

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:)
) DOCKET No. SDWA-07-2020-0124
)
KICKAPOO PUBLIC WATER SYSTEM,) AMENDED
KICKAPOO TRIBE IN KANSAS, OWNER) FINDINGS OF VIOLATION and
PWS ID# 070000002) ORDER FOR COMPLIANCE ON
) CONSENT
)
RESPONDENTS)
)
Proceedings under Section 1414(g) of the Safe)
Drinking Water Act, 42 U.S.C. § 300g – 3(g))
)

The United States Environmental Protection Agency and the Kickapoo Public Water System and the Kickapoo Tribe in Kansas entered into a FINDINGS OF VIOLATION and ORDER FOR COMPLIANCE ON CONSENT on September 15, 2020. The following findings and Order are an AMENDMENT to the above-referenced matter.

STATUTORY AUTHORITY

The following findings are made and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 1414(g) of the Safe Drinking Water Act (“SDWA” or the “Act”), 42 U.S.C. § 300g – 3(g). The Administrator has delegated the authority to issue this Order to the Regional Administrator of EPA Region 7 who has further delegated such authority to the Director of the Enforcement and Compliance Assurance Division.

1. This Amended Administrative Order on Consent (Order) is entered into voluntarily by and between the EPA, the Kickapoo Public Water System, and the Kickapoo Tribe in Kansas (Respondents). This Order is issued pursuant to Section 1414(g) of the Act, 42 U.S.C. § 300g – 3(g). Respondents neither admit nor deny the findings, legal conclusions, or determinations of the Order and agree not to contest the authority or jurisdiction of the Regional Administrator of EPA Region 7 or his designees to issue this Order in this or in any subsequent proceeding to enforce the terms of this Order. This Order constitutes an enforceable agreement between Respondents and EPA. Respondents agree to service of this Order by electronic mail.

2. The EPA has primary enforcement responsibility for the Act’s public water supply protection program on the Kickapoo Tribal Reservation (the Reservation). No other governmental authority has applied for and been approved to administer the program on the Reservation.

FACTUAL BACKGROUND

3. The Kickapoo Tribe in Kansas is a federally recognized Indian Tribe within the United States (72 Fed. Reg. 13648, 13650) (March 22, 2007). The term “Indian Tribe” is defined by Section 1401(14) of the Act, 42 U.S.C. § 300f (14) as any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over any area.
4. Respondents are "persons" as defined by Section 1401(12) of the Act, 42 U.S.C. § 300f (12).
5. At all times relevant to the violations alleged herein, Respondents owned and operated a Public Water System (PWS), the Kickapoo Tribe Public Water System (the System), which provides water for human consumption on the Reservation. The System, located on the Reservation near 1107 Goldfinch Road in Horton, Kansas, serves approximately 560 year-round residents and 869 transient customers annually through 196 service connections.
6. The System is a “public water system” and “community water system” as defined by Section 1401 of the Act, 42 U.S.C. § 300f, and is designated as PWS Number 070000002.
7. As the owner and operator of the System, Respondents are “suppliers of water” as that term is defined in Section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. As provided in Section 1411 of the Act, 42 U.S.C. § 300g, Respondents are therefore required to comply with the Act and the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. Part 141.
8. Paragraphs 8-59 of the September 15, 2020 FINDINGS OF VIOLATION and ORDER FOR COMPLIANCE ON CONSENT are incorporated by reference in this AMENDED FINDINGS OF VIOLATION and ORDER FOR COMPLIANCE ON CONSENT.

FINDINGS OF VIOLATIONS

Count VI

Long-Term 1 Enhanced Surface Water Treatment Rule

9. Under the Long-Term 1 Enhanced Surface Water Treatment Rule, in accordance with 40 C.F.R. § 141.551(b), the turbidity measured at the combined filter effluent (CFE) of the filters at the Kickapoo Tribal Waterworks (KTW) treatment plant must not exceed 1 NTU at any time. Based on information reported by the KTW, the CFE turbidity of the KTW treatment plant exceeded 1 NTU as follows:

<u>Date</u>	<u>CFE Turbidity (NTU)</u>
7/2/20	1.5
7/3/20	2.1
7/6/20	1.6
7/16/20	1.6
7/17/20	3.4
7/22/20	1.7
8/9/20	5.0
8/11/20	2.1
8/14/20	1.4
8/26/20	1.1
9/22/20	1.3
10/9/20	1.1
11/18/20	1.7
11/18/20	1.2
12/11/20	1.3
12/20/20	1.3
1/19/21	2.0
1/19/21	2.1
2/16/21	1.2

The KTW is therefore in violation of 40 C.F.R. § 141.551(b).

