it. 40 C.F.R. § 141.21(g)(2).

13. Upon receipt of this Order, Respondent shall collect 5 routine samples during the month following receipt of a positive test result for total coliform. 40 C.F.R. § 141.21(b)(5). Respondent shall report analytical results to EPA and the State within the first 10 days following the month in which sample results are received, as required by the drinking water regulations. 40 C.F.R. § 141.31(a). Any violation of the total coliform monitoring requirements shall be reported to EPA and the State within ten days after Respondent learns of it. 40 C.F.R. § 141.21(g)(2).

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

15. Upon receipt of this Order, Respondent shall monitor for nitrate annually. Respondent shall report analytical results to EPA and the State within the first 10 days following the month in which sample results are received, as required by the drinking water regulations. 40 C.F.R.

§ 141.31(a). Any violation of the nitrate monitoring requirements shall be reported to EPA and the State within 48 hours after the Respondent learns of it. 40 C.F.R. § 141.31(b).

16. Within 30 days of receipt of this Order, Respondent must provide public notice of the violations specified in paragraphs 4 through 7. 40 C.F.R. § 141.201, et seq. Respondent shall submit a copy of the public notice to EPA and the State within ten days of completion of the public notice. 40 C.F.R. § 141.31(d). This notice shall be given by (1) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system OR (2) by mail or direct delivery to each customer and service connection; AND (3) any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice required above, such as publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or delivery of multiple copies in central locations. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but for no less than seven days. The public water system must repeat the notice every three months as long as the violation or situation persists. Respondent shall comply with the public notification requirements following any future drinking water regulations violation. 40 C.F.R. § 141.201, et seq.

17. Respondent shall report any other violation of the drinking water regulations to EPA and the State within 48 hours of discovery. 40 C.F.R. § 141.31(b).

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

Eric Finke
U. S. EPA Montana Office
10 W. 15th St., Suite 3200
Helena, MT 59626

AND

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

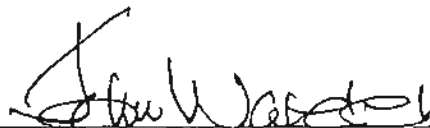
GENERAL PROVISIONS

19. This Order does not constitute a waiver, suspension, or modification of any requirement of the Act or drinking water regulations.

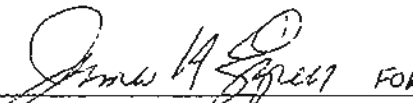
Issuance of this Order is not an election by EPA to forgo any civil or criminal action.

20. Violation of any part of this Order may subject Respondent to a civil penalty of up to \$32,500 per day of violation (as adjusted for inflation). Violation of the Act or the drinking water regulations may subject Respondent to a civil penalty of up to \$27,500 per day per violation or, for any such violation after January 12, 2009, \$32,500 per day per violation (as adjusted for inflation). 42 U.S.C. §§ 300g-3, 300j-6, 300j-8; 40 C.F.R. part 19.

12,29,08
Date


John F. Wardell, Director
Montana Office

12/23/08
Date

 FOR
Michael T. Risner, Director
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice