

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2013 MAR -8 PM 3:50

IN THE MATTER OF)

Richard Smith, Owner)
Lodore Supper Club and Saloon)

Respondent)

Proceeding under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))

FILED
EPA REGION VIII
HEARING CLERK

) Docket No. SDWA-08-2012-0056

) EPA'S OPPOSITION TO
) RESPONDENT'S MOTION
) TO DISMISS

In opposition to the Respondent's Request for Motion and Order to Dismiss (Motion to Dismiss) filed on February 26, 2013, Region 8 of the United States Environmental Protection Agency (EPA) submits the following.

I. INTRODUCTION

This is an administrative penalty action brought by the EPA pursuant to section 1414(g) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(g). The EPA has alleged that Rick Smith (the Respondent) violated an administrative compliance order and is liable for a penalty.

II. STATUTORY AND REGULATORY BACKGROUND

In 1974, Congress amended the Public Health Service Act by passing the federal Safe Drinking Water Act (Act). "The purpose of the legislation [was] to assure that water supply systems serving the public meet minimum national standards for protection of public health." H.R. Rep. No. 93-1185, 93rd Cong., 2nd Sess. (1974), 1974 U.S.C.C.A.N. 6454, 1974 WL 11641. The Act required the EPA to promulgate National Primary Drinking Water Regulations (NPDWRs) applying to "each public water system [PWS] in each state." Sections 1411 and 1412 of the Act, 42 U.S.C. §§ 300g and 300g-1. The NPDWRs are codified at 40 C.F.R. part 141.

Although the EPA may grant states primary enforcement authority for PWSs (see section 1413 of the Act, 42 U.S.C. § 300g-2), Wyoming has neither applied for nor received such authority. Consequently, the EPA administers and enforces the NPDWRs directly in Wyoming. (Exh. 1, ¶ 2.)

The EPA is authorized to issue orders requiring compliance with the NPDWRs, according to section 1414(g) of the Act, 42 U.S.C. § 300g-3(g). An “applicable requirement” includes, among other things, the NPDWRs and various statutory requirements. Section 1414(i) of the Act, 42 U.S.C. § 300g-3(i).

The NPDWRs establish monitoring requirements and Maximum Contaminant Levels (MCLs) for various contaminants. The provisions relevant to this action are summarized below.

A. Total Coliform Bacteria - Monitoring and Reporting

Total coliform bacteria are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present in a drinking water supply. They include fecal coliform bacteria and *E. coli* bacteria, the presence of which indicate possible contamination with potentially harmful human or animal wastes containing microbes that can cause short-term effects such as diarrhea, cramps, or nausea. These pose special risks for infants, young children, some of the elderly, and people with severely compromised immune systems. 40 C.F.R. part 141, subpart O, app. A and subpart Q, app. B.

Each transient, non-community¹ PWS using ground water as its source and serving 1,000 or fewer persons is required to monitor at least quarterly for total coliform bacteria, with certain exceptions not relevant here. 40 C.F.R. § 141.21(a)(3)(i). The owner or operator of each system must report that

¹ The system involved in this action is a “transient non-community water system.” A “transient non-community water system” is a public water system that does not regularly serve at least 25 of the same persons over six months per year. 40 C.F.R. § 141.2. A “non-community water system” is a PWS that is not a “community water system.” 42 U.S.C. § 300f(16). A “community water system” is defined as a public water system that “(A) serves at least 15 service connections used by year-round residents of the area served by the system; or (B) regularly serves at least 25 residents.” 42 U.S.C. § 300f(15).

system's sampling results to the EPA² no later than 10 days after the end of the monthly or quarterly monitoring period. 40 C.F.R. § 141.31(a).

B. Reporting Failures to Monitor

Any PWS that fails to comply with a total coliform monitoring requirement must report that monitoring violation to the EPA within 10 days of discovering the violation. 40 C.F.R. § 141.21(g)(2).

C. Providing Public Notice

If a PWS fails to monitor as required by the NPDWRs for any contaminant, the system's owner or operator must notify the public no later than 12 months after the system discovers the monitoring violation. 40 C.F.R. §§ 141.201(a), 141.204, and 40 C.F.R. part 141, subpart Q, app. A.

III. FACTUAL BACKGROUND

This action involves a PWS known as the Lodore Supper Club and Saloon public water system (the System). As demonstrated below, the Respondent, an individual, owns the System. The System uses groundwater from a well as its source. (Exh. 1, ¶¶ 2 and 5; Exh. 1.h.³)

On November 21, 2006, the EPA received a Water System Basic Information form for the System, with the address of 6 N. Piney Road, in Story, Wyoming. The form indicated that the operator was "Kimmeri's Restaurant." Directly under the heading "Affidavit," which was in bold type, and the statement, "I, the owner or responsible party for the water system named above, hereby certify that all statements listed above are true and correct to the best of my knowledge," the Respondent signed this form. His signature was dated "11-13-06." (Exh. 1, ¶ 2; Exh. 1.a.)

By letter dated November 28, 2006, the EPA notified the Respondent that the System had been formally reactivated as a Wyoming community public water system and was subject to regulation under the Act and the NPDWRs. The letter included a notification, also dated November 28, 2006, stating that

² The reporting requirements are described as they apply to systems in Wyoming, which, as mentioned above, does not have primary enforcement authority for the public water supply program.

³ Please see the last page of this document for a list of exhibits.

the Respondent was required to monitor the System's water quarterly for total coliform and yearly for nitrate. The Respondent signed a return receipt card for this letter. (Exh. 1, ¶ 4; Exh. 1.b.)

Thereafter, the EPA sent the Respondent yearly notifications of the monitoring and reporting requirements for the System. The dates of the notifications and the years they covered are listed below:

February 12, 2007, for 2007

February 11, 2008, for 2008

January 23, 2009, for 2009

January 21, 2010, for 2010

February 2, 2011, for 2011

Each notification stated that the Respondent was required to monitor the System's water quarterly for total coliform and annually for nitrate. (Exh. 1, ¶ 6; Exh. 1.c - 1.g.)

On July 13, 2007, the EPA mailed the Respondent a copy of a sanitary survey report for a PWS described as the "Lodore Supper Club and Saloon." The sanitary survey indicated, among other things, that the Respondent had been interviewed and "conducted a tour of the water system facilities." (Exh. 1 ¶ 6; Exh. 1.h.)

On October 17, 2007, the EPA mailed the Respondent a notification that the System's source water had been determined not to be ground water under the direct influence of surface water. (Exh. 1, ¶ 7; Exh. 1.i.)

On December 18, 2007, the EPA issued an administrative compliance order to Kimmeri's Kuisine, alleging that Kimmeri's Kuisine, a Wyoming corporation, had failed (1) to monitor the System's water for total coliform during the fourth quarter of 2006 and the first three quarters of 2007, (2) to monitor the System's water for nitrate during 2006, and (3) to report these failures to monitor to

the EPA. Rick Smith was sent a copy of this order although this order did not name him as a respondent. (Exh. 1, ¶ 8; Exh. 1.j.)

By letter dated September 17, 2009, the EPA notified Kimmeri's Kuisine that the December 18, 2007, order was being closed because "[b]ased on the information provided by Rick Smith [the Respondent], the new owner and/or operator of Lodore, you no longer own and/or operate Lodore as of December 2008 and according to the Wyoming Secretary of State Business Division the Kimmeri's Kuisine Corporation was administratively dissolved on August 10, 2009." The Respondent was also sent a copy of this letter. (Exh. 1, ¶ 9; Exh. 1.k.)

On July 28, 2010, the EPA issued Administrative Order Docket No. SDWA-08-2010-0062 (Order) to the Respondent, alleging that the Respondent, as owner and/or operator of the System, had violated the NPDWRs by failing to monitor the System's water for total coliform during the fourth quarter of 2008 and the second and fourth quarters of 2009, by failing to submit a timely notification to the EPA of total coliform monitoring from the first quarter of 2009, and by failing to provide public notice of his monitoring violations. The Order directed the Respondent to monitor the System's water for total coliform bacteria at least quarterly, to report analytical results to the EPA within the first 10 days following the month in which sample results were received, to report any violation of the total coliform monitoring requirements to the EPA within 10 days of discovery, to notify the public within 30 days of his failures to monitor for total coliform, and to provide the EPA with a copy of the public notice within 10 days of providing it. (Exh. 1, ¶ 10; Exh. 2, ¶¶ 11 and 12.)

Despite having received the Order, the Respondent continued to fail to monitor the System's drinking water for total coliform. He did not monitor the System's water for total coliform during the third quarter of 2010 and the first and third quarters of 2011. He also failed to report to the EPA that no

monitoring had been done for these quarters and failed to provide public notice of these violations or the violations for which the Order directed him to provide public notice. (Exh. 1, ¶ 11.)

The EPA notified the Respondent of these violations by letters dated December 15, 2010 (concerning the failure to monitor for total coliform in the third quarter of 2010), June 14, 2011 (concerning the failure to monitor for total coliform in the first quarter of 2011), and December 19, 2011 (concerning the failure to monitor for total coliform in the third quarter of 2011). Each of these three letters also notified the Respondent that he had not provided public notice as directed by the Order. (Exh. 3, 4, and 5.) The EPA did not receive any response to any of these three letters. (Exh. 1, ¶ 11.)

IV. AS A MATTER OF LAW, THE RESPONDENT, AS OWNER OF THE SYSTEM, IS LIABLE FOR VIOLATING THE ORDER

There is no doubt that the Respondent owns the property where the System is located. In his answer to the EPA's complaint, the Respondent refers to himself as "the individual who owns the property, 6 N, Piney Rd. in Story, Wyoming, more commonly known as the Lodore." (The Respondent's answer does not have numbered paragraphs, so none is cited.) The signature block on the Respondent's Motion Dismiss states "Richard Smith, Owner / Lodore Supper Club and Saloon." Tax records that the EPA has obtained from Sheridan County, Wyoming, also indicate that the Respondent owns this property. (Exh. 1 ¶ 12.)

The Respondent, however, denies that he is responsible for complying with the NPDWRs. His Motion to Dismiss asks that his "liability to test water at the Lodore Supper Club be relieved as it was the responsibility of the lessors⁴ to test and document the usage of water in the said establishment" and that "the responsible parties be fined for their lack of follow thru with the testing of the water that was essential to the running of the business they were leasing from Respondent."

⁴ Presumably, the Respondent meant "lessees," not "lessors."

The EPA assumes, solely for purposes of its opposition to the Respondent's Motion to Dismiss, that the Respondent at all relevant times has owned but has not operated the System.⁵ Even if this assumption is true, the Respondent is liable for violating the Order by virtue of the fact that he is the owner of the System. Liability under the public water supply protection provisions in Part B of the Act lies with the owner or the operator of a public water system.

According to 40 C.F.R. § 141.21(b) and (g), a "system" must monitor and report any failures to monitor for total coliform.⁶ The term "system" is not defined in the Act or the NPDWRs. However, the requirement to report monitoring results applies to a "supplier of water," a term that is defined in section 1401(5), 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2 as "any person who owns or operates a public water system." It is, therefore, reasonable to construe the monitoring requirement in section 141.21 as applying to the owner or operator of the system in question.

The requirement to provide public notice applies to the owner or operator of a system. Section 1414(c) of the Act, 42 U.S.C. § 300g-3(c), states, in relevant part, "Each owner or operator of a public water system shall give notice of . . . any failure on the part of the public water system to . . . perform monitoring required by [42 U.S.C. § 300j-4(a)]." In 40 C.F.R. § 141.201(a), the EPA states, in relevant part, "(a) Who must give public notice? Each owner or operator of a public water system . . . must give

⁵ In the event of a hearing in this matter, the EPA would not concede that the Respondent's sole involvement with the System has been owning the land where it is located. In his answer, the Respondent supplied two pages of what he indicated were a lease for the real property where the System is located. These pages did not indicate the term of the lease or whether the lease covered the entire System (e.g., the well that supplies the System's water). The EPA also reserves the right to dispute any claim that the Respondent was never an operator of the System. For example, as stated in the Declaration of Kathelene Brainich, there is evidence that the Respondent has, at least at times, operated the System's bar.

⁶ See, e.g., 40 C.F.R. § 141.21(a)(3)(i), stating, in relevant part, "A non-community water system using only ground water (except ground water under the direct influence of surface water as defined in § 141.2) and serving 1,000 persons or fewer must monitor each quarter that the system provides water to the public. . . ."

notice for all violations of national primary drinking water regulations (NPDWRs) and for other situations”

The Respondent’s answer indicates that although he is the landowner, he does not consider himself the “operator” of the System. For instance, in answer to paragraph 2 of the EPA’s complaint, which reads “The Respondent owns and/or operates the Lodore Supper Club and Saloon public water system (the System), located in Sheridan County, Wyoming, for the provision to the public of piped water for human consumption,” the Respondent wrote “DENY” above “or operates the Lodore Supper Club and Saloon.” The answer indicates, in the penultimate paragraph, that the Respondent does not consider himself the “owner operator of the business that is responsible for this monitoring.” The Respondent’s answer also refers to the restaurant having “changed names and owners on 4 different occasions,” suggesting that “business owners” are liable as “operators” but landowners are not.

The term “owner” is not defined in the Act or the NPDWRs. However, if the term “owner” in the Act and NPDWRs were interpreted to exclude landowners in instances such as this, it would effectively equate “owners” and “operators,” terms that are used separately in the definition of “supplier of water.” Both the Act and the NPDWRs define the term “supplier of water” as is “a person who owns or operates a public water system.”⁷ Thus, the Respondent’s interpretation would contradict the statute and regulations. The Respondent’s interpretation would also leave a major gap in the class of “owners and operators,” because it would exclude landowners.

This narrow interpretation would drastically restrict the class of persons accountable for violations of the NPDWRs. Under section 1414(g) of the Act, the EPA may seek an administrative penalty after an administrative order has been violated. In turn, under section 1414 of the Act, the EPA issues an administrative order after an applicable requirement has been violated. This means that before any supplier of water becomes liable for administrative penalties, the supplier of water would have

⁷ Section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2 (emphasis added).

violated an applicable requirement, the EPA would have issued a compliance order, and the supplier of water would have violated the EPA's order. Tenants, operators, and "business owners" who are not landowners could come and go during this fairly lengthy process, thus precluding administrative penalties as a means to promote compliance.⁸ On the other hand, landowners are less likely to turn over than tenants or other operators, meaning the administrative penalty process could be more effectively used to support the EPA's compliance efforts.

Additionally, part of the enforcement process involves locating responsible parties. Through public records, it is possible for the EPA to obtain real property ownership information. However, information concerning private leases between landowners and tenants is often not available. (Exh. 1, ¶ 12.) If landowners were not responsible for compliance, then violations could easily go unaddressed, due to difficulties in identifying tenants or operators.

