

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

FILED

5/29/2024

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U.S. EPA REGION 8  
HEARING CLERK

<p>IN THE MATTER OF:</p> <p><b>Spirit Lake Water Resource Management Program,</b></p> <p>Respondent</p> <p>Spirit Lake Water Management RWS Public Water System PWS ID 083890025</p>	<p>Docket No. SDWA-08-2024-0032</p> <p><b>ADMINISTRATIVE ORDER ON CONSENT</b></p> <p>Section 1414(g) of the Safe Drinking Water Act, 42 U.S.C. § 300(g)-3(g)</p>
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**INTRODUCTION**

The United States Environmental Protection Agency, Region 8 (EPA) and the Spirit Lake Tribe, Spirit Lake Water Resource Management Program (SLWRM), which is the Respondent in this matter, enter into this Administrative Order on Consent (Consent Order) to resolve noncompliance with the Safe Drinking Water Act (Act), 42 U.S.C. section 300f *et seq.*, and the National Primary Drinking Water Regulations (Part 141), 40 C.F.R. part 141, at the Spirit Lake Water Management RWS Public Water System (System).

**JURISDICTION**

1. The EPA has primary enforcement responsibility over public water systems on the Spirit Lake Reservation (Reservation). No other governmental entity has applied for and been approved to administer the program on the Reservation.
2. The EPA enters into and issues this Consent Order under the authority vested in the EPA Administrator by section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), which has been delegated to the undersigned EPA official.
3. The Findings of Fact and Findings of Violation and Conclusions of Law (Findings) allegations in paragraphs 6 through 13, below, are made solely by the EPA. Without any admission of liability, Respondent consents to the issuance of this Consent

Order and agrees to abide by all of its conditions. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review of this Consent Order under section 1448(a) of the Act, 42 U.S.C. § 300j-7(a). Respondent further agrees not to challenge the jurisdiction of the EPA or the Findings in any proceeding to enforce this Consent Order or in any action under this Consent Order.

#### **PARTIES BOUND**

4. This Consent Order applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Consent Order to any successors-in-interest prior to transfer of any interest in the System. Any change in ownership or control of the System including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Consent Order.
5. Each undersigned signatory for Respondent certifies to her or his authority to execute this Consent Order and to legally bind Respondent to the terms of this Consent Order.

#### **FINDINGS OF FACT**

6. The SLWRM is a tribal agency organized under the laws of the Spirit Lake Tribe and therefore is a "person" as the term is defined in the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2, for purposes of federal enforcement under the Act.

7. Respondent owns and/or operates the System, which is a public water system, in Benson County, North Dakota, within the exterior boundaries of the Spirit Lake Reservation. The System provides the public with piped water for human consumption.
8. The System has approximately 850 service connections used by year-round residents and regularly serves an average of approximately 4,400 year-round residents. Therefore, the System is a “public water system” and a “community water system” within the meaning of sections 1401(4) and (15) of the Act, 42 U.S.C. § 300f(4) and (15), and 40 C.F.R. § 141.2.
9. Respondent owns and/or operates the System and therefore is a “supplier of water” as defined in section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent therefore is required to comply with the requirements of the Act and its implementing regulations, Part 141.
10. The source of the System’s water is groundwater accessed via five wells. The water is treated by chlorine gas.

**FINDINGS OF VIOLATION AND CONCLUSIONS OF LAW**

11. As a community water system, Respondent is required to have “qualified personnel” operating the System under the Disinfectant Byproduct Rule. 40 C.F.R § 141.130(c). Respondent received a sanitary survey report from the EPA on June 16, 2014, which detailed the System’s lack of an operator with the appropriate qualifications under the Disinfectant Byproduct Rule: Level II for water treatment and Level II for distribution. The EPA approved a schedule for the System to take corrective actions and extended the deadline multiple times, with a final completion date of March 1, 2023. Respondent failed to complete corrective actions to have sufficiently

qualified personnel operating the System by March 1, 2023, and therefore violated this requirement.

12. Respondent is required to notify the public of certain violations of Part 141 and, within 10 calendar days after completing public notice, provide the EPA a certification of having provided public notice, along with a representative copy of the public notice. 40 C.F.R. §§ 141.31(d) and 141.201. The violation identified in paragraph 11, above, is classified as a Tier 2 violation, requiring public notice within 30 calendar days, according to 40 C.F.R. § 141.203. Respondent failed to notify the public of the violation identified in paragraph 11, above, quarterly after public notices were made during the 1<sup>st</sup> and 2<sup>nd</sup> quarters of 2023, and failed to certify to the EPA that public notice was provided and therefore violated this requirement.
13. Respondent is required to report any failure to comply with 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 identified in paragraphs 11 and 12 above, to the EPA and therefore violated this requirement.

### **ORDER ON CONSENT**

Based on the foregoing Findings, and pursuant to section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), Respondent agrees and is hereby ORDERED to perform the following:

14. No later than 90 calendar days after the effective date of this Consent Order, Respondent shall have at least one qualified water operator as required by the Disinfectant Byproduct Rule for the System. Such qualified water operator must be an employee of the SLWRM or a contract operator possessing current certification

at the level appropriate for the System (Level II for water treatment and Level II for distribution). Such qualified water operator must hold keys to the System and must be able to respond in a timely manner in the event of an emergency. Within 30 days of the effective date of this Order, Respondent shall submit to the EPA its plan to obtain a qualified water operator. System operators may be properly certified by successfully passing the certification exam administered by the Inter Tribal Council of Arizona (ITCA), or another certification approved by EPA. For assistance in exam preparation, Respondent may contact the Indian Health Service or ITCA.

15. Within 30 calendar days of the Effective Date of this Consent Order, and quarterly thereafter as long as the violation cited in paragraph 11, above persists, Respondent shall notify the public of this violation. 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>. During the pendency of this Consent Order and 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 provide the EPA a certification of having provided public notice, along with a representative copy of the public notice. 40 C.F.R. § 141.31(d).
16. During the pendency of this Consent Order, 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 Consent Order or Part 141, Respondent shall report within that different period.

17. Any notices or reports required by this Consent Order to be submitted to the EPA shall be submitted to:

Steven Latino, 8ENF-W-SD  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, Colorado 80202-1129  
Email: latino.steven@epa.gov

### **GENERAL PROVISIONS**

18. Respondent shall fully implement each item of this Consent Order. Respondent's failure to fully implement all requirements of this Consent Order in the manner and time period required shall be deemed a violation of this Consent Order.
19. This Consent Order shall not constitute a waiver, suspension, or modification of any requirement of the Act or Part 141. Issuance of this Consent Order is not an election by the EPA to forgo any civil or criminal action.
20. Violation of any part of this Consent Order, the Act, or Part 141 may subject Respondent to a civil penalty of up to \$69,733 (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; 88 Fed. Reg. at 89309 (December 27, 2023).
21. This Consent Order may be amended or modified by written agreement of the EPA and Respondent.
22. The Effective Date of this Consent Order is the date upon which a fully executed copy is filed with the Regional Hearing Clerk.
23. This Consent Order shall terminate upon written request to and approval by the EPA following successful completion of the requirements agreed to in the Consent

Order. The EPA at its sole discretion may terminate the Consent Order upon determining full compliance and providing written notice to the Respondent.

IT IS SO AGREED AND ORDERED:

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,**  
Complainant.

Date: \_\_\_\_\_

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Suzanne Bohan, Director  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 8

**Spirit Lake Water Resource  
Management Program**  
Respondent.

Date: 6/23/24



Robert Thompson, Director, Spirit Lake  
Water Resource Management Program