

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 MAY 20 PM 2:06

REGION 8
TRAINING OFFICE

IN THE MATTER OF)
)
Rocky Boy Utilities)
Rocky Boy's Rural Water (Newtown), Operator)
Box Elder, Montana)
PWS ID# 083090075)
)
Respondent)
)
Proceedings under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))
)

EMERGENCY
ADMINISTRATIVE
ORDER

Docket No. SDWA-08-2008-0061

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 (the Act), 42 U.S.C. § 300i, as properly delegated to the Supervisors of the EPA Montana Office and the Technical and Legal Enforcement Programs of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

JURISDICTION

1. EPA has jurisdiction to issue emergency orders pursuant to section 1431 of the Act, 42 U.S.C. § 300i.
2. EPA has primary enforcement responsibility for the Act on the Rocky Boy's Indian Reservation. No other authority has applied for and been approved to administer the program on the Rocky Boy's Indian Reservation.

FINDINGS

1. The Rocky Boy Utilities ("Respondent") is a tribal agency under the laws of the Chippewa Cree Business Committee and is therefore a "person" within the meaning of 40 C.F.R. § 141.2 for purposes of federal enforcement.
2. Respondent operates the Rocky Boy's Rural Water System ("Newtown" or "System"), located on the Rocky Boy's Indian Reservation, 11 miles southeast of Box Elder, Montana, that provides water for human consumption. The System serves approximately 2000 residents annually through 435 service connections consisting of 402 residential service connections and 33 commercial service connections.
3. The System is a "public water system" and a "community water system" within the meaning of the Act and the regulations. 40 C.F.R. § 141.2.
4. Respondent operates the System and is therefore a "supplier of water" within the meaning of the Act and the regulations. 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. Respondent is, therefore, required to comply with the Act and regulations. 42 U.S.C. § 300g, and 40 C.F.R. part 141.
5. The System is supplied solely by groundwater from approximately six out of eleven community wells.
6. EPA has determined that conditions exist at Respondent's public water system that may present an imminent and substantial endangerment to the health of persons. The current emergency conditions were initiated by a May 24, 2008,

event when three of the System's wells were over pumped due to improper pumping rates for the capacity of the wells.

7. As a result, current emergency conditions exist as a result of a loss of pressure in the distribution system that occurred on or about May 24, 2008. Loss of pressure may cause a net movement of water from outside the pipe to the inside through cracks, breaks, or joints in the distribution system that are common in all water systems. Back siphonage is also a condition resulting from low or no pressure. Such system failures carry a high potential for fecal contamination or other disease causing organisms to enter the distribution system.
8. Respondent contacted EPA, via an EPA Contractor, approximately 24 hours after the public water system learned of this emergency situation with significant potential of serious adverse effects on human health as a result of short-term exposure, as required by 40 C.F.R. §§ 141.202(b)(2) and 141.202(a)(9).
9. This Order and the requirements set forth herein are necessary to ensure adequate protection of public health based on EPA's primary enforcement responsibility for the Act in Indian country.
10. Prior to issuing this Order, EPA consulted with local (Tribal) authorities to confirm the information on which this Order is based and to ascertain the actions which such authorities are taking.
11. EPA has direct implementation authority and is responsible for enforcement of the Safe Drinking Water Act on Indian Lands.

EMERGENCY ADMINISTRATIVE ORDER

1. Within 24 hours of receipt of this Order, Respondent shall notify EPA in writing of its intention to comply with the terms of this Order. The written response shall include a general plan for compliance with each of the elements of this Order.
2. Upon the effective date of this Order, Respondent shall continue to notify all water users of Respondent's Water System that an alternative potable water supply is available. The alternative water supply shall be from an EPA regulated drinking water supply that meets the National Primary Drinking Water Regulations or a licensed water distributor, and must be made available at no cost as needed for drinking and cooking until Respondent receives written notification from EPA that alternative water is no longer necessary. Respondent shall provide the alternative water at a central location that is accessible to all persons served by the water system. Respondent shall provide a sufficient quantity of water for reasonable domestic uses, at a minimum, two liters daily per person served by the water system.
3. Prior to the distribution system being restored to service, Respondent shall disinfect and flush the distribution system.
4. Respondent shall maintain a detectable disinfectant residual as measured at the far ends of the distribution system. Respondent shall monitor the disinfectant residual daily and report those results to EPA by email or FAX at the same time

total coliform results are provided. On the first day service is restored, one residual shall be collected at the first service connection following each tank.