It is, therefore, entirely logical that Congress has placed the responsibility of complying with drinking water regulations on "owners or operators."⁹ Construing the term "owner or operator" as narrowly as the Respondent suggests would seriously undermine the effectiveness of the EPA's administrative penalty authorities and unduly frustrate the protective purposes of the Act.

The Respondent also points to boilerplate language in a lease indicating that his tenants are required to comply with "all statutes, ordinances and requirements of all municipal, state, and federal authorities." (See page 5 of the lease submitted with the Respondent's answer.) Of course, landlords can require their tenants to comply with federal requirements and, as the Respondent has done, also

⁸ This matter is a case in point. As indicated above, the EPA issued a compliance order to a prior tenant in 2007. By 2009, the EPA closed that order, because the tenant had left. The Respondent's answer cited four changes of names and "owners" of the restaurant "[d]uring the period of time listed in the complaint." Thus, it is unlikely any one operator (or "owner" of the restaurant) would have remained in that capacity long enough to be issued an administrative order, to violate it, and to be issued an administrative penalty complaint.

⁹ The EPA takes the position that it would have been proper (assuming this information was known) also to have named both the Respondent and his tenants as respondents in the order and penalty complaint. Naming a tenant, however, would not, however, absolve a landlord from liability, or vice versa.

require their tenants to indemnify them for judgments, expenses, and damages. (See page 8 of the lease submitted with the Respondent's answer.) It may well be that the Respondent is entitled to obtain reimbursement from his tenants for whatever penalty, if any, the Respondent pays the EPA as a result of this proceeding (although, of course, the EPA is not rendering any legal opinion on the respective rights and liabilities of private parties). In any event, a lease or other contractual arrangement does not nullify the underlying responsibility of a landlord, as an owner, to comply with the NPDWRs.

The Act imposes strict liability. See U.S. v. Massachusetts Water Resources Authority, 256 F.3d 36, 40, n. 5 (1st Cir. 2001), noting that the 1986 amendments to the Act deleted the requirement that violations of the Act be "willful" for courts to impose penalties, and S. Rep. No. 99-56 (May 15, 1985), 1986 U.S.C.C.A.N. 1566, 1574, 1985 WL 25951, referencing the elimination of the willfulness requirement for penalties. Even if the Respondent somehow understood that his tenants were in compliance with the NPDWRs (which the EPA does not concede), the Respondent remains liable for the violations that have occurred. See, for example, In the Matter of Paul Durham, d/b/a Windmill Hill Estates Water System, Docket No. SDWA-C930036, 1997 EPA ALJ LEXIS 107 (ALJ Biro, April 15, 1997), in which an owner/operator argued that he should not be penalized for failures to monitor because he had hired people to do so who had been derelict in their duties and because he had been unsuccessful in hiring others. The Administrative Law Judge rejected this argument: "It is simply not appropriate to excuse or significantly reduce the penalty for the failure to monitor based on the misfeasance of his agents or the lack of an agent, when the circumstances indicate that Mr. Durham had no basis for believing in good faith that he could reasonably rely on the actions of others to fulfill the regulatory requirements."

Moreover, there is no reason to suppose that the Respondent could not have taken responsibility for compliance with the NPDWRs. There is no evidence that the Respondent was prevented in any way

from entering the premises to monitor once each quarter for total coliform bacteria or from notifying the EPA and the public of failures to monitor.

This case is analogous to a recent Clean Water Act lawsuit, in which the defendants allegedly discharged dredged and fill material into wetlands without a permit and the court ruled that the landowner had been properly named as a defendant:

The Cundiffs also assert that Seth Cundiff should have been dismissed from the lawsuit because, while he unquestionably owned part of the wetlands, he had leased them back to his father, Rudy Cundiff, and only Rudy engaged in any of the disputed activities. This argument fails, however, because even though he leased his tract, Seth Cundiff both owned it and had knowledge of Rudy Cundiff's activities. So the district court did not abuse its discretion in denying the motion to dismiss Seth Cundiff from the lawsuit.

United States v. Cundiff, 555 F.3d 200, 213, n. 7 (6th Cir. 2009), cert. denied 558 U.S. 818, 130 S.Ct. 74, 175 L.Ed.2d 27 (2009).¹⁰

In the pending action, there is no doubt that the Respondent knew of the ongoing violations. He had listed himself as a responsible party on the Water System Basic Information form, he had received at least six yearly summaries of monitoring requirements, he had received a copy of an order issued to a prior tenant, he had been named in the Order as the respondent, and he had received three separate notifications that he had violated the Order.

¹⁰ The Clean Water Act is not entirely analogous. When a permit is issued under section 402 of the Clean Water Act, 33 U.S.C. § 1342, for a discharge from a facility that is owned by one person but operated by another, 40 C.F.R. § 122.21(b) provides that the operator is to apply for the permit. There is no comparable provision under Part B of the Safe Drinking Water Act or the NPDWRs.

V. CONCLUSION

As the foregoing discussion indicates, the Respondent should not be dismissed from this action because, as owner of the System, he is responsible for complying with the NPDWRs and the Order.

Respectfully submitted,


Margaret J. (Peggy) Livingston
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LIST OF EXHIBITS

TO EPA'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS

Note: Exhibits 2-5 are the same as Exhibits 2-5 of the EPA's September 25, 2012, complaint.

1. Declaration of Kathelene Brainich, with the following attachments:
 - a. November 21, 2006, Water System Basic Information form, signed by Rick Smith
 - b. November 28, 2006, letter from the EPA to Lodore Supper Club and Saloon, c/o Rick Smith,, with signed return receipt card
 - c. February 12, 2007, notification of monitoring requirements for 2007
 - d. February 11, 2008, notification of monitoring requirements for 2008
 - e. January 23, 2009, notification of monitoring requirements for 2009
 - f. January 21, 2010, notification of monitoring requirements for 2010
 - g. February 2, 2011, notification of monitoring requirements for 2011
 - h. July13, 2007, letter from the EPA to Rick Smith, transmitting a sanitary survey
 - i. October 17, 2007, letter, from the EPA to Lodore Supper Club and Saloon, c/o Rick Smith, regarding Negative GWUDISE Assessment
 - j. December 18, 2007, Administrative Order, cover letter, and letter from the EPA to County Commissioners
 - k. September 17, 2009, letter from the EPA to Kim Eckerman
 - l. July 28, 2010, letter from the EPA to County Commissioners
 - m. Printout from Sheridan County tax records
2. July 28, 2010, letter to Richard Smith, and Administrative Order, Docket No. SDWA-08-2010-0062, with Regional Hearing Clerk file stamp of same date.
3. December 15, 2010, letter from the EPA to Richard Smith, with Regional Hearing Clerk file stamp of same date.
4. June 14, 2011, letter from the EPA to Richard Smith, with Regional Hearing Clerk file stamp of same date.
5. December 19, 2011, letter from the EPA to Richard Smith, with Regional Hearing Clerk file stamp of same date.

Certificate of Service

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing EPA's Opposition to Respondent's Request to Dismiss (with all exhibits) has been served upon each of the following on March 5, 2013:

Rick Smith, Owner
Lodore Supper Club and Saloon
P.O. Box 6044
Sheridan, WY 82802

By Certified Mail, Return Receipt Requested

No. 7009 3410 0000 3592 8444

One copy

Tina Artemis
Regional Hearing Clerk
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202

By Hand Delivery - Original and one copy

Hon. Elyana R. Sutin
Regional Judicial Officer
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202

By Hand Delivery - one copy

Elyana R. Sutin

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF)

COMPLAINANT'S
EXHIBIT NO. 1

Richard Smith, Owner)
Lodore Supper Club and Saloon)

) Docket No. SDWA-08-2012-0056

Respondent)

) DECLARATION OF
) KATHELENE BRAINICH

Proceeding under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))
_____)

I, Kathelene Brainich, in accordance with 28 U.S.C. § 1749, declare as follows:

1. Position and Responsibilities. I am employed by Region 8 of the United States Environmental Protection Agency (EPA) as an Environmental Protection Specialist in the Technical Enforcement Program, specializing in enforcement of the EPA's public water supply (PWS) protection program. My responsibilities include verifying violations of the EPA's National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. part 141, drafting administrative compliance orders and related enforcement communications, contacting entities against which the EPA is taking enforcement actions, tracking compliance with the administrative compliance orders that the EPA issues, and providing litigation support.
2. Wyoming Enforcement. The EPA directly implements the PWS protection program in Wyoming because the State of Wyoming has not applied for or obtained primary enforcement responsibility for the PWS protection program. As part of the EPA's direct implementation of the PWS protection program, the EPA issues administrative orders and administrative penalty complaints to

public water supply systems in Wyoming when the EPA's files indicate that these systems have violated the NPDWRs.

3. Water System Basic Information Form. Attached to this Declaration as Exh. 1.a is a Water System Basic Information form from the EPA's file for the Lodore Supper Club and Saloon Public Water System (the System). In its usual and ordinary course of business, the EPA collects Water System Basic Information forms from PWSs and maintains these forms, as submitted by PWSs, in its files. This form indicates, among other things, that the System uses ground water as its source.

4. Re-Activation Letter. Attached to this Declaration as Exh. 1.b is a letter dated November 28, 2006, from the EPA to "Lodore Supper Club & Saloon, c/o Rick Smith." In its ordinary and usual course of business, the EPA sends letters of this type when the EPA learns of a new PWS or learns that a water system that was previously regulated and later de-activated (e.g., due to going out of business) has resumed operations. The attached letter dated November 28, 2006, included a diagram indicating sampling locations for the System and a schedule outlining the System's monitoring requirements. The letter indicated that it was sent by certified mail, return receipt requested. A copy of the signed return receipt card is included in Exh. 1.b.

5. Annual Monitoring Summaries. In the ordinary and usual course of business, EPA Region 8 mails PWSs in Wyoming annual summaries of the applicable monitoring requirements for that year. Copies of the annual monitoring summaries that the EPA's file for the System indicates were sent to the System are attached as Exh. 1.c, 1.d, 1.e, 1.f, and 1.g. They are dated February 12, 2007, covering requirements for 2007; February 11, 2008, covering requirements for 2008; January 23, 2009, covering requirements for 2009; January 21, 2010, covering requirements for 2010; and February 2, 2011, covering requirements for 2011.


6. Sanitary Survey Report. In the ordinary and usual course of business, the EPA and/or its contractors conduct sanitary surveys of PWSs in Wyoming. A copy of a 2007 sanitary survey for the System, along with a letter indicating that it was sent to Rick Smith on July 13, 2007, is attached as Exh. 1.h.
7. Determination that System is Not Under the Direct Influence of Surface Water. By letter dated October 17, 2007, a copy of which is attached as Exh. 1.i, the EPA notified Mr. Smith that the System's source water had been determined not to be ground water under the direct influence of surface water.
8. Administrative Order to Kimmeri's Kuisine. An administrative order that the EPA issued to Kimmeri's Kuisine is attached as Exh. 1.j. This order has a date stamp indicating that it was filed with the Regional Hearing Clerk for EPA Region 8 on December 18, 2007. Also attached are a cover letter addressed to the Registered Agent of Kimmeri's Kuisine and a letter to the County Commissioners of Sheridan County, Wyoming. The EPA routinely keeps copies of administrative orders of this type in its files for PWSs, and I routinely track compliance with orders of this sort. While tracking compliance with this order, I was told by the tenant operating under the name "Kimmeri's Kuisine that Rick Smith, the Respondent in this case, in addition to owning the building the restaurant occupied also owned and operated the bar portion of the building.
9. Closure of 2007 Administrative Order. Attached as Exh. 1.k is a copy of a letter dated September 17, 2009, from the EPA to the Registered Agent for Kimmeri's Kuisine. In the ordinary and usual course of business, the EPA issues an administrative order closure letter when the EPA learns that the entity to which it has issued an order no longer owns and/or operates the system covered by the order.

10. 2010 Administrative Order. Exhibit 2 to the EPA's Opposition to Respondent's Motion to Dismiss includes a copy of Administrative Order Docket No. SDWA-08-2010-0062 (the Order), which the EPA issued on July 28, 2010, to Rick Smith. A copy of a letter from the EPA to County Commissioners of Sheridan County, Wyoming, concerning the Order is attached as Exh. 1.l.

11. Compliance with 2010 Administrative Order. After the EPA issued the Order, I kept track of Mr. Smith's compliance with the Order. I determined that Mr. Smith had not submitted all the information that the Order required to be submitted. My investigation revealed that Mr. Smith had not monitored for total coliform for the System for the third quarter of 2010, the first quarter of 2011, or the third quarter of 2011; had not notified the EPA of any of these failures to monitor; and had not provided public notice of these failures to monitor or of the violations for which the Order had directed him to provide public notice. The EPA notified Mr. Smith of these violations in the letters dated December 15, 2010, June 14, 2011, and December 19, 2011, which are Exhibits 3, 4, and 5 to the EPA's Opposition to Respondent's Motion to Dismiss and to the EPA's September 25, 2012, Complaint and Notice of Opportunity for Hearing. The EPA's records indicate that Mr. Smith did not reply to any of these three letters.

12. Researching Ownership Records. As part of my duties, I research publicly available information to identify owners and operators of public water supplies. In my experience, data on real property ownership is readily available to the public. For example, an internet search that I performed on December 11, 2012, confirmed that the website for Sheridan County, Wyoming, indicates that Richard Lee Smith is the owner of the property at 6 N. Piney Road, Story, WY 82842. See the attached Exh. 1.m. However, in my experience it not always been possible to obtain information concerning leases and tenants through publicly available sources.

I declare under penalty of perjury that the foregoing is true and correct.

 3/8/13
Kathelene Brainich

Exhibits that are Attached Declaration of Kathelene Brainich

- 1.a. November 21, 2006, Water System Basic Information form, signed by Rick Smith
- 1.b. November 28, 2006, letter from the EPA to Lodore Supper Club and Saloon, c/o Rick Smith,, with signed return receipt card
- 1.c. February 12, 2007, notification of monitoring requirements for 2007
- 1.d. February 11, 2008, notification of monitoring requirements for 2008
- 1.e. January 23, 2009, notification of monitoring requirements for 2009
- 1.f. January 21, 2010, notification of monitoring requirements for 2010
- 1.g. February 2, 2011, notification of monitoring requirements for 2011
- 1.h. July 13, 2007, letter from the EPA to Rick Smith, transmitting a sanitary survey
- 1.i. October 17, 2007, letter, from the EPA to Lodore Supper Club and Saloon, c/o Rick Smith, regarding Negative GWUDISE Assessment
- 1.j. December 18, 2007, Administrative Order, cover letter, and letter from the EPA to County Commissioners
- 1.k. September 17, 2009, letter from the EPA to Kim Eckerman
- 1.l. July 28, 2010, letter from the EPA to County Commissioners
- 1.m. Printout from Sheridan County tax records

COMPLAINANT'S
EXHIBIT NO. 1.a

307/751-4479
Per State official, (will
automatically be activate)
- Does qualify

11/21/06 - Laska - L. 11, 10
ofulation?
- S.D.'s?
307/683-3284
Lodore Saloon and Kimmeris
Kuisine

Complete the information requested on this form and return
to the EPA within five days in the envelope provided.

