



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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2008 JUN - 5 AM 11: 09

Ref: 8ENF-W

JUN - 5 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steve Westberg, Owner/Operator
Town and Country Lanes and Bar
6126 Highway 312
Billings, MT 59105

Re: Amended Administrative Order
Docket No. SDWA-08-2007-0015
ID # MT0001731

Dear Mr. Westberg:

Enclosed you will find an Amended Administrative Order ("Order"), which the Environmental Protection Agency ("EPA") has issued under the authority of the Safe Drinking Water Act ("the Act"), 42 U.S.C. section 300f et seq., and its implementing regulations. This Order amends the March 22, 2007 Order issued by EPA. Among other things, the Amendment to the Administrative Order finds that Town and Country Lanes and Bar is a public water supplier as defined by the Act and that it has violated the National Primary Drinking Water Regulations ("NPDWRs") at 40 C.F.R. §§ 141.63, 141.21, 141.21(b)(5), 141.201, 141.21(g)(1) 141.21(g)(2) and 141.31(b) for: exceeding the acute maximum contaminant level ("MCL") for total coliform; exceeding the MCL for total coliform; failure to monitor for bacteriological quality; failure to conduct five routine samples the month after a total coliform-positive routine sample; failure to provide public notice of the violations; and failure to notify the State of the violations.

This Amendment adds the April 2007 violation for exceeding the acute MCL for total coliform (under the Findings of Violation section, paragraph I), and the May 2007 and February 2008 violations for exceeding the MCL for total coliform (under the Findings of Violation section, paragraph II) and requires the Respondent to submit a plan for bringing the public water system into compliance with the total coliform rule (see items 3 through 5 of the Order section on pages 6 - 7 of the Order). Additionally, sections V through VIII (pages 5 and 6) and paragraph 9 (page 8) were changed so that the references refer to the correct sections and paragraphs in this Amended Order.

If you comply with the enclosed Order for a period of at least twelve months, EPA may choose to close the Order. Violating the enclosed Order may lead to (1) a penalty of up to \$32,500 per day of violation of the Order, (2) a separate such penalty for violating the regulations themselves, and/or (3) a court injunction ordering you to comply.

Please note that the effective date of the enclosed Order is the date of issuance. Within the next 10 days, please provide EPA with any new information that you believe the Agency is not aware of relating to the alleged violations in the Order. The information may be sent to Kimberly Pardue Welch at the address on the letterhead, include the mailcode 8ENF-W, or you may call Ms. Pardue Welch at (800) 227-8917, extension 6983, or (303) 312-6983. If you wish to have an informal conference with EPA, you may also call or write Ms. Pardue Welch. If you are represented by an attorney or have legal questions, please call Amy Swanson at the above 800 number, extension 6906, or at (303) 312-6906.

We urge your prompt attention to this matter.

Sincerely,



Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc: John Arrigo, MT DEQ
Shelly Nolan, MT DEQ



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

IN THE MATTER OF)	
Steve Westberg, Owner/Operator)	
Town and Country Lanes and Bar)	
Billings, MT)	
)	
Respondent)	
)	AMENDED
)	ADMINISTRATIVE ORDER
Proceedings under Section 1414(g))	
of the Safe Drinking Water Act,)	
42 U.S.C. § 300g-3(g))	Docket No. SDWA-08-2007-0015
)	

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by section 1414(g) of the Safe Drinking Water Act ("the Act"), 42 U.S.C. § 300g-3(g), and its implementing regulations, as properly delegated to the Supervisors of the Technical and Legal Enforcement Programs of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

FINDINGS

1. Steve Westberg ("Respondent") is a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. Respondent owns and/or operates a system, the Town and Country Lanes and Bar Water System (the "System"), located in Yellowstone County, Montana, for the provision to the public of piped water for human consumption.
3. The System has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is therefore a "public water system" within the meaning of section 1401(4) of the Act,

42 U.S.C. § 300f(4), and a "transient, non-community" water system within the meaning of 40 C.F.R. § 141.2.

4. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of section 1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. Part 141, also known as the National Primary Drinking Water Regulations ("NPDWRs").
5. According to a March 9, 2005 sanitary survey conducted by the Yellowstone City-County Health Department, Respondent operates a system that is supplied solely by a ground water source consisting of one well located on site. Water is supplied to a residence and a bar year-round. The System provides water to approximately 100 persons year-round.
6. The Montana Department of Environmental Quality ("MDEQ" or the "State") has primary enforcement authority for the Act in the State of Montana. On January 17, 2007, EPA issued a Notice of Violation pursuant to section 1414(a) of the Act, 42 U.S.C. § 300g- 3(a), to MDEQ regarding the violation at the public water system. MDEQ elected not to commence an appropriate 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).
7. EPA 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).

