

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Received by
EPA Region VIII
Hearing Clerk

IN THE MATTER OF:)	
)	Docket No. SDWA-08-2022-0019
David Flammond,)	
)	ADMINISTRATIVE ORDER
Respondent.)	
)	
Kip’s Beer Garden Public Water System)	
<u>PWS ID #083090098</u>)	

1. This Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by section 1414(g) of the Safe Drinking Water Act (Act), 42 U.S.C. § 300g-3(g), as properly delegated to the undersigned official.
2. David Flammond (Respondent) is an individual who owns and/or operates the Kip’s Beer Garden Public Water System (System), which provides piped water to the public in Glacier County, Montana, for human consumption.
3. The System is supplied by a groundwater source accessed via one well. The water is untreated.
4. The System has approximately seven service connections and/or regularly serves an average of approximately 200 individuals daily at least 60 calendar days out of the year. Therefore, the System is a “public water system” as defined in section 1401(4) of the Act, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2. Further, the System is a non-community water system that does not regularly serve at least 25 of the same persons over six months per year and, as such, is also a “transient, non-community water system” as defined in 40 C.F.R. § 141.2. The System is operated seasonally from May to September.
5. The EPA has primary enforcement responsibility over public water systems on the Blackfeet Reservation (Reservation). No other governmental entity has applied for and been approved to administer the program on the Reservation.
6. Respondent is a “person” as defined in section 1401(12) of the Act, 42 U.S.C § 300f(12) and is subject to the Act and 40 C.F.R. part 141 (Part 141). Part 141 is an “applicable requirement” as defined in section 1414(i) of the Act, 42 U.S.C. § 300g-3(i).
7. Part 141 includes monitoring requirements. The EPA has sent Respondent annual notifications of the specific monitoring requirements that apply to the System.

VIOLATIONS

8. Respondent is required to complete seasonal start-up procedures as required by 40 C.F.R. §§ 141.854-861. Prior to opening to the public each year, Respondent must send the EPA a signed certification of its completed start-up procedures using the EPA’s approved checklist (see link in paragraph 21, below). Respondent failed to complete seasonal start-up procedures and failed to submit a signed copy of the completed checklist to the EPA prior to opening to the public in May 2022 and therefore, violated these requirements.

9. Respondent was required to develop a written total coliform sample siting plan to identify sampling sites and a sample collection schedule representative of water throughout the distribution system by February 25, 2022, as set forth in the Notice of Noncompliance letter dated March 2, 2022, and submit it to the EPA for review. 40 C.F.R. § 141.853(a). Respondent is required to collect total coliform samples according to the written sample siting plan. 40 C.F.R. § 141.853(a). Respondent failed to submit a sample siting plan to the EPA and, therefore, failed to conduct appropriate total coliform sampling according to a sample siting plan. As a result, Respondent violated these requirements.
10. Respondent is required to monitor the System's water monthly for total coliform bacteria from May to September each year. 40 C.F.R. § 141.853-858. Respondent failed to monitor the System's water for total coliform bacteria during the May of 2022; May, June, July, and September of 2021; and August and September of 2019, and therefore, violated this requirement.
11. Respondent is required to conduct triggered source monitoring within 24 hours of being notified that a regular, routine total coliform monitoring sample is positive for total coliform. 40 C.F.R. § 141.402. The System has not notified the EPA that its water is treated to meet at least a 4-log, 99.99% removal of viruses. Respondent must sample each groundwater source, and have it analyzed for a fecal indicator (e.g., *E. coli*). Respondent failed to monitor the System's source for a fecal indicator within 24 hours after being notified on August 11, 2021, that a sample taken on August 9, 2021, was analyzed as total coliform positive and therefore, violated this requirement. 40 C.F.R. § 141.402.
12. If the System has more than one positive total coliform sample result within the same month or fails to take three total coliform repeat samples within 24 hours following a routine total coliform positive result, Respondent is required to conduct a Level 1 assessment and submit it to the EPA within 30 calendar days of learning of the monitoring results. 40 C.F.R. § 141.859. Respondent failed to conduct a Level 1 assessment after failing to take three repeat samples of the System's water after a positive total coliform sample on August 9, 2021, and therefore, violated this requirement.
13. Respondent is required to complete corrective action of a significant deficiency or comply with an EPA-approved corrective action plan and schedule within 120 calendar days (or earlier if instructed by the EPA) of receiving written notification from the EPA of a significant deficiency. 40 C.F.R. § 141.404(a). Respondent is required to notify the EPA within 30 calendar days of completion of a significant deficiency corrective action. 40 C.F.R. § 141.405(a)(2). The EPA sent the Respondent a sanitary survey report dated May 20, 2020, which detailed significant deficiencies. The EPA approved a corrective action schedule to complete corrective actions by December 2, 2020. The EPA's record reflects that the Respondent failed to complete all corrective actions by December 2, 2020, and failed to notify the EPA of corrective action completion by January 2, 2021, and therefore, violated this requirement.