WATER SYSTEM BASIC INFORMATION

Name of System: Lodore Super Club & Saloon INACTIVE - WY 56 00545
System Address: (physical location) 6 N. Piney Rd
STORY, WY 82842
Mailing Address: (if different) PO BOX 6044
Sheridan, WY 82801
County System in which System is Located SHERIDAN

System Owned By:
Owner Type: Federal State Local Government
(circle one) Private Native American
Owner Telephone #: 307-683-3284
751-4479

System Operated By: Kimmeris's RESTAURANT
Operator Telephone #: 307-683-3334 Fax #:
Name of Contact Person: Kim Eckerman OR Rick Smith
Address of Contact Person: PO BOX 6044
Sheridan, WY 82801
E-mail Address: Rick@wyo@cheerpyre.net
System Start-up Date:

Identify the type of facility you are (or supply water to):
(i.e. residential, mobile home park, restaurant, campground, resort, factory, school, etc):

How many active service connections does your system have? 2
Do you serve water to the public all year? yes

If YES
1. How many people that use your water are year-round residents? 2
2. How many full-time employees do you have that use your water? 1-2

3. If NO
1. Please list which months your system serves water: _____
2. Are there at least 60 days in any year your system serves an average of 25 or
more individuals per day? Yes No
If yes, please list which months: _____
3. Does the system regularly serve at least 25 of the same people over 6 months
of the year? Yes No

RECEIVED
NOV 21 2006
WYOMING WATER

Please estimate the number of people who may consume piped water **PER DAY** at your facility. Include: employees, transient people, residents, and family/friends for each of the following months:

January	April	July	October
February	May	August	November
March	June	September	December

Where does your water come from?

Check all that are used.

Source

Frequency of Use
(circle one)

- River, Lake, Stream
Name _____
Permanent Intermittent Seasonal Emergency
- Well(s) How many? 1
_____ **Permanent** Intermittent Seasonal Emergency
- Spring(s) (Ground water) _____
_____ Permanent Intermittent Seasonal Emergency
- Purchased Water _____
(who purchased from) _____ Permanent Intermittent Seasonal Emergency

- If purchased, how is the water billed? Owner is billed by supplier
 Each residential unit is billed individually by the supplier

Do you add booster disinfection? YES NO

Do you treat the raw water before consumption? If yes, briefly describe the treatment _____

What water storage facilities do you have (include pressure tanks): _____

COMMENTS: _____

AFFIDAVIT

I, the owner or responsible party for the water system named above, hereby certify that all statements listed above are true and accurate to the best of my knowledge.

Rick Smith
Name (print)

[Signature]
Signature

11-13-06
Date

Questions about the form: call 1-800-227-8917, ext. 6280.

Please be advised that it is a criminal offense to submit fraudulent data to EPA.

RECEIVED
NOV 21 2006
Water Unit



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET- SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

COMPLAINANT'S
EXHIBIT NO. 1.b

File Copy

Ref: 8P-W-DW

NOV 28 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

~~Lodore Supper Club & Saloon.~~
c/o Rick Smith
PO Box 6044
Sheridan, WY 82801

Re: Reactivation
PWS ID # WY5600545
Use this identification number on all
correspondence to insure proper crediting of
analytical results to your file.

System Type: Non-community
System Source: Groundwater

Dear Mr. Smith:

The purpose of this letter is to inform you that your drinking water system has been formally activated as a Wyoming public water system and is now subject to regulation under the Safe Drinking Water Act and the National Primary Drinking Water Regulations. Based on the information we received, your drinking water system meets the definition of a **transient, non-community ground water** public water system.

Details of the required sampling (monitoring), reporting, and record-keeping obligations for your public water system are enclosed. Sampling and reporting requirements for contaminants must be completed within the indicated time frames and copies of records must be retained for specified time periods. The following regulations apply to your public water system:


Total Coliform (bacteria)
Nitrate and Nitrite

Please collect a sample for total coliform bacteria and nitrate/nitrite analysis immediately. Thereafter, you are required to monitor 1 time(s) per quarter for total coliform bacteria.

Timely and proper collection of samples, analysis of samples by EPA certified laboratories, and reporting of results to EPA is essential for the protection of the health of your customers, and will prevent the assessment of violations. We recognize that the regulations may seem confusing at first and we are committed to helping you understand your responsibilities.

If you have any questions, or if you would like a copy of 40 CFR, Section 141, please contact me at 1-800-227-8917, extension 6280, or Barbara McAlpine-Johnson at extension 7005. Please put the mail code **8P-W-DW** and **your PWS ID number** on all correspondence to EPA.

Sincerely,


for Charla Colson
Environmental Specialist
Public Water System Program

Enclosures

7005 0390 0000 4846 8415

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

PWS ID# WY5600545

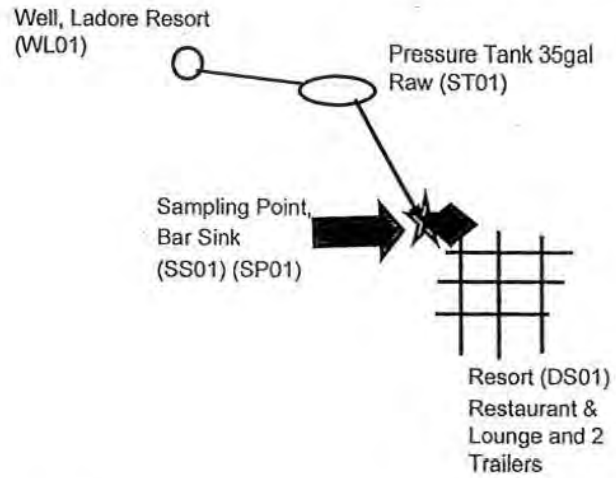
OFFICIAL USE

Postage	Edore Supper Club & Saloon	
Certified Fee	C/o Rick Smith	
Return Receipt Fee (Endorsement Required)	PO Box 6044	Postmark Here
Restricted Delivery Fee (Endorsement Required)	Sheridan WY 82801	
Total Postage & Fees	\$activation Packet	

Sent To	11/28/06	bj
Street, Apt. No., or PO Box No.		
City, State, ZIP+4		

Lodore Supper Club and Saloon

PWS ID # 5600545 N



★ Entry Point

Agreed to by
X _____
Date _____

Sample Point for Nitrates

SCHEMATIC NOT TO SCALE
Date 12-1-99
Prepared by Todd Mercord
Revised 12-6-01 C Lamb

Monitoring and Reporting Requirements for the Calendar Year 2006

November 28, 2006

Lodore Supper Club & Saloon

PWS ID#: WY5600545 (NC/GW)

Water System Inventory

Water Source: GW

Service Connections: 3

Water System Type: NC

Population Served: 100

Contact: Mr. Rick Smith

Address: PO Box 6044

Sheridan, WY 82801

Phone: 307-683-3284

Where to monitor and Whom to call

The "rule managers" responsible for administering the several monitoring and reporting rules are listed here. Any question or discussion should be directed to the appropriate rule manager, at the extension given.

Sampling Points Defined in the System Schematic

SP01 BAR SINK

1-800-227-8917

Monitoring for these contaminants is to be at the Defined Sampling Points:

Inorganic Chemicals	IOC	Jack Theis	6347
Nitrate	Nitrate	Jack Theis	6347
Nitrite	Nitrite	Jack Theis	6347
Synthetic Organic Chemicals	SOC	Rod Glebe	6627
Volatile Organic Chemicals	VOC	Rod Glebe	6627

Monitoring for these contaminants will be within the distribution system:

Asbestos	Asbestos	Jack Theis	6347
Disinfection Byproducts	DBP	Mary Wu	6789
Lead and Copper	Lead & Copper	Bre Bockstahler	6034
Radionuclides	Rads	Bre Bockstahler	6034
Total Coliform Rule	TCR	Charla Colson	6280

The following rules may apply:

Consumer Confidence Report	CCR	Janet LaCombe	6287
Surface Water Treatment Rule or Interim Enhanced SWTR	SWTR/IESWTR	Mindy Mohr	6525

IMPORTANT

You must use an EPA Region 8 laboratory certified to test for the contaminant.
Call 1-800-227-8917 and ask for the **Region 8 Drinking Water Certified Lab List**
or go to

<http://www.epa.gov/region8/water/dwhome/wycon/dwlab/dwlab.html>

Monitoring and Reporting Requirements for the Calendar Year 2006

November 28, 2006

Lodore Supper Club & Saloon

PWS ID#: WY5600545 (NC/GW)

The requirements presented here are based on the information we have, which might not be completely accurate. We advise you to compare this information with data from your own files, and possibly contact the appropriate rule manager.

Total Coliform (TCR)	You must take one sample during each of the four quarters in 2006, at sites which are representative of water throughout the distribution system according to your site sampling plan.
Nitrate (NO3)	Between January 1, 2007, and December 31, 2007, take one sample for nitrate analysis at each sample point indicated on your system schematic.

PLEASE COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse that we can return the card to you. Attach this card to the back of the mailpiece, on the front if space permits.

Mailpiece Addressed to: PWSID#WY5600545

Home Supper Club & Saloon
Rick Smith
Box 6044
Sidon WY 82801

water Receipt Requested
puw-MS
B
NOV 29 2006

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
X Rick Smith

B. Received by (Printed Name) *Rick Smith* C. Date of Delivery

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:



3. Service Type **RECEIVED**
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail **DEC 05 2006**

4. Restricted Delivery? (Extra Fee) Yes

Tracking Number (Transfer from service label) 7005 0390 0000 4846 8415 **Drinking Water Uni**

Form 3811, February 2004 Domestic Return Receipt 11/28/06 bj 102595-02-M-1540

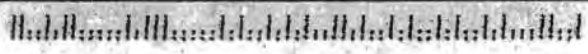
5600545



• Sender: Please print your name, address, and ZIP+4 in this box

11.2.2002

Environmental Protection Agency
c/o Barbara McAlpine-Johnson (8P-W-DW)
Drinking Water Unit
999 18th Street, Suite 300
Denver, CO 80202



Monitoring and Reporting Requirements for the Calendar Year 2007

February 12, 2007

Lodore Supper Club & Saloon

PWS ID#: WY5600545 (NC/GW)

The requirements presented here are based on the information we have, which might not be completely accurate. We advise you to compare this information with data from your own files, and possibly contact the appropriate rule manager.

Total Coliform (TCR)	You must take one sample during each of the four quarters in 2007, at sites which are representative of water throughout the distribution system according to your site sampling plan.
Nitrate (NO3)	Between January 1, 2007, and December 31, 2007, take one sample for nitrate analysis at each sample point indicated on your system schematic.

COMPLAINANTS
EX-127 12/10

Monitoring and Reporting Requirements for the Calendar Year 2007

February 12, 2007

Lodore Supper Club & Saloon

PWS ID#: WY5600545 (NC/GW)

Water System Inventory

Water Source: GW

Service Connections: 3

Water System Type: NC

Population Served: 100

Contact: Mr. Rick Smith

Address: PO Box 6044

Sheridan, WY 82801

Phone: 307-683-3284

Where to monitor and Whom to call

The "rule managers" responsible for administering the several monitoring and reporting rules are listed here. Any question or discussion should be directed to the appropriate rule manager, at the extension given.

Sampling Points Defined in the System Schematic

SP01 BAR SINK

1-800-227-8917

Monitoring for these contaminants is to be at the Defined Sampling Points:

Inorganic Chemicals	IOC	Rod Glebe	6627
Nitrate	Nitrate	Tiffany Mifflin	6521
Nitrite	Nitrite	Tiffany Mifflin	6521
Synthetic Organic Chemicals	SOC	Rod Glebe	6627
Volatile Organic Chemicals	VOC	Rod Glebe	6627

Monitoring for these contaminants will be within the distribution system:

Asbestos	Asbestos	Rod Glebe	6627
Disinfection Byproducts	DBP	Mary Wu	6789
Lead and Copper	Lead & Copper	Bre Bockstahler	6034
Radionuclides	Rads	Bre Bockstahler	6034
Total Coliform Rule	TCR	Charla Colson	6280

The following rules may apply:

Consumer Confidence Report	CCR	Janet LaCombe	6287
Surface Water Treatment Rule or Interim Enhanced SWTR	SWTR/IESWTR	Mindy Mohr	6525

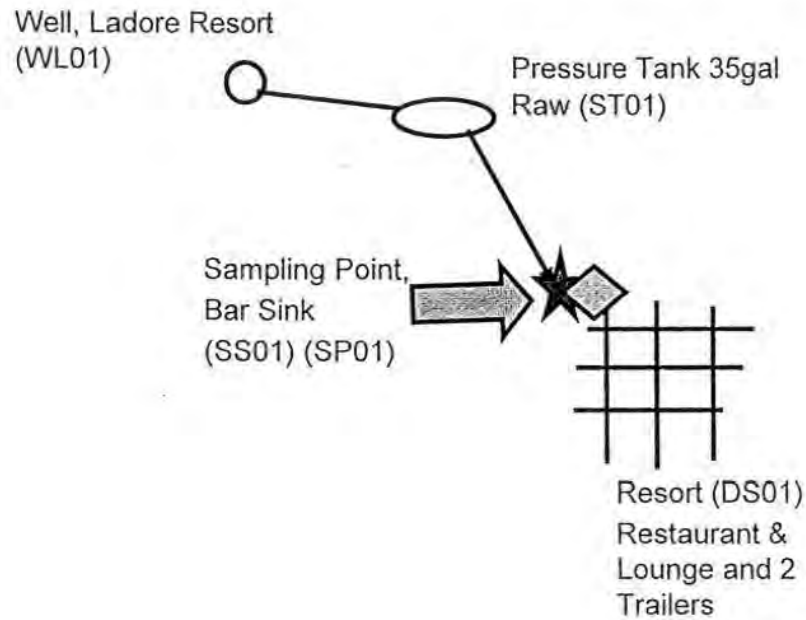
IMPORTANT

You must use an EPA Region 8 laboratory certified to test for the contaminant.
Call **1-800-227-8917** and ask for the **Region 8 Drinking Water Certified Lab List**
or go to

<http://www.epa.gov/region8/water/dwhome/wycon/dwlab/dwlab.html>

Lodore Supper Club and Saloon

PWS ID # 5600545 N



★ Entry Point

Agreed to by
X _____
Date _____

Sample Point for Nitrates

SCHEMATIC NOT TO SCALE
Date 12-1-99
Prepared by Todd Mercord
Revised 12-6-01 C Lamb

Monitoring and Reporting Requirements for the Calendar Year 2008

February 11, 2008

LODORE SUPPER CLUB & SALOON

PWS ID#: WY5600545 (NC/GW)

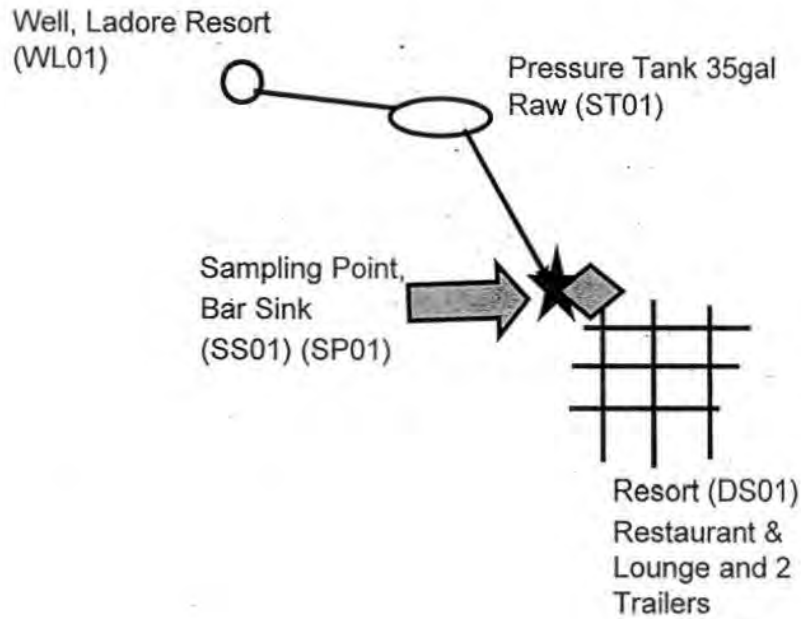
The requirements presented here are based on the information we have, which might not be completely accurate. We advise you to compare this information with data from your own files, and possibly contact the appropriate rule manager.