8. EPA has provided a copy of this Order to MDEQ pursuant to section 1414(g)(2) of the Act, 42 U.S.C. § 300g-3(g)(2).
9. EPA is issuing this Order requiring the System to comply with the “applicable requirements” it violated pursuant to section 1414(g) of the Act, 42 U.S.C. § 300g-3(g).
10. 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).

FINDINGS OF VIOLATION

I.

1. 40 C.F.R. § 141.63(b) imposes and defines the acute maximum contaminant level (“MCL”) for total coliform bacteria as a fecal coliform positive or E. coli positive repeat sample, or any total coliform positive repeat sample following a fecal coliform positive or E. coli positive routine sample.
2. Monitoring results submitted by Respondent for the public water system in April 2007 exceeded the acute MCL for total coliform bacteria, in violation of 40 C.F.R. § 141.63(b).

II.

1. 40 C.F.R. § 141.63(a)(2) imposes and defines the MCL for total coliform bacteria, applicable to public water systems collecting fewer than 40 samples per month, as no more than one sample collected during the month may be positive for total coliform bacteria.

2. The State adopted 40 C.F.R. § 141.63(a) and incorporated it by reference in ARM 17.38.207(1).
3. Monitoring results submitted by Respondent for the System exceeded the MCL for total coliform bacteria for the following months: March 2002, October 2002, December 2002, January 2003, July 2004, August 2004, October 2004, April 2005, December 2005, May 2007, and February 2008, in violation of ARM 17.38.207(1) and 40 C.F.R. § 141.63(a)(2).

III.

1. 40 C.F.R. § 141.21(a)(3)(i) requires non-community water systems using only ground water and serving 1,000 persons or fewer to monitor for total coliform each calendar quarter that the system provides water to the public to determine compliance with the MCL for total coliform bacteria as stated in 40 C.F.R. § 141.63.
2. The State requires non-community public water systems to sample for total coliform once each month, as set forth in ARM 17.38.215(1)(b), which adopted portions of 40 C.F.R. § 141.21.
3. Respondent failed to monitor for total coliform for the following months: May 2002, June 2005 and July 2005, in violation of ARM 17.38.215(1)(b) and 40 C.F.R. § 141.21.

IV.

1. 40 C.F.R. § 141.21(b)(5) requires public water systems that collect fewer than five routine samples per month and have one or more total coliform positive samples to collect at least five routine samples during the next month the system provides water to the public.

2. Respondent failed to collect at least five routine samples in the following months after a total coliform positive sample in the preceding month: November 2002, February 2003, September 2004, May 2005, and January 2006, in violation of 40 C.F.R. § 141.21(b)(5).

V.

1. 40 C.F.R. § 141.21(g)(1) requires public water systems that have exceeded the MCL for total coliform in 40 C.F.R. § 141.63 to report the violation to the State no later than the end of the next business day after it learns of the violation.
2. Respondent failed to report to the State instances of noncompliance detailed in Sections I and II, in violation of 40 C.F.R. § 141.21(g)(1).

VI.

1. 40 C.F.R. § 141.21(g)(2) requires public water systems to report any failure to comply with a coliform bacteria monitoring requirement to the State within ten business days after the system discovers the violation.
2. Respondent failed to report to the State instances of noncompliance detailed in Sections III and IV, in violation of 40 C.F.R. § 141.21(g)(2).

VII.

1. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any violations of the NPDWRs, including violations of the MCL, maximum residual disinfection level ("MRDL"), treatment technique ("TT"), monitoring requirements, and testing procedures in 40 C.F.R. Part 141.
2. Respondent has not provided public notice of the violations outlined in Sections II through IV, in violation of 40 C.F.R. § 141.201.

VIII.

1. 40 C.F.R. § 141.31(b) requires owners and/or operators of public water systems to notify the State within 48 hours the failure to comply with any NPDWR, including public notice requirements.
2. Respondent failed to report to the State instances of noncompliance detailed in Section VII, in violation of 40 C.F.R. § 141.31(b).