5. Upon the effective date of this Order, Respondent shall comply with the total coliform maximum contaminant level ("MCL") as set forth in 40 C.F.R. § 141.63.
6. Once the pressure of 25 psi is regained and the distribution system is restored to service, Respondent shall collect two consecutive daily special purpose total coliform samples of the treated water to determine compliance with the MCL as set forth in 40 C.F.R. § 141.63. Respondent shall designate one sample as the monthly compliance sample. Respondent shall continue daily total coliform monitoring until receiving written notice from EPA to discontinue daily sampling. Respondent shall report daily total coliform sampling results to EPA by email or FAX immediately upon receiving the laboratory results.
7. After Respondent receives written notification from EPA to discontinue daily total coliform sampling, Respondent shall conduct weekly bacteriological sampling to determine compliance with the MCLs for total coliform bacteria as stated in 40 C.F.R. § 141.63. Respondent shall report weekly total coliform sampling results to EPA by email or FAX immediately upon receiving the laboratory results.
8. Respondent shall continue weekly bacteriological monitoring until Respondent receives notification from EPA to discontinue weekly bacteriological sampling. Respondent shall thereafter resume monthly total coliform sampling as required

by 40 C.F.R. § 141.21 to determine compliance with the MCLs for total coliform bacteria as stated in 40 C.F.R. § 141.63. Respondent shall report analytical results to EPA within the first 10 days of the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).

9. Respondent shall collect all total coliform samples at sites which are representative of water throughout the distribution system according to the written sample site plan Respondent previously submitted to EPA pursuant to 40 C.F.R. § 141.21(a).
10. If any one of the designated compliance sample results are total coliform-positive, Respondent shall conduct repeat sampling as required by 40 C.F.R. § 141.21(b), which requires public water systems that collect five or fewer total coliform samples to collect a minimum of four repeat samples within 24 hours of being notified of the total coliform-positive sample. Furthermore, Respondent shall comply with the requirements of 40 C.F.R. § 141.21(b)(5), which requires public water systems that collect five or fewer total coliform samples to collect a total of 5 routine total coliform samples the month following a total coliform-positive compliance sample result.
11. Within 30 days of this Order, Respondent shall submit a detailed plan to EPA that outlines actions to be taken that will ensure this situation does not cause another loss of pressure. The plan shall include a table listing active and abandoned wells for the Newtown System, a physical description and GPS coordinates for each

well, the volume of each well, the pumping capacity of each well, the horsepower of each pump, and the total dynamic head of each pump. In addition, the plan shall include a physical description and GPS coordinates for each pumphouse serving the system. Each well and pumphouse will be labeled to correspond to the plan. The plan shall contain standard operating procedures (SOPs) for operators to follow in the event there is a failure of a pump. EPA will respond to the plan within 15 days with questions and recommendations. A final plan will be submitted by the Tribe 15 days after receiving EPA's comments.

12. Respondent shall continue to provide public notice in the affected area as set forth in this Order. This public notice shall be posted in conspicuous locations throughout the area served by the water system and hand delivered to persons served by the water system, including but not limited to the hospital and schools. Upon the effective date of this Order, Respondent shall comply with the public notification requirements at 40 C.F.R. § 141.201 et seq. following any future National Primary Drinking Water Regulations ("NPDWRs") violation. Respondent shall submit a copy of the public notice to EPA within 24 hours of completion of the public notice, as required by 40 C.F.R. § 141.31(d). The public notice shall include the following information:

- a. All requirements as specified in 40 C.F.R. § 141.205 including:
 - (1) A description of the violation, including the emergency situation and potential contaminants of concern, and (as applicable) the