Total Coliform (TCR)	You must take one sample during each of the four quarters in 2008, at sites which are representative of water throughout the distribution system according to your site sampling plan.
Nitrate (NO3)	Between January 1, 2008 and December 31, 2008, take one sample for nitrate analysis at each Entry Point (Sample Point) to the distribution system.

COMPLAINANT'S
EXHIBIT NO. 1.d

Lodore Supper Club and Saloon

PWS ID # 5600545 N



★ Entry Point

Agreed to by _____
X _____
Date _____

Sample Point for Nitrates

SCHEMATIC NOT TO SCALE
Date 12-1-99
Prepared by Todd Mercord
Revised 12-6-01 C Lamb

Monitoring and Reporting Requirements for the Calendar Year 2009

January 23, 2009

LODORE SUPPER CLUB & SALOON

PWS ID#: WY5600545 (NC/GW)

Water System Inventory

Water Source: GW

Service Connections: 1

Water System Type: NC

Population Served: 50

Contact: RICK SMITH

Address: PO BOX 6044
SHERIDAN, WY 82801

Phone: 307-683-3284

COMPLAINANT'S
E-mail: [redacted]

Where to monitor and Whom to call

The "rule managers" responsible for administering the several monitoring and reporting rules are listed here. Any question or discussion should be directed to the appropriate rule manager.

Sampling Points Defined in the System Schematic

SP01 BAR SINK

Call 1-800-227-8917 and ask for the Rule Manager/phone number below.

Monitoring for these contaminants is to be at the Defined Sampling Points:

Inorganic Chemicals	IOC	Rod Glebe	312-6627
Nitrate	Nitrate	Tiffany Mifflin	312-6521
Nitrite	Nitrite	Tiffany Mifflin	312-6521
Radionuclides	Rads	Bre Bockstahler	312-6034
Synthetic Organic Chemicals	SOC	Rod Glebe	312-6627
Volatile Organic Chemicals	VOC	Rod Glebe	312-6627

Monitoring for these contaminants will be within the distribution system:

Asbestos	Asbestos	Rod Glebe	312-6627
Disinfection Byproducts	DBP	Mary Wu	312-6789
Lead and Copper	Lead & Copper	Bre Bockstahler	312-6034
Total Coliform Rule	TCR	Charla Colson	312-6280

The following rules may apply:

Consumer Confidence Report	CCR	Janet LaCombe	312-6287
Surface Water Treatment Rule	SWTR	Mindy Mohr	312-6525

IMPORTANT

You must use an EPA Region 8 laboratory certified to test for the contaminant.
Call **1-800-227-8917** and ask for the appropriate Rule Manager listed above
or get the latest list at Drinking Water Online at

<http://www.epa.gov/region8/waterops/docs/certifiedlabs.pdf>

Monitoring and Reporting Requirements for the Calendar Year 2009

January 23, 2009

LODORE SUPPER CLUB & SALOON

PWS ID#: WY5600545 (NC/GW)

The requirements presented here are based on the information we have, which might not be completely accurate. We advise you to compare this information with data from your own files, and possibly contact the appropriate rule manager.

Total Coliform (TCR)	Take 1 sample each quarter during the year in 2009. Take samples throughout the distribution system following your site sampling plan.
Nitrate (NO3)	Between January 1, 2009 and December 31, 2009, take one sample for nitrate analysis at each Entry Point (Sample Point) to the distribution system.

Monitoring and Reporting Requirements for the Calendar Year 2010

January 21, 2010

LODORE SUPPER CLUB & SALOON/MOJO RISING

PWS ID#: WY5600545 (NC/GW)

Total Coliform (TCR)	Take 1 sample each quarter during the year in 2010. Take samples throughout the distribution system following your site sampling plan. IF YOU CHLORINATE OR PURCHASE CHLORINATED WATER, you must measure chlorine residual at the same place each time you do bacteriological sampling. Write the chlorine residual results on the sampling sheet and ask your laboratory to forward that information to EPA.
Ground Water Rule	ON THOSE OCCASIONS YOU RECEIVE NOTICE OF AN UNSAFE ROUTINE TOTAL COLIFORM SAMPLE (TC+, FC+, or EC+), YOU MUST IMMEDIATELY CALL MS. TIFFANY MIFFLIN, GWR Manager who may be contacted at 303-312-6521 or 1-800-227-8917 ext. 312-6521. Ms. Mifflin will determine whether or not samples must be taken at your ground water source(s) for E. coli testing to meet the initial GWR sampling requirements.
Nitrate (NO3)	Between January 1, 2010 and December 31, 2010, take one sample for nitrate analysis at each Entry Point (Sample Point) to the distribution system.

COMPLAINANT'S
EXHIBIT NO. 1. f

Monitoring and Reporting Requirements for the Calendar Year 2010

January 21, 2010

LODORE SUPPER CLUB & SALOON/MOJO RISING

PWS ID#: WY5600545 (NC/GW)

Water System Inventory

Water Source: GW
Water System Type: NC

Service Connections: 1
Population Served: 50

Contact: RICK SMITH
Address: PO BOX 6044
SHERIDAN, WY 82801
Phone: 307-683-3284

Where to monitor and Whom to call

The "rule managers" responsible for administering the several monitoring and reporting rules are listed here. Any question or discussion should be directed to the appropriate rule manager.

Sampling Points Defined in the System Schematic
SP01 BAR SINK

Call 1-800-227-8917 and ask for the Rule Manager/phone number below.

Monitoring for these contaminants is to be at the Defined Sampling Points:

Inorganic Chemicals	IOC	Gail Franklin	6497
Nitrate/Nitrite	Nitrate	Gail Franklin	6497
Radionuclides	Rads	Bre Bockstahler	6034
Synthetic Organic Chemicals	SOC	Gail Franklin	6497
Volatile Organic Chemicals	VOC	Gail Franklin	6497

Monitoring for these contaminants will be within the distribution system:

Asbestos	Asbestos	Gail Franklin	6497
Disinfection Byproducts	DBP	Mary Wu	6789
Lead and Copper	Lead & Copper	Bre Bockstahler	6034
Total Coliform Rule	TCR	Charla Colson	6280

The following rules may apply:

Consumer Confidence Report	CCR	Tiffany Mifflin	6521
Ground Water	GWR	Tiffany Mifflin	6521
Surface Water Treatment Rule or Interim Enhanced SWTR	SWTR/IESWTR	Mindy Mohr	6525

IMPORTANT

You must use an EPA Region 8 laboratory certified to test for the contaminant.
Call **1-800-227-8917** and ask for the appropriate Rule Manager listed above
or get the latest list at Drinking Water Online at

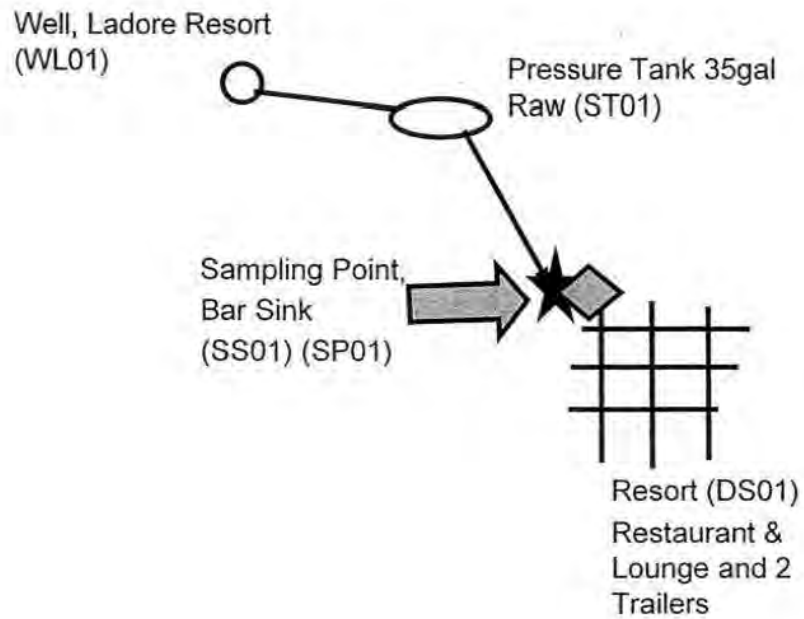
<http://www.epa.gov/region8/waterops/docs/certifiedlabs.pdf>

The requirements presented here are based on the information we have, which might not be completely accurate. We advise you to compare this information with data from your own files, and possibly contact the appropriate rule manager.

If you have any questions concerning these monitoring requirements contact the appropriate rule manager at 1-800-227-8917.

Lodore Supper Club and Saloon

PWS ID # 5600545 N



★ Entry Point

Agreed to by
X _____
Date _____

Sample Point for Nitrates

SCHEMATIC NOT TO SCALE
Date 12-1-99
Prepared by Todd Mercord
Revised 12-6-01 C Lamb

Monitoring and Reporting Requirements for the Calendar Year 2011

February 2, 2011

LODORE SUPPER CLUB & SALOON/MOJO RISING

PWS ID#: WY5600545 (NC/GW)

Water System Inventory

Water Source:	GW	Service Connections:	1
Water System Type:	NC	Population Served:	50
Contact:	RICK SMITH		
Address:	PO BOX 6044 SHERIDAN, WY 82801		
Phone:	307-683-3284		

Where to monitor and Whom to call

The "rule managers" responsible for administering the several monitoring and reporting rules are listed here. Any question or discussion should be directed to the appropriate rule manager at the toll free number:

1-800-227-8917

or call directly at the number below.

COMPLAINANT'S
EXHIBIT NO. 19

Monitoring for these contaminants is to be at the Defined Sampling Points:

Inorganic Chemicals	IOC	Natalie Cannon	303-312-6625
Nitrate/Nitrite	Nitrate	Alysia Tien	303-312-7021
Radionuclides	Rads	Alysia Tien	303-312-7021
Synthetic Organic Chemicals	SOC	Natalie Cannon	303-312-6625
Volatile Organic Chemicals	VOC	Natalie Cannon	303-312-6625

Monitoring for these contaminants will be within the distribution system:

Asbestos	Asbestos	Natalie Cannon	303-312-6625
Disinfection Byproducts	DBP	Mary Wu	303-312-6789
Lead and Copper	Lead & Copper	Alysia Tien	303-312-7021
Total Coliform Rule	TCR	Bre Bockstahler	303-312-6034

The following rules may apply:

Consumer Confidence Report	CCR	Karen Shirley	303-312-6104
Ground Water Rule	GWR	Tiffany Mifflin	303-312-6521
Surface Water Treatment Rule or Interim Enhanced SWTR	SWTR/IESWTR	Mindy Mohr	303-312-6525



IMPORTANT



You must use an EPA Region 8 laboratory certified to test for the contaminant.
Call **1-800-227-8917** and ask for the appropriate Rule Manager listed above
or get the latest list at Drinking Water Online at

<http://www.epa.gov/region8/waterops/docs/certifiedlabs.pdf>

Monitoring and Reporting Requirements for the Calendar Year 2011

February 2, 2011

LODORE SUPPER CLUB & SALOON/MOJO RISING

PWS ID#: WY5600545 (NC/GW)

The nitrate/nitrite information presented here might not accurately reflect your compliance status if 2010 data was submitted after 01/01/2011. You will receive a separate letter from the rule manager in the near future if your nitrate/nitrite compliance status has changed from what is listed above. All other requirements presented here are based on the information we have, which might not be completely accurate. We advise you to compare this information with data from your own files, and possibly contact the appropriate rule manager.

