



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

SEP 7 2010

Ref: 8MO

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kenneth Lyons, Registered Agent
Feeding Frenzy, Inc.
1024 Mountain Park Drive
Whitefish, MT 59937

Re: Administrative Order
Docket No. SDWA-08-2010-0066
Cheffy's Public Water System
PWS ID # MT0004436

Dear Mr. Lyons:


Enclosed is an Administrative Order issued by the Environmental Protection Agency (EPA) under the authority of the Safe Drinking Water Act (SDWA), 42 U.S.C. section 300g-3(g). Among other things, the Order describes how Feeding Frenzy, Inc., as owner of the Cheffys Public Water System, has violated the National Primary 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 for 12 months after the effective date, 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.

You may submit information or request an informal conference with EPA by contacting Sienna Paquin at the above address or by phone at toll free (866) 457-2690 extension 5026, or (406) 457-5026. For legal questions, the attorney assigned to this matter is Marc Weiner, who can be reached at EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129 (with the mailcode 8ENF-L) or by phone at toll free (800) 227-8917 extension 6913, or (303) 312-6913.

I urge your prompt attention to this matter.

Sincerely,


Julie DalSoglio, Director
EPA Montana Office

Enclosures
Order
Public notice samples/templates

cc: Tina Artemis, Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 SEP -7 PM 1:48

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)
)
Feeding Frenzy, Inc.)
1024 Mountain Park Drive)
Whitefish, MT 59937)
)
Respondent)

ADMINISTRATIVE ORDER

Docket No. SDWA-08-2010-0066

1. This Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by § 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. Feeding Frenzy Inc. (Respondent) is a Montana corporation that owns and/or operates the Cheffys Public Water System (the system) in Flathead 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 87 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 August 3, 2010, EPA issued a Notice of Violation (NOV) 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 § 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 § 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. When so directed by the State, Respondent is required to monitor the system's water at least once per month to determine compliance with the maximum contaminant level (MCL) for total coliform bacteria. ARM 17.38.215(1)(b). The State directed Respondent to do so beginning January 2006. Respondent failed to monitor the water for contamination of total coliform bacteria during the months of September – October 2005; March 2006; June - July 2006; March 2007; June - December 2007; January - December 2008; January - May 2009; July – September 2009; November - December 2009; and March 2010, and therefore, violated this requirement.

5. If more than one sample 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). More than one total coliform sample collected in June 2010 and July 2010 from the system was positive for total coliform, and, therefore, Respondent violated this requirement.

6. 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 2007 and 2008 and, therefore, violated this requirement.

7. 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 did not notify the public of the violations cited in paragraphs 4 through 6 above and, therefore, violated this requirement. Public notice for the September – December 2009 and 2010 failure to monitor total coliform violations cited in paragraph 4 is not yet overdue. Respondent issued public notice for the June 2010 total coliform MCL violation.

8. 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 paragraph 4 above and, therefore, violated this requirement.

9. Respondent is required to report any failure to comply with any of the drinking water regulations (except where a different reporting period is specified above) to the State within 48 hours. 40 C.F.R. § 141.31(b).

Respondent failed to report the violations listed in paragraphs 5 and 6 above to the State and, therefore, violated this requirement.

ORDER

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

10. Upon receipt of this Order, Respondent shall monitor for total coliform bacteria monthly. ARM 17.38.215(1)(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).

11. Respondent shall comply with the total coliform MCL.

12. 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).

13. Within 30 days of the effective date of this Order, Respondent must provide public notice of the violations specified in paragraphs 4 through 6. 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.

14. Upon the effective date of this Order, Respondent shall comply with the public notification requirements following any future drinking water regulations violation. 40 C.F.R. § 141.201 et seq.

15. Upon the effective date of this Order, Respondent shall report any violation of the total coliform monitoring requirements to EPA and the State within ten days after Respondent learns of it. 40 C.F.R. § 141.21(g)(2).

16. If the system's water exceeds the total coliform MCL in 40 C.F.R. § 141.63, 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).

17. Upon the effective date of this Order, 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:

Sienna Paquin
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

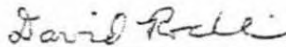
19. This Order does not constitute a waiver, suspension, or modification of any requirement of the Act or drinking water regulations. Issuance of this Order is not an election by EPA to forgo any civil or criminal action.

20. Violation of any part of this Order, the Act, 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(g)(3); 40 C.F.R. part 19.

Issued this 2 day of September, 2010.



Julie DalSoglio, Director
Montana Office



David Rochlin, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice