

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

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EPA -- REGION 10

In the Matter of: )  
)  
Nooksack Indian Tribe ) Docket No. SDWA-10-2017-0013  
Five Cedars Apartments )  
Public Water System )  
(ID# 105300028) ) 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 Five Cedars Apartments 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 155 persons including 33 residents and an elder housing complex through 35 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 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, 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, 2014, and 2015. Therefore, Respondent violated these requirements.

3.2. 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 September 30, 2011 following the sanitary survey of the System conducted on August 25, 2011. *See* Attachment A. On June 14, 2012, EPA approved Respondent’s CAP addressing significant deficiencies identified in EPA’s letter of September 30, 2011. Respondent subsequently failed to meet the schedule in the approved CAP. EPA provided Respondent with a notice of being out of compliance with the CAP on August 1, 2014, to which EPA did not receive a response. Therefore, Respondent violated this requirement.

3.3. 40 C.F.R. Part 141, Subpart Q requires public water systems to notify persons 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 paragraphs 3.1 and 3.2 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 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.

4.2. Within 180 days of the effective date of this Order, Respondent shall correct any remaining significant deficiencies identified in EPA's September 30, 2011 letter and provide documentation of such corrective actions and/or provide EPA with a new CAP to be approved by EPA.

4.3. 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 and 3.2 above.

4.4. 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.

4.5. 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 or 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 19.4.

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

September 30, 2011

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Mr. Joe Bob, Lead Operator  
Nooksack Indian Tribe  
PO Box 157  
Deming Washington 98244

Re: Sanitary Survey Significant Deficiencies at Five Cedars, #105300028

Dear Mr. Bob:

Thank you for having your sanitary survey conducted by Indian Health Service's tribal utility consultant Warren Nilchee, Jr., on August 25, 2011. 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, Five Cedars, 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 Chan Pongkhamsing at (206) 553-1806 or [Pongkhamsing.chan@epa.gov](mailto:Pongkhamsing.chan@epa.gov) or me at (206) 553-6917 or [Jacobsen.lisa@epa.gov](mailto:Jacobsen.lisa@epa.gov)

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Jacobsen".

*for* 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.

<b>PWSID:</b>	105300028
<b>System Name:</b>	FIVE CEDARS COMMUNITY WATER SYSTEM
<b>Primary Source:</b>	Groundwater
<b>Sanitary Survey Date:</b>	8/25/2011
<b>Surveyor:</b>	WARREN NILCHEE, JR.
<b>Notice Date:</b>	9/30/2011

<b>Corrective Action Plan Due Date:</b>	2/7/2012
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Deficiency	Schedule to Address Deficiency		Accomplishments (date completed)
	Milestone/Corrective Action Description	Scheduled Date	
WL-01 - Sources - Improper well or spring sanitary cap, vent, and/or seal. - Correct Deficiency		2/7/2012	
WL-01 - Sources - No raw sample tap. - Correct Deficiency		2/7/2012	
WL-01 - Sources - High risk of GWUDI due to nearby surface water source, GWUDI assessment needed. - Provide Corrective Action Plan			

Deficiency	Schedule to Address Deficiency		Accomplishments (date completed)
	Milestone/Corrective Action Description	Scheduled Date	
WL-02 (Inactive Well) - High risk of contaminating nearby well if well is not being used or abandoned - Provide Corrective Action Plan			
ST-02 (Clearwell) - Finished Storage No safe access to storage structure due to tank elevation, dirt fill and no access walk way. - Provide Corrective Action Plan			
ST-02 (Clearwell) - Finished Storage Improper storage overflow. - Provide Corrective Action Plan			
ST-02 (Booster pump on Clearwell) - Pumps, Pump Controls, and Pump Facilities - Inadequate pump house ventilation or fiberglass enclosure - Provide Corrective Action Plan			
Management/Operation Cap - Management - Written standard operating protocol needed. - Provide Corrective Action Plan			
Management/Operation Cap - Management - Emergency response plan needed. - Provide Corrective Action Plan			

Deficiency	Schedule to Address Deficiency		Accomplishments (date completed)
	Milestone/Corrective Action Description	Scheduled Date	
Management/Operation Cap - Management - Cross-connection control program needed. - Provide Corrective Action Plan			

List any additional attachments included with this plan:

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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 \_\_\_\_\_

Deficiency	Schedule to Address Deficiency		Accomplishments (date completed)
	Milestone/Corrective Action Description	Scheduled Date	
EPA Use Only			
approved by (print)	_____	consultation date	closed date
	Compliance Officer Signature	_____	Date



Certificate of Service

The undersigned certifies that the original of the attached **ADMINISTRATIVE COMPLIANCE ORDER, In the Matter of: Nooksack Indian Tribe, Five Cedars Apartments, Public Water System. Docket No.: SDWA-10-2017-0013**, 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:

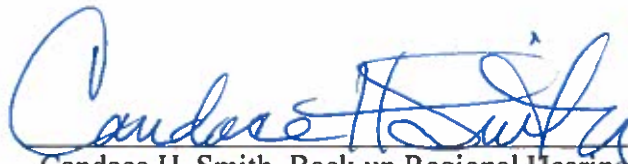
Adam Baron  
Drinking Water Compliance Officer  
U.S. EPA, Region 10 (OCE-101)  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

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

