

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 8-3 PJ 3:46
REGION 8

IN THE MATTER OF)	
)	
The Fort Belknap Indian Community, Owner,)	AMENDED ADMINISTRATIVE
and Prairie Mountain Utilities, Operator,)	ORDER
Fort Belknap Agency Public Water System)	
Harlem, MT 59526)	Docket No. SDWA-08-2007-0069
PWS ID# 083090041)	
)	
Respondents.)	
)	
Proceedings under section 1414(g))	
of the Safe Drinking Water Act,)	
42 U.S.C. § 300g-3(g))	
)	

The following findings are made and order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) in the Safe Drinking Water Act (the Act), 42 U.S.C. § 300g-3(g), as properly delegated to the Supervisors in the Legal Enforcement Program, Office of Enforcement, Compliance and Environmental Justice and the Montana Office, EPA Region 8.

AUTHORITY

1. Section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), authorizes the Administrator to issue an administrative order requiring compliance and/or assessing a civil penalty for noncompliance with any applicable requirement.
2. EPA has primary enforcement responsibility for public water systems on Indian lands, pursuant to the regulations for implementation and enforcement of the National Primary Drinking Water Regulations (NPDWRs) set forth at 40 C.F.R. § 141.2.

FINDINGS

1. The Fort Belknap Indian Community (FBIC) is a federally-recognized tribal government/tribal agency comprised of the Assiniboine and Gros Ventre Tribes, and is a "person" within the meaning of 40 C.F.R. § 141.2 for purposes of federal enforcement.
2. The Prairie Mountain Utilities (the Utility) is a tribal agency under the laws of the Fort Belknap Indian Community Business Council and is therefore a "person" within the meaning of 40 C.F.R. § 141.2 for purposes of federal enforcement.
3. Respondent FBIC owns the Fort Belknap Agency Public Water System (System), located in the northwest portion of the Fort Belknap Indian Reservation, Montana, that provides water for human consumption.
4. Respondent Utility operates the System.
5. The System serves approximately 2,000 residents annually through 420 service connections.
6. The System is a "public water system" within the meaning of 40 C.F.R. § 141.2.
7. The System serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents and is therefore a "community water system" within the meaning of 40 C.F.R. § 141.2.
8. Respondents FBIC and Utility own and/or operate the System and therefore are "suppliers of water" within the meaning of section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondents therefore are required to comply with the Act and its implementing regulations, 40 C.F.R. part 141.

9. The System is supplied solely by surface water from the Milk River.

10. On August 29, 2005, EPA issued a final Compliance Assistance Plan (CAP) to the Fort Belknap Water System. The CAP listed the violations that had occurred, described the assistance EPA had provided to the Respondent to facilitate compliance with the Act, and explained the actions which would enable the System to return to compliance. During the approximately two and one-half years since the CAP was issued, EPA has documented additional continuing violations, many of which are similar to those listed in the CAP.

FINDINGS OF VIOLATION

1. The regulations require that a system conduct monthly monitoring for disinfection byproduct precursors, including "paired samples" of total organic carbon (TOC) in source water and treated water, and alkalinity in the source water. More specifically, a system must collect one paired sample of TOC and one source water alkalinity sample per month per plant (40 C.F.R. § 141.132(d)). The System failed to collect such samples during August 2004, November 2004, January 2005 - January 2006, and April - December 2006, and, therefore, violated the Act and the regulations for a total of 24 months.

2. The regulations require that information from the monthly monitoring samples stated above be reported to EPA each quarter. (See 40 C.F.R. § 141.134(a)). The System failed to report such information for all 4 quarters of 2005 and the last 3 quarters of 2006, and, therefore, violated the Act and the regulations for a total of 7 quarters.

3. The regulations (see 40 C.F.R. § 141.132(b)) require the collection of one water sample from the distribution system during each quarter to determine compliance with the maximum contaminant level (MCL) for disinfection byproducts (see 40 C.F.R. § 141.64). The System failed to take such samples during the 1st, 2nd, and 3rd quarters of 2005, and the 2nd and 3rd quarters of 2006, and, therefore, violated the Act and the regulations for a total of 5 quarters.

