



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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

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Ref: 8ENF-W

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CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

James Brawdy, Owner  
Gramma Ruby's Café  
5 Third Street  
Hobson, MT 59452

Re: Administrative Order  
Gramma Ruby's Café  
Public Water System  
Docket No. SDWA-08-2009-0007  
PWS ID # MT0002011

Dear Mr. Brawdy:

Enclosed is an Administrative Order (Order) issued by the Environmental Protection Agency (EPA) under the authority of the Safe Drinking Water Act (the Act), 42 U.S.C. section 300f et seq. Among other things, the Order describes how you have 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 Gramma Ruby's Café complies with the Order for twelve months, 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.

To submit information or request an informal conference with EPA, contact Kimberly Pardue Welch at the above address (with the mailcode 8ENF-W) or by phone at (800) 227-8917, extension 6983 or (303) 312-6983. For legal questions, the attorney assigned to this matter is

Jean Belille, who may be reached at the above address (with the mailcode 8ENF-L) or by phone at (800) 227-8917, extension 6556 or (303) 312-6556.

We urge your prompt attention to this matter.

Sincerely,



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

Enclosures

Order  
Public notice samples/templates

cc: John Arrigo, MT DEQ  
Shelly Nolan, MT DEQ  
Tina Artemis, EPA Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2008 NOV 24 AM 8:48

2008 NOV 24 AM 8:48

\_\_\_\_\_  
IN THE MATTER OF )  
 )  
James Brawdy, Owner )  
Gramma Ruby's Café )  
Hobson, MT )  
 )  
Respondent )

ADMINISTRATIVE ORDER

Docket No. SDWA-08-2009-0007

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. James Brawdy (Respondent) is an individual who owns and/or operates the Gramma Ruby's Café Water System (the system) in Judith Basin 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 54 people per day through 2 service connections year round. The system is a "transient 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 October 14, 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. Respondent is required to monitor the system's water at least once annually to determine compliance with the maximum contaminant level (MCL) for nitrate. 40 C.F.R. § 141.23(d). Respondent was notified in a January 8, 2008 letter from the MDEQ that as of the 1<sup>st</sup> quarter of 2008, Respondent is required to monitor the system's water at least once per quarter to determine compliance with the MCL for nitrate. A.R.M. 17.38.216(3)(a)(i)(6) and 40 C.F.R § 141.23(e)(3). The drinking water regulations define the nitrate MCL as 10 milligrams per liter (mg/L). 40 C.F.R. § 141.62(b). Monitoring results submitted by Respondent for the System exceeded the MCL for nitrate on November 9, 2007 (11.9 mg/L) and, therefore, the system has violated this requirement. Subsequent samples taken on March 12, 2008 (9.65 mg/L), June 27, 2008 (5.21 mg/L), September 16, 2008 (7.57 mg/L) and October 10, 2008 (6.88 mg/L) were below the nitrate MCL but were greater than 50 percent of the nitrate MCL requiring continued quarterly nitrate monitoring.

5. The law requires operators of a public water system that exceeds the nitrate MCL to either 1) take a confirmation sample within 24 hours of notification of the analytical results or 2) immediately notify the consumers served by the system and take a confirmation sample within two weeks of notification. 40 C.F.R. § 141.23(f)(2). Respondent failed to take a confirmation sample within 24 hours of being notified of the nitrate MCL exceedance on November 9, 2007 and failed to immediately notify the consumers served by the system and take a confirmation sample within two weeks of notification of the November 9, 2007 nitrate MCL exceedance and, therefore, violated this requirement. Respondent issued public notice for the November 9, 2007 nitrate MCL on December 17, 2007.

6. The law requires Respondent 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 violations listed in paragraph 5 above (failure to take a confirmation sample) and, therefore, violated this requirement.

7. Respondent is required to report any failure to comply with any of the drinking water regulations to the State within 48 hours. 40 C.F.R. § 141.31(b). Respondent failed to report the violations listed in paragraphs 4, 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:

8. Upon the effective date of the Order, Respondent must comply with the nitrate MCL. 40 C.F.R. § 141.62(b).

9. If additional nitrate MCL violations occur while this Order is in effect, within 90 days of the date of the violation, Respondent shall provide EPA with a compliance plan and schedule for the system to come into compliance with the nitrate MCL at 40 C.F.R. § 141.62(b). 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 6 months 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 Respondent's plan and schedule does not substitute for any State of Montana approvals of plans and specifications (engineering plans) which are also required before modifications can be made to the system.

10. The plan and schedule required by paragraph 9, above, will be incorporated into this Order as enforceable requirements upon written approval by EPA.

11. Within 60 days of receiving EPA's approval of the plan and schedule required by paragraph 9, above, Respondent shall submit to EPA quarterly reports on the progress made toward bringing the system into compliance with 40 C.F.R. § 141.62(b). Each quarterly report is due by the 10<sup>th</sup> day of the month following the end of each calendar quarter.

12. Respondent must achieve and maintain compliance with 40 C.F.R. § 141.62(b) by the final date specified in the approved plan, or no later than 6 months after receiving EPA's approval of the plan and schedule required by paragraph 9, above, whichever is earliest. If implementation of the plan fails to achieve permanent compliance, EPA may order further steps and/or seek penalties for noncompliance.

13. Upon the effective date of this Order, Respondent must comply with all confirmation sampling requirements found in 40 C.F.R. § 141.23(f)(2). This requires public water systems that exceed the MCL for

nitrate to either 1) take a confirmation sample within 24 hours of notification of the analytical results or 2) immediately notify the consumers served by the system and take a confirmation sample within two weeks of notification. If a confirmation sample is taken, the results of the initial and confirmation sample shall be averaged to determine the System's compliance with 40 C.F.R. § 141.62(b).

