

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2015 SEP 14 PM 3:56  
FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: \_\_\_\_\_ )  
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 )  
Bureau of Indian Affairs, )  
 )  
 )  
Respondent. \_\_\_\_\_ )

Docket No. SDWA-08-2015-0045

**ADMINISTRATIVE ORDER**

1. This Administrative Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by section 1414 of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300g-3, as properly delegated to the undersigned officials.
2. The Bureau of Indian Affairs (the BIA or Respondent) is a federal agency that owns and/or operates the Crow Agency Public Water System (TP01 or the System) which provides piped water to the community of Crow Agency, Montana, for human consumption. The System is located within the exterior boundaries of the Crow Indian Reservation.
3. The System is supplied solely by surface water with an intake on the Little Big Horn River. The raw water is treated via a conventional filtration system including coagulation, flocculation, sedimentation, filtration and chlorination.
4. The System has approximately 430 service connections used by year-round residents and regularly serves an average of approximately 1,600 year-round residents. Therefore, the System is a “public water system” and a “community water system” as defined in 40 C.F.R. § 141.2 and section 1401 of the Act, 42 U.S.C. § 300f.
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 section 1414(i) of the Act, 42 U.S.C. § 300g-3(i).

VIOLATION

6. The requirement to respond to a significant deficiency identified in sanitary surveys performed by the EPA is set forth in 40 C.F.R. § 141.723.
7. A sanitary survey is an onsite review of the water source, facilities, equipment, maintenance and monitoring compliance of a public water system to evaluate the adequacy of the public water system, its sources and operations, and the distribution of safe drinking water. 40 C.F.R. § 141.723(a).
8. A significant deficiency is defined by the Drinking Water Regulations to include a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution

system that the EPA determines to be causing, or has the potential for causing, the introduction of contamination into the water delivered to consumers. 40 C.F.R. § 141.723(b).

9. For sanitary surveys performed by the EPA, systems must respond in writing to significant deficiencies identified in sanitary survey reports no later than 45 days after receipt of the report, indicating how and when the system will address significant deficiencies noted in the survey. 40 C.F.R. § 141.723(c).

10. Systems must correct significant deficiencies identified in sanitary survey reports according to the schedule approved by the EPA, or if there is no approved schedule, according to the schedule reported under paragraph (c) of this section if such deficiencies are within the control of the system. 40 C.F.R. § 141.723(d).

11. The EPA performed a sanitary survey of the System on July 8 and 9, 2013.

12. During the sanitary survey of the System, the EPA identified the System's lack of a certified operator at the level required for the System as a significant deficiency.

13. The EPA issued the Respondent a final Sanitary Survey Report for the System on December 3, 2013, noting the lack of a certified operator as a significant deficiency.

14. According to the plan and schedule approved by the EPA, the Respondent was required to have at least one properly certified operator (MT 1B for treatment and MT 3A for distribution) by March 31, 2014.

15. The System's operators registered and attempted to take the exams in February 2015 for their MT 1B operator certification for treatment and the MT 3A operator certification for distribution. However, neither operator passed. The registration is valid until October 2015, during which time the operators may take the exam as many times as they need to pass.

16. The EPA provided Respondent with a Notice of Violation (NOV) based on the failure to complete corrective action on April 22, 2014, citing Respondent's failure to correct a significant deficiency according to the schedule approved by the EPA in violation of 40 C.F.R. § 141.723(d).

17. Respondent's failure to correct the operator certification significant deficiency by retaining a properly certified operator for the System by the EPA-approved deadline of March 31, 2014, constitutes a violation of 40 C.F.R. § 141.723(d).

### ORDER

Based on the above violations, the Respondent is ordered to perform the following actions upon the Respondent's receipt of this Order:



18. Within 5 days of receipt of this Order, the Respondent shall provide the EPA a status update with a revised deadline for obtaining a certified operator at the appropriate distribution and treatment levels for the System. Options for obtaining appropriate System operator certification include (1) successful passage by the System's operators of the MT 1B treatment and MT 3A distribution operator certification exams; (2) successful passage of the Treatment Level 2 and Distribution Level 1 exams provided by an EPA-approved certification program; or (3) hiring a contract operator with current certification at levels appropriate for the System. The Respondent is required to have a properly certified operator for the System within 60 days of receipt of this Order.

19. Within 30 days after receipt of this Order, the Respondent shall notify the public of the violation cited in paragraph 17 above as required by 40 C.F.R. part 141, subpart Q. Thereafter, following any future violation of the Drinking Water Regulations, the Respondent shall comply with the applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 days after providing public notice, the Respondent shall submit a copy of the notice to the EPA.

20. This Order shall be binding on the Respondent and any person (e.g., employee, contractor, or other agent) acting in concert with the Respondent.

21. If Respondent (a) leases or sells the System to another person or entity, or (b) contracts with or hires any other person or entity to operate the System, Respondent shall, no later than the date of such lease, sale, or other contract, provide a copy of this Order to the lessee, purchaser, or contractor. No later than 10 days thereafter, Respondent shall notify the EPA in writing of the lease, sale, or other contract, with such notification to include the name and contact information of the person who has leased, bought, or contracted to operate the System. Respondent shall remain obligated to comply with this Order even if Respondent leases the System to another person or entity or hires another person or entity to operate the System.