Total Coliform (TCR)	<p>Take 1 sample each quarter during the year in 2011. Take samples throughout the distribution system following your site sampling plan.</p> <p>IF YOU CHLORINATE OR PURCHASE CHLORINATED WATER, you must measure chlorine residual at the same place each time you do bacteriological sampling. Write the chlorine residual results on the sampling sheet and ask your laboratory to forward that information to EPA.</p>
Ground Water Rule	<p>When you receive notice of a total coliform positive (TC+) routine sample under the Total Coliform Rule (TCR), call Tiffany Mifflin at 1-800-227-8917 ext. 312-6521 within 24 hours to determine if you need to sample the ground water source(s).</p> <p>Otherwise, you must sample all ground water sources in use at the time of the original TC+. Label the sampling location as "SOURCE", include the location if there are multiple ground water sources (e.g. SOURCE- Well#3) and mark the sample as "ROUTINE". You may find a copy of the GWR sampling form at the following website: http://www.epa.gov/region8/waterops/reporting/forms.html THIS SAMPLING IS IN ADDITION TO YOUR REPEAT SAMPLING REQUIREMENTS UNDER THE TOTAL COLIFORM RULE.</p>
Nitrate (NO3)	<p>Between January 1, 2011 and December 31, 2011, take one sample for nitrate analysis at each Entry Point (Sample Point) to the distribution system.</p>

Lodore Supper Club and Saloon

PWS ID # 5600545 N



Well, Ladore Resort
(WL01)




Pressure Tank 35gal
Raw (ST01)



Sampling Point,
Bar Sink
(SS01) (SP01)



Resort (DS01)
Restaurant &
Lounge and 2
Trailers

 Entry Point

Agreed to by

X _____

Date _____

Sample Point for Nitrates

SCHEMATIC NOT TO SCALE

Date 12-1-99

Prepared by Todd Mercord

Revised 12-6-01 C Lamb



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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

Ref: 8P-W-DW

JUL 13 2007

COMPLAINANT'S
EXHIBIT NO. 1.4

Rick Smith
Ladore Supper Club and Saloon
P.O. Box 6044
Sheridan, WY 82301

File Copy

Re: PWS ID#: WY5600545

Dear Mr. Smith:

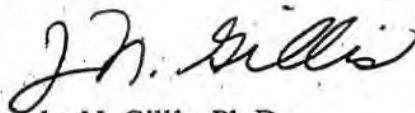
Enclosed is your copy of a report prepared for the U. S. Environmental Protection Agency (EPA) following a sanitary survey of your public water system on May 10, 2007. Please note the recommendations listed on the first page of the report. These recommendations should be implemented as soon as possible to ensure that public health is protected at your public water system. In summary, the recommendations for your water system include the following:

1. Collect quarterly bacteriological samples, and an annual nitrate sample. The new owner or manager of the business was unaware of the quarterly bacteriological monitoring requirement. Consequently, they failed to take a routine sample during the first quarter of 2007. Non-community water systems that serve fewer than 1,000 people and use only groundwater are required to collect one routine bacteriological sample per quarter. Bacteriological samples must be analyzed within 48 hours of collection. Check with your post office for the best and fastest way to deliver water samples to the laboratory, or use a different carrier to meet this requirement. Bacteriological results should be sent to Charla Colson of EPA Region 8 at the address located at the top of this report. During the survey, the surveyor reviewed the quarterly bacteriological monitoring and annual nitrate monitoring requirements, explained and assisted the owner in completing the failure to monitor public notice (PN), and demonstrated the appropriate bacteriological sampling procedure. Also, an annual nitrate sample is required of this water system, and a copy of those results should be sent to Tiffany Mifflin at EPA Region 8 at the address located above.
2. The well casing cover should be replaced with a manufactured sanitary seal. The cap on the well casing is loose, and does not have a gasket that would form a sanitary seal when tightened. Electrical wires entering the well casing beneath the well cap should be placed within conduit, sealed, and connected to the well cap. Also, the wellhead should be protected from unauthorized intrusion by fencing and a locked gate. At a minimum, a lock to ensure the well cap cannot be removed should be installed to prevent accidental or intentional contamination of the water source.

3. A statement of completion and description of the well (well log) was not available or located during the survey interview. The WY State Engineer's Office, at (307) 777-6163, or the well driller should be contacted by the owner to search for the well log which would include such information as the well depth, casing size, yield/design rate of flow, date drilled, etc.
4. The well casing should be extended to a minimum of 18" above the surrounding grade.

We would like to thank you for your cooperation and time during the sanitary survey of your public water system on May 10, 2007. If you have any questions regarding the sanitary survey, please call Gail Hill at 1-800-227-8917, ext. 6497 or Chuck Lamb at ext. 6261. If you have any questions on specific regulations, please refer to the brochure enclosed with this letter. The names and phone numbers for all of the rule managers are included in the brochure.

Sincerely,



John N. Gillis, Ph.D.
Team Lead, Wyoming PWSS DI

Enclosures (2)

SANITARY SURVEY
U.S. EPA REGION VIII
1595 WYNKOOP STREET
MAIL CODE: 8P - W - DW
DENVER, COLORADO 80202-1129

Date of Survey: **May 10, 2007** PWS ID No.: **5600545**
Classification: **Transient non-community groundwater**
Name of PWS: **Lodore Supper Club and Saloon**
Mailing address: **P.O. Box 6044, Sheridan, WY 82801**
(Location is at 6 North Piney, Story, WY 82842)
e-mail address: **ricknwyo@fiberpipe.net**
County: **Sheridan**
Physical location and directions: **Located on WY 193 in Story, Wyoming.**
Name of surveyor: **Lee Michalsky, RATES**
Prior Surveyor and date: **Diane Monahan; 11/05/2001**
Date of GWUDISW assessment & score: **May 10, 2007; Score: 45**

SECTION 1: RECOMMENDATIONS

1. **Collect quarterly bacteriological samples, and an annual nitrate sample. The new owner or manager of the business was unaware of the quarterly bacteriological monitoring requirement. Consequently, they failed to take a routine sample during the first quarter of 2007. Non-community water systems that serve fewer than 1,000 people and use only groundwater are required to collect one routine bacteriological sample per quarter. Bacteriological samples must be analyzed within 48 hours of collection. Check with your post office for the best and fastest way to deliver water samples to the laboratory, or use a different carrier to meet this requirement. Bacteriological results should be sent to Charla Colson of EPA Region 8 at the address located at the top of this report. During the survey, the surveyor reviewed the quarterly bacteriological monitoring and annual nitrate monitoring requirements, explained and assisted the owner in completing the failure to monitor public notice (PN), and demonstrated the appropriate bacteriological sampling procedure. Also, an annual nitrate sample is required of this water system, and a copy of those results should be sent to Tiffany Mifflin at EPA Region 8 at the address located above.**

SECTION 1: RECOMMENDATIONS (cont.)

2. The well casing cover should be replaced with a manufactured sanitary seal. The cap on the well casing is loose, and does not have a gasket that would form a sanitary seal when tightened. Electrical wires entering the well casing beneath the well cap should be placed within conduit, sealed, and connected to the well cap. Also, the wellhead should be protected from unauthorized intrusion by fencing and a locked gate. At a minimum, a lock to ensure the well cap cannot be removed should be installed to prevent accidental or intentional contamination of the water source.
3. A statement of completion and description of the well (well log) was not available or located during the survey interview. The WY State Engineer's Office, at (307) 777-6163, or the well driller should be contacted by the owner to search for the well log which would include such information as the well depth, casing size, yield/design rate of flow, date drilled, etc.
4. The well casing should be extended to a minimum of 18" above the surrounding grade.

SECTION 2: SUMMARY

The Lodore Supper Club and Saloon is classified as a non-community groundwater system. The water system can serve up to 210 customers through 1 service connection. Source water is from the Lodore Well #2, reported to be 100 feet deep. Raw water is pumped from the well to a 35-gallon hydropneumatic tank that is located in the crawl space beneath the supper club building. Water is pressurized and then distributed throughout the restaurant and lounge.

Lee Michalsky, Rural and Tribal Environmental Solutions (RATES) conducted a sanitary survey on May 10, 2007. Rick Smith, Property Owner, was interviewed, and conducted a tour of the water system facilities.

Sanitary Survey
Date: **May 10, 2007**

PWS Name: **Lodore Supper Club and Saloon**
PWS ID#: **5600545**

SECTION 3: CONTACT NAMES AND PHONE NUMBERS/E-MAIL ADDRESSES

Property Owner: **Rick Smith; (307) 683-3284**

Business Owner: **Kim Eckerman; (307) 683-3284**

Person contacted for survey: **Rick Smith**

County and/or CHS Sanitarian: **Sue Mickelson; 11 Timm Place Sheridan WY, 82801;**

e-mail: **smike@state.wy.us**

DEQ District Engineer: **Karen Farley; (307) 473-3478; e-mail: KFARLE@state.wy.us**

Operator(s), Certification types(s), and Expiration dates(s): **NA**

The following abbreviations will be used throughout this document:
NI = no information; NA = not applicable; NR = not requested

SECTION 4: SERVICE DATA

Service Area(s): **Restaurant and lounge**

Owner type: **Private**

Is this PWS part of a concessionaire operation on state/fed land? **No**

Population: Estimated summer: **210** Estimated winter: **15 - 20**

Period of operation: **Year-round**

Number of service connections: **One** Metered? **No**

Water usage: **NI - well production is not metered**

Total gal/day **NI** Per person gal/day **NI** Water lost gal/day **NI**

- Is the current water source adequate in quantity? **Yes**

- Is the water source yield sufficient to meet future demands? **Yes**

Have there been any interruptions in service in the last 5 years? **No**

Have there been reports of water borne disease? **No**

Does system have a current operations and maintenance manual which describes all procedures, equipment, sampling schedules, and inspection data? **No**

Does the system have security measures in place (fencing; locks; lighting; alarms; etc.)?

No (See Recommendation #2)

Does the system have an emergency response plan? **No**

Are all personnel familiar with emergency procedures? **NA**

Water sold to: **NA**

Sanitary Survey
Date: **May 10, 2007**

PWS Name: **Lodore Supper Club and Saloon**
PWS ID#: **5600545**

SECTION 6: SOURCE DATA POTENTIAL POLLUTION SOURCES

Abandoned wells: **None reported or observed during the interview or facilities inspection**

Septic systems: **The septic tank and drain field are located approximately 150 feet down-grade of the well**

Above ground fuel or chemical storage tanks: **No**

Underground fuel or chemical storage tanks: **No**

Agricultural activities: **None**

Chemical storage and mixing facilities: **NA**

Industrial activities: **No**

SECTION 7: SOURCE DATA CURRENT AND ABANDONED WELLS

Name and/or Number of Well(s): **Lodore Well #2**

DEQ Permit #: **UW# 15230**

SEO Permit #:

Is the well drawing from a confined or unconfined aquifer? **Unconfined aquifer**

Has the recharge area been mapped? **NI**

Is the well in a flood plain? **Yes**

Does surface water runoff drain toward or away from the wellhead? **Away**

Well house, well pit, pitless adapter, or combination? **Pitless adapter**

Date drilled: **9/15/1972**

Total well depth (ft.): **100'** Total casing depth (ft.): **100' - 1/2" steel gage**

Casing diameter (in.): **4"**

Casing perforations (type, size, range of depth(s), and/or total #): **None (gravel packed)**

Depth of grouting: **NI**

Pump depth: **40'** Type of pump/brand name: **1/2 hp submersible**

Actual yield (gpm): **10-15 gpm**

Does wellhead have a sanitary seal around the casing? **No (See Recommendation #2)**

Does well casing terminate at least 18 in. above the floor or ground surface?

No, 10" (See Recommendation #4)

Is the vent at least 18 in. above the floor or ground surface? **No**

Is the vent facing downward, and is it screened? **Yes**

**SECTION 7: SOURCE DATA
CURRENT AND ABANDONED WELLS (cont.)**

Is there a working sample tap at the well (before treatment)? **Yes**
Is emergency power available? **No**
Has the local utility been made aware of any generators at the facility? **NA**
Does the owner have a copy of the well log? **No (See Recommendation #3)**

**SECTION 12: SOURCE DATA
BACKUP WATER SOURCES**

Describe any backup water sources possibly available to the PWS: **None**
Does the system have interconnections with neighboring systems or a contingency plan for water outages? **No**

SECTION 15: STORAGE FACILITIES AND PRESSURE TANKS

Name or designation: **Lodore Supper Club and Saloon**
Date put into service: **1972** Raw or treated water? **Raw**
Location and type of material: **Ground-level steel hydropneumatic tank**
Is the storage properly covered or enclosed? **Yes**
Type of storage: **Pressure**
Volume (gal.): **35 gallons**
Total days supply when full: **< 1 day**
- Is the storage capacity adequate for current needs? **Yes**
- Is the storage capacity over-designed to meet future needs? **No**
Is the water level indicator accurate (*gravity tanks*)? **NA**
Is the site subject to flooding? **Yes**
Is the unit structurally sound and properly maintained? **Yes**
Are overflow lines: **NA - pressurized sealed tank**
Turned downward? **NA**
Covered or screened with #24 mesh corrosion-resistant screen? **NA**
Terminated at least 12-24 inches above ground? **NA**

Sanitary Survey
Date: May 10, 2007

PWS Name: Lodore Supper Club and Saloon
PWS ID#: 5600545

SECTION 15: STORAGE FACILITIES AND PRESSURE TANKS (cont.)

Are air vents: **NA**

Turned downward? **NA**

Covered or screened with #24 mesh corrosion-resistant screen? **NA**

Are drain and clean-out lines: **NA**

Turned downward? **NA**

Covered or screened with #24 mesh corrosion-resistant screen? **NA**

Terminated at least 3 diameters above ground? **NA**

Can tank be isolated from the system? **Yes**

Do the inflow and outflow lines have check valves? **No**

When and how was the tank last cleaned? **NA**

How is the tank disinfected after repair or cleaning? **NA**

SECTION 17: DISTRIBUTION DATA

Water is pumped from the well through a 1.5 inch copper pipe approximately 70 feet into a 35-gallon pressure tank that is located in the crawl space below the supper club. The pressure tank cuts in at 40 psi, and out at 65 psi. Water is stored under pressure and then distributed throughout the facility through 1/2" and 3/4" copper pipe.

Location and estimated linear feet of asbestos-cement pipe: **None**

Have lines broken due to frost or traffic load? **No**

Does PWS have access to proper main line bedding material? **NA**

Is proper bedding material used for mainline replacement and repair? **NA**

Pressure zones: **Distribution system pressure is maintained utilizing a hydropneumatic tank. Well pump cuts in at 40 psi and cuts out at 65 psi.**

Is there at least 35 psi pressure in the distribution system at peak normal flow? **Yes**

Is there 20 psi at all points in the system during fire fighting flow?

No - no fire suppression system.

Location, length, number, and flushing frequency for dead ends in the system: **NA**

Is there an existing or potential interconnection with another system? **No**

Are prints of the distribution system maintained; e.g. revised to show replacement or repair? **No**

Number of metered services: **0**

Number of unmetered services: **1**

SECTION 18: CROSS CONNECTION CONTROL

Have all high-hazard connections to the water system been identified?

No high risk services are connected to this system

Does each high hazard connection have the appropriate backflow device or method installed?