4. The regulations require systems to report information including the number of disinfection byproducts samples taken during the quarter; locations, date, and results of samples taken; the arithmetic average of the results; and whether the MCL for disinfection byproducts was violated, to EPA within 10 days after the end of each quarter. (40 C.F.R. § 141.134). The System failed to report such information for the 3rd quarter of 2004, and 2nd quarter of 2005, and reported results late for the 1st quarter of 2005, 1st quarter of 2007 and 2nd quarter of 2007 and, therefore, violated the Act and the regulations for a total of 5 quarters.

5. The regulations require that the Combined Filter Effluent (CFE) turbidity of a system using a surface water source and conventional filtration must be less than or equal to 0.3 Nephelometric Turbidity Units ("NTU") in at least 95 percent of the measurements taken each month after January 1, 2005 (40 C.F.R. § 141.551(a)). Monitoring results show that this turbidity limit was exceeded during February and March 2005 and during June, July, and August 2006, and, therefore, violated the Act and the regulations for a total of 5 months.

6. The regulations require that the maximum CFE turbidity of systems using a surface water source and conventional filtration never exceed 1 NTU during any month after January 1, 2005 (40 C.F.R. § 141.551(b)). The System exceeded 1 NTU 3 times during the month of

February 2005, and 20 times during the month of March 2005, and, therefore, violated the Act and the regulations a total of 23 times.

7. Whenever turbidity exceeds 2.0 NTU during 2 consecutive 15-minute readings, in 2 consecutive months for an individual filter, the regulations require that systems arrange to have a Comprehensive Performance Evaluation (CPE) performed by EPA or by a third party approved by EPA within 60 days of the second month's exceedance UNLESS the system has had a CPE within the prior 12 months OR the system and EPA are participating in an ongoing Comprehensive Technical Assistance (CTA) project (40 C.F.R. § 141.563(c)).

The July 5, 2005 CAP encouraged the System to initiate a third-party CTA project within 30 days. Respondent arranged for a CTA visit by Midwest Assistance Project on June 6th, 7th, and 8th, 2007, almost two years after the deadline recommended in the CAP. **There has been no follow up to this additional CTA visit.** The CAP also specified that the Respondent should state its intent to implement the changes recommended in the CTA; no such statement has been provided. No CPE has been conducted at the System since 2000, more than one year prior to the date the System exceeded 2 NTU for the 2nd consecutive month. Therefore, since the dates the System exceeded 2 NTU for the 2nd consecutive month in March 2005 **and again in February, 2008**, the System has neither arranged for the required CPE nor fully participated in an ongoing CTA, it is in violation of the Act and its regulations

8. Whenever 2 consecutive individual filter turbidity readings exceed 1.0 NTU, the regulations require systems to report those values, the filter number, the date, and the cause (if known) to EPA by the 10th of the following month (40 C.F.R § 141.570(b)(2)). The System

reported a possible cause for the exceedances of February and March 2005, but failed to report the individual filter values, numbers, and dates, and, therefore, violated the Act and its regulations 6 times for this requirement. **The system also reported, but did not cite a possible cause for, exceedances of 1.0 NTU in December 07, January 08, and February 08 and 2.0 NTU in January and February, 08 in violation of the Act and the NPDWRs.**

9. **The regulations require the system to monitor turbidity and disinfectant residual. As required by the Surface Water Treatment Rule (SWTR) and the Long Term 1 Enhanced SWTR (LT1SWTR), turbidity of representative samples of the combined water from the two filters must be monitored and reported at least once every 4 hours (40 CFR §141.74(c)(1)). The turbidity of the system's combined filtered water was not measured and reported at least once every 4 hours for the months of January and February 2008, in violation of the Act and the NPDWRs. This requirement was met on only two days in January, for example.**

10. The regulations require that systems using chlorine to monitor residual disinfectant concentration in the distribution system at the same point and at the same time as total coliforms are sampled (40 C.F.R. § 141.132(c)(1)). The System failed to monitor for chlorine residual in October 2005, in violation of the Act and the regulations.

11. The regulations require systems using filtration to monitor disinfectant residual at the entry point to the distribution system continuously and record the lowest values each day (40 C.F.R. § 141.74(c)(2)). The System failed to record the lowest values on 3 of 31 days during the month of December 2005, and therefore violated the Act and its regulations a total of 3 times.

12. The regulations require systems that provide filtration to maintain the residual disinfectant concentration at the entry point to the distribution system at a level which does not fall below 0.2 mg/l for more than 4 hours (40 C.F.R. § 141.72(b)(2)). The System allowed the residual to fall below 0.2 mg/l for more than 4 hours on February 9, 2005, in violation of the Act and its regulations.

