



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Ref: 8ENF-W-SD

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
and via email

The Honorable Rynalea Whiteman Pena, President  
Northern Cheyenne Indian Reservation  
P.O. Box 128  
Lame Deer, Montana 59043-0128

Re: Emergency Administrative Order under Section 1431 of the Safe Drinking Water Act,  
Birney Village, PWS ID#083090062 Docket No. **SDWA-08-2019-0027**

Dear President Whiteman Pena:

Enclosed is an Emergency Administrative Order (Order) issued by the U.S. Environmental Protection Agency to the Northern Cheyenne Utility Commission (NCUC) and the Northern Cheyenne Indian Tribe (Tribe), under section 1431 of the Safe Drinking Water Act (Act), 42 U.S.C. § 300i.

The EPA has determined that conditions exist at the Birney Village Public Water System (System) that may present an imminent and substantial endangerment to the persons served by the System. The EPA has made this determination based on notification from the laboratory and the System operator on June 18, 2019 that the System has an *E. coli* maximum contaminant level exceedance.

Pursuant to the authority set forth in section 1431 of the Act, 42 U.S.C. § 300i, the EPA is authorized to take actions necessary to protect human health. The Order and its requirements are necessary to ensure adequate protection of public health.

The enclosed Order sets forth the actions that must be taken to ensure that the people served by the System are provided with safe drinking water. The Order requires the NCUC and the Tribe to, among other things, take the following actions: issue a boil water advisory and provide an alternate source of water until notified by the EPA to discontinue; submit a plan and schedule for any corrective actions identified to prevent bacteriological contamination of the System; disinfect and flush the System; and take additional total coliform bacteria samples.

The penalties for failing to comply are set forth in the Order. If you have any questions or wish to discuss the Order, please contact Steven Latino at (800) 227-8917 extension 6440 or 303-312-6440, or by email at [latino.steven@epa.gov](mailto:latino.steven@epa.gov). Any questions from counsel should be directed to Shaula Eakins, Assistant Regional Counsel, (800) 227-8917, extension 6317, or at (303) 312-6317, or by email at [eakins.shaula@epa.gov](mailto:eakins.shaula@epa.gov).

Thank you for your attention to this matter.

Sincerely,



Suzanne J. Bohan, Director  
Enforcement and Compliance Assurance Division

Enclosures

cc: Rynalea Whiteman Pena, President ([rynalea.pena@cheyennenation.com](mailto:rynalea.pena@cheyennenation.com))  
Adam Spang, Manager, Northern Cheyenne Utility Commission ([adam.spang.ncuc@gmail.com](mailto:adam.spang.ncuc@gmail.com))  
Charlene Alden, Environmental Director ([charlene.alden@cheyennenation.com](mailto:charlene.alden@cheyennenation.com))  
Ethelyn Shoulderblade, Acting Manager, Northern Cheyenne Utility Commission  
([ethelyn.ncud@gmail.com](mailto:ethelyn.ncud@gmail.com))  
Cleveland McManus, Operator, Northern Cheyenne Utility Commission  
Jim White, Director, SFC, Indian Health Service ([jim.white@ihs.gov](mailto:jim.white@ihs.gov))

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2019 JUN 19 PM 4:07

IN THE MATTER OF )  
 )  
Northern Cheyenne Utility Commission )  
Birney Village )  
PWS ID 083090062 C )  
 )  
Respondent. )

Docket No. ~~SDWA-08-2019-0027~~

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EPA REGION VIII  
HEARING CLERK

**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. The Northern Cheyenne Tribe (“Tribe”) is a federally recognized Indian tribe and therefore is a “municipality” and a “person” as those terms are defined in the Act, 42 U.S.C. § 300f(10) and § 300f(12), respectively, for purposes of federal enforcement.

4. The Northern Cheyenne Utility Commission 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).

5. Respondent Northern Cheyenne Utility Commission and the Tribe own and operate the Birney Village Public Water System (System) located within the exterior boundaries of the Northern Cheyenne Indian Reservation, Montana. The System provides water to the public for human consumption through pipes or other constructed conveyances.

6. The System is supplied by a groundwater source accessed via Well 01 with treatment provided. Groundwater is pumped from Well 01 into a water treatment plant with chlorination equipment and then into the system’s distribution system and two connected 20,000-gallon tanks. The System is operated year-round.

7. The System has 32 service connections and regularly serves 96 individuals daily for at least 60 days out of the year.

8. 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 Regulation (NPDWR) at 40 C.F.R. part 141.

