

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

December 11, 2020

8:16 AM

Received by

EPA Region VIII

Hearing Clerk

IN THE MATTER OF: )

Northern Arapaho Utilities Department, )

Respondent. )

Ethete Water System Public Water System  
PWS ID #085690002 )

) Docket No. SDWA-08-2021-0002

) **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 Northern Arapaho Utilities Department (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 Ethete Water System Public Water System.

**JURISDICTION**

1. The EPA has primary enforcement responsibility over public water systems on the Wind River Reservation (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 or any of the Findings 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 Ethete Water System Public Water System. Any change in ownership or control of the Ethete Water System 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 Northern Arapaho Utilities Department is a tribal agency organized under the laws of the Arapaho Tribe of the Wind River Reservation, Wyoming, (Northern Arapaho 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 owns and/or operates a public water system known as the Ethete Water System Public Water System (System) in Ethete, Fremont County, Wyoming, within the exterior

boundaries of the Wind River Reservation. The System provides the public with piped water for human consumption.

8. The System has approximately 450 service connections used by year-round residents and regularly serves an average of approximately 1800 year-round residents and a transient population of 150 and, therefore, is a “public water system” and a “community water system” within the meaning of section 1401 of the Act, 42 U.S.C. § 300f, and 40 C.F.R. § 141.2.

9. Respondent owns and/or 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.

10. The source of the System’s water is surface water from the South Fork of the Little Wind River.

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

11. Respondent is required to complete corrective action of significant deficiencies in accordance with an EPA-approved corrective action schedule. 40 C.F.R. § 141.723(d). Respondent received sanitary survey reports from the EPA on April 19, 2013 and December 10, 2018, respectively, which detailed significant deficiencies. The EPA approved a schedule for the System to complete the corrective actions by October 19, 2013 and June 10, 2019, respectively. The deadline for the significant deficiency detailed in the sanitary survey report received on April 19, 2013 was subsequently extended following a written request from the System to September 1, 2014. Respondent failed to complete all corrective actions by September 1, 2014 and June 10, 2019, and/or failed to notify the EPA within 30 calendar days of completion of a significant deficiency corrective action and therefore, violated this requirement.

12. Respondent was required to monitor the System's tap water for lead and copper triennially beginning in 2007. 40 C.F.R. § 141.86(d). Due to a copper action level exceedance during the June 1 to September 30, 2018 monitoring period, reduced triennial monitoring has been revoked and Respondent must now monitor for lead and copper for six-month monitoring periods. Respondent failed to complete the required 20 samples for lead and copper during the July 1, 2019 to December 31, 2019 sampling period and therefore, violated this requirement.

13. Respondent is required to have sufficient disinfection treatment installed to ensure that the total treatment processes of the system achieve at least 99.9 percent (3-log) inactivation and/or removal of *Giardia lamblia* cysts, as determined by the EPA. 40 C.F.R. § 141.72(b)(1). Respondent failed to meet the treatment technique requirement for *Giardia lamblia* inactivation and, therefore, violated this requirement.

14. Respondent is required to report nitrate analytical results to the EPA no later than (1) the first 10 calendar days following the month in which the result is received, or (2) the first 10 calendar days following the end of the required monitored period, whichever is earlier. 40 C.F.R. § 141.31(a). In 2019, Respondent failed to report monitoring results for nitrate to the EPA within this time period and therefore, violated this requirement.

15. Respondent is required to monitor the System's water at least annually for volatile organic contaminants (VOCs). 40 C.F.R. § 141.24(f)(5). Respondent failed to monitor the System's water for VOCs during 2017, and therefore, violated this requirement.

16. Respondent is required to monitor the System's water for cyanide at least once every year. 40 C.F.R. § 141.23(a) and (c). Respondent failed to monitor the System's water for cyanide during the 2017 monitoring period and, therefore, violated this requirement.

17. Respondent is required to monitor the System's water for sodium at least once every year. 40 C.F.R. § 141.41(a). Respondent failed to monitor the System's water for sodium during the 2017 monitoring period and, therefore, violated this requirement.

18. Respondent is required to monitor the System's water for disinfection byproduct precursors, to take monthly paired samples of total organic carbon (TOC) in source water and treated water, with an alkalinity sample of the source water to be taken at the same time. 40 C.F.R. § 141.132(d). Respondent failed to monitor the System's water for disinfection byproduct precursors during February and March of 2020 and January of 2017, and therefore, violated this requirement.

