

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Received by
EPA Region VIII
Hearing Clerk

IN THE MATTER OF)
)
Ute Indian Tribe and Ute Tribe Public Works,)
Uriah Heeps Public Water System,)
)
Respondents.)

Docket No. SDWA-08-2021-0038
EMERGENCY
ADMINISTRATIVE ORDER

AUTHORITY

1. This Emergency Administrative Order (Order) is issued by the U.S. Environmental Protection Agency (EPA) pursuant to the authority of section 1431(a) of the Safe Drinking Water Act (Act), 42 U.S.C. § 300i(a). The undersigned official has been properly delegated this authority.
2. The EPA may issue an order under section 1431(a) of the Act, 42 U.S.C. § 300i(a), when a contaminant that is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the health of persons, and appropriate state and local authorities have not acted to protect the health of such persons.

FINDINGS

3. Respondent Ute Indian Tribe (Tribe) is a federally recognized Indian tribe and is a “person” within the meaning of 42 U.S.C. § 300f(12), and 40 C.F.R § 141.2, for purposes of federal enforcement under the Act.
4. Respondent Ute Tribe Public Works is a tribal agency organized under the laws of the Tribe and therefore is a “person,” as that term is defined in the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2, for purposes of federal enforcement.
5. The System is supplied by groundwater sources (two springs and one well). The System collects water from a subsurface collection system and routes the collected water to a water treatment plant. Both Uriah Heeps and Whiterocks water treatment is comprised of injection of phosphoric acid for corrosion control, and gaseous chlorine for disinfection.
6. The System has 915 service connections and regularly serves 3550 individuals daily for at least 60 days out of the year. Therefore, the System is a “public water system” and a “community water system” as defined in 40 C.F.R. § 141.2 and section 1401 of the Act, 42 U.S.C. § 300f.
7. The System is a “public water system” as defined in 40 C.F.R. § 141.2 and section 1401(4) of the Act, 42 U.S.C. § 300f(4), and, therefore, is subject to the requirements of the Act and the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. part 141.

8. Prior to issuing this Order, the EPA consulted with the Tribe and Public Works to confirm the facts stated in this Order and with Tribal and local authorities to ascertain they have not acted to protect the health of persons in this instance.

9. The EPA has determined that conditions exist at the System that may present an imminent and substantial endangerment to the health of humans, based on the facts indicated in paragraphs 11 and 12, below. The EPA has determined that this Order is necessary to protect public health.

10. *E. coli* are bacteria whose presence indicates that the water may have been contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

11. On August 10, 2021, the EPA was notified that a routine total coliform sample collected from the System on August 9, 2021, was analyzed as positive for total coliform and *E. coli*. On August 12, 2021, the EPA was notified that 2 repeat total coliform samples tested positive for total coliform with 1 repeat sample testing positive for total coliform and *E. coli*. (see 40 C.F.R. § 141.858). Additionally, 2 triggered source samples were analyzed as positive for total coliform (see 40 C.F.R. § 141.402), all of which were collected on August 11, 2021.

12. In addition, a violation of the maximum contaminant level (MCL) for *E. coli* occurs if a system has any combination of a total coliform positive and *E. coli* positive routine and repeat samples or an *E. coli* positive routine and no repeat samples. These circumstances have occurred at the System, as set forth in paragraph 11, above, and, therefore, Respondents have violated the *E. coli* MCL. 40 C.F.R. § 141.860.

13. On August 12, 2021, the EPA provided Respondents with a public notice template for a boil water advisory, and Respondents were in the process of notifying persons served by the System of the contamination on August 13, 2021.

ORDER

INTENT TO COMPLY

14. Within 24 hours of receipt of this Order, Respondents shall notify the EPA in writing of their intent to comply with this Order. Notification by e-mail to the EPA point of contact identified below is acceptable.

BOIL WATER ADVISORY AND PUBLIC NOTICE

15. The boil water advisory referenced in paragraph 13, above, shall

- a. **Be issued to all residents receiving water from the System in Randlett and downstream, including the community of Ouray, and**
- b. Remain in place until the EPA provides written notification to Respondents that the boil water advisory is no longer needed.

16. Respondents must carry out the public notice and other notice requirements as required by 40 C.F.R. part 141, subpart Q.

ALTERNATE WATER SUPPLY

17. Using the public notice referenced in paragraph 13, above, Respondents shall, no later than 24 hours after receipt of this Order, **notify all residents receiving water from the System in Randlett and downstream, including the community of Ouray, that an alternative potable water supply is available at no cost to all users of the System as needed for drinking, cooking, maintaining oral hygiene, and dish washing.** Respondents shall provide at least two liters of potable water daily per person at a central location that is accessible to all persons served by the System. The alternate water supply shall be made available until the Respondents receive written notification from the EPA that it is no longer necessary to supply it.