14. During 2019, Respondent was required to monitor the System's water the first quarter of operation for nitrite at every entry point to the distribution System which is representative of each well after treatment. 40 C.F.R. § 141.23(e). Respondent failed to monitor the System's water for nitrite during the initial monitoring period of the third quarter of 2019, and therefore, violated this requirement. Respondent sampled for nitrite on June 18, 2021.

15. During 2019, Respondent was required to monitor the System's water the first quarter of operation for nitrate at every entry point to the distribution System which is representative of each well after treatment. 40 C.F.R. §§ 141.23(a) and (d). Respondent failed to monitor the System's water for nitrate during the third quarter of 2019, and therefore, violated this requirement. Respondent sampled for nitrate on June 18, 2021.

16. Respondent is required to notify the public of certain violations of Part 141 and, within 10 calendar days after completing public notice, provide a copy of the public notice and certification to the EPA. 40 C.F.R. §§ 141.31(d) and 141.201-141.211. The violations identified in paragraphs 8, 12 and 13, above, are classified as violations requiring Tier 2 public notice within 30 calendar days, according to 40 C.F.R. § 141.203. The EPA's records reflect that the Respondent failed to notify the public of the violations cited in paragraphs 8, 9 and 13 and failed to submit a copy of the public notice and certification to the EPA and therefore, violated this requirement.

17. Respondent is required to notify the public of certain violations of Part 141 and, within 10 calendar days after completing public notice, provide a copy of the public notice and certification to the EPA. 40 C.F.R. §§ 141.31(d) and 141.201-141.211. The violations identified in paragraphs 10, 11, 14, and 15, above, are classified as violations requiring Tier 3 public notice within 1 year, according to 40 C.F.R. § 141.204. The EPA's records reflect that the Respondent failed to notify the public of the violations cited in paragraphs 10, 11, 14, and 15 and failed to submit a copy of the public notice and certification to the EPA and therefore, violated this requirement. The deadline for public notice of the May 2022 and September 2021 violation cited in paragraph 10 has not yet passed.

18. Respondent is required to report any failure to comply with any Part 141 to the EPA within 48 hours (except where Part 141 specifies a different time period). 40 C.F.R. § 141.31(b). Respondent failed to report the violations cited in paragraphs 8, 9, 11 through 15, above, to the EPA and therefore, violated this requirement.

19. Respondent is required to report any violation of total coliform monitoring requirements to the EPA within 10 calendar days after discovering the violation. 40 C.F.R. § 141.861(a)(4). Respondent failed to report the violations listed in paragraph 10, above, to the EPA and therefore, violated this requirement.

ORDER

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

20. Respondent is ordered to comply with all provisions of the Act and Part 141, including but not limited to each requirement cited above.
21. Respondent shall complete seasonal start-up procedures as required by 40 C.F.R. §§ 141.854-861. The EPA approved start-up procedures checklist can be found at https://www.epa.gov/sites/production/files/2014-12/documents/rtrcr_seasonal_startup_checklist.pdf.
22. Prior to opening to the public each year, Respondent shall send to the EPA a signed copy of the completed start-up procedures checklist.
23. Within 30 calendar days of receipt of this Order, Respondent shall develop a written total coliform sample siting plan and submit it to the EPA for review. The plan must identify sampling sites (both routine and repeat) and a sample collection schedule that is representative of water throughout the distribution system, as required by 40 C.F.R. § 141.853(a)(1). The triggered source water monitoring location must also be included in the sample siting plan 40 C.F.R. § 141.402(a). A template can be found at <https://www.epa.gov/region8-waterops/revised-total-coliform-rule-sample-siting-plan>.
24. Respondent shall monitor the System's water monthly for total coliform bacteria from May through September each year. If a sample is positive for total coliform, within 24 hours of being notified of the positive result, Respondent shall collect a set of three repeat samples for each total coliform-positive sample. 40 C.F.R. § 141.853-858.
25. Within 48 hours after receipt of this Order, Respondent shall collect at least one water sample from its groundwater source and have it analyzed for a fecal indicator (e.g., *E. coli*). If a sample is *E. coli* positive, Respondent shall notify the EPA immediately for appropriate assistance 40 C.F.R. § 141.403(a)(4). Respondent shall comply with the treatment technique requirements, according to 40 C.F.R. § 141.403(a), and providing appropriate public notification pursuant to 40 C.F.R. § 141.402(g) within 24 hours as required by 40 C.F.R. § 141.202(b)(1). Thereafter, Respondent shall comply with all source water monitoring and related requirements in 40 C.F.R. § 141.402. When reporting any triggered source water sample result, Respondent shall specify that it is a triggered source water sample. Respondent shall report results to the EPA within the first 10 calendar days following the end of the required monitoring period. 40 C.F.R. § 141.31(a).
26. Within 15 calendar days of receipt of this Order, Respondent shall conduct a Level 1 assessment and submit the attached Revised Total Coliform Rule Level 1 assessment form to the EPA. The assessment shall determine the cause of the total coliform-positive samples, identify corrective actions for all sanitary defects, and include a proposed schedule (Schedule) and plan for completion of all corrective actions after consulting with the EPA. The Schedule shall be incorporated into this Order with