ORDER

Based on the foregoing Findings, and pursuant to section 1414(g) of the Act, IT IS ORDERED:

1. Upon the effective date of this Order, Respondent shall monitor the water for total coliform monthly as required by ARM 17.38.215(1)(b) to determine compliance with the total coliform MCL appearing at ARM 17.38.207(l) and 40 C.F.R. § 141.63(a)(2). Upon the effective date of this Order, Respondent shall comply with the total coliform acute MCLs and the total coliform MCLs as stated in ARM 17.38.207(l) and 40 C.F.R. §§ 141.63(a)(2) and 141.63(b). Respondent shall report results to EPA and the State within ten days following the end of each monitoring period, as required by 40 C.F.R. § 141.31(a).
2. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.21(g)(1) by reporting any total coliform MCL violation under 40 C.F.R. § 141.63 to EPA and the State no later than the end of the next business day after Respondent learns of the violation.
3. Within 60 days of the effective date of this Order, Respondent shall provide EPA with a compliance plan and schedule for the system to come into compliance with the total coliform MCLs at 40 C.F.R. § 141.63. The plan shall include proposed

system modifications, estimated costs of modifications, and a schedule for completion of the project and compliance with the above-mentioned regulations. The proposed schedule shall include specific milestone dates and a final compliance date (to be within 60 days from the date of EPA's approval of the plan). The plan and schedule must be approved by EPA before construction or modifications can commence. EPA's approval of Respondents' plan and schedule does not substitute for the State of Montana's approval of plans and specifications (engineering plans) that are also required before modifications can be made to the system.

4. The plan and schedule required by paragraph 3, above, will be incorporated into this Order as enforceable requirements upon written approval by EPA.
5. Respondent must achieve and maintain compliance with the total coliform MCLs at 40 C.F.R. §§ 141.63(a)(2) and 141.63(b) by the final date specified in the approved plan, or no later than 60 days after receiving EPA's approval of the plan and schedule required by paragraph 3, above, whichever is earliest. Respondent must meet that deadline even if the plan as approved does not achieve compliance. If the plan fails to achieve compliance, EPA may order further steps and/or seek penalties for noncompliance.
6. Upon the effective date of this Order, Respondent shall comply with all sampling requirements specified in 40 C.F.R. 141.21(b)(5). If the System has one or more total coliform positive samples in a month, Respondent shall collect at least five routine samples during the next month the System provides water to the public. Respondent shall report analytical results to EPA and the State within the first ten

days following the end of the monitoring period, as required by 40 C.F.R.

§ 141.31(a).

7. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R. § 141.21 to EPA and the State within ten days after the Respondent discovers the violation.
8. Except where a different reporting period is specified above, upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.31(b) by reporting any failure to comply with any NPDWR (40 C.F.R. part 141) to EPA and the State within 48 hours.
9. Within 30 days from the effective date of this Order, Respondent must provide public notice of the violation(s) specified under the Findings of Violation Sections II through IV in this Order, to return to compliance with 40 C.F.R. §§ 141.201, 141.204 and 141.205. Upon the effective date of this Order, Respondent shall comply with the public notification requirements at 40 C.F.R. § 141.201 et seq. following any future NPDWR violation. Respondent shall submit a copy of the public notice to EPA and the State within ten days of completion of the public notice, as required by 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.

10. Reporting requirements specified in this Order shall be provided by certified mail to the following addresses:

U. S. EPA Region 8 (8ENF-W)
1595 Wynkoop Street
Denver, Colorado 80202
Attn: Kimberly Pardue Welch

Montana Department of
Environmental Quality – PWSS
P.O. Box 200901
Helena, MT 59620-0901
Attn: Shelly Nolan

GENERAL PROVISIONS

1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 et seq., or the Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
2. Violation of any term of this Order may subject the Respondent to an administrative civil penalty of up to \$27,500, under section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), or a civil penalty of not more than \$32,500 per day of violation, assessed by an appropriate U.S. district court under section 1414(g)(3)(C) of the Act, 42 U.S.C. § 300g-3(g)(3)(C).
3. Violation of any requirement of the Act or its implementing regulations may subject Respondent to a civil penalty of not more than \$32,500 per day of violation, assessed by an appropriate U.S. district court under section 1414(b) of the Act, 42 U.S.C. § 300g-3(b).

4. The effective date of this Order shall be the date of issuance of this Order.

Issued this 5th day of June, 2008.

Matt Colby for
David J. Janik, Acting Director
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Diane L. Sipe
Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