14. Within 30 days of the effective date of this Order, Respondent must provide public notice of the violation(s) specified in Paragraph 5 in this Order (for failure to take a nitrate confirmation sample). 40 C.F.R. §§ 141.201, 141.202 and 141.205. 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.** 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. Respondent shall report all analytical results to EPA and the State within the first 10 days following the month in which samples results are received, or within the first 10 days following the end of the monitoring period, whichever is shortest. 40 C.F.R. § 141.31(a).

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

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

Kimberly Pardue Welch  
U. S. EPA Region 8 (8ENF-W) **AND**  
1595 Wynkoop Street  
Denver, CO 80202-1129

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

**GENERAL PROVISIONS**

18. 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.

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

11/19/08  
Date

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

11.18.08  
Date

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

# Instructions for Nitrate Failure to Take a Confirmation Sample Notice – Template 1 - 2

## Template on Reverse

Since failure to take a confirmation sample for nitrate within 24 hours after learning that an initial sample exceeded the MCL is a Tier 1 violation, you must provide public notice to persons served as soon as practical but within 24 hours after you learn of the violation (141.202(b)). During this time period you must also contact your primacy agency. You should also coordinate with your local health department. This template is also applicable to nitrite and total nitrate and nitrite violations. You must use one or more of the following methods to deliver the notice to consumers (141.202(c)):

- Radio
- Television
- Hand or direct delivery
- Posting in conspicuous locations

You may need to use additional methods (e.g., newspaper, delivery of multiple copies to hospitals, clinics, or apartment buildings); since notice must be provided in a manner reasonably calculated to reach all persons served.

The notice on the reverse is appropriate for hand delivery or a newspaper notice. However, you may wish to modify it before using it for a radio or TV notice. If you do, you must still include all required elements and leave the health effects language in italics unchanged. This language is mandatory (141.205(d)). If you post or hand deliver, print your notice on letterhead, if available.

### Alternative Sources of Water

If you are providing alternative sources of water for infants, your notice should say where it can be obtained. Remember that bottled water can also be contaminated. If you are providing bottled water, make sure it meets the standard for nitrates by contacting the bottler and asking for the most recent test results.

### Repeat Notices

If this is a repeat notice (as required by your primacy agency), or if your system's nitrate levels fluctuate around the MCL, you may wish to include an explanation similar to the following:

*You were initially notified of our system's failure to take a confirmation sample following high nitrate level on [give date]. Since that time we have taken a confirmation sample on [give date] that also resulted in a high nitrate level. We are currently monitoring the nitrate concentration every three months. Seasonal fluctuations in nitrate concentrations have been observed, due to nitrates contained in fertilizer. It appears that high nitrates occur during the later summer and fall. Note that prior to [year] we were meeting drinking water standards for nitrate.*

### Corrective Action

In your notice, describe corrective actions you are taking. The bullet below describes one action commonly taken by water systems with nitrate/nitrite violations. You can use the following language, if appropriate, or develop your own:

- We are in the process of collecting a confirmation sample to determine if we have high nitrate levels. If the sample shows we are meeting our drinking water standards, you will not receive another notice. However, if the sample shows that we do have high nitrate levels in our water, another notification will be issued within 24 hours after we receive the results

### 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)). You should also issue a follow-up notice in addition to meeting any repeat notice requirements your primacy agency sets.

You should notify health professionals in the area of the violation. People may call their doctors with questions, and the doctors should have the information they need to respond appropriately.



## **DRINKING WATER WARNING**

Gramma Ruby's Café did not take a confirmation sample to

determine if the water has high levels of nitrate –

**DO NOT GIVE THE WATER TO INFANTS UNDER 6 MONTHS  
OLD OR USE IT TO MAKE INFANT FORMULA**

**We are required to monitor your drinking water for nitrate on a regular basis. Results of regular monitoring are an indicator of whether or not our drinking water meets health standards. Water sample results received on November 9, 2007 showed nitrate levels of above the nitrate standard, or maximum contaminant level (MCL), of 10 mg/L. We were required to take a confirmation sample within 24 hours. We did not complete the required confirmation sample monitoring and therefore cannot be sure of the quality of our drinking water during that time. Nitrate in drinking water is a serious health concern for infants less than six months old.**

Nitrate in drinking water can come from natural, industrial, or agricultural sources (including septic systems and run-off). Levels of nitrate in drinking water can vary throughout the year.

### **What should I do? What does this mean?**

**•DO NOT GIVE THE WATER TO INFANTS.** Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome. Blue baby syndrome is indicated by blueness of the skin. Symptoms in infants can develop rapidly, with health deteriorating over a period of days. If symptoms occur, seek medical attention immediately.

• Water, juice, and formula for children under six months of age should not be prepared with tap water. Bottled water or other water low in nitrates should be used for infants until further notice.

**•DO NOT BOIL THE WATER.** Boiling, freezing, filtering, or letting water stand does not reduce the nitrate level. Excessive boiling can make the nitrates more concentrated, because nitrates remain behind when the water evaporates.

• Adults and children older than six months can drink the tap water (nitrate is a concern for infants because they can't process nitrates in the same way adults can). However, if you are pregnant or have specific health concerns, you may wish to consult your doctor.

### **What is being done?**

[Describe corrective action and when system expects to return to compliance.] After receiving the results of our first sample, we failed to collect a second sample within 24 hours to confirm the results of the first sample. We have since collected the second sample and are waiting for the results.

For more information, please contact [name of contact] at [phone number] 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 **Gramma Ruby's Café**.

State Water System ID#: **MT0002011**.

Date distributed \_\_\_\_\_.

**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:

Kimberly Pardue Welch  
US EPA Region 8  
8ENF-W  
1595 Wynkoop Street  
Denver, CO 80202-1129

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 \_\_\_\_\_