

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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EPA--REGION 10

In the Matter of:)
)
Nooksack Indian Tribe) Docket No. SDWA-10-2017-0014
Sulwhanon Housing Development)
Public Water System)
(ID# 105300141)) ADMINISTRATIVE COMPLIANCE
) ORDER
)
)
Respondent.)

I. JURISDICTION

1.1. This Administrative Compliance Order (“Order”) is issued pursuant to 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”), 42 U.S.C. § 300g-3(g). The Administrator has delegated this authority to the Regional Administrator, Region 10, who in turn delegated this authority to the Director of the Office of Compliance and Enforcement.

1.2. EPA has primary enforcement responsibility for public water systems on the Nooksack Indian Reservation pursuant to the regulations for implementation and enforcement of the National Primary Drinking Water Regulations set forth in 40 C.F.R. Parts 141-142.

II. FINDINGS

2.1. The Nooksack Indian Tribe is a “person” within the meaning of Section 1401(12) of SDWA, 42 U.S.C. 300(f)(12), and 40 C.F.R. § 141.2 for purposes of federal enforcement under the SDWA.

2.2. The Nooksack Indian Tribe ("Respondent") owns and/or operates the Sulwhanon Housing Development Public Water System ("System") located on the Nooksack Indian Tribe Reservation in Washington State that provides water for human consumption.

2.3. The System serves approximately 25 homes, four non-residential units, and a community building with an estimated population of approximately 150 persons through 30 service connections.

2.4. The System is a "public water system" within the meaning of Section 1401(4) of SDWA, 42 U.S.C. § 300(f)(4), and 40 C.F.R. § 141.2.

2.5. The System regularly serves at least 15 service connections used by year-round residents and/or regularly serves at least 25 year-round residents and is therefore a "community water system" within the meaning of Section 1401(15) of SDWA, 42 U.S.C. § 300(f)(15), and 40 C.F.R. § 141.2.

2.6. Respondent owns and/or operates the System and therefore is a "supplier of water" within the meaning of Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent therefore is required to comply with the SDWA and its implementing regulations, 40 C.F.R. Part 141.

2.7. The System is solely supplied by a groundwater source.

III. VIOLATIONS

3.1. 40 C.F.R § 141.26(a) requires community water systems to sample for gross alpha particle activity and radium-228 at every entry point to the distribution system during each compliance period. Respondent violated 40 C.F.R § 141.26(a) by failing to collect the required gross alpha particle activity and radium-228 samples at the System during the 2011-2013 compliance period as defined in EPA's Standardized Monitoring Framework at 56 F.R. 3526.

Therefore, Respondent violated these requirements.

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3.2. 40 C.F.R. § 141, Subpart Q requires community water systems to distribute to their customers and the primacy agency an annual Consumer Confidence Report (“CCR”) containing certain information and certify to the primacy agency that the report has been sent within three months of distribution to their customers. Respondent failed to provide the CCR for the System and/or certify its distribution to EPA covering the following report years: 2011, 2012, 2013, 2014, and 2015. Therefore, Respondent violated these requirements.

3.3. 40 C.F.R. § 141.404 requires a groundwater system, within 120 days of receiving written notice of significant deficiencies from EPA, to either correct the significant deficiencies or develop an approved corrective action plan (“CAP”) on how and when the deficiencies will be addressed and to maintain compliance with the CAP and schedule. EPA provided Respondent written notice of significant deficiencies on July 8, 2013 following the sanitary survey of the System conducted on May 29, 2013. *See Attachment A.* Respondent failed to submit a CAP or provide evidence that the significant deficiencies had been addressed within 120 days. EPA provided Respondent a notice of being out of compliance with this requirement on December 16, 2013; Respondent did not provide a response to EPA. Therefore, Respondent violated this requirement.

3.4 40 C.F.R. § 141.31 requires public water systems to report to EPA the results of any test measurement or analysis required by 40 C.F.R. Part 141 within ten days following the month in which the result is received, or within the first ten days following the end of the required monitoring period stipulated by EPA, whichever of these is shorter. 40 C.F.R. § 141.31 also requires public water systems to report to EPA within 48 hours of the failure to comply with any primary drinking water regulation. Respondent violated 40 C.F.R. § 141.31 by failing to notify EPA of the violations listed in paragraphs 3.2 and 3.4 above.

3.5. 40 C.F.R. Part 141, Subpart Q requires public water systems to notify persons
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served by the system of certain violations of drinking water regulations. Respondent violated 40 C.F.R. Part 141, Subpart Q by failing to give notice of the violations described in paragraph 3.1 above to the persons served by the System.

