



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
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August 27, 2020
1:30 PM
Received by
EPA Region VIII
Hearing Clerk

DOCKET NO.: SDWA-08-2019-0021

IN THE MATTER OF:)
INDIAN HEALTH SERVICE) FINAL ORDER
BLACKFEET COMMUNITY HOSPITAL)
RESPONDENT)

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby ORDERED to comply with all of the terms of the Consent Agreement, effective 30 days after service on all parties.

SO ORDERED THIS 27TH DAY OF AUGUST, 2020.

KATHERIN HALL
Digitally signed by KATHERIN HALL
Date: 2020.08.27 13:29:37 -06'00'

Katherin E. Hall
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)			
INDIAN HEALTH SERVICE)	Docket No. SDWA-08-2019-0021		
P.O. Box 760)		August 27, 2020	
Browning, Montana 59417)		1:30 PM	
Respondent.)		Received by	
Blackfeet Community Hospital,)		EPA Region VIII	
PWS ID# 083090092)	CONSENT AGREEMENT	Hearing Clerk	

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.
2. The Indian Health Service (Respondent) owns and/or operates the Blackfeet Community Hospital Public Water System (System) located in Glacier County, Montana, on the Blackfeet Indian Reservation (Reservation).
3. EPA and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this Consent Agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

4. This Agreement is issued under the authority vested in the Administrator of the EPA by sections 1414 and 1447 of the Safe Drinking Water Act (Act), 42 U.S.C. §§ 300g-3(g)(3) and 300j-6(b)(2). The undersigned EPA official has been duly authorized to institute this action.
5. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
6. The final order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

7. The Act and the National Primary Drinking Water Regulations (Part 141), 40 C.F.R. part 141, apply to public water systems on the Reservation.
8. A "public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. 42 U.S.C. § 300f(4).

9. The EPA has primary enforcement responsibility over public water systems on the Reservation, as no other governmental entity has applied for and been approved to administer the program on the Reservation.
10. Pursuant to section 1414 of the Act, in any case in which the EPA is authorized to bring a civil action under section 1414 of the Act with respect to any applicable requirement, the EPA also may issue an order to require compliance with such applicable requirement. 42 U.S.C. § 300g-3(g)(1).
11. Any person who violates, or fails or refuses to comply with, a section 1414 order is liable to the United States for a civil penalty of not more than \$58,328 per day of violation. 42 U.S.C. § 300g-3(g)(3); 85 Fed. Reg. 1751, 1754.
12. The term “person” means an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency). 42 U.S.C. § 300f(12).
13. Pursuant to section 1447 of the Act, each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government owning or operating any public water system shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural respecting such public water systems in the same manner and to the same extent as any person is subject to such requirements. 42 U.S.C. § 300j-6.
14. If the EPA finds that a Federal agency has violated an applicable requirement under this subchapter, the EPA may issue a penalty order assessing a penalty against the Federal agency assessing a civil penalty in an amount not to exceed \$40,640 per day per violation. 42 U.S.C. § 300j-6; 85 Fed. Reg. 1751, 1754.
15. Part 141 constitutes an “applicable requirement.” 42 U.S.C. § 300g-3(i).

IV. STIPULATED FACTS

16. Respondent is a Federal agency that owns and/or operates the System, which provides piped water to the public in Glacier County, Montana, for human consumption.
17. The System is supplied by surface water and groundwater. The System’s hospital treatment building primarily uses surface water but can use groundwater when needed. The System’s dialysis clinic uses only groundwater. The surface water is purchased from the Two Medicine Public Water System (PWS ID: 083090090) via the Town of Browning Public Water System (PWS ID: 083090091). The surface water is treated by the Two Medicine Public Water System using cassette ultrafiltration and sodium hypochlorite disinfection prior to delivery. The System’s hospital treatment building also filters the surface water with a pressure sand filtration system. The groundwater is supplied by a wellfield consisting of three wells. The System’s hospital treatment building filters the groundwater with a sand filtration system. The System’s dialysis clinic further filters the groundwater with a cartridge filter and reverse osmosis system prior to use in the dialysis machines. The rest of the facility is typically supplied via the surface water from the Two Medicine Public Water System, though in an emergency, the groundwater source could supply water to the entire hospital.