9. Prior to issuing this Order, the EPA consulted with the System 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.

10. 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 12 and 13, below. The EPA has determined that this Order is necessary to protect public health.

11. *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 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.

12. On June 14, 2019, the EPA was notified that a routine bacteriological sample collected from the System on June 12, 2019, was analyzed as positive for total coliform. On June 18, 2019 the EPA was notified that one repeat bacteriological sample (see 40 C.F.R. § 141.858), collected on June 14, 2019, tested positive for total coliform and *E. coli*.

13. 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. These circumstances have occurred at the System, as set forth in paragraph 12, above, and, therefore, Respondent has violated the *E. coli* MCL. 40 C.F.R. § 141.860.

14. On June 18, 2019, the EPA provided Respondent with a public notice template for a boil water advisory, and Respondent notified persons served by the System of the contamination on June 18, 2019.

### **ORDER**

#### **INTENT TO COMPLY**

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

### **BOIL ORDER AND PUBLIC NOTICE**

16. The boil order advisory referenced in paragraph 14, above, shall remain in place until the EPA provides written notification to Respondent that the boil order is no longer needed.

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

### **ALTERNATE WATER SUPPLY**

18. Using the public notice referenced paragraph 14, above, Respondent shall, no later than 24 hours after receipt of this Order, notify the public 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. Respondent 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 Respondent receives written notification from the EPA that it is no longer necessary to supply it.

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

### **CORRECTIVE MEASURES**

20. Within 15 days after the effective date of this Order, Respondent 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 12, 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.

21. The schedule required by paragraph 20, 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.

22. Respondent shall notify the EPA in writing within 24 hours after completing corrective action.

## **DISTRIBUTION SYSTEM DISINFECTION AND MONITORING REQUIREMENTS**

23. Within 24 hours after providing the notification required by paragraph 22, above, Respondent shall disinfect and flush the System.
24. Following disinfecting and flushing of the System, beginning on the first date when chlorine levels return to normal, Respondent shall collect consecutive daily (one sample per day) special purpose (defined in 40 C.F.R. § 141.853(b)) samples from the System's distribution system until notified by the EPA that consecutive daily sampling may be discontinued. Respondent shall ensure that each sample is analyzed for total coliform and *E. coli* and shall email each result to the EPA upon receipt of the analysis from the laboratory.
25. After Respondent receives written notification from the EPA that they may discontinue daily special purpose coliform sampling, Respondent shall collect weekly bacteriological samples (one sample per week) to determine compliance with the *E. coli* MCL as stated in 40 C.F.R. § 141.860.
26. After Respondent receives written notification from the EPA that it may discontinue weekly total coliform sampling, Respondent shall thereafter resume monthly total coliform sampling as required by 40 C.F.R. § 141.855.
27. Respondent shall remain obligated to comply with the requirements in 40 C.F.R. §§ 141.402 (to collect an additional source water sample) and 141.858 (to collect three repeat samples within 24 hours of being notified of a total coliform positive-sample result). If a future repeat sample is positive for coliform, Respondent shall, within 24 hours of being notified of the positive sample result, consult with the EPA for appropriate responsive actions.
28. Respondent shall collect all routine and repeat coliform samples at sites that are representative of water throughout the System according to the Sample Siting Plan submitted to the EPA by Respondent. Additionally, Respondent 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.
29. The EPA may require Respondent to increase coliform sampling at any time while this Order is in effect.

## **REPORTING**

30. Respondent must give daily updates to the EPA on the progress of scheduling a Level 2 Assessment (see 40 C.F.R. §§ 141.2 and 141.851-141.861) by an EPA-approved third party, disinfecting and flushing the System, and monitoring for coliform and chlorine residual. Updates must be submitted to the EPA daily until the EPA provides written notification to the

Respondent that reports may be submitted less frequently or discontinued. These reports may be submitted via e-mail.

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

Steven Latino  
via e-mail: latino.steven@epa.gov  
Telephone (800) 227-8917, ext. 6440, or (303) 312-6440

32. This Order does not relieve Respondent from its 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 \$23,963 per day. 42 U.S.C. § 300i(b); 40 C.F.R. part 19; 84 Fed. Reg. 2056, 2059 (February 6, 2019) and 84 Fed. Reg. 5955 (February 25, 2019).

34. This Order constitutes final agency action. Respondent 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 Respondent in writing and they shall be incorporated into this Order.

36. 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 EPA, that the terms of this Order have been satisfactorily completed.

37. Issued and effective this 19<sup>th</sup> day of June, 2019.

  
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Suzanne J. Bohan, Director  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202