19. Respondent is required to monitor the System's water monthly for total coliform bacteria. 40 C.F.R. §§ 141.853-858. Respondent failed to monitor the System's water for total coliform bacteria during September of 2018, and therefore, violated this requirement.

20. Respondent is required to collect total trihalomethanes (TTHMs) and haloacetic acids (HAA5s) samples in the System's distribution system quarterly. 40 C.F.R. § 141.623. Respondent failed to collect TTHM and HAA5s samples during the first quarter of 2020, and therefore, violated this requirement.

21. Respondent is required to notify the public of certain violations of Part 141 and, within 10 calendar days after completing public notice, 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) and 141.201-141.211. The violation identified in paragraph 11, above, is classified as Tier 2 violation, requiring public notice within 30 calendar days, according to 40 C.F.R. § 141.203. Respondent failed to

notify the public of the violation cited in paragraph 11 and/or failed to certify to the EPA that public notice was provided and therefore violated this requirement.

22. Respondent is required to notify the public of certain violations of Part 141 and, within 10 calendar days after completing public notice, 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) and 141.201-141.211. The violations identified in paragraphs 15, 16, 17, and 19, above, are classified as Tier 3 violations, requiring public notice within 1 year, according to 40 C.F.R. § 141.204. Respondent failed to notify the public of the violations cited in paragraphs 15, 16, 17, and 19 and/or failed to certify to the EPA that public notice was provided and therefore violated this requirement.

23. Respondent is required to report any violation of total coliform monitoring requirements to the EPA within 10 calendar days after discovering the violation. 40 C.F.R. § 141.861(a)(4). Respondent failed to report the violation identified in paragraph 19, above, to the EPA and therefore, violated this requirement.

24. Respondent is required to report any failure to comply with Part 141 to the EPA within 48 hours (except where Part 141 specifies a different time period). 40 C.F.R. § 141.31(b). Respondent failed to report the violations identified in paragraphs 12 through 18, above, 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:

25. Within 60 calendar days of ~~receipt~~ the effective date of this Order, Respondent shall consult with the EPA regarding action to correct the Significant Deficiencies Identified in paragraph 26, and shall submit a proposed schedule (Schedule) and plan to the EPA for completion of these corrective actions. The Schedule shall be incorporated to be an enforceable requirement upon written approval by the EPA. Within 30 calendar days after completing each task included in the Schedule, Respondent shall notify the EPA of the project's completion. Respondent shall provide sufficient evidence to the EPA including photographs of the corrective actions.

26. Significant Deficiencies that require Corrective Action are the following:

The System is not conducting adequate individual filter effluent (IFE) recording per 40 C.F.R. § 141.560(c). The turbidity of the finished water from the four individual filters must be monitored continuously and recorded at least once every 15 minutes. Either single-day charts must be used for each filter, and must be properly annotated to denote all times when each individual filter is sending water to the clearwell, or the supervisory control and data acquisition (SCADA) system must be modified with computer capability to record, store and print each filter's 15 minute IFE turbidity, clearly identifying when each filter's water is sent to the clearwell. The chart recorder or SCADA must be able to record and store combined filter effluent (CFE) turbidity values up to at least 5 nephelometric turbidity units (NTU), and IFE turbidity values up to at least 2 NTU. This significant deficiency was identified in the April 2013 sanitary survey.

Inadequate inactivation design or operation: The water treatment system operation and/ or design does not provide for adequate inactivation of *Giardia*. The Surface Water Treatment Rule requires that water systems achieve at least 99.9% (3-log) reduction credit for *Giardia* cysts. The filtration system, when properly operated, receives a 2.5 log removal credit for *Giardia*. The system must achieve the additional

0.5 log reduction credit for *Giardia* through inactivation (chlorination followed by contact time). This significant deficiency was identified in the June 2019 sanitary survey.

27. Respondent shall monitor the System's water for lead and copper in 6-month monitoring periods between January 1 and June 30, 2020, and again between July 1 and December 31, 2020, and thereafter as directed by the EPA, according to the System's Lead and Copper Rule Tap Sample Site Plan, as required by 40 C.F.R. §§ 141.86(a)-(d). Within the first 10 calendar days following the end of each monitoring period, Respondent shall report analytical results to the EPA, as required by 40 C.F.R. § 141.90. Within 30 calendar days of receiving monitoring results, Respondent shall deliver a consumer notice of individual tap monitoring results to the persons served at each sampled site, in accordance with 40 C.F.R. 141.85(d). Within 90 calendar days following the end of each monitoring period, Respondent shall provide the EPA a certification of having provided public notice, along with a representative copy of the public notice in accordance with 40 C.F.R. 141.90(f)(3).