13. The regulations impose and define the MCL for total coliform bacteria, applicable to public water systems collecting fewer than 40 samples per month, as no more than one sample collected during the month may be positive for total coliform bacteria (40 C.F.R. § 141.63(a)(2)). The System exceeded the MCL for total coliform bacteria in November and December 2005, and, therefore, violated the Act and the regulations for a total of 2 times.

14. The regulations require systems that have exceeded the MCL for total coliform to report the violation to EPA no later than the end of the next business day after it learns of the violation (40 C.F.R. § 141.21(g)(1)). The System failed to report to EPA the total coliform MCL violations of November and December 2005 within 24 hours, in violation of the Act and the regulations.

15. The regulations require a system to report any failure to comply with a coliform monitoring requirement to EPA within 10 days, and report other NPDWR violations to EPA within 48 hours. (40 C.F.R. §§ 141.21(g)(2) and 141.31(b)). Although the System reported most of the above violations to EPA, none were reported within the required time periods. The System violated the Act and the regulations a total of 83 times

16. The regulations require a system to notify the public of any violations of the

NPDWRs (40 C.F.R. Part 141 Subpart Q, §§ 141.201 et. seq.). The System issued a public notice within the required time periods for 17 of the above violations, and public notice is not yet due for an additional 10 violations. The System violated the Act and regulations a total of 56 times.

ORDER

Based on the findings of violations above, the Respondents are ordered to do the following:

1. Upon the effective date of this order, monitor monthly for disinfection byproduct precursors, including "paired samples" of total organic carbon (TOC) in source water and treated water, and alkalinity in the source water (40 C.F.R. § 141.132(d)); and report analytical results and compliance calculations to EPA within the first 10 days of the end of the monitoring period [40 C.F.R. §§ 141.134(a) and (d)].
2. Upon the effective date of this order, monitor quarterly for disinfection byproducts in the distribution system (40 C.F.R. § 141.132(b)) to determine compliance with the disinfection byproducts MCL (40 C.F.R. § 141.64); and report analytical results and compliance calculations to EPA within the first 10 days of the end of the monitoring period (40 C.F.R. §§ 141.134(a) and (b)).
3. Upon the effective date of this order, ensure that the turbidity of produced water remains at less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month (40 C.F.R. § 141.73(a)(1)); and ensure that the turbidity of produced water never exceeds 1 NTU (40 C.F.R. § 141.551(b)). **Please submit copies of the CFE strip chart recorders**

monthly, with the system's turbidity report. EPA will determine your compliance with these requirements using the monitoring results required by 40 C.F.R. § 141.551. Measurements must continue to be taken as described in 40 C.F.R. § 141.74(a) and (c), including but not limited to, **reporting the turbidity of the combined and individual filter effluent water samples at least once every 4 hours.** Should produced water turbidity exceed 1.0 NTU, report to EPA the date and values of the exceedance(s) by the 10th of the following month (40 C.F.R. § 141.570(a)(3)).

4. Turbidity from the individual filters must be monitored continuously, and recorded at least once every 15 minutes (40 C.F.R. § 141.560(c)). Report turbidity monitoring results to EPA within the first 10 days following the end of the monitoring period (40 C.F.R. § 141.75 and 141.570(b)). Report any instance where the turbidity of an individual filter exceeds 1.0 NTU in two consecutive recordings, 15 minutes apart, and identify the filter number, corresponding date(s), turbidity values which exceeded 1.0 NTU and the cause (if known), for the exceedances. Follow up action will be required if the turbidity of an individual filter, in two consecutive readings 15 minutes apart, exceeds 1.0 NTU for three consecutive months, or exceeds 2.0 NTU for two consecutive months (40 C.F.R. § 141.563(b)and (c)).

5. Within 30 days of the effective date of this order, provide EPA with a schedule to implement the improvements recommended in the primary Comprehensive Technical Assistance visit of June 6-8, 2007 and the Comprehensive Performance Evaluation conducted August 21-23, 2000. Within 30 days of receiving the Tribe's schedule, EPA will provide comments to the Tribe. Within 30 days of receiving EPA's comments, make necessary changes and resubmit the final schedule to EPA with a letter from the Tribal Chair stating the Tribes' intent to implement

Fort Belknap Agency PWS
Amended Administrative Order - 10

the schedule (40 C.F.R. § 141.563(c)). **This final schedule will be incorporated into this Order upon approval by EPA.**

6. Within 30 days of the effective date of this order, conduct a self assessment of the filter(s) which exceeded 1.0 NTU in December 07, January 08, and February 08 and exceeded 2.0 NTU in January and February, 08; and provide a written report (40 C.F.R. § 141.563).