each milestone to be an enforceable requirement upon written approval by the EPA. Within 10 calendar days after completing all tasks included in the Schedule, Respondent shall notify the EPA of the project's completion. Respondent shall provide sufficient evidence to the EPA, including photographs of the corrective actions. 40 C.F.R. § 141.859. Following any future instances of the System (1) having two or more total coliform-positive sample results (including routine and repeat samples) within the same month, (2) failing to collect three repeat samples within 24 hours following a total coliform--positive sample, (3) having an *E. coli* MCL violation, or (4) triggering a second Level 1 assessment within a rolling 12-month period, Respondent shall conduct the appropriate level of assessment in compliance with 40 C.F.R. § 141.859.

27. Within 30 calendar days of receipt of this Order, Respondent shall consult with the EPA regarding action to correct significant deficiencies and shall submit a proposed schedule and plan to the EPA for completion of all corrective actions specified below. The plan shall include proposed modifications to the System and estimated costs of modifications. The EPA will review the proposed schedule and any approved schedule (Schedule) shall be incorporated into this Order with each milestone to be an enforceable requirement upon written approval by the EPA. Within 10 calendar days after completing all tasks included in the Schedule, Respondent shall notify the EPA of the project's completion. Respondent shall provide sufficient evidence of the project's completion to the EPA, including photographs of the corrective actions. Thereafter, if the EPA identifies any significant deficiency at the System, Respondent shall complete corrective action for each significant deficiency and provide notification to the EPA within 30 calendar days of completion, as required by 40 C.F.R. §§ 141.403(a) and 141.405(a)(2).

Corrective Actions:

- All openings in Well WL01 must be sealed and watertight.

28. Respondent shall monitor the System's water for nitrite, as required by 40 C.F.R. § 141.23(e). Respondent shall report results to the EPA within the first 10 calendar days following the end of the required monitoring period. 40 C.F.R. § 141.31(a).

29. As required by Part 141, Respondent shall monitor the System's water for nitrate, in accordance with 40 C.F.R. §§ 141.23(a) and (d). Respondent shall report results to the EPA within the first 10 calendar days following the end of the required monitoring period. 40 C.F.R. § 141.31(a).

30. Within 30 calendar days after receipt of this Order, and quarterly thereafter as long as the violations cited in paragraphs 8, 12 and 13, above, persists, Respondent shall notify the public of these violations. Thereafter, following any future violation of Part 141, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 calendar days after providing public notice, Respondent shall submit a copy of the notice and certification to the EPA. 40 C.F.R. § 141.31(d). Templates and instructions are available at: <https://www.epa.gov/region8-waterops/reporting-forms-drinking-water-systems-wyoming-and-tribal-lands-epa-region-8#pn>.

31. Within 30 calendar days after receipt of this Order, Respondent shall notify the public of the violations cited in paragraphs 10, 11, 14 and 15, above. Thereafter, following any future violation of Part 141, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 calendar days after providing public notice, Respondent shall submit a copy of the notice and certification to the EPA. 40 C.F.R. § 141.31(d). Templates and instructions are available at: <https://www.epa.gov/region8-waterops/reporting-forms-drinking-water-systems-wyoming-and-tribal-lands-epa-region-8#pn>.

32. Respondent shall report any violation of Part 141 to the EPA within 48 hours of the violation occurring, as required by 40 C.F.R. § 141.31(b). However, if a different time period for reporting is specified in this Order or Part 141, Respondent shall report within that different period.

33. Respondent shall report any violation of total coliform monitoring requirements to the EPA within 10 calendar days after discovering the violation and notify the public in accordance with subpart Q of this part, as required by 40 C.F.R. § 141.861(a)(4).

34. Respondent must send all reporting and notifications required by this Order to the EPA at:

Email: R8DWU@epa.gov and latino.steven@epa.gov

GENERAL PROVISIONS

35. This Order is binding on Respondent, his assigns and heirs, and any person (*e.g.*, employee, contractor, or other agent) acting in concert with Respondent.

36. This Order does not constitute a waiver, suspension, or modification of any requirement of the Act or Part 141. Issuance of this Order is not an election by the EPA to forgo any civil or criminal action.

37. Violation of any part of this Order, the Act, or Part 141 may subject Respondent to a civil administrative penalty of up to \$62,689 (as adjusted for inflation) per day of violation, a court injunction ordering compliance, or both. 42 U.S.C. § 300g-3; 40 C.F.R. part 19; 87 Fed. Reg. at 1679 (January 12, 2022).

David Flammond
Kip's Beer Garden Public Water System,
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38. Respondent may seek federal judicial review of this Order pursuant to section 1448(a) of the Act, 42 U.S.C. § 300j-7(a).

Issued: July 27, 2022.

Colleen Rathbone, Branch Manager
Water Enforcement Branch
Enforcement and Compliance Assurance Division