22. Respondent shall send all reporting and notifications required by this Order in writing to:

Sienna Meredith  
U.S. EPA, Region 8  
10 West 15<sup>th</sup> Street, Suite 3200  
Helena, MT 59626

#### GENERAL PROVISIONS

23. 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.

24. Violation of any part of this Order may subject the Respondent to a civil penalty of up to \$32,500 per day of violation (as adjusted for inflation). Violation of the Act or the Drinking Water Regulations



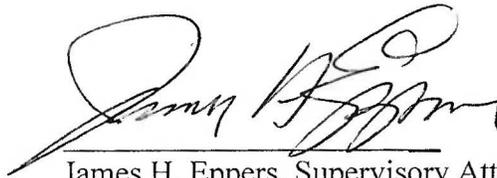
may subject the Respondent to a civil penalty of up to \$32,500 per day per violation (as adjusted for inflation). 42 U.S.C. §§300g-3, 300j-6, 300j-8; 40 C.F.R. part 19.

25. Respondent may seek federal judicial review of this Order pursuant to section 1448(a) of the Safe Drinking Water Act, 42 U.S.C. § 300j-7(a).

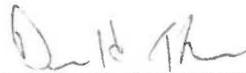
26. This Order is effective upon receipt by the Respondent and will continue to be in effect until closed by the EPA.

SEP 14 2015

Issued: \_\_\_\_\_, 2015.



James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice



Debra H. Thomas, Acting Director  
Montana Office



**LT2ESWTR Failure to Take Corrective Action Within Required Time Frame  
Public Notice**

**IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER**

**\_\_\_\_\_ (PWS Name) Failed to Correct a Significant Deficiency  
Within Required Time Frame.**

Our water system recently violated a drinking water requirement. Although this incident was not an emergency, as our customers, you have a right to know what happened and what we did (are doing) to correct this situation.

A routine sanitary survey conducted on (provide survey date) \_\_\_\_\_ by the Environmental Protection Agency Region 8 (EPA) found (describe significant deficiency in our water system) \_\_\_\_\_

According to the EPA's Long Term 2 Enhanced Surface Water Treatment Rule, we were required to take action to correct this deficiency. However, we failed to take this action according to the schedule we submitted to the EPA.

**What should I do?**

- There is nothing you need to do. You do not need to boil your water or take other corrective actions.

**What does this mean?**

This is not an emergency. If it had been, you would have been notified within 24 hours.

*\*Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.\** **These symptoms, however, are not caused only by organisms in drinking water, but also by other factors. If you experience any of these symptoms and they persist, you may want to seek medical advice.**

**What is being done?**

(Describe corrective action) \_\_\_\_\_

We anticipate resolving the problem within (estimated time frame) \_\_\_\_\_.

For more information, please contact (name of system contact) \_\_\_\_\_ at (phone number) \_\_\_\_\_ or (mailing address) \_\_\_\_\_.

*\*Please share this information with all the other people who drink this water, especially those who may not have received this notice directly. 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 (system name) \_\_\_\_\_.

Public Water System ID#: \_\_\_\_\_.

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

# Instructions for LT2ESWTR Failure to Take Corrective Action Within Required Time

## Template on Reverse

A system's failure to be in compliance with an EPA approved corrective action plan and schedule for a significant deficiency under the Long Term 2 Enhanced Surface Water Treatment Rule is a treatment technique violation and requires Tier 2 notification. You must provide public notice to persons served as soon as practical but within 30 days after you learn of the violation [40 CFR 141.203(b)]. You must issue a repeat notice every three months for as long as the violation persists. Your primacy agency may have more stringent requirements for treatment technique violations. Check with your agency to make sure you meet all requirements.

Community systems must use one of the following methods [40 CFR 141.203(c)]:

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

Noncommunity systems must use one of the following methods [40 CFR 141.203(c)]:

- Posting in conspicuous locations
- Hand delivery
- Mail

In addition both community and noncommunity systems must use *another* method reasonably calculated to reach others if they would not be reached by the first method [40 CFR 141.203(c)]. Such methods could include newspapers, e-mail, or delivery to community organizations. If you mail, post, or hand deliver, print your notice on your system's letterhead if available.

The notice on the reverse is appropriate for mailing, posting, or hand delivery. If you modify this notice, you must still include all required PN elements from 40 CFR 141.205(a) and leave the mandatory language unchanged (see below).

### Mandatory Language

Mandatory language on health effects (from Appendix B to Subpart Q) must be included as written (with blanks filled in) and is presented in this notice in italics and with an asterisk on either end.

You must also include standard language to encourage the distribution of the public notice to all persons served, where applicable [40 CFR 141.205(d)]. This language is also presented in this notice in italics and with an asterisk on either end.