- contaminant level;
 - (2) When the violation or situation occurred;
 - (3) Any potential adverse health effects from the violation or situation (see section b. below);
 - (4) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;
 - (5) Whether alternative water supplies should be used (see section b. below);
 - (6) What actions consumers should take, including when they should seek medical help, if known (see section b. below);
 - (7) What the system is doing to correct the violation or situation;
 - (8) When the water system expects to return to compliance or resolve the situation;
 - (9) The name, business address, and phone number of the water system owner, operator, or designee of the public water system as a source of additional information concerning the notice; and
 - (10) A statement to encourage the notice recipients to distribute the public notice to other persons served by the system
- b. Mandatory health effects language as specified in 40 C.F.R. §141.205(d)(1), Appendix B to subpart Q of part 141. This language is as follows:

Rocky Boy's Rural Water System (Newtown) experienced a loss of pressure in the distribution system, which can cause a net movement of water from outside the pipe to the inside through cracks, breaks, or joints in the distribution system that are common in all water systems. Such a system failure carries with it a high potential that fecal contamination or other disease causing organisms could enter the distribution system.

Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches. Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Fecal coliforms and E. Coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly and people with severely compromised immune systems.

ALL WATER USED FOR DRINKING, BRUSHING TEETH, COOKING, MAKING ICE, WASHING DISHES, OR USED FOR HUMAN CONSUMPTION, ETC., SHALL BE BOILED UNTIL FURTHER NOTIFICATION FOR AT LEAST THREE (3) MINUTES, AT A ROLLING BOIL, BEFORE USE. ALL STORED WATER, DRINK OR ICE MADE RECENTLY FROM THIS SUPPLY SHALL BE DISCARDED.

13. Respondent shall continue the public notice as set forth in paragraph 12 above until EPA Region 8 provides written notification to discontinue public notice.
14. Respondent shall notify EPA as soon as practicable, but within 24 hours after learning of a violation or situation with the potential to have serious adverse effects on human health as a result of short-term exposure to contaminants, as determined in the regulations or by EPA on a case-by-case basis 40 C.F.R. §§

141.202(b)(2) and 141.202(a)(9). Rocky Boy Utilities must comply with this regulation in any future water outage event or any similar emergency situation.

15. All reports and notifications herein required shall be submitted to:

Barbara Burkland
U. S. EPA Region 8 Montana Office
10 West 15th St., Suite 3200
Helena, MT 59626
burkland.barbara@epa.gov
phone: (406)457-5009 or 1-866-457-2690, ext. 5009
FAX: (406)457-5055

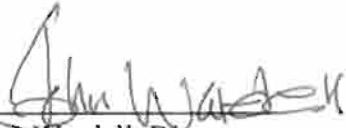
GENERAL PROVISIONS

1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 et seq., or the Safe Drinking Water 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.
2. Violation of any term of this Order instituted under section 1431(a) of the Act, 42 U.S.C. § 300i(a), may subject the Respondent to a civil penalty not to exceed \$16,500 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).
3. Violation of any requirement of the SDWA or its implementing regulations instituted under section 1414(b) of the Act, 42 U.S.C. § 300g-3(b) may subject Respondent to a civil penalty of not more than \$32,500 per day of violation assessed by an appropriate U.S. District Court under section 1414(b) of the Act,

42 U.S.C. § 300g-3(b).

4. The effective date of this Order shall be the date of issuance.

Issued this 28 day of May, 2008.



John Wardell, Director
EPA Region 8 Montana Office

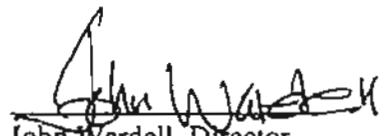
David J. Janik, Acting Director
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

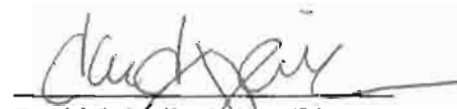
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42 U.S.C. § 300g-3(b).

4. The effective date of this Order shall be the date of issuance.

Issued this 28th day of May, 2008.


John Wardell, Director
EPA Region 8 Montana Office


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