28. Respondent shall comply with treatment requirements as stated in 40 C.F.R. § 141.70(a), by treating the System's water to achieve at least 99.9 percent (3-log) removal/inactivation of *Giardia lamblia* cysts and 99.99 percent (4-log) removal/inactivation of viruses. Respondent shall meet the requirements of 40 C.F.R. §§ 141.72(b) and 141.73 for disinfection and filtration, respectively.

29. Unless a different reporting requirement is specified by Part 141 or this Order, Respondent must report monitoring results to the EPA within the first 10 calendar days following the end of the required monitoring period as stipulated by the EPA. 40 C.F.R. § 141.31(a).

30. Respondent shall monitor the System's water for VOCs as required by Part 141. Respondent is next required to sample for volatile organic contaminants between January 1, 2020 and



December 31, 2020. 40 C.F.R. § 141.24(f)(5). Respondent shall report results to the EPA within the first 10 calendar days following the end of the required monitoring period. 40 C.F.R. § 141.31(a).

31. Respondent shall monitor the System's water for cyanide between January 1, 2020, and December 31, 2020, as required by 40 C.F.R. § 141.23(a) and (c). Respondents shall report any analytical results to the EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).

32. Respondent shall monitor the System's water for sodium between January 1, 2020, and December 31, 2020, as required by 40 C.F.R. § 141.41(a). Respondent shall report any analytical results to the EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.41(a).

33. Respondent shall monitor the System's water each month for disinfection byproduct precursors, as required by 40 C.F.R. § 141.132(d). Within the first 10 calendar days after the end of each quarter, Respondent shall report analytical results, including its calculation of the TOC removal percentage and all other information required by 40 C.F.R. § 141.134(d), to the EPA, as required by 40 C.F.R. § 141.134(a).

34. Respondent shall monitor the System's water monthly for total coliform bacteria. If a sample is positive for total coliform, within 24 hours of being notified of the positive result, Respondent shall collect a set of three repeat samples for each total coliform-positive sample. 40 C.F.R. § 141.853-858. Respondent shall report results to the EPA within the first 10 calendar days following the end of the required monitoring period. 40 C.F.R. § 141.31(a).

35. Respondent shall monitor the System's water quarterly for TTHMs and HAA5s at the specific location during the month identified in the System's monitoring plan, as required by 40 C.F.R.

§§141.620-141.622. Respondent shall submit the sampling results to the EPA within 10 calendar days following the end of the monitoring period, as specified by 40 C.F.R. § 141.629.

36. Within 30 calendar days after this Order is filed, and quarterly thereafter as long as the violation cited in paragraph 11, 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 Order, 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).

37. Within 30 calendar days after this Order is filed, Respondent shall notify the public of the violations cited in paragraphs 15, 16, 17, and 19, above. 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 Order, 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).

38. During the pendency of this Order, Respondent shall report any violation of total coliform monitoring requirements to the EPA within 10 calendar days after discovering the violation and notify the public in accordance with Subpart Q of this part, as required by 40 C.F.R. § 141.861(a)(4).

39. During the pendency of this Order, Respondent shall report any violation of Part 141 to the EPA within 48 hours of the violation, as required by 40 C.F.R. § 141.31(b). However, if a different time period for reporting is specified in this Order or Part 141, Respondent shall report within that different period.

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

Steven Latino, 8ENF-WSD  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, Colorado 80202-1129  
Email: latino.steven@epa.gov

#### **GENERAL PROVISIONS**

41. 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.

42. 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.

43. Violation of any part of this 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).

44. This Consent Order may be amended or modified by written agreement of the EPA and Respondent.

45. The Effective Date of this Consent Order is the date upon which a fully executed copy is filed with the Regional Hearing Clerk.

46. 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**

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

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

Northern Arapaho Utilities Department  
Ethete Public Water System  
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**Northern Arapaho Utilities Department,  
Respondent.**

Date: 12-9-20

Michael Quiver  
Michael Quiver, Director, Northern Arapaho  
Utilities Department