7. Upon the effective date of this order, monitor for residual disinfectant concentration in the distribution system at the same point and time as total coliforms are sampled (40 C.F.R. §§ 141.132(c)(1) and 141.74(c)(3)(I)); and report the results and other required information to EPA within 10 days after the end of each month (40 C.F.R. § 141.75(b)(2)).

8. Upon the effective date of this Order, monitor disinfectant residual at the entry point of the distribution system continuously and record the lowest value each day (40 C.F.R. § 141.74(c)(2)); and report those values to EPA within 10 days after the end of the month the System serves water to the public (40 C.F.R. § 141.75(b)(2)).

9. Upon the effective date of this Order, maintain the residual disinfectant concentration at the entry point to the distribution system at a level which does not fall below 0.2 mg/l for more than 4 hours (40 C.F.R. § 141.72(b)(2)).

10. Upon the effective date of this order, comply with the total coliform MCL (40 C.F.R. § 141.63(a)); and report any exceedance of the MCL to EPA no later than the end of the next business day after it learns of the violation (40 C.F.R. § 141.21(g)(1)).

11. Continue the current boil order until such time as EPA provides written notice that it

can be lifted.

12. Upon the effective date of this order, report any failure to comply with coliform monitoring requirements to EPA within 10 days (40 C.F.R. § 141.21(g)(2)).

13. Except where a different reporting period is specified above, upon the effective date of this order, report any failure to comply with any NPDWR to EPA within 48 hours (40 C.F.R. § 141.31(b)).

14. Upon the effective date of this order, provide public notice(s) in the manner specified in the regulations. Such notice is intended to ensure that the public has been notified of all violations and shall contain all of the information required by the regulations (40 C.F.R. §§ 141.201, 141.204 and 141.205). Templates and a table summarizing violations are enclosed to assist the Tribes. The public notice(s) should state that the boil order remains in effect. Submit a copy of the public notice(s) to EPA within 10 days of completion of the public notice (40 C.F.R. § 141.31(d)).

15. Send any reports to EPA required in this order by certified mail to:

Barbara Burkland
U.S. EPA Region 8, Montana Office
10 West 15th St., Suite 3200
Helena, MT 59626

GENERAL PROVISIONS

Issuance of this order does not constitute a waiver, suspension, or modification of any Federal law or regulation, nor is it an election by EPA to forgo any civil or criminal action

Fort Belknap Agency PWS
Amended Administrative Order - 12

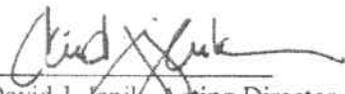
otherwise authorized by law.

Violation of any term of this order may result in an administrative civil penalty of up to \$27,500, or a civil penalty of not more than \$32,500 per day of violation assessed by the U.S. District Court. (42 U.S.C. § 300g-3(g)(3)(B)or(C)).

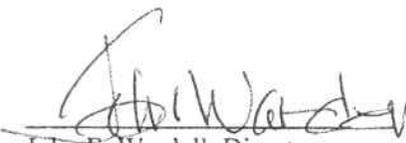
Violation of any requirement of the SDWA or its implementing regulations may subject Respondent to a civil penalty of not more than \$32,500 per day of violation assessed by the U.S. District Court. (42 U.S.C. § 300g-3(b)).

This order is effective upon receipt.

Issued this 8 day of April, 2008.



David J. Janik, Acting Director
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice



John F. Wardell, Director
Montana Office

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the AMENDED ADMINISTRATIVE ORDER were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent as follows:

Via hand-delivery to:

The Honorable Elyana R. Sutin
Regional Judicial Officer
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

Via certified mail to:

Julia Doney, President
Fort Belknap Community Council
RR1, Box 66
Harlem, MT 59526

Scott Snow, Manager
Prairie Mountain Utilities
RR1, Box 66
Harlem, MT 59526

Date: 4/8/2008

Signature:  _____