NA

Has the PWS required the appropriate BFPs to be installed at all service connections completed after March 12, 2003? (This includes service connections for existing buildings to replacement water distribution mains constructed after March 12, 2003.) **NA**

Does the water supplier have a record keeping program and management procedures to ensure:

a. the installation and certification by test or inspection of all backflow preventers (BFPs) at new service connections? **NA**

b. the annual passing test certification by a certified tester of all high-hazard BFPs at service connections? **NA**

Can each high-hazard facility be matched in the PWS records with a high-hazard BFP that has been properly tested within the past year? **NA**

Are there any taps or service connections on transmission lines from remote water sources to the water storage and distribution system? **No**

Are stock watering tank connections protected from back-siphonage by at least a double check backflow device at the tap on the transmission line? **NA**

SECTION 19: SAFETY DATA

PERSONNEL SAFETY

Is there a safety program defining measures to be taken if someone is injured? **No**

Are all personnel trained in proper handling of all utilized chemicals and materials? **No**

Are adequate masks, protective clothing, and safety equipments provided?

No water treatment chemicals used at this facility

Does the operator understand relevant Occupational Safety and Health Administration (OSHA) regulations (e.g., confined space, hazard communication, trenching/shoring, lock out/tag out)? **Yes**

Sanitary Survey
Date: **May 10, 2007**

PWS Name: **Lodore Supper Club and Saloon**
PWS ID#: **5600545**

SECTION 19: SAFETY DATA (cont.)

CHEMICAL SAFETY

- Are oxidizers, corrosives, and flammables stored in separate areas and in closed, marked containers? **Yes**
- Are flammables stored in appropriate containers and cabinets away from combustion sources? **Yes**
- Is there adequate ventilation in the areas where solvents, aerosols, and chemical feeders are in use? **Yes**
- Are bulk storage areas physically isolated from treatment areas to prevent spills from entering treated or untreated water? **NA**
- Is the fire department familiar with the facilities and their contents? **No**

SECTION 20: MANAGEMENT DATA

- Are there rules governing new hookups? **NA**
- Is there a water main extension policy? **NA**
- Are DEQ construction specifications followed? **NA**
- Are there policies or rules describing customer rights and responsibilities? **NA**
- Is there a schedule for routine preventative maintenance for all facilities and equipment? **NA**
- Does the PWS have contracts in place to assure prompt supply and repair service? **NA**

SECTION 21: MONITORING AND RECORDS

- Does the operator know how to collect samples for total coliform analysis?
No - surveyor reviewed bacteriological sampling procedure with property owner (See Recommendation #1)
- Does the operator know what to do in the event of a total coliform "unsafe" result?
No (See Recommendation #1)
- Are extra bottles available in case of need for repeat total coliform sampling? **No**
- Are test kits, reagents, and instruments, as appropriate, available for monitoring? **NA**
- For systems that disinfect: **NA**
- Does the operator know the location of each entry point to the distribution system? **Yes**
- Does the operator know how to properly label samples taken from the entry points? **Yes**
- Has the PWS completed the monitoring that is specified in the EPA-provided monitoring schedule for this calendar year? **No (See Recommendation #1)**
- Are copies of all monitoring results filed and readily accessible? **No**

**Environmental Protection Agency, Region VIII
1595 Wynkoop Street (8P-W-DW)
Denver, Colorado 80202-1129**

ASSESSMENT OF Ground Water Under The Direct Influence Of Surface Water (GWUDISW)
(GWUDISW is subject to the Surface Water Treatment Rule)

Public Water System Name: **Lodore Supper Club and Saloon** PWS#: **5600545**
 Well/Spring/Infiltration Gallery Name: **Lodore Well #2** County: **Sheridan**
 State Engineer's Office Ground Water Permit #:
 Department of Environmental Quality Construction Permit #: **UW 15230**
 Date of Assessment: **May 10, 2007** Analyst: **Lee Michalsky, RATES**

	<u>Index Points</u>	<u>Score</u>
A. TYPE OF SUBSURFACE WATER SOURCE (Circle One)		
Well, equal to or greater than 50 ft. deep ^(*)	0	
Well, less than 50 ft. deep ^(*)	5	
Spring	10	
Infiltration Gallery, more than 2 ft deep	10	
Infiltration Gallery, at or < 2 ft deep	25	
^(*) depth to first screen or perforation for groundwater entry		
B. HISTORICAL MICROBIOLOGICAL CONTAMINATION (Circle)		
History or suspected outbreak of Giardia or other pathogenic organisms associated with surface water with current system configuration	50	
Record of total coliform acute MCL violations over last 3 years	30	
Record of total coliform monthly MCL violations over last 3 years		
One Month	5	
Two Months	10	
Three Months	20	
Regulatory agency verifies complaints about turbidity or suspected waterborne disease	10	

	<u>Index Points</u>	<u>Score</u>
C. HYDROGEOLOGICAL FEATURES (Circle)		
Distance between a surface water source and the groundwater collector (vertical well, spring box or infiltration gallery)		
Over 200 ft.	0	
100 - 200 ft.	5	
Less than 100 ft.	10	
Well, spring, or infiltration gallery located on floodplain at approximate altitude of stream.	20	
Surface runoff drains toward well, spring, or infiltration gallery.	15	
Exposed aquifer that is coarse alluvium, cavernous, or fractured	15	
D. STRUCTURAL FEATURES (Circle the information pertaining to either the well OR the spring collection box- not both.)		
<u>WELLS</u> (includes wells collecting water from infiltration galleries)		
Uncased well	40	
Casing not properly sealed (such as no concrete slab extending 2 – 4 feet around and sloping away from casing, or seal is loose or missing bolts holding it in place, or annular space around casing is not grouted to 20 ft)	15	15
No watertight sanitary seal on well casing cap	15	15
Well height not properly terminated (well, including the pitless adapter units, does not terminate a minimum of 18 inches above ground level, 12 inches above the pump house floor, or 3 feet above the highest known flood elevation, whichever is higher – measurements should be taken from the pump house floor, not the bottom of a pit which may be located within the pump house)	15	15
<u>SPRING COLLECTION BOX</u> (includes collection vaults collecting water from infiltration galleries)		
Deep-rooted vegetation (e.g. trees, shrubs) around springbox, providing conduit for surface water into spring water.	15	
Springbox is not watertight, with watertight overlapping lid or cover	15	
Overflows or drains open to atmosphere or allow entrance of animals (unscreened)	15	
Marshy (standing water) around spring collection area	30	
TOTAL SCORE ^(*):		<u>45</u>

^(*) total score of ≥ 40 indicates further assessment is needed

COMMENTS: Replacing the well casing cap with a sanitary seal would lower the evaluation score to 15.

22

EPA Official Photograph

Subject: Lodore Well #2

PWS# 5600545

System: Lodore Supper Club and Saloon
6 North Piney

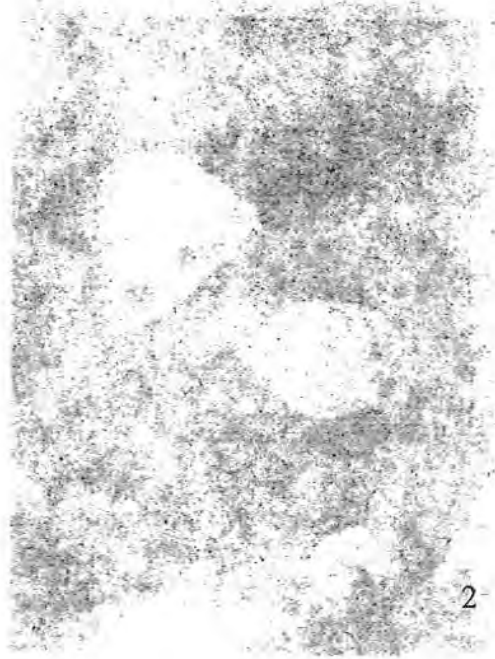
Story, WY 5600545 **County:** Sheridan

Date: 05/10/2007

Time: 0930 hrs

Photographer: Lee Michalsky, RATES

1306 Patriot Street Billings, MT 59105-1559





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

Mail Code: 8P-W-DW

COMPLAINANT'S
EXHIBIT NO. 1, 2

OCT 17 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lodore Supper Club and Saloon
c/o Rick Smith
PO Box 6040
Sheridan, WY 82801

RE: Negative GWUDISW Assessment
PWS ID # WY5600545

Dear Mr. Smith:

The purpose of this letter is to document a final determination regarding the status of the well that the Lodore Supper Club and Saloon drinking water system was using for its drinking water source. EPA's concerns with this well were outlined in our letter to you created July 16, 2007.

Lodore Supper Club and Saloon will not be required to conduct MPAs or comply with the SWTR due to the improvements made to the Lodore Supper Club and Saloon well head. We greatly appreciate your cooperation in making the requisite system improvements.

Please note, this determination will be revisited during the next sanitary survey conducted at your facility. At that time, the condition of the well will again be assessed to determine if it is potentially influenced by surface water. If you have any questions or need further assistance, please contact me at 303-312-6521.

Sincerely,

Tiffany Mifflin
Tiffany Mifflin
Life Scientist



Printed on Recycled
Paper



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

JO
eccc
TM
WC file

Ref: 8ENF-W

DEC 18 2007

COMPLAINANTS
EX-112 1j

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sheridan County Commissioners
c/o Terry Cram, Chair
224 South Main Suite B-1
Sheridan, WY 82801

Re: Notice of Safe Drinking Water Act
Enforcement Action against Kimmeri's
Kuisine/Lodore Supper Club
PWS ID 5600545

Dear County Commissioners:

The Safe Drinking Water Act (SDWA) requires that the United States Environmental Protection Agency (EPA) notify locally elected officials of certain enforcement actions taken in their area.

An Administrative Order is being issued to Kimmeri's Kuisine as owner/operator of Lodore Supper Club, Story, Wyoming. This Order requires that Kimmeri's Kuisine take measures to return its public water system to compliance with the SDWA and the National Primary Drinking Water Regulations. The violations include failing to monitor for total coliform and nitrate, and failing to report these violations to EPA.

For more details, a copy of the Order is enclosed for your information. **The Order does not require any response or action by the County Commission.** If you have any questions regarding this Order, please contact Kathelene Brainich at (303) 312-6481.

Sincerely,

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

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

DEC 18 2007

Ref: 8ENF-W

CERTIFIED MAIL LETTER
RETURN RECEIPT REQUESTED

Kim Eckerman, Registered Agent
Kimmeri's Kuisine
78 Fish Hatchery Road
Story, WY 82842

Re: Administrative Order
Docket No. SDWA-08-2008-0010
Kimmeri's Kuisine/Lodore Supper Club
PWS ID #WY5600545

Dear Ms. Eckerman:

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 300f *et seq.* Among other things, the Order describes how Kimmeri's Kuisine 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 there is compliance 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.


While not yet past due, public notice of the violations noted in the Order must be completed immediately. Attached is a public notice template to assist you in completing this requirement. Post the public notice at the restaurant for seven days, sign and date a copy of the notice, write the dates it was posted on the copy, and send to EPA within ten days of completion.

Also enclosed is a small business resources information sheet, outlining compliance assistance resources and tools available to small businesses and small governments, in case these resources apply to your situation.

To submit information or request an informal conference with EPA, contact Kathelene Brainich at the above address (with the mailcode 8ENF-W) or by phone at (800) 227-8917, extension 312-6481 or (303) 312-6481. For legal questions, the attorney assigned to this matter is Marc Weiner, who can be reached at the above address (with the mailcode 8ENF-L) or by phone at (800) 227-8917, extension 312-6913 or (303) 312-6913.

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 template
Information sheet

cc: Rick Smith, building owner
WY DEQ (via email)
WY DOH (via email)

ORDER

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

7. Upon receipt of this Order, Respondent shall monitor quarterly for total coliform bacteria. 40 C.F.R. sections 141.21, 141.63. Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results were received, as required by the drinking water regulations. 40 C.F.R. § 141.31(a). Any violation of total coliform monitoring requirements shall be reported to EPA within ten days after the Respondent learns of it. 40 C.F.R. § 141.21(g)(2).

8. Within 30 days of the effective date of this Order, and per the regulations thereafter, Respondent shall monitor at least annually for nitrate. 40 C.F.R. § 141.23(d). Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results were received, as required by the drinking water regulations. 40 C.F.R. § 141.31(a). Any violation of nitrate monitoring requirements shall be reported to EPA within 48 hours. 40 C.F.R. § 141.31(b).

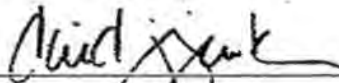
9. Reporting requirements specified in this Order shall be provided by certified mail to:

U. S. EPA Region 8 (8P-W-DW)
1595 Wynkoop Street
Denver, CO 80202-1129

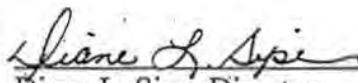
GENERAL PROVISIONS

10. 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.

11. 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.



Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice



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

IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER
LODORE SUPPER CLUB/KIMMERI'S KUISINE

DRINKING WATER MONITORING REQUIREMENTS NOT MET IN 2006-2007

We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not our drinking water meets health standards. During 2006-2007 we did not complete monitoring or testing for bacteriological quality and nitrate/nitrite and therefore cannot be sure of the quality of our drinking water during that time.

What should I do? There is nothing you need to do at this time.

The table below lists the contaminants we did not properly test for, how often we are supposed to sample for these contaminants and how many samples we are supposed to take, how many we took, when samples should have been taken, and the date when the situation was corrected.

Contaminant	Required sampling frequency	Number of samples taken	When all samples should have been taken	When samples were or will be taken
Bacteriological routine	One sample quarterly	0	4 th quarter 2006, and 1 st , 2 nd , and 3 rd quarter 2007	4 th quarter 2007
Nitrate	Annually	0	2006	2007

What happened? What is being done? Will sample as required in future. Call Kim Eckerman at 307-683-3452/9490 if you have questions.

Please share this information with all the other people who drink this water. You can do this by posting this notice in a public place or distributing copies by hand or mail.

Note: send copy to EPA after public notice is complete with the dates posted and your signature within 10 days after posting is complete.

Instructions for Monitoring Violations Annual Notice--Template 3-1

Template on Reverse

Since most monitoring violations are included in Tier 3, you must provide public notice to persons served within one year after you learn of the violation (141.204(b)). Multiple monitoring violations can be serious, and your primacy agency may have more stringent requirements. Check with your primacy agency to make sure you meet its requirements.

Community systems must use one of the following (141.204(c)):

- Hand or direct delivery
- Mail, as a separate notice or included with the bill

Non-community systems must use one of the following (141.204(c)):

- Posting in conspicuous locations
- Hand delivery
- Mail

In addition, both community and non-community systems must use *another* method reasonably calculated to reach others if they would not be reached by the first method (141.204(c)). Such methods could include newspapers, e-mail, or delivery to community organizations. If you post the notice, it must remain posted until the violation is resolved. If the violation has been resolved, you must post the notice for at least one week (141.204(b)). If you mail, post, or hand deliver, print your notice on letterhead, if available.

