

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD
LENEXA, KANSAS 66219

Received by
EPA Region 7
Hearing Clerk

IN THE MATTER OF)	
)	
)	
KICKAPOO TRIBE IN KANSAS)	
PWS ID# 070000002)	
Respondent)	
)	EMERGENCY
)	ADMINISTRATIVE ORDER
)	
Proceeding under section 1431(a))	
of the Safe Drinking Water Act,)	
42 U.S.C. § 300i(a))	Docket No. SDWA-07-2023-0069
_____)	

STATUTORY AUTHORITY

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by section 1431 of the Safe Drinking Water Act (SDWA or Act), 42 U.S.C. § 300i. The authority to issue this Order has been redelegated to the Region 7 Director of the Enforcement and Compliance Assurance Division with the concurrence of Region 7 Regional Counsel.

JURISDICTION

1. The EPA has authority to take emergency actions pursuant to section 1431 of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300i.
2. The EPA has primary enforcement responsibility for the Act’s public water supply protection program on the Kickapoo in Kansas Tribal Reservation (the Reservation). No other governmental authority has applied for and been approved to administer the program on the Reservation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

3. The Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas (Respondent) is a federally recognized Indian Tribe and is a “person” within the meaning of 42 U.S.C. § 300f(12), and as defined in 40 C.F.R. § 141.2, for purposes of federal enforcement under the Act.
4. Respondent owns and operates the Kickapoo Tribe Public Water System (the System) and provides water for human consumption on the Reservation. The System serves approximately 560 year-round residents through approximately 196 service connections.
5. The System is a “public water system” and a “community water system” as defined in section 1401 of the Act, 42 U.S.C. § 300f and 40 C.F.R. § 141.2.
6. As the owner and operator of the System, Respondent is a “supplier of water” as that term is defined in section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. As provided in section 1411 of the Act, 42 U.S.C. § 300g, Respondent is therefore required to comply with the Act and the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. Part 141.
7. On August 18-19, 2022, EPA Region 7 conducted a sanitary survey (Survey) of the System. During the Survey, EPA observed a hole in the roof of Site 2 Tower that was identified as a significant deficiency to the Respondent on September 16, 2022 via electronic mail and in the Survey’s report provided to Respondent on October 14, 2022. The Site 2 Tower is a finished water storage structure. Water from the Site 2 Tower is consumed by users of the System without subsequent treatment or disinfection. The survey report explained the roof of all water storage structures must be watertight with no openings except properly constructed vents, manholes, overflows, risers, drains, pump

- mountings, control ports, or piping for inflow and outflow to prevent the introduction of contamination of water delivered to customers.
8. A significant deficiency includes a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that EPA determines to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers. 40 C.F.R. §141.723(b).
 9. Systems must correct significant deficiencies identified in sanitary survey reports according to the schedule approved by EPA. 40 C.F.R. §141.723(d).
 10. In the October 14, 2022, Survey report transmittal correspondence, the EPA established a schedule deadline of November 28, 2022, to correct the significant deficiency associated with the hole in the roof of the Site 2 Tower.
 11. Respondent has not taken adequate action to correct or repair the hole(s) in the roof of the Site 2 Tower.
 12. The hole(s) in the roof of the Site 2 Tower may allow disease vectors, such as rodents and birds, to access the interior of the structure and the finished water. These vectors are known to transmit diseases to humans. If disease vectors infiltrate the Site 2 Tower, they may contaminate drinking water consumed by users of the System.
 13. EPA has determined Respondent's failure to take adequate actions to repair the hole(s) in the roof of the Site 2 Tower has introduced or is likely to introduce contaminants into water delivered to its users and therefore presents or may present an imminent and substantial endangerment to the health of persons who are or may be users of the System.
 14. EPA consulted with tribal authorities before issuing this Order and has determined they have not acted to protect the health of persons in this instance. This Order is necessary to ensure adequate protection of public health.

EMERGENCY ADMINISTRATIVE ORDER

15. Within 24 hours of receipt of this Order, Respondent shall notify EPA in writing of its intent to comply with the terms of this Order.
16. Within 48 hours of receipt of this Order, Respondent shall take the following actions:
 - a. Perform interim repairs of the hole(s) in the roof of the Site 2 Tower to ensure it is watertight and impervious to contaminants and disease vectors.
 - b. Conduct a visual inspection of the interior of the Site 2 Tower to determine the presence of any signs of contamination associated with disease vectors (e.g., bird feathers, nests) or indications of drinking water contamination.
17. Within three days of receipt of this Order, provide photographic documentation to EPA of completion of the actions required above.
18. If results of the visual inspection of the interior of the Site 2 Tower required above indicate vector entry or potential contamination of drinking water, Respondent shall immediately notify all users of the System that water should be boiled prior to consuming. Copies of the boil advisory provided to Respondent's users shall be provided to EPA within 24 hours of issuance.
19. If results of the visual inspection required above indicate vector entry or potential contamination of drinking water, Respondent shall clean and disinfect the interior of the Site 2 Tower within five business days of the visual inspection in a manner consistent with industry standards. Documentation of actions to clean and disinfect the Site 2 Tower shall be provided to EPA within five business days of completion.
20. Within 30 days of receipt of this Order, Respondent shall permanently repair holes in the storage structure and provide documentation to EPA of the actions taken.

21. All information required of Respondent under this Order shall be submitted to:

Angela Acord
Enforcement and Compliance Assurance Division
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Phone: 913-551-7914
Email: acord.angela@epa.gov

GENERAL PROVISIONS

22. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 et seq., or the Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
23. The EPA may modify this Order to ensure protection of human health. The EPA will communicate any modification(s) to Respondent in writing and the modification(s) shall be incorporated into this Order.
24. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from the EPA that Respondent has demonstrated, to the satisfaction of the EPA, that the terms of this Order have been satisfactorily completed.
25. Violation of any term of this Order may subject the Respondents to a civil penalty not to exceed \$28,239 (adjusted for inflation according to 40 C.F.R. part 19) for each day in which such violation occurs or failure to comply continues, assessed by an appropriate U.S. District Court under section 1431(b) of the Act, 42 U.S.C. § 300i(b).
26. Respondent may seek federal judicial review of the Order pursuant to section 1448(a) of the Safe Drinking Water Act, 42 U.S.C. § 300j-7(a).
27. The provisions of this Order are binding on Respondent and its officials, officers, directors, partners, agents, employees, attorneys, successors, heirs, and assigns, and on all

persons, independent contractors, consultants, and contractors acting in concert with
Respondent.

28. The effective date of this Order shall be the date of Respondent's receipt.

David Cozad
Director
Enforcement and Compliance Assurance Division

Leslie Humphrey
Regional Counsel
Office of Regional Counsel

Certificate of Service

I certify that on the date noted below I delivered a true copy of this Emergency Administrative Order by electronic mail, to:

Regional Hearing Clerk, EPA Region 7
R7_Hearing_Clerk_Filings@epa.gov

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance on Consent by electronic mail and certified mail, to:

Lester Randall
Chairman
Kickapoo Tribe in Kansas
824 111th Drive
Horton, Kansas 66439
ljr3131@outlook.com