10. Under the Long-Term 1 Enhanced Surface Water Treatment Rule, per 40 C.F.R. § 141.551 (a), the turbidity measured at the combined filter effluent of the filters at the KTW water treatment plant must be no greater than 0.3 NTU in at least 95 percent of the turbidity measurements taken each month. For August 2020, the KTW reported that 82% of the combined filter effluent turbidity readings were below 0.3 NTU. Therefore, the KTW is in violation of 40 C.F.R. § 141.551(a) for August 2020.

Count VII

Surface Water Treatment Rule

11. Under the Surface Water Treatment Rule, in accordance with 40 C.F.R. § 141.75(b)(3)(iii), the KTW is required to notify EPA Region 7 as soon as possible, but no later than the end of the next business day, when the concentration of residual chlorine in water entering the distribution system falls below 0.2 mg/L. Region 7 was notified of residual chlorine levels entering the distribution system below 0.2 mg/L as follows:

<u>Date Residual Chlorine Below 0.2 mg/L</u>	<u>Date Reported to EPA</u>
7/3/20	8/25/20
7/19/20	8/25/20
7/29/20	8/25/20

8/13/20	9/23/20
8/14/20	9/23/20
8/16/20	9/23/20
8/17/20	9/23/20
8/26/20	9/23/20
8/31/20	9/23/20
1/14/21	1/27/21

Therefore, the KTW is in violation of 40 C.F.R. § 141.75(b)(3)(iii).

12. Under the Surface Water Treatment Rule, in accordance with 40 C.F.R. §141.723(d), the KTW is required to address significant deficiencies according to the schedule approved by EPA. A deadline extension until September 30, 2020, was granted to the KTW to address the filter media significant deficiency identified during the May 2019 sanitary survey. A deadline extension until October 2, 2020, was granted to the KTW to address the significant deficiency related to inspecting and repairing the Site 2 Tower identified during the April 2016 sanitary survey. Information documenting that these significant deficiencies have been corrected has not been provided to EPA. Therefore, based on the information available to EPA, the KTW is in violation of 40 C.F.R. § 141.723(d).

Count VIII

Phase II/V Rule

13. Under the Phase II/V Rule, in accordance with 40 C.F.R. § 141.23(c)(1), surface water systems without a waiver must determine compliance with the inorganic contaminant maximum contaminant levels annually. The KTW was required to monitor for the following inorganic contaminants during 2020:

- Antimony
- Arsenic
- Barium
- Beryllium
- Cadmium
- Chromium
- Cyanide
- Flouride
- Mercury
- Selenium
- Thallium

The KTW failed to conduct the required monitoring during 2020 for each of the inorganic contaminants listed above. Therefore, the KTW is in violation of 40 C.F.R. § 141.23(c)(1).

14. Under the Phase II/V Rule, in accordance with 40 C.F.R. § 141.24(f)(5), surface water systems on reduced monitoring must determine compliance with the volatile organic

contaminant maximum contaminant levels annually. The KTW was required to monitor for the following volatile organic contaminants during 2020:

- 1,1,1-Trichloroethane
- 1,1,2-Trichloroethane
- 1,1-Dichloroethylene
- 1,2,4-Trichlorobenzene
- 1,2-Dichloroethane
- 1,2-Dichloropropane
- Benzene
- Carbon tetrachloride
- Monochlorobenzene
- cis-1,2-Dichloroethylene
- Dichloromethane
- Ethylbenzene
- o-Dichlorobenzene
- para-Dichlorobenzene
- Styrene
- Tetrachloroethylene
- Toluene
- Trans-1,2-Dichloroethylene
- Trichloroethylene
- Vinyl Chloride
- Xylenes (total)

The KTW failed to conduct the required monitoring during 2020 for each of the volatile organic contaminants listed above. Therefore, the KTW is in violation of 40 C.F.R. § 141.24(f)(5).

15. Under the Phase II/V Rule, in accordance with 40 C.F.R. § 141.23(d)(5), community water systems on annual nitrate monitoring must determine compliance with the maximum contaminant level during the quarter which previously resulted in the highest analytical result. The KTW is required to monitor for nitrate during the fourth quarter of the calendar year (October 1- December 31). The KTW failed to monitor for nitrate in 2020. Therefore, the KTW is in violation of 40 C.F.R. § 141.23(d)(5).
16. Under the Phase II/V Rule, in accordance with 40 C.F. R § 141.24, the KTW is required to monitor for atrazine during the quarter that previously yielded the highest analytical result. Based on the KTW's previous analytical results, monitoring for atrazine must be conducted during April, May or June, therefore, the KTW was required to monitor for atrazine during April, May, or June 2020. The KTW failed to monitor for atrazine during the required timeframe; therefore, the KTW is in violation of 40 C.F. R § 141.24(h)(7)(iii).

