

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

February 12, 2021
8:41 AM

Received by

IN THE MATTER OF:)
Northern Arapaho Utilities Department,)
Respondent.)

Docket No. SDWA-08-2021-0011

EPA Region VIII

Hearing Clerk

**ADMINISTRATIVE ORDER ON
CONSENT**

Arapahoe Industrial Park Public Water System)
PWS ID #085690008)

Proceeding pursuant to section 1414(g) of the
Safe Drinking Water Act, 42 U.S.C. § 300(g)-3(g).

INTRODUCTION

The United States Environmental Protection Agency, Region 8 (EPA) and the Northern Arapaho Utilities Department (Respondent) 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 Arapahoe Industrial Park Public Water System.

JURISDICTION

1. The EPA has primary enforcement responsibility over public water systems on the Wind River 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 allegations in paragraphs 6 through 10, below, are made solely by the EPA. In signing this Consent Order, Respondent neither admits nor denies the allegations. 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 any of 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 Arapahoe Industrial Park Public Water System. Any change in ownership or control of the Arapahoe Industrial Park Public Water 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 Northern Arapaho Utilities Department is a tribal agency organized under the laws of the Arapaho Tribe of the Wind River Reservation, Wyoming, (Northern Arapaho 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.

7. Respondent owns and/or operates a public water system known as the Arapahoe Industrial Park Public Water System (System) in Arapahoe, Fremont County, Wyoming, within the exterior boundaries of the Wind River Reservation. The System provides the public with piped water for human consumption.

8. The System has approximately 15 service connections used by year-round residents and regularly serves an average of approximately 150 year-round residents and a non-transient population of 500. 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 ground water from two wells.

FINDINGS OF VIOLATION AND CONCLUSIONS OF LAW

11. Respondent is required to monitor the System’s water annually 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 2019 and therefore violated this requirement.

12. Respondent is required to complete corrective action of significant deficiencies 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). Respondent received a sanitary survey report from the EPA on February 27, 2016, which detailed significant deficiencies. The EPA approved a schedule for the System to complete the corrective actions by August 27, 2016. Respondent failed to complete all corrective actions by August 27, 2016, and/or failed to notify the EPA within

30 calendar days of completion of any significant deficiency corrective action and therefore violated this requirement.

13. Respondent is required to collect total trihalomethanes (TTHMs) and haloacetic acids (HAA5s) samples in the System's distribution system during the month(s) of the highest disinfectant byproduct concentrations at the location(s) and on the date(s) identified in the System's EPA-issued February 20, 2020, monitoring plan. 40 C.F.R. §§ 141.621 & 141.622(a)(1). Respondent failed to monitor the System's water for TTHMs and HAA5s during August in the 2016 to 2018 monitoring period and therefore violated this requirement.

14. Respondent is required to monitor the System's water monthly for total coliform bacteria. 40 C.F.R. §§ 141.853-858. Respondent failed to monitor the System's water for total coliform bacteria during April of 2020 and therefore violated this requirement.

15. 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 141.201-141.211. The violation identified in paragraph 12, 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 12, above, and/or failed to certify to the EPA that public notice was provided and therefore violated this requirement.

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 paragraph 13, above, are classified as a Tier 3 violation, requiring public notice within one year, according to

40 C.F.R. § 141.204. Respondent failed to notify the public of the violations cited in paragraph 13 and/or failed to submit a copy to the EPA and therefore violated this requirement.

17. 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, 12, and 13, above, to the EPA and therefore violated this requirement.

18. 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 violation listed in paragraph 14, above, to the EPA and therefore violated this requirement.

ORDER ON CONSENT

Based on the foregoing Findings of Fact and Findings of Violation and Conclusions of Law, 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:

19. Within 30 calendar days of the Effective Date of this Consent Order, and as required by Part 141 thereafter, 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).

20. Within 60 calendar days of the Effective Date of this Consent Order, Respondent shall consult with the EPA regarding actions to correct significant deficiencies and shall submit a proposed schedule (Schedule) and plan to the EPA for completion of all corrective actions. The Schedule shall be incorporated into this Consent Order as an enforceable requirement upon written approval by the EPA.

Within 10 calendar days after completing each task included in the Schedule, Respondent shall notify the EPA of the task's completion. Respondent shall provide sufficient evidence to the EPA including photographs of the following corrective actions:

- Well WL-01- Unknown integrity of sanitary seal on the well (WL01) casing): To prevent contamination, the well must be fitted with a functioning sanitary seal and a tightly bolted cap. The surveyor was unable to determine the integrity of the seal during the survey. The well cap must be removed to determine the existence and adequacy of the seal (gasket). If the seal (gasket) is not present, a seal (gasket) must be installed per manufacturer's specifications. If the well cap is not designed to provide a sanitary seal, the well cap will need to be replaced with a properly designed and functioning well cap that will provide an adequate sanitary seal; and
- By June 1, 2021, the air vent opening for Tank ST01 must be covered with #24 mesh screen and a watertight cover and shroud added that extends down to the bottom of the #24 mesh screen.

21. Respondent shall monitor the System's water annually for TTHMs and HAA5s at the specific location during the month identified in the System's EPA-issued February 20, 2020 monitoring plan, as required by 40 C.F.R. §§141.620-141.622. Respondent shall submit the sampling results to the EPA within 10 calendar days following the end of the monitoring period, as specified by 40 C.F.R. § 141.629.

22. Respondent shall monitor the System's water monthly for total coliform bacteria. If a sample is positive for total coliform, within 24 hours of being notified of the positive results, Respondent shall collect a set of three repeat samples for each total coliform positive sample.

40 C.F.R. § 141.853-858. 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).

23. Within 30 calendar days of the Effective Date of this Consent Order, and quarterly thereafter as long as the violation cited in paragraph 13, 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).

24. Within 30 calendar days of the Effective Date of this Consent Order, Respondent shall notify the public of the violation identified in paragraph 14, above. 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).

25. 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.

26. During the pendency of this Consent Order, 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).

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

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

GENERAL PROVISIONS

28. 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.

29. 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.

30. Violation of any part of this Consent Order, the Act, or Part 141 may subject Respondent to a civil penalty of up to \$58,328 (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; 85 Fed. Reg. at 1754 (January 13, 2020).

31. This Consent Order may be amended or modified by written agreement of the EPA and Respondent.

32. The Effective Date of this Consent Order is the date upon which a fully executed copy is filed with the Regional Hearing Clerk.

33. 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:

Date: 02/12/2021

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

COLLEEN
RATHBONE

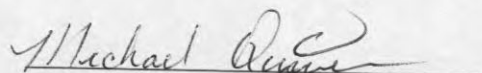
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COLLEEN RATHBONE
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Colleen Rathbone, Branch Chief
Water Enforcement Branch
U.S. EPA Region 8

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Northern Arapaho Utilities Department
Respondent.

Date: 2-2-2021


Michael Quiver, Director, Northern Arapaho
Utilities Department