IV. ORDER

Based upon the foregoing Findings and Violations and pursuant to Section 1414(g) of the SDWA, 42 U.S.C. § 300(g)-3(g), it is hereby ordered as follows:

4.1. Within 60 days of the effective date of this Order, Respondent shall collect gross alpha particle activity, radium-226, radium-228, and uranium samples at the site number identified in the Monitoring Plan Summary of the System's Water Quality Management Plan attached to this Order as Attachment B. Results must be submitted to EPA no later than the 10th day of the month following the month the samples are collected.

4.2. Within 60 days of the effective date of this Order, Respondent shall prepare a CCR based on 2016 monitoring results and distribute the CCR via mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered. Respondent shall also mail a copy of the CCR to EPA and provide a certification notice to EPA that states that the CCR has been distributed to its customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to EPA.

4.3. Within 180 days of the effective date of this Order, Respondent shall correct any remaining significant deficiencies identified in EPA's July 8, 2013 letter and provide documentation of such corrective actions and/or provide EPA with a new CAP approved by EPA.

4.4. Within 60 days of the effective date of this Order, Respondent shall issue a Tier 3 public notice for violations listed in sections 3.1 above.

4.5. Within 60 days of the effective date of this Order, Respondent shall send EPA a

copy of the public notice and a certification that the System has fully complied with the public notification regulations.

4.6. Respondent must provide the public notices required above by mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered. The public notices must also be delivered to other persons regularly served by the System via any other method reasonably calculated to reach persons regularly served by the System who would not normally be reached via mail or other direct delivery. Other methods of delivery include publication in a local newspaper, posting in public places, on the Internet, or email. If a notice is posted, it must remain in place for as long as the violation persists, but in no case less than seven days, even if the violation is resolved.

V. SANCTIONS

5.1. For violations of this Order, Respondent may be subject to a civil penalty of not more than \$54,789 per day of violation pursuant to Section 1414(g)(3)(A) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(A) and 40 C.F.R. Part 19.

5.2. Nothing in this Order shall be construed to relieve Respondent of any applicable requirements of federal, state, or local law. EPA reserves the right to take enforcement action as authorized by law for any violation of this Order, and for any future or past violation of any applicable legal requirements of the SDWA including, but not limited to, the violations identified in Part III of this Order.

5.3. The provisions of this Order are binding upon Respondent, and all officers, directors, agents, employees, successors, and assigns of Respondent.

5.4. 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).

5.5. This Order is effective upon receipt by Respondent.

Issued: April 6, 2017.



Edward J. Kowalski, Director
Office of Compliance and Enforcement

Attachment A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
WATER AND WATERSHEDS

July 8, 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Joseph Johnson-Bob
Nooksack Indian Tribe
P.O. Box 157
Deming, WA 98244

Re: Sanitary Survey Significant Deficiencies at Sulwhanon CWS, #105300141

Dear Mr. Johnson-Bob:

Thank you for having your sanitary survey conducted by Indian Health Service's tribal utility consultant Warren Nilchee, Jr., on May 29, 2013. The National Primary Drinking Water Regulations (40 CFR Part 141) require that sanitary surveys be conducted at public water systems at least every three to five years, depending on the type of system and size. The purpose of this letter is to inform you that significant deficiencies were identified at your drinking water system, Sulwhanon CWS, during the sanitary survey.

These significant deficiencies have the potential to impair your water quality and jeopardize public health. Significant deficiencies require immediate attention in the form of corrective actions. Within 120 days from receipt of this certified letter, your system must either complete the corrective actions or be on an approved corrective action plan. Failure to meet these requirements will result in a violation. Your response to these significant deficiencies will help make certain that potential problems can be addressed, corrected, and avoided.

Enclosed is a corrective action plan template for your drinking water system as well as instructions that detail the steps you are required to complete. If you have any questions regarding this letter, please do not hesitate to contact me at (206) 553-6917 or Jacobsen.lisa@epa.gov

Sincerely,

A handwritten signature in cursive script that reads "Lisa Jacobsen".

Lisa Jacobsen
Tribal Drinking Water Coordinator

Enclosure: Corrective Action Plan
Corrective Action Plan Instructions

cc: Warren Nilchee, Jr., Indian Health Services

Corrective Action Plan

EPA Region 10

Tribal Public Water System Supervision Program

All public water systems are required to undergo sanitary surveys. Public water systems using groundwater water must consult EPA about required corrective actions within 30 days of being notified of a significant deficiency and must complete corrective actions or be in compliance with an approved Corrective Action Plan within 120 days of receiving notice of significant deficiencies (40 CFR 141.403 (a)). Public water systems with surface water sources must be in compliance with a corrective action plan within 45 days of receiving notice of a significant deficiency (40 CFR 141.723).

EPA may specify shorter deadlines if the deficiency poses a high health risk. The corrective action plan must provide a written description of how and on what schedule significant deficiencies will be addressed. This Corrective Action Plan form will meet this requirement, other formats are acceptable.