Count IX

Stage 1 Disinfection Byproducts Rule

17. Under the Stage 1 Disinfection Byproducts Rule, in accordance with 40 C.F.R. § 141.132(d)(1), Subpart H systems which use conventional filtration treatment must monitor each treatment plant for total organic carbon (TOC) no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. Systems must also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. At the same time as the source water sample is taken, systems must monitor for alkalinity in the source water prior to any treatment. The KTW is required to monitor for TOC and alkalinity each month in accordance with 40 C.F.R. § 141.132(d)(1). The KTW failed to monitor for these disinfection byproduct precursors in December 2020. Therefore, based on the information available to EPA, the KTW is in violation of 40 C.F.R. § 141.132(d)(1).

18. Under the Stage 2 Disinfection Byproducts Rule, in accordance with 40 C.F. R § 141.621, the KTW is required to monitor quarterly for disinfectant byproducts, including total trihalomethanes and haloacetic acids, per the schedule and at the location identified in its monitoring plan. Pursuant to its monitoring plan, the KTW was required to monitor for disinfectant byproducts in August 2020. The KTW failed to monitor for disinfection byproducts in August 2020. Therefore, the KTW is in violation of 40 C.F. R § 141.621(a)(2) for that time period.

Count X

Lead and Copper Rule

19. Under the Lead and Copper Rule, in accordance with 40 C.F.R. §141.86(d)(4)(iv), public water systems on a reduced monitoring schedule must monitor at representative sample sites, in accordance with the approved lead and copper monitoring plan, between June 1 and September 30. The KTW failed to monitor for lead and copper in 2020. Therefore, the KTW is in violation of 40 C.F.R. §141.86(d)(4)(iv).

Count XI

Public Notification Rule

20. Under the Public Notification Rule, in accordance with 40 C.F.R. § 141.203, a Tier 2 public notice must be issued as soon as practical, but no later than 30 days after the system learns of certain violations as described in 40 C.F.R. § 141.203(a).

21. The KTW has not submitted certain required Tier 2 public notifications as outlined in Attachment 1. Therefore, the KTW is in violation of 40 C.F.R. § 141.203.

ORDER FOR COMPLIANCE ON CONSENT

Based on the Factual Background and Findings of Violation set forth above, and pursuant to Section 1414(g) of the SDWA, 42 U.S.C. § 300g – 3(g), EPA hereby ORDERS, and Respondents hereby AGREE to take, the actions described below:

Compliance with Long-Term 1 Enhanced Surface Water Treatment Rule

22. Within 21 days of the effective date of this Order, KTW shall submit a plan, subject to EPA review and approval, outlining actions they will implement to ensure CFE turbidity remains in compliance with all regulatory requirements, and dates by which such actions will be implemented.
23. On an ongoing basis, the KTW must report to EPA the date and value of any CFE turbidity measurement taken during the month that exceeds 1 NTU. Such reporting must be submitted to Region 7 no later than 24 hours from its occurrence. Alternatively, the KTW may issue a Tier 1 Public Notice in lieu of reporting to EPA within 24 hours.

Compliance with Surface Water Treatment Rule

24. On an ongoing basis, notify Region 7 as soon as possible, but no later than the end of the next business day, when the concentration of residual chlorine in water entering the distribution system falls below 0.2 mg/L. Such notification shall include the duration the residual was below 0.2 mg/L.
25. Address the significant deficiencies outlined in paragraph 12 above.
 - i. Within 14 days of the effective date of this Order, the KTW must address the filter media significant deficiency.
 - ii. Within 14 days of the effective date of this Order, the KTW must make all necessary repairs to ensure the integrity of the roof of the Site 2 Tower.
 - iii. Within 14 days of the effective date of this Order, the KTW must propose a date, subject to EPA approval, by which all other repairs necessary to the Site 2 Tower will be completed.

Compliance with the Phase II/V Rule

26. Conduct appropriate monitoring to determine compliance with the inorganic contaminant maximum contaminant levels no later than December 31, 2021.
27. Conduct appropriate monitoring to determine compliance with the volatile organic contaminant maximum contaminant levels no later than December 31, 2021.
28. Conduct appropriate monitoring to determine compliance with the nitrate maximum contaminant level between October 1- December 31, 2021.

29. Conduct monitoring for atrazine during April, May, or June 2021.
30. Submit monitoring results to EPA for all monitoring outlined in Paragraphs 26-29 by the 10th day of the month following the monitoring.