18. The System has approximately one service connection and/or regularly serves an average of approximately 236 of the same individuals daily for at least six months out of the year. Additionally, the System serves a transient population of 350. Therefore, the System is a “public water system” as defined in section 1401(4) of the Act, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2. The System is also a “non-transient, non-community” water system as defined in 40 C.F.R. § 141.2.
19. Respondent is a “person” as defined in section 1401(12) of the Act, 42 U.S.C § 300f(12), and is subject to the Act and Part 141.
20. Part 141 includes monitoring requirements. The EPA has sent Respondent annual notifications of the specific monitoring requirements that apply to the System.
21. Respondent is required to monitor the System’s water monthly for total coliform bacteria. 40 C.F.R. §§ 141.853-858.
22. Respondent must report any violation of coliform monitoring requirements to the EPA within 10 days after discovering the violation. 40 C.F.R. § 141.861(a)(4).
23. On May 20, 2019, the EPA issued Respondent an Administrative Order requiring Respondent to correct failures to monitor for total coliform bacteria and to notify the EPA of violations of the total coliform monitoring requirements.
24. Respondent did not monitor for total coliform bacteria in July 2019.
25. Respondent did not report its failure to monitor for total coliform bacteria in July 2019 to EPA by August 10, 2019.
26. Respondent was required to monitor for lead and copper during the June 1 to September 30, 2019 monitoring period.
27. Respondent was required to deliver a consumer notice of individual tap monitoring results for lead and copper to the persons served at each sampled site no later than 30 days after the System learned of the tap monitoring results. 40 C.F.R. § 141.85(d).
28. Within 90 calendar days following the end of each monitoring period, Respondent was required to submit to the EPA a sample copy of the consumer notification along with a certification that the notification has been distributed. 40 C.F.R. § 141.90(f)(3).
29. By August 29, 2019, Respondent learned of the tap monitoring results for the June 1 to September 30, 2019 monitoring period.
30. Respondent did not deliver a consumer notice of the results of individual tap monitoring results for lead and copper to the persons served at each sampled site within 30 days after the System learned of the tap monitoring results from the June 1 to September 30, 2019 monitoring period.
31. Respondent did not provide a certification of consumer notification to the EPA by December 31, 2019.

32. Respondent is required to correct significant deficiencies within 120 days of receiving written notification of a significant deficiency or earlier if directed by the EPA. 40 C.F.R. § 141.404(a).
33. On May 15, 2018, the EPA performed a sanitary survey at the system and identified significant deficiencies, including: (1) the vent on Gravity Tank ST01 did not terminate in an inverted U construction at least 24 inches above the tank surface to prevent inhalation of contaminants by the tank and (2) the System lacked of a certified operator.
34. On March 27, 2019, the EPA sent Respondent documentation of the sanitary survey and required Respondent to correct the significant deficiencies by September 26, 2019.
35. Respondent did not correct the significant deficiencies by September 26, 2019.
36. Respondent has taken the following corrective actions:
 - a. On February 10, 2020, Respondent delivered a lead and copper consumer notice to the persons served at each sampled site from the June 1 to September 30, 2019 monitoring period.
 - b. On May 18, 2020, Respondent notified the EPA of the completed action to correct the air vent on Tank ST01 and provided confirmation of the corrective action to the EPA.
 - c. On June 8, 2020, Respondent contracted with a certified operator to assist with the operation of the System, then provided confirmation of the corrective action to the EPA.

V. ALLEGED VIOLATIONS OF LAW

37. Respondent failed to monitor for total coliform bacteria in July 2019, in violation of 40 C.F.R. §§ 141.853-858.
38. Respondent failed to notify the EPA that Respondent violated the total coliform monitoring requirements in July of 2019 by the August 10, 2019 deadline, in violation of 40 C.F.R. § 141.861(a)(4).
39. From September 29, 2019, to February 9, 2020, Respondent failed to deliver a lead and copper consumer notice to the persons served at each sampled site for the June 1 to September 30, 2019 monitoring period, in violation of 40 C.F.R. § 141.85(d), and from January 1, 2020, to February 9, 2020, Respondent failed to submit a certification of consumer notification, in violation of 40 C.F.R. § 141.90(f)(3).
40. From September 27, 2019, to June 8, 2020, Respondent failed to take corrective action to address significant deficiencies by the date established by the EPA, September 26, 2019, in violation of 40 C.F.R. § 141.404(a).