### Corrective Action

In your notice, describe corrective actions you are taking. Listed below are some steps commonly taken by water systems with Surface Water Treatment Rule treatment technique violations. Depending on the corrective action you are taking, you can use one or more of the following statements, if appropriate, or develop your own text:

- Although we did not meet our deadline, we are now in consultation with the state to develop a corrective action plan.
- The significant deficiency has been identified and addressed.
- We have implemented a short term plan to address the immediate issue while we pursue the long-term solution.

### Repeat Notices

For repeat notices, you should state how long the violation has been ongoing and remind consumers of when you sent out any previous notices. If you are making progress with correcting the significant deficiency or addressing the fecal indicator-positive source sample, describe it. Alternatively, if funding or other issues are delaying corrective action, let consumers know.

### 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 public notification requirements within ten days after issuing the notice [40 CFR 141.31(d)].

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one true and correct copy of the foregoing **ADMINISTRATIVE ORDER** were hand delivered to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail to the following Monday, September 14, 2015 as indicated below:

to:

Mr. Darryl LaCounte, Acting Regional Director  
Bureau of Indian Affairs, Rocky Mountain Region  
2021 4<sup>th</sup> Avenue North  
Billings, MT  
**CERTIFIED MAIL # 7008 3230 0003 0764**

and true copy by regular mail to:

The Honorable Darrin Old Coyote, Chairman  
Ms. Connie Howe, Environmental Director  
Crow Tribe  
P.O. Box 159  
Crow Agency, MT 59022

and true copies by email to:

Mr. Bruce Ward, Engineer  
Bureau of Indian Affairs, Rocky Mountain Region  
bruce.ward@bia.gov

Ms. Beverly Stiller, Administrative Manager  
Bureau of Indian Affairs, Rocky Mountain Region  
beverly.stiller@bia.gov

Ms. Vianna Stewart, Crow Agency Superintendent  
Bureau of Indian Affairs, Crow Agency  
vianna.stewart@bia.gov

Mr. Leroy Cummins, Facility Manager  
Bureau of Indian Affairs, Crow Agency  
leroy.cummins@bia.gov

Date: Monday, September 14, 2015

By: Dayle Aldinger  
Dayle Aldinger



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, MONTANA OFFICE

FEDERAL BUILDING, 10 West 15<sup>TH</sup> Street, Suite 3200  
HELENA, MT 59626-0096  
Phone 866-457-2690  
www.epa.gov/region08

SEP 14 2015

Ref: 8MO

**CERTIFIED MAIL # 7008 3230 0003 0764**  
**RETURN RECEIPT REQUESTED**

Mr. Darryl LaCounte, Acting Regional Director  
Bureau of Indian Affairs, Rocky Mountain Region  
2021 4<sup>th</sup> Avenue North  
Billings, Montana 59101

Re: In the Matter of the U.S. Department of the Interior, Bureau of Indian Affairs, Crow Agency (TP01) Public Water System, Administrative Order, Docket No. **SDWA-08-2015-0045**

Dear Mr. LaCounte:

Enclosed is an Administrative Order (Order) issued by the U.S. Environmental Protection Agency (EPA) to the U.S. Department of the Interior, Bureau of Indian Affairs Rocky Mountain Region (BIA), under the authority of section 1414(g) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(g). Among other things, the Order alleges that the BIA as owner and/or operator of the Crow Agency (TP01) Public Water System (System), has violated the National Primary Drinking Water Regulations (Drinking Water Regulations) at 40 C.F.R. part 141.

The Order is effective upon the date received. Please review the Order and within 10 days provide the EPA with any pertinent information you believe the EPA may not have (e.g., public notices that may have been issued but not submitted to the EPA, dates exams may have been taken, etc.).

The Order requires the System 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. If the BIA complies with the Order, the EPA may close the Order without further action. Failure to comply with the Order may lead to substantial civil penalties.

Please be aware that you are required to submit to the EPA a plan and schedule for bringing the System into compliance with the Drinking Water Regulations. To submit information, to request paper copies of public notice forms and instructions, or to request an informal conference with the EPA, please contact

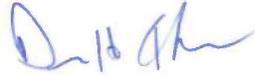


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Sienna Meredith at the above address or by phone at (800) 457-2690, extension 5026, or (406) 457-5026. Any questions from the BIA's attorney should be directed to Amy Swanson, Enforcement Attorney, who may be reached by phone at (800) 227-8917, extension 6906, or (303) 312-6906.

I urge your prompt attention to this matter.

Sincerely,



Debra H. Thomas  
Acting Director

Enclosures

1. Order
2. Public Notice Template

cc: Mr. Bruce Ward, Engineer,  
Ms. Beverly Stiller, Administrative Manager  
Bureau of Indian Affairs, Rocky Mountain Region

Ms. Vianna Stewart, Crow Agency Superintendent  
Mr. Leroy Cummins, Facility Manager  
Bureau of Indian Affairs Crow Agency

The Honorable Darrin Old Coyote, Chairman  
Ms. Connie Howe, Environmental Director  
Crow Tribe

Ms. Tina Artemis, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 8