The notice on the reverse is appropriate for insertion in an annual notice or the CCR, as long as public notification timing and delivery requirements are met (141.204(d)). You may need to modify the template for a notice for individual monitoring violations. This example presents violations in a table; however, you may write out an explanation for each violation if you wish. For any monitoring violation for volatile organic compounds (VOCs) or other groups, you may list the group name in the table, but you must provide the name of every chemical in the group on the notice, e.g., in a footnote.

You may need to modify the notice if you had any monitoring violations for which monitoring later showed a maximum contaminant level or other violation. In such cases, you should refer to the public notice you issued at that time.

Include in your notice the standard language for monitoring and testing procedure violations in *italics* (141.205(d)(2)). If you modify the notice, you may not alter this mandatory language.

Corrective Actions

In your notice, describe corrective actions you took or are taking. Listed below are some steps commonly taken by water systems with monitoring violations. Choose the appropriate language, or develop your own:

- We have since taken the required samples, as described in the last column of the table above. The samples showed we are meeting drinking water standards.
- We have since taken the required samples, as described in the last column of the table above. The sample for [contaminant] exceeded the limit. [Describe corrective action; use information from public notice prepared for violating the limit.]
- We plan to take the required samples soon, as described in the last column of the table above.

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)).



Office of Enforcement and Compliance Assurance INFORMATION SHEET

U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers:
www.epa.gov/clearinghouse

Pollution Prevention Clearinghouse
www.epa.gov/opptintr/library/ppicindex.htm

EPA's Small Business Ombudsman Hotline provides regulatory and technical assistance information.
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7828

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
www.epa.gov

Small Business Assistance Program
www.epa.gov/ttn/sbap

Compliance Assistance Home Page
www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance
www.epa.gov/compliance

Small Business Ombudsman
www.epa.gov/sbo

Innovative Programs for Environmental Performance
www.epa.gov/partners



Compliance Assistance Centers

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers (Centers) that provide information targeted to industries with many small businesses. All Centers can be accessed at:

<http://www.assistancecenters.net>

Metal Finishing

(1-800-AT-NMFC or www.nmfc.org)

Printing

(1-888-USPNEAC or www.pneac.org)

Automotive Service and Repair

(1-888-GRN-LINK or www.ccar-greenlink.org)

Agriculture

(1-888-663-2155 or www.epa.gov/agriculture)

Printed Wiring Board Manufacturing

(1-734-995-4911 or www.pwbr.org)

Chemical Industry

(1-800-672-6048 or www.chemalliance.org)

Transportation Industry

(1-888-459-0656 or www.transource.org)

Paints and Coatings

(1-800-286-6372 or www.paintcenter.org)

Construction Industry

(www.cicacenter.org)

Automotive Recycling Industry

(www.ecarcenter.org)

US / Mexico Border Environmental Issues

(www.bordercenter.org)

State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or call EPA's Small Business Ombudsman at (800)-368-5888 or visit the Small Business Environmental Homepage at <http://www.smallbiz-enviroweb.org>.

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses: The Small Business Policy ([\[www.epa.gov/compliance/incentives/smallbusiness\]\(http://www.epa.gov/compliance/incentives/smallbusiness\)\) and Audit Policy \(<http://www.epa.gov/compliance/incentives/auditing>\).](http://</p></div><div data-bbox=)

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an ombudsman ("SBREFA Ombudsman") and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The SBREFA Ombudsman will annually rate each agency's responsiveness to small businesses. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community because the regulated community previously commented on its activities.

Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) or related provisions.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

Darcy Carlson
8P-W-DW

2009 SEP 17 AM 8:23

FILED
EPA REGION VIII
HEARING CLERK

SEP 17 2009

Ref: 8 ENF-W

Kim Eckerman, Registered Agent
Kimmeri's Kuisine
293 S. Main
Buffalo, WY 82834

COMPLAINTS
EX. 1.1.k

JG J.H.
CL CL
JR JR
WC - file

Re: Closure of Administrative Order
Docket No. SDWA-08-2008-0010
Kimmeri's Kuisine/Lodore Supper Club
PWS ID #WY5600545

Dear Ms. Eckerman:

This letter is to inform you of the United States Environmental Protection Agency's (EPA) decision to close the Administrative Order ("Order"), Docket No. SDWA-08-2008-0010, issued to Kimmeri's Kuisine as owner and/or operator of the Lodore Supper Club (Lodore) on December 18, 2007. Based on the information provided by Rick Smith, the new owner and/or operator of Lodore, you no longer own and/or operate Lodore as of December 2008 and according to the Wyoming Secretary of State Business Division the Kimmeri's Kuisine Corporation was administratively dissolved (tax) on August 10, 2009.

Thank you for your cooperation in this matter. If you have any questions, please call Kathelene Brainich at 303-312-6481.

Sincerely,

Lisa Kahn, Team Leader
Drinking Water Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc: Rick Smith, Lodore Supper Club
WY DEQ & WY DOH (via email)
Tina Artemis, EPA Regional Hearing Clerk

RECEIVED

SEP 18 2009

Drinking Water Unit

Printed on Recycled Paper



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

*John E. Kynecy
8/1-10-10*

*JG J.B.
BB
WC file*

JUL 28 2010

COMPLAINANT'S
EXHIBIT NO. 1.1

Ref: 8ENF-W

CERTIFIED MAIL LETTER
RETURN RECEIPT REQUESTED

Sheridan County Commissioners
c/o Steve Maier, Chairman
224 S. Main Street
Suite B1
Sheridan, WY 82801

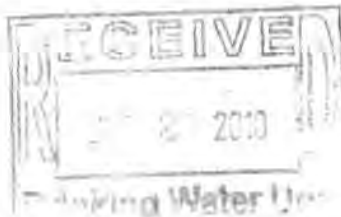
Re: Notice of Safe Drinking Water Act
Enforcement Action against
Richard Smith, Owner
Lodore Supper Club and Saloon
PWS ID #WY5600545

Dear Commissioners:

The Safe Drinking Water Act (SDWA) requires that the United States Environmental Protection Agency (EPA) notify locally elected officials of certain enforcement actions taken in their area.

EPA has issued an Administrative Order (Order) to Richard Smith, owner and operator of the Lodore Supper Club and Saloon, located in Story, Wyoming, directing him to comply with the National Primary Drinking Water Regulations. The violations alleged in the Order include: failing to monitor the water for total coliform; failing to provide public notice of the violations; and failing to report these violations to EPA.

For more details, a copy of the Order is enclosed. **The Order does not require any response or action by the County Commission.** If you have any questions regarding this Order, please contact Shawn McCaffrey at (303) 312-6515.



Sincerely,

Arturo Palomares, Director
Water Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency-Region 8

Enclosure
Order



Sheridan County Wyoming

Shopping Cart: 0 items [\$0.00]



New Search



History



Payoff



Pay Taxes



Help

Local Tax Number: 0000010509

Status: Current

Receipt: 10032

2012 Owner(s):
SMITH, RICHARD LEE

Mailing Address:

PO BOX 6044
SHERIDAN, WY 82801

Levy District:

206, 2-SFD

2012 Value:

Market: \$245,921
Taxable: \$23,362

Vet Exempt: \$0
Net Taxable: \$23,362

2012 Taxes:

First Half: \$776.79
Second Half: \$776.78
Total: \$1,553.57

2012 Payments:

First Half: \$0.00
Second Half: \$0.00
Total: \$0.00



Detail



Detail

2012 Legal Records:

Geo Code: 03-5383-08-3-00-157-33
Property address: 6 N PINEY RD, STORY WY 828420000
Legal: T53N R83W SEC 08 SWSW PT 1.83 ACRES

Note: The accuracy of this data is not guaranteed.

Web data was last updated 12/10/2012.

Powered By



© 2005-2012, Computer Software Associates Inc. Version 4.2.1



Sheridan County Wyoming

Shopping Cart: 0 items [\$0.00]

New Search

Detail

Payoff

Help

Local Tax Number: 0000010509

Status: Current

Type: RE

Owner: SMITH, RICHARD LEE

History:

Tax Year	Statement #	Bill Date	Bill Amount	Date Paid	Paid Amount	Notes
<u>2012</u>	10032	08/30/2012	\$1,553.57		\$0.00 \$0.00	
<u>2011</u>	12433	08/30/2011	\$1,526.04	1/19/2012 5/22/2012	\$789.36 \$767.54	
<u>2010</u>	448	07/12/2011	\$20.00	8/19/2011	\$0.00 \$20.00	
<u>2010</u>	643	08/19/2011	\$20.00	8/19/2011	\$20.00 \$0.00	
<u>2010</u>	9474	09/08/2010	\$1,763.91	8/19/2011 8/19/2011	\$1,004.61 \$925.88	
<u>2009</u>	453	07/13/2010	\$20.00	7/20/2010	\$0.00 \$20.00	
<u>2009</u>	9473	09/04/2009	\$2,144.76	7/20/2010 7/20/2010	\$1,205.66 \$1,109.92	
<u>2008</u>	12873	08/27/2008	\$2,077.13	8/19/2009 8/19/2009	\$1,183.00 \$1,090.29	
<u>2008</u>	18612	07/14/2009	\$20.00	8/19/2009	\$0.00 \$20.00	
<u>2007</u>	13121	09/07/2007	\$2,149.08	12/28/2007 5/9/2008	\$1,099.97 \$1,074.54	
<u>2006</u>	9960	10/03/2006	\$2,019.61	5/10/2007 5/10/2007	\$1,099.94 \$1,009.80	

Note: The accuracy of this data is not guaranteed.

Web data was last updated 12/10/2012.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

**COMPLAINANT'S
EXHIBIT NO. 2**

JUL 28 2010

Ref: 8ENF-W

CERTIFIED MAIL LETTER
RETURN RECEIPT REQUESTED

Richard Smith, Owner
Lodore Supper Club and Saloon
P. O. Box 6044
Sheridan, WY 82801-1444

Re: Administrative Order
Lodore Supper Club and Saloon
Public Water System
Docket No. **SDWA-08-2010-0062**
PWS ID# WY5600545

Dear Mr. Smith:

Enclosed is an Administrative Order (Order) issued by the United States Environmental Protection Agency (EPA) under the authority of the Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f *et seq.* Among other things, the Order alleges that you have violated the National Primary Drinking Water Regulations (the 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, 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.

The Small Business Regulatory Enforcement and Fairness Act (SBREFA) may apply to this situation. Enclosed is a small business information sheet, outlining compliance assistance resources available to small businesses and small governments, in case these are relevant. SBREFA does not eliminate the responsibility to comply with the Order or the drinking water regulations.

The Order requires you to notify the public of having violated the drinking water regulations. Enclosed please find a public notice template explaining the public notice requirements in more detail.

To submit information or request an informal conference with EPA, please contact Shawn McCaffrey at the above address (with the mailcode 8ENF-W) or by phone at (800) 227-8917, extension 6515 or (303) 312-6515. Any questions from your attorney should be directed to David Janik, Senior Enforcement Attorney, who may be reached at the above address (with the mailcode 8ENF-L) or by phone at (800) 227-8917, extension 6917 or (303) 312-6917.

We urge your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arturo Palomares', is written over the word 'Sincerely,'. The signature is fluid and cursive, extending to the right.

Arturo Palomares, Director
Water Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency-Region 8

Enclosures:

Order
SBREFA Information Sheet
Public Notice Template

cc:

Tina Artemis, EPA Regional Hearing Clerk
Wyoming DEQ/DOH (via email)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 JUL 28 AM 8:44

IN THE MATTER OF: _____)
)
Richard Smith aka "Rick Smith",)
)
Respondent. _____)

FILED
EPA REGION VIII
HEARING CLERK
Docket No. ~~SDWA-08-2010-0062~~
ADMINISTRATIVE ORDER

1. This Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.* (the Act), as properly delegated to the undersigned officials.
2. Richard Smith is an individual who owns and/or operates the Lodore Supper Club and Saloon Water System (the system), which provides piped water to the public in Sheridan County, Wyoming, for human consumption.
3. The system is supplied by a ground water source consisting of one well which provides water that is not treated.
4. The system has 1 service connection and/or regularly serves an average of approximately 210 individuals daily for at least 6 months out of the year. Therefore, the system is a "public water system" as defined in § 1401(4) of the Act, 42 U.S.C. § 300f (4), and 40 C.F.R. § 141.2. The system is also a "transient, non-community" water system as defined in 40 C.F.R. § 141.2.
5. Respondent is subject to the Act and the National Primary Drinking Water Regulations (drinking water regulations) at 40 C.F.R. part 141. The drinking water regulations are "applicable requirements" as defined in § 1414(i) of the Act, 42 U.S.C. § 300g-3(i).
6. The drinking water regulations include monitoring requirements. EPA has sent Respondent annual notifications of the specific monitoring requirements that apply to the system.

VIOLATIONS

7. Respondent is required to monitor the system's water quarterly for total coliform bacteria. 40 C.F.R. § 141.21. Respondent failed to monitor the system's water for total coliform bacteria during the 4th (October – December) quarter of 2008, 2nd (April – June) quarter of 2009, and the 4th quarter of 2009, and, therefore, violated this requirement.
8. Respondent is required to report any failure to meet a coliform monitoring requirement to EPA no later than 10 days after learning of this violation. 40 C.F.R. § 141.21(g)(2). Respondent did not notify EPA of the violations cited in paragraph 7, above, and, therefore, violated this requirement.

9. Respondent is required to report the results of testing for total coliform bacteria to EPA no later than (1) the first 10 days following the month in which the result is received, or (2) the first 10 days following the end of the required monitored period, whichever is earlier. 40 C.F.R. § 141.31(a). Respondent sampled the water for contamination of total coliform bacteria on February 17, 2009, but failed to report the analytical results to EPA until September 1, 2009, and therefore, violated this requirement.

10. 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 violations listed in paragraph 7, above, and, therefore, violated this requirement. Public notice for the 4th quarter 2009 failure to monitor total coliform violation cited in paragraph 7 is not yet overdue.

ORDER

Based on the above violations, Respondent is ordered to perform the following actions upon Respondent's receipt of this Order (unless a different deadline is specified below):

11. Respondent shall monitor the system's water quarterly for total coliform bacteria, as required by 40 C.F.R. § 141.21. Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results were received, as required by 40 C.F.R. § 141.31(a). Respondent shall report any violation of the total coliform monitoring requirements to EPA within 10 days of discovery, as required by 40 C.F.R. § 141.21(g)(2).

12. Within 30 days after receiving this Order, Respondent shall notify the public of the violations cited in paragraph 7, above, following the instructions provided with the public notice templates provided to Respondent with this Order. Thereafter, following any future violation of the drinking water regulations, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 days after providing public notice, Respondent shall submit a copy of the notice to EPA.