Compliance with the Disinfection Byproducts Rule

31. On an ongoing basis, conduct monthly monitoring for disinfection byproducts precursors in accordance with 40 C.F.R. § 141.132(d)(1).
32. On an ongoing basis, conduct quarterly monitoring for disinfection byproducts in accordance with 40 C.F.R. § 141.621.
33. Submit monitoring results to EPA for all monitoring outlined in Paragraphs 31-32 by the 10th day of the month following the monitoring.

Compliance with the Lead and Copper Rule (LCR)

34. Conduct the initial round of standard monitoring in accordance with the LCR sampling plan approved by EPA on January 26, 2021, no later than June 30, 2021.
35. Conduct a second round of standard monitoring in accordance with the LCR sampling plan approved by EPA on January 26, 2021, no later than December 31, 2021.
36. Conduct ongoing monitoring under the LCR following the second round of standard monitoring consistent with the LCR as prescribed by EPA.
37. Submit monitoring results to EPA for all monitoring outlined in Paragraphs 34-35 by the 10th day of the month following the end of the monitoring period.
38. Perform consumer notification of lead tap monitoring results and any necessary public education when lead tap monitoring results exceed the lead action level in accordance with 40 C.F.R. §141.85.

Compliance with the Public Notification Rule

39. Post all required Tier 2 and Tier 3 public notifications as outlined in Attachment 1.
40. Provide a copy of each public notice and certification that it was completed to EPA within ten days of completion in accordance with 40 C.F.R. § 141.31(d).

Capacity Development

41. The KTW shall develop or update Operations and Maintenance (O&M) Plans or Standard Operating Procedures (SOPs) for the drinking water system. The O&M Plans or SOPs shall be submitted to EPA for review and approval within six (6) months of the Effective Date of

this Order. Upon approval by EPA, KTW shall implement the approved Plans or SOPs. The Drinking Water O&M Plan or SOPs shall be based on guidance found at https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/o&m.pdf.

42. Subject to availability of training, within six (6) months of the Effective Date of this Order or within six (6) months of being appointed to the Tribal Council, whichever is later, the Kickapoo Tribal Chairman and his/her designee from the Kickapoo Tribal Council shall complete Board and Council Training for management of Drinking Water Utility Systems.
43. For failure to comply with the following requirements listed in Paragraphs 43.i through 43.iv, EPA may, in the exercise of its discretion, require the KTW to conduct a study regarding the feasibility of connecting the PWS to another public water system to provide drinking water to the Kickapoo Reservation if any one of the following circumstances occurs:
 - i. For more than sixty (60) consecutive days the KTW has not employed a Drinking Water Operator who is appropriately certified in accordance with EPA licensing provisions for operations of the KTW system;
 - ii. KTW fails to timely monitor for any contaminants required by the NPDWR and the KTW's sampling plans for three (3) consecutive months, or four (4) months in any twelve (12) month period;
 - iii. KTW fails to timely report to EPA any information as required by the SDWA in any three (3) consecutive months, or four (4) months in any twelve (12) month period; or
 - iv. KTW experiences SDWA violations associated with high CFE turbidity levels or low disinfectant levels in three (3) consecutive months, or four (4) months in any twelve (12) month period.


The feasibility study shall be submitted to EPA within six months from the date that EPA informs Respondents of such requirements.

General Provisions

44. Each submittal made pursuant to this Order shall be sent by email to:
marquess.scott@epa.gov.
45. If the EPA identifies any deficiencies in the deliverables required above, Respondents shall correct all deficiencies and resubmit the deliverable, or disapproved portions thereof, within five calendar days of notification, or such longer time as agreed to by the EPA in writing
46. This Order is effective upon the EPA's signature. This Order will remain in effect until the EPA provides notice of its termination.
47. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. Part 141 or of the Act, which remain in full force and effect. Issuance of this

Order is not an election by EPA to forego any civil or any criminal action otherwise authorized under the Act.

48. Federal law states that violation of any terms of this Order may subject Respondents to an administrative civil penalty of up to \$39,936 under Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(A), or a civil penalty of not more than \$57,317 per day of violation, assessed by an appropriate United States District Court, under Sections 1414(g)(3)(A) and (C) of the Act, 42 U.S.C. §§ 300g-3(g)(A) and (C).
49. This Order shall be binding on Respondents and all their heirs, successors, and assignees. No change in ownership of the PWS shall alter the responsibility of the PWS under this Order.



Lester Randall
Chairman
Kickapoo Tribe in Kansas

4/26/21

Date

David Cozad
Director
Enforcement and Compliance Assurance Division
EPA Region 7

Date

Christopher Muehlberger
Assistant Regional Counsel
Office of Regional Counsel
EPA Region 7

Date