

July 13, 2020  
7:00 AM  
Received by  
EPA Region VIII  
Hearing Clerk

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

IN THE MATTER OF: )  
)  
Two Medicine Water Company )  
)  
Respondent. )  
)  
Town of Browning Public Water System )  
PWS ID # 083090091 )

Docket No. SDWA-08-2020-0032

**ADMINISTRATIVE ORDER ON  
CONSENT**

Proceeding pursuant to section 1414(g) of the  
Safe Drinking Water Act, 42 U.S.C. § 300(g)-3(g).

**INTRODUCTION**

The United States Environmental Protection Agency, Region 8 (EPA) and the Two Medicine Water Company (Respondent) enter into this Administrative Order on Consent (Consent Order) to resolve noncompliance with the Safe Drinking Water Act (Act), 42 U.S.C. section 300f *et seq.*, and the National Primary Drinking Water Regulations (Part 141), 40 C.F.R. part 141 at the Town of Browning Public Water System (System).

**JURISDICTION**

1. The EPA has primary enforcement responsibility over public water systems on the Blackfeet Indian Reservation of Montana (Reservation). No other governmental entity has applied for and been approved to administer the program on the Reservation.
2. The EPA enters into and issues this Consent Order under the authority vested in the EPA Administrator by section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), which has been delegated to the undersigned EPA official.
3. The allegations in paragraphs 6 through 10, below, are made solely by the EPA. In signing this Consent Order, Respondent neither admits nor denies the allegations. Without any admission of liability, Respondent consents to the issuance of this Consent Order and agrees to

abide by all of its conditions. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review of this Consent Order under section 1448(a) of the Act, 42 U.S.C. § 300j-7(a). Respondent further agrees not to challenge the jurisdiction of the EPA, the Findings of Fact, or the Findings of Violation and Conclusions of Law in any proceeding to enforce this Consent Order or in any action under this Consent Order.

#### **PARTIES BOUND**

4. This Consent Order 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 Consent Order to any successors-in-interest prior to transfer of any interest in the Town of Browning Public Water System. Any change in ownership or control of the Town of Browning Public Water System including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Consent Order.

5. Each undersigned signatory for Respondent certifies to her or his authority to execute this Consent Order and to legally bind Respondent to the terms of this Consent Order.

#### **FINDINGS OF FACT**

6. The Two Medicine Water Company is a tribal agency organized under the laws of the Blackfoot Tribe of the Blackfoot Indian Reservation of Montana (Blackfoot Tribe) and therefore

is a “person” as the term is defined in the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2, for purposes of federal enforcement.

7. Respondent operates the System, which is a public water system, in Browning, Glacier County, Montana, within the exterior boundaries of the Reservation. The System provides the public with piped water for human consumption.

8. The System has approximately 1,700 service connections used by year-round residents and regularly serves an average of approximately 4,500 year-round residents and therefore is a “public water system” and a “community water system” within the meaning of sections 1401(4) and (15) of the Act, 42 U.S.C. § 300f(4) and (15), and 40 C.F.R. § 141.2.

9. The System’s surface water is purchased from Two Medicine Water System (PWS ID: 083090090). The surface water is treated by the Two Medicine Water System using ultrafiltration and sodium hypochlorite disinfection prior to delivery. No additional treatment occurs at the System.

10. Respondent operates the System and therefore is a “supplier of water” as defined in section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent therefore is required to comply with the requirements of the Act and its implementing regulations, Part 141.

#### **FINDINGS OF VIOLATION AND CONCLUSIONS OF LAW**

11. Respondent is required to complete corrective action of a significant deficiency in accordance with an EPA-approved corrective action schedule. 40 C.F.R. § 141.723(d).

12. Respondent received a sanitary survey report from the EPA on January 25, 2016, following the June 11, 2015 Sanitary Survey, which detailed significant deficiencies including the cleaning and inspection of the Weasel Head Tank - ST04 (Tank) requirement. The cleaning and inspection of the Tank were completed on August 8, 2016.

13. As a result of the cleaning and inspection, the following concerns were identified in an inspection report sent to Respondent: The support column was found in poor condition with 5% surface corrosion notes. The column was not straight or secured to the floor. It had shifted 3 feet and one side of the base was 3 inches off the floor. Additionally, the interior roof was found in fair condition with 50% surface corrosion noted. All the support beams had shifted with the center of the column and were bowed with three missing metal pieces.

14. The EPA opened a significant deficiency on August 16, 2016, and placed the System on an initial schedule to correct this significant deficiency by February 28, 2017.

15. This deadline has been extended by the EPA several times after receiving requests from the System. On May 9, 2017, the EPA extended the schedule to September 30, 2017; on October 2, 2017, the EPA extended the schedule to November 30, 2017; on November 30, 2017, the EPA extended the schedule to December 31, 2017; on February 2, 2018, the EPA extended the schedule to April 30, 2018; and on June 1, 2018, the EPA extended the schedule to September 30, 2018.