PWSID:	105300141
System Name:	SULWHANON COMMUNITY WATER SYSTEM
Primary Source:	Groundwater
Sanitary Survey Date:	5/29/2013
Surveyor:	WARREN NILCHEE, JR.
Notice Date:	7/8/2013

Corrective Action Plan Due Date:	11/15/2013
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Deficiency	Schedule to Address Deficiency		Accomplishments (date completed)
	Milestone/Corrective Action Description	Scheduled Date	
WL-01 (SULWHANON) - Sources - Casing less than 18 in. above ground or less than 12 in. above pump house floor. - Provide Corrective Action Plan			
WL-01 (SULWHANON) - Sources - Well or spring within 100 feet of sewer line. - Provide Corrective Action Plan			
WL-01 (SULWHANON) - Sources - No raw sample tap. - Correct Deficiency		11/15/2013	

Deficiency	Schedule to Address Deficiency		Accomplishments (date completed)
	Milestone/Corrective Action Description	Scheduled Date	
WL-01 (SULWHANON) - Sources - Well or spring within 100 feet of sewer line. - Provide Corrective Action Plan			
WL-01 (GENESIS II) - Sources - Improper or missing well or spring vent. - Correct Deficiency		11/15/2013	
Pump Controls, and Pump Facilities - Inadequate pump house ventilation. - Provide Corrective Action Plan			
MANAGEMENT/OPERATION CAP - Management - Certified operator needed or operator not certified at the proper level. - Provide Corrective Action Plan			
MANAGEMENT/OPERATION CAP - Management - Emergency response plan needed. - Provide Corrective Action Plan			
MANAGEMENT/OPERATION CAP - Management - Cross-connection control program needed. - Provide Corrective Action Plan			
-			

List any additional attachments included with this plan:

Deficiency	Schedule to Address Deficiency		Accomplishments (date completed)
	Milestone/Corrective Action Description	Scheduled Date	

I understand that failing to meet an EPA approved Deficiency Corrective Action Plan may constitute a violation of the Safe Drinking Water Act.

Name (print) _____

address _____

Phone _____

email _____

Signature _____

Date _____

EPA Use Only	
approved by (print) _____	consultation date _____
_____	closed date _____
Compliance Officer Signature _____	Date _____

Attachment B

EPA #105300141 Sulwhanon Monitoring Plan Summary

Constituent	Site #	Sample Quantity	Frequency	Next Sample Due Date
Coliform (40 CFR §141.21)	SH-04, SH-05 & G-06 (see schedule)	One	Monthly	1 st Week of the month. Record chlorine residual on lab slip.
TTHM & HAA5 (disinfection byproducts) (40 CFR §141 subpart V)	SH-05	One (1) TTHM sample and one (1) HAA5 sample	Annual	Anytime between 8/1/15 – 8/31/15
Lead & Copper* (40 CFR § 141.80)	Primary sites - SH-03 through SH-07 Alternate site - SH-08 & G-04	Five (5)	3 Years	Anytime between 6/1/15 – 9/30/15
Nitrate (40 CFR §141.23)	SH-02	One Finished water tap	Annual	Anytime between 1/1/15 – 12/31/15
IOCs (40 CFR § 141.23)	SH-02	One Finished water tap	3 Years	Anytime between 1/1/17 – 12/31/19
VOCs (40 CFR §141.24)	SH-02	One Finished water tap	3 Years	Anytime between 1/1/17 – 12/31/19
Dioxin (40 CFR §141.24)	SH-02	One Finished water tap	3 Years	OVERDUE
SOCs – including dioxin (40 CFR §141.24)	SH-02	One Finished water tap	3 Years	Anytime between 1/1/17 – 12/31/19
Gross Alpha (40 CFR §141.26)	SH-02	One Finished water tap	3 Years	OVERDUE
Radium 228 (40 CFR §141.26)	SH-02	One Finished water tap	3 Years	OVERDUE
Consumer Confidence Report (CCR)** (40 CFR §141 subpart O)			Yearly	Before July 1st for prior reporting year

* If you are no longer able to collect a lead and copper sample from a site listed in the Monitoring Program Summary, please contact your TUC to help identify a new sample site

Certificate of Service

The undersigned certifies that the original of the attached **ADMINISTRATIVE COMPLIANCE ORDER, In the Matter of: Nooksack Indian Tribe, Salwhanon Housing Development, Public Water System. Docket No.: SDWA-10-2017-0014**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Adam Baron
Drinking Water Compliance Officer
U.S. EPA, Region 10 (OCE-101)
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail to:

Chairman Bob Kelly
Nooksack Indian Tribe
5016 Deming Road
Deming, WA 98244

And to:
Katherine Canete, General Manager
Rickie Wayne Armstrong, Tribal Attorney
Richard Edwards, Facilities and Maintenance Director
Joseph Johnson-Bob, PWS Operator

DATED this 7th day of April, 2017


Candace H. Smith, Back up Regional Hearing Clerk
EPA Region 10