18. No later than five days after the effective date of this Order (see paragraph 37, below), Respondents shall provide the EPA with a copy of their notification concerning an alternate water supply is available.

CORRECTIVE MEASURES

19. Within 30 days after the effective date of this Order, Respondents shall provide the EPA with a plan and schedule that outlines corrective actions taken and/or to be taken to prevent future *E. coli* contamination at the System. The plan shall identify the cause of the contamination referenced in paragraph 11, if possible, and include proposed system modifications, estimated costs of modifications, and a schedule for completion of the project. The proposed schedule shall include specific milestone dates and a final completion date (to be within three months from the date of the EPA's approval of a schedule). The schedule must be approved by the EPA before construction or modifications may commence.

20. The schedule required by paragraph 19, above, will be incorporated into this Order as an enforceable requirement upon written approval by the EPA. If implementation of the plan fails to correct and/or prevent *E. coli* contamination, the EPA may order further steps.

21. Respondents shall notify the EPA in writing within 24 hours after completing corrective action detailed in the plan and schedule.

DISTRIBUTION SYSTEM DISINFECTION AND MONITORING REQUIREMENTS

22. Within 24 hours of locating and addressing the cause of contamination, Respondents shall disinfect and flush the System unless EPA indicates other required monitoring is needed prior to disinfecting and flushing.
23. **Immediately upon receipt of this Order, Respondents shall take weekly “special” purpose (defined in 40 C.F.R. § 141.853(b)) total coliform samples in communities upstream of Randlett that are representative of water throughout the System according to the Sample Siting Plan submitted to the EPA by Respondents.**
24. **Following disinfecting and flushing of the System, beginning on the first date when chlorine levels return to normal, Respondents shall collect consecutive daily (one sample per day) “special” purpose (defined in 40 C.F.R. § 141.853(b)) total coliform samples from the community of Ouray until notified by the EPA that consecutive daily sampling may be discontinued.** These daily samples should be labeled as “special” samples, not for use for compliance. Respondents shall ensure that each sample is analyzed for total coliform and *E. coli* and shall email each result to the EPA immediately upon receipt of the analysis from the laboratory. Along with the total coliform sample collection, Respondents shall measure the chlorine residual indicating free or total and provide these measurements along with the total coliform analysis from the laboratory.
25. After Respondents receive written notification from the EPA that they may discontinue consecutive daily “special” total coliform sampling, Respondents shall collect weekly “special” total coliform samples (one sample per week) from the community of Ouray in addition to the other weekly samples.
26. After Respondents receive written notification from the EPA that it may discontinue weekly “special” total coliform sampling, Respondents shall thereafter resume monthly routine total coliform sampling as required by 40 C.F.R. § 141.855 according to the total coliform Sample Siting Plan.
27. Respondents shall collect all routine total coliform samples at sites that are representative of water throughout the System according to the Sample Siting Plan submitted to the EPA by Respondents. Additionally, Respondents shall report all sampling results to the EPA by email immediately upon (*i.e.*, as soon as practicable, and in no event more than 24 hours after) receiving the results.
28. Respondents shall remain obligated to comply with the requirements in 40 C.F.R. §§ 141.402 (to collect additional source water samples) and 141.858 (to collect three repeat samples within 24 hours of being notified of a routine total coliform-positive sample result). If a future repeat sample is positive for total coliform, Respondents shall, within 24 hours of being notified of the positive sample result, consult with the EPA for appropriate responsive actions.

29. **The EPA may require Respondents to increase total coliform sampling at any time while this Order is in effect.**

REPORTING

30. Respondents must give daily updates to the EPA on the progress of disinfecting and flushing the System, and monitoring for total coliform and chlorine residual. Updates must be submitted to the EPA daily until the EPA provides written notification to the Respondents that reports may be submitted less frequently or discontinued. These reports may be submitted via e-mail.

31. Any notices, reports, or updates required by this Order to be submitted to the EPA shall be submitted to:

Nathan Hicks
via e-mail: hicks.nathaniel@epa.gov
Telephone (800) 227-8917, ext. 6546, or (303) 312-6546

32. This Order does not relieve Respondents from the obligation to comply with any applicable federal, tribal, or local law.

33. Failure to comply with this Order may result in civil penalties of up to \$24,674 per day. 42 U.S.C. § 300i(b); 40 C.F.R. part 19; 85 Fed. Reg. at 83821 (December 23, 2020).

34. This Order constitutes final agency action. Respondents may seek federal judicial review of this Order pursuant to section 1448(a) of the Act, 42 U.S.C. 300j-7(a).

35. The EPA may modify this Order. The EPA will communicate any modification(s) to Respondents in writing and they shall be incorporated into this Order.

36. The provisions of this Order shall be deemed satisfied upon Respondents' receipt of written notice from the EPA that Respondents have demonstrated, to the satisfaction of EPA, that the terms of this Order have been satisfactorily completed.

37. Issued and effective this 13th day of August, 2021.

Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division