VI. TERMS OF CONSENT AGREEMENT

41. For the purpose of this proceeding, Respondent:
 - a. admits the jurisdictional and governing law allegations in sections II and III of this Agreement;

- b. admits to the stipulated facts stated in section IV of this Agreement;
 - c. admits to the violations of law alleged in section V of this Agreement;
 - d. consents to the assessment of a civil penalty as stated below;
 - e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - f. waives any right to confer under 42 U.S.C. § 300j-6(b)(3);
 - g. waives any right to contest any final order approving this Agreement; and
 - h. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.
42. Sections 1414 and 1447 of the Act, 42 U.S.C. §§ 300g-3(g)(3) and 300j-6(b)(2), authorize EPA to assess a civil penalty in this matter.
43. In determining the amount of the penalty to be assessed, EPA considered the seriousness of the violations, population at risk, and other appropriate factors, in accordance with section 1414 and 1447 of the Act, 42 U.S.C. §§ 300g-3(g)(3) and 300j-6(b)(2).
44. Based on the Alleged Violations of Law, and after consideration of the statutory factors in paragraph 43 above, EPA has determined a civil penalty of \$33,500 is appropriate to settle this matter.
45. Penalty Payment. Respondent agrees to:
- a. pay a civil penalty in the amount of \$33,500 within 30 calendar days of the Effective Date of this Agreement;
 - b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment>;
 - c. identify each and every payment with the docket number that appears on the final order,
 - d. within 24 hours of payment, email proof of payment to Steven Latino and Matt Castelli at latino.steven@epa.gov and castelli.mttthew@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).
46. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); and the United States' enforcement expenses;
 - b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - c. suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
47. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.
48. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the System. Any change in ownership or corporate control of Respondent, including but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
49. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
50. Except as qualified by paragraph 45, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. EFFECT OF CONSENT AGREEMENT

51. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.
52. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/ Regional Judicial Officer, or other delegatee.
53. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of up to \$58,328 per day per violation, or both, as provided in section 1414, 42 U.S.C. § 300g-3, and adjusted for inflation pursuant to 40 C.F.R. part 19. EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.
54. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

55. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
56. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.

VIII. PUBLIC NOTICE

57. Any final order approving this Agreement will be publicly noticed pursuant to 40 C.F.R. § 22.43(c).

IX. EFFECTIVE DATE

58. This Agreement shall become effective 30 days after it has been served on all parties. 40 C.F.R. § 22.43(b).

Consent Agreement: In the Matter of Indian Health Service, Blackfeet Community Hospital
ECN: 600.0042.2019_BlackfeetHospital

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8,
Complainant.**

Date: _____

By: _____

SUZANNE BOHAN Digitally signed by SUZANNE
BOHAN
Date: 2020.08.12 08:17:29 -06'00'
Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division

**UNITED STATES
INDIAN HEALTH SERVICE BLACKFEET COMMUNITY
HOSPITAL,
Respondent.**

Date: 8/5/2020

By: _____


Garland Stiffarm, CEO

CERTIFICATE OF SERVICE

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **INDIAN HEALTH SERVICE, BLACKFEET COMMUNITY HOSPITAL; DOCKET NO.: SDWA-08-2019-0021** was filed with the Regional Hearing Clerk on August 27, 2020.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Matt Castelli, Enforcement Attorney, and sent via certified receipt email on August 27, 2020, to:

Respondent

Garland Stiffarm, CEO
Indian Health Service
Garland.stiffarm@ihs.gov

Legal Counsel

Gary Fahlstedt, Assistant Regional Counsel
Department of Health and Human Services, Region VIII
Gary.fahlstedt@hhs.gov

EPA Financial Center

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
Chalifoux.Jessica@epa.gov

August 27, 2020

MELISSA
HANIEWICZ

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MELISSA HANIEWICZ
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Melissa Haniewicz
Regional Hearing Clerk