13. Respondent shall direct all reporting required by this Order to:

U.S. EPA Region 8 (8P-W-DW)
1595 Wynkoop Street
Denver, CO 80202-1129

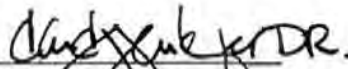


GENERAL PROVISIONS

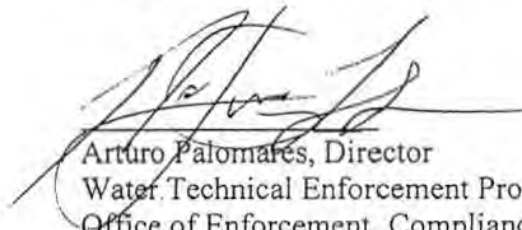
14. This Order does not constitute a waiver, suspension, or modification of any requirement of the Act or drinking water regulations. Issuance of this Order is not an election by EPA to forgo any civil or criminal action.

15. Violation of any part of this Order 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; 40 C.F.R. part 19.

Issued: July 28, 2010.



Michael T. Risher, Director
David Kochlin, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice



Arturo Palomares, Director
Water Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency-Region 8



TIER 3 TEMPLATES

The pages that follow contain templates for Tier 3 violations and situations. Along with the templates are instructions, including the required method of delivery and instructions for completing individual sections of the notices. These instructions are designed to supplement Chapter 7, so you may see much of the information repeated here.

Mandatory language on unknown risk for monitoring violations, which must be included exactly as written, is presented in *italics* (141.205(d)).

You must also include the following italicized language in all notices, where applicable (141.205(d)). Use of this language does *not* relieve you of your obligation to take steps reasonably calculated to notify all persons served:

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.

Templates

Monitoring Violations Annual NoticeBTemplate 3-1

Instructions for Monitoring Violations Annual Notice--Template 3-1

Template on Reverse

Since most monitoring violations are included in Tier 3, you must provide public notice to persons served within one year after you learn of the violation (141.204(b)). Multiple monitoring violations can be serious, and your primacy agency may have more stringent requirements. Check with your primacy agency to make sure you meet its requirements.

Community systems must use one of the following (141.204(c)):

- Hand or direct delivery
- Mail, as a separate notice or included with the bill

Non-community systems must use one of the following (141.204(c)):

- Posting in conspicuous locations
- Hand delivery
- Mail

In addition, both community and non-community systems must use *another* method reasonably calculated to reach others if they would not be reached by the first method (141.204(c)). Such methods could include newspapers, e-mail, or delivery to community organizations. If you post the notice, it must remain posted until the violation is resolved. If the violation has been resolved, you must post the notice for at least one week (141.204(b)). If you mail, post, or hand deliver, print your notice on letterhead, if available.

The notice on the reverse is appropriate for insertion in an annual notice or the CCR, as long as public notification timing and delivery requirements are met (141.204(d)). You may need to modify the template for a notice for individual monitoring violations. This example presents violations in a table; however, you may write out an explanation for each violation if you wish. For any monitoring violation for volatile organic compounds (VOCs) or other groups, you may list the group name in the table, but you must provide the name of every chemical in the group on the notice, e.g., in a footnote.

You may need to modify the notice if you had any monitoring violations for which monitoring later showed a maximum contaminant level or other violation. In such cases, you should refer to the public notice you issued at that time.

Include in your notice the standard language for monitoring and testing procedure violations in *italics* (141.205(d)(2)). If you modify the notice, you may not alter this mandatory language.

Corrective Actions

In your notice, describe corrective actions you took or are taking. Listed below are some steps commonly taken by water systems with monitoring violations. Choose the appropriate language, or develop your own:

- X We have since taken the required samples, as described in the last column of the table above. The samples showed we are meeting drinking water standards.
- X We have since taken the required samples, as described in the last column of the table above. The sample for [contaminant] exceeded the limit. [Describe corrective action; use information from public notice prepared for violating the limit.]
- X We plan to take the required samples soon, as described in the last column of the table above.

After Issuing the Notice

Make sure to send EPA Region 8 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:

Shawn McCaffrey
US EPA Region 8
BENF-W
1595 Wynkoop Street
Denver, CO 80202-1129

Or, you may fax a copy to: Attn: Shawn McCaffrey at 303-312-7202.

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 _____

IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER
Monitoring Requirements Not Met for Lodore Supper Club and Saloon

Our water system violated a drinking water standard over the past two years. Even though this was not an emergency, as our customers, you have a right to know what happened and what we did to correct the situation.

We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not our drinking water meets health standards. We failed to monitor for total coliform during the 4th quarter of 2008, and the 2nd and 4th quarters of 2009.

What should I do?

There is nothing you need to do at this time.

The table below lists the contaminant(s) we did not properly test for during the previous years how often we are supposed to sample for [this contaminant/these contaminants] and how many samples we are supposed to take, how many samples we took, when samples should have been taken, and the date on which follow-up samples were (or will be) taken.

Contaminant	Required sampling frequency	When all samples should have been taken	When samples were or will be taken
Failure to monitor for total coliform	Quarterly	4 th quarter of 2008 2 nd and 4 th quarters of 2009	1 sample each quarter during the year

What happened? What is being done?

For more information, please contact [name and number of contact person] _____ or
 [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 **Lodore Supper Club and Saloon**
 State Water System ID#: **WY5600545**

Date distributed or dates posted: _____



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

COMPLAINANT'S
EXHIBIT NO. 3

2010 DEC 15 AM 9:54

DEC 15 2010

Ref: 8 ENF-W

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

Richard Smith, Owner
Lodore Supper Club and Saloon
P. O. Box 6044
Sheridan, WY 82801-1444

Re: Violation of Administrative Order
Docket No. SDWA-08-2010-0062
Lodore Supper Club and Saloon
PWS ID # WY5600545

Dear Mr. Smith:

On July 28, 2010, the US Environmental Protection Agency (EPA) issued an Administrative Order (the Order), Docket No. SDWA-08-2010-0062, ordering you as owner and/or operator of the Lodore Supper Club and Saloon Public Water System (the system) to comply with various drinking water regulations issued by EPA under the Safe Drinking Water Act (the Act), 42 U.S.C. Section 300f et seq.

Our records indicate that you (Respondent) are in violation of the Administrative Order. Among other things, the Order included the following requirements (quoted from items 11 and 12. of the Order section on page 2 of the Order):

1. Respondent shall monitor the system's water quarterly for total coliform bacteria, as required by 40 C.F.R. § 141.21. Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results were received, as required by 40 C.F.R. § 141.31(a). Respondent shall report any violation of the total coliform monitoring requirements to EPA within 10 days of discovery, as required by 40 C.F.R. § 141.21(g)(2).

You did not monitor for total coliform bacteria at the system during the 3rd quarter (July - September) of 2010 and failed to report this violation to EPA.

2. Within 30 days after receiving this Order, Respondent shall notify the public of the violations cited in paragraph 7, above, following the instructions provided with the public notice templates provided to Respondent with this Order. Thereafter, following any future violation of the drinking water regulations, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 days after providing public notice, Respondent shall submit a copy of the notice to EPA.


EPA has not received Respondent's public notice of the above-mentioned violations. Please conduct the public notice as required in the Order and submit a copy to EPA.

EPA is considering additional enforcement action as a result of the non-compliance with the Order. Violating an administrative order may lead to (1) a penalty of up to \$37,500 per day per violation of the Order, and/or (2) a court injunction ordering compliance.

If you have any questions or wish to have an informal conference with EPA, you may contact Shawn McCaffrey at 1-800-227-8917, extension 6515 or (303) 312-6515. Any questions from your attorneys should be directed to David Rochlin, Senior Enforcement Attorney, at (303) 312-6892 or at the following address:

David Rochlin
Senior Enforcement Attorney
U.S. EPA, Region 8 (8-ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge your prompt attention to this matter.



Lisa Kahn, Team Leader
Drinking Water Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc: Tina Artemis, EPA Regional Hearing Clerk
Wyoming DEQ (via email)
Wyoming DOH (via email)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

COMPLAINANT'S
EXHIBIT NO. 4

2011 JUN 14 AM 11:04

JUN 14 2011

Ref: 8 ENF-W

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard Smith, Owner
Lodore Supper Club and Saloon
P. O. Box 6044
Sheridan, WY 82801-1444

Re: Violation of Administrative Order
Docket No. SDWA-08-2010-0062
Lodore Supper Club and Saloon
PWS ID # WY5600545

Dear Mr. Smith:

On July 28, 2010, the US Environmental Protection Agency (EPA) issued an Administrative Order (the Order), Docket No. SDWA-08-2010-0062, ordering you as owner and/or operator of the Lodore Supper Club and Saloon Public Water System (the system) to comply with various drinking water regulations issued by EPA under the Safe Drinking Water Act (the Act), 42 U.S.C. Section 300f *et seq.*

Our records indicate that you (Respondent) are again in violation of the Administrative Order. Among other things, the Order included the following requirements (quoted from items 11 and 12, of the Order section on page 2 of the Order):

1. Respondent shall monitor the system's water quarterly for total coliform bacteria, as required by 40 C.F.R. § 141.21. Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results were received, as required by 40 C.F.R. § 141.31(a). Respondent shall report any violation of the total coliform monitoring requirements to EPA within 10 days of discovery, as required by 40 C.F.R. § 141.21(g)(2).

You did not monitor for total coliform bacteria at the system during the 1st quarter (January - March) of 2011 and failed to report this violation to EPA.

2. Within 30 days after receiving this Order, Respondent shall notify the public of the violations cited in paragraph 7, above, following the instructions provided with the public notice templates provided to Respondent with this Order. Thereafter, following any future violation of the drinking water regulations, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 days after providing public notice, Respondent shall submit a copy of the notice to EPA.


EPA has not received Respondent's public notice of the above-mentioned violations. Please conduct the public notice as required in the Order and submit a copy to EPA.

EPA is considering additional enforcement action as a result of the non-compliance with the Order. Violating an administrative order may lead to (1) a penalty of up to \$37,500 per day per violation of the Order, and/or (2) a court injunction ordering compliance.

If you have any questions or wish to have an informal conference with EPA, you may contact Shawn McCaffrey at 1-800-227-8917, extension 6515 or (303) 312-6515. Any questions from your attorneys should be directed to David Rochlin, Senior Enforcement Attorney, at (303) 312-6892 or at the following address:

David Rochlin
Senior Enforcement Attorney
U.S. EPA, Region 8 (8-ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge your prompt attention to this matter.



Lisa Kahn, Team Leader
Drinking Water Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc: Tina Artemis, EPA Regional Hearing Clerk
Wyoming DEQ (via email)
Wyoming DOH (via email)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

COMPLAINANT'S
EXHIBIT NO. 5

2011 DEC 19 AM 11:48

DEC 19 2011

Ref: 8 ENF-W

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard Smith, Owner
Lodore Supper Club and Saloon
P. O. Box 6044
Sheridan, WY 82801-1444

Re: 3rd Violation of Administrative Order
Docket No. SDWA-08-2010-0062
Lodore Supper Club and Saloon
PWS ID # WY5600545

Dear Mr. Smith:

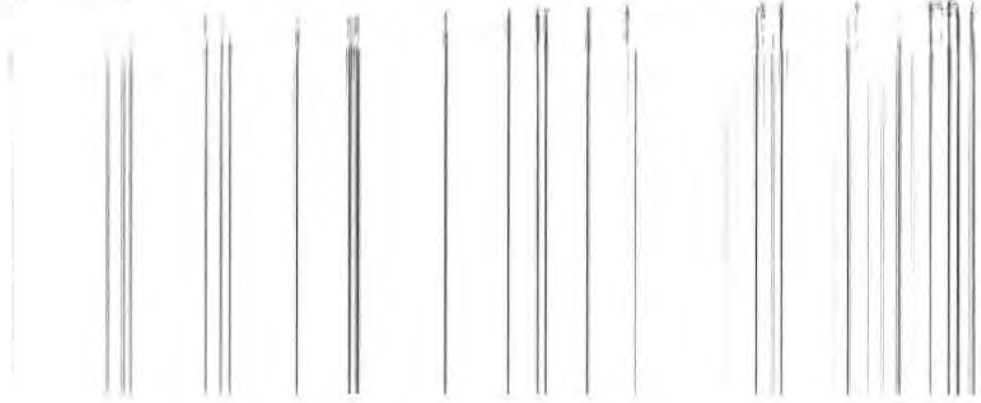
On July 28, 2010, the US Environmental Protection Agency (EPA) issued an Administrative Order (the Order), Docket No. SDWA-08-2010-0062, ordering you as owner and/or operator of the Lodore Supper Club and Saloon Public Water System (the System) to comply with various drinking water regulations issued by EPA under the Safe Drinking Water Act (the Act), 42 U.S.C. Section 300f et seq.

Our records indicate that you (Respondent) are again in violation of the Administrative Order. Among other things, the Order included the following requirements (quoted from items 11 and 12. of the Order section on page 2 of the Order):

1. Respondent shall monitor the system's water quarterly for total coliform bacteria, as required by 40 C.F.R. § 141.21. Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results were received, as required by 40 C.F.R. § 141.31(a). Respondent shall report any violation of the total coliform monitoring requirements to EPA within 10 days of discovery, as required by 40 C.F.R. § 141.21(g)(2).

You did not monitor for total coliform bacteria at the System during the 3rd quarter (July - September) of 2011 and failed to report this violation to EPA.

2. Within 30 days after receiving this Order, Respondent shall notify the public of the violations cited in paragraph 7. above, following the instructions provided with the public notice templates provided to Respondent with this Order. Thereafter, following any future violation of the drinking water regulations, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 days



2. Within 30 days after receiving this Order, Respondent shall notify the public of the violations cited in paragraph 7, above, following the instructions provided with the public notice templates provided to Respondent with this Order. Thereafter, following any future violation of the drinking water regulations, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 days after providing public notice, Respondent shall submit a copy of the notice to EPA.


EPA has not received Respondent's public notice of the above-mentioned violations. Please conduct the public notice as required in the Order, including new violations since the Order was issued, and submit a copy to EPA.

EPA is considering additional enforcement action as a result of continued non-compliance with the Order. Violating an administrative order may lead to (1) a penalty of up to \$37,500 per day per violation of the Order, and/or (2) a court injunction ordering compliance.

If you have any questions or wish to have an informal conference with EPA, you may contact Shawn McCaffrey at 1-800-227-8917, extension 6515 or (303) 312-6515. Any questions from your attorneys should be directed to David Rochlin, Senior Enforcement Attorney, at (303) 312-6892 or at the following address:

David Rochlin
Senior Enforcement Attorney
U.S. EPA, Region 8 (8-ENF-I.)
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge your prompt attention to this matter.



Lisa Kahn, Team Leader
Drinking Water Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc: Tina Artemis, EPA Regional Hearing Clerk
Wyoming DEQ (via email)
Wyoming DOH (via email)
Rick Hall, Lodore Supper Club, General Manager