16. The EPA sent the Respondent an August 23, 2018, Sanitary Survey Report, following the May 17, 2018, Sanitary Survey. The 2018 Sanitary Survey Report described the same significant deficiency stating that the Tank was not structurally sound.

17. On May 27, 2019, the EPA issued a Notice of Violation for failure to complete significant deficiency.

18. Respondent failed to complete the corrective action at the Tank by September 30, 2018, in accordance with the EPA-approved corrective action schedule, in violation of 40 C.F.R. § 141.723(d).

19. Respondent is required to notify the public of certain Part 141 violations and, within 10 calendar days after completing public notice, provide a copy of the public notice and certification to the EPA. 40 C.F.R. §§ 141.31(d) and 141.201-141.211. The violation identified in paragraph 18 is classified as a Tier 2 violation, requiring public notice within 30 calendar days, according to 40 C.F.R.

§ 141.723(b), and every three months for as long as the violation persists. Respondent failed to notify the public of the violation cited in paragraph 18 and/or failed to submit a copy to the EPA and therefore, violated this requirement.

#### **ORDER ON CONSENT**

Based on the foregoing Findings of Fact and Findings of Violation and Conclusions of Law, and pursuant to section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), Respondent agrees and is hereby ORDERED to perform the following:

20. Respondent is ordered to comply with all provisions of the Act and Part 141, including but not limited to each requirement cited above.

21. Within 30 days after receipt of this Order, Respondent shall consult with the EPA regarding action to correct the significant deficiency identified in the 2015 and 2018 Sanitary Surveys by replacing the Tank. Respondent shall submit a proposed schedule (Schedule) and plan (Plan) to the EPA for completion for the corrective action. The Plan shall include proposed modifications to the System and estimated costs of the modifications. The Schedule shall include specific milestone dates. The Schedule shall be incorporated into this Order with each milestone to be an enforceable requirement upon written approval by the EPA. Respondent must receive written approval of the Schedule from the EPA before construction or modifications can begin. Within 10 calendar days after completing all tasks included in the Schedule, Respondent shall notify the EPA of the project's completion. Respondent shall provide sufficient evidence of completion to the EPA including photographs of the corrective actions. Thereafter, if the EPA identifies any significant deficiency at the System, Respondent shall complete corrective action for each significant deficiency and provide notification to the EPA within 30 calendar days of completion, as required by 40 C.F.R. § 141.723(d).

22. Within 30 calendar days of the Effective Date of this Consent Order, and quarterly thereafter as long as the violation cited in paragraph 18, above persists, Respondent shall notify the public of this violation. Templates and instructions are available at: <https://www.epa.gov/region8-waterops/reporting-forms-drinking-water-systems-wyoming-and-tribal-lands-epa->

region-8#pn. During the pendency of this Consent Order and following any future violation of Part 141, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. Part 141, Subpart Q. Within 10 calendar days after providing public notice, Respondent shall provide the EPA a certification of having provided public notice, along with a representative copy of the public notice. 40 C.F.R. § 141.31(d).

23. Respondent must complete the corrective action and return the System to compliance by October 31, 2021.

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

Christina Carballal, 8ENF-WSD  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, Colorado 80202-1129  
Email: [carballal-broome.christina@epa.gov](mailto:carballal-broome.christina@epa.gov)

**GENERAL PROVISIONS**

25. Respondent shall fully implement each item of this Consent Order. Respondent's failure to fully implement all requirements of this Consent Order in the manner and time period required shall be deemed a violation of this Consent Order.
26. This Consent Order shall not constitute a waiver, suspension, or modification of any requirement of the Act or Part 141. Issuance of this Consent Order is not an election by the EPA to forgo any civil or criminal action.
27. Violation of any part of this Consent Order, the Act, or Part 141 may subject Respondent to a civil penalty of up to \$58,328 (as adjusted for inflation) per day of violation, a court injunction ordering compliance, or both. 42 U.S.C. § 300g-3; 40 C.F.R. Part 19; 85 Fed. Reg. at 1754 (January 13, 2020).
28. This Consent Order may be amended or modified by written agreement of the EPA and Respondent.
29. The Effective Date of this Consent Order is the date upon which a fully executed copy is filed with the Regional Hearing Clerk.
30. This Consent Order shall terminate upon written request to and approval by the EPA following successful completion of the requirements agreed to in the Consent Order. The EPA at its sole discretion may terminate the Consent Order upon determining full compliance and providing written notice to the Respondent.



IT IS SO AGREED AND ORDERED:

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


**COLLEEN  
RATHBONE** Digitally signed by  
COLLEEN RATHBONE  
Date: 2020.07.13  
06:53:15 -06'00'

Date: \_\_\_\_\_

Colleen Rathbone, Branch Chief  
Water Enforcement Branch  
U.S. EPA Region 8

**TWO MEDICINE WATER COMPANY,**  
Respondent.

Date: 7/10/2020

  
Mr. Alvin Yellow Owl Jr., Director  
Two Medicine Water Company