

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8



IN THE MATTER OF)
)
Department of the Interior,) Docket No. SDWA-08-2024-0013
Bureau of Indian Affairs,)
)
Respondent.) **EMERGENCY**
) **ADMINISTRATIVE ORDER**
)
Crow Agency (TP01) Public Water System)
PWS ID #083090011)

AUTHORITY

1. This Emergency Administrative Order (Order) is issued by the U.S. Environmental Protection Agency (EPA) pursuant to the authority of section 1431(a) of the Safe Drinking Water Act (Act), 42 U.S.C. § 300i(a). The undersigned official has been properly delegated this authority.
2. The EPA may issue an order and may take such actions as the EPA deems necessary in order to protect the health of persons under section 1431(a) of the Act, 42 U.S.C. § 300i(a), when the EPA receives information that a contaminant that is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the health of persons, and appropriate state and local authorities have not acted to protect the health of such persons.

FINDINGS

3. The Department of the Interior, Bureau of Indian Affairs (Respondent) owns and/or operates the Crow Agency TP01 Public Water System (System), which provides piped water to the public within the boundaries of the Crow Reservation for human consumption through pipes or constructed conveyances.
4. Respondent is a "Federal agency" within the meaning of section 1401(11) of the Act, 42 U.S.C. § 300f(11), and is a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2, for purposes of enforcement under the Act.
5. Each department, agency, and instrumentality of the federal government that owns or operates a public water system is subject to and must comply with all Federal, State, interstate, and local requirements pursuant to section 1447(a) of the Act, 42 U.S.C. § 300j-6(a).

6. The System is supplied by a surface water source accessed via an intake on the Little Big Horn River, with treatment provided via a conventional filtration system and disinfection via sodium hypochlorite.

7. The System has approximately 510 service connections used by year-round residents and/or regularly serves an average of approximately 1300 year-round residents. Therefore, the System is a “public water system” and a “community water system” as defined in 40 C.F.R. § 141.2 and section 1401 of the Act, 42 U.S.C. § 300f.

8. On January 16, 2024, EPA consulted with appropriate tribal and/or local authorities regarding actions such authorities have taken in this matter to protect the health of individuals served by the System; to confirm the correctness of the information on which this Order is based; and to ascertain the actions which tribal and/or local authorities are or will be taking.

9. The EPA directly implements the Act on the Crow Reservation, as no other governmental entity has received delegated authority to implement the Act on the Crow Reservation. The EPA has determined that state and local authorities have not acted to protect the health of persons in this instance.

10. The EPA has determined that conditions exist at the System that may present an imminent and substantial endangerment to the health of humans, based on the facts indicated in paragraphs 11 and 12, and that this Order is necessary to protect public health.

11. On January 16, 2024, the EPA was notified that the System lost pressure in the upper housing area because the water treatment plant (TP01) lost power. This caused the raw water pump to lose its prime and stop water production. The backup raw water pump failed to kick on when the primary raw water pump stopped functioning. Due to the lack of production, lack of on-site operators to identify the issue, and high-water demand (both consumer use and three known leaks in distribution), the storage tank levels dropped. The plant lost power several times over the weekend and the raw water pump needed to be reset each time power was lost. This is at least the third time in three months that the distribution system has lost pressure. This System often runs unmanned, i.e., without an operator physically present. The Supervisory Control and Data Acquisition (SCADA) system at TP01 is not currently functional, and even when functional, it does not alert offsite operators when water in the storage tank drops to critically low levels. These factors can and have resulted in delays in System operators responding to problems that cause storage tank levels to drop and associated pressure loss in the distribution system.

12. Loss of pressure in a drinking water distribution system may cause a net movement of water from outside of a pipe to the inside through cracks, breaks, or joints in the distribution

system that are common in all water systems. Backsiphonage 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 a distribution system.

13. On January 16, 2024, the EPA provided Respondent with a public notice template for a boil water advisory, and Respondent notified persons served by the System of the contamination on January 16, 2024.

ORDER

INTENT TO COMPLY

14. Within 24 hours of receipt of this Order, Respondent shall notify the EPA in writing of their intent to comply with this Order. Notification by e-mail to the EPA point of contact identified below is acceptable.

BOIL WATER ADVISORY AND PUBLIC NOTICE

15. The boil water advisory referenced in paragraph 13 above, shall remain in place until the EPA provides written notification to Respondent that the boil water advisory is no longer needed.

16. Respondent must carry out the public notice and other notice requirements as required by 40 C.F.R. part 141, subpart Q.

ALTERNATE WATER SUPPLY

17. Using the public notice template referenced in paragraph 13 and consistent with the requirements referenced in paragraph 16, above, Respondent shall, no later than 24 hours after receipt of this Order, notify the public that an alternative potable water supply is available at no cost to all users of the System as needed for drinking, cooking, maintaining personal hygiene, and dish washing. Respondent shall provide at least one gallon of potable water daily per person at a central location that is accessible to all persons served by the System. The alternate water supply shall be made available until the Respondent receives written notification from the EPA that it is no longer necessary to supply alternative potable water.

18. No later than five days after the effective date of this Order (see paragraph 35, below), Respondent shall provide the EPA with a copy of its notification to the public indicating that an alternate water supply is available.

CORRECTIVE MEASURES

19. Within 15 days after the effective date of this Order, Respondent shall provide the EPA with a plan and schedule that outlines corrective actions taken and/or to be taken to prevent future contamination at the System. The plan shall identify the cause of the pressure loss referenced in paragraph 11, if possible, and include proposed system modifications, estimated costs of modifications, and a schedule for completion of the project. The plan must include corrective actions 1) to have a functional backup raw water pump, 2) to have a functional SCADA system that alerts offsite operators when water levels are critically low, 3) to have a backup generator, and 4) to prevent future delays in operators responding to pressure loss situations (e.g., ensuring adequate staffing levels focused on the operation of the system). The proposed schedule shall include specific milestone dates and a final completion date (to be within three months from the date of the EPA's approval of a schedule). The schedule must be approved by the EPA before construction or modifications may commence.

20. The schedule required by paragraph 19, above, will be incorporated into this Order as an enforceable requirement upon written approval by the EPA. If implementation of the plan fails to correct and/or prevent further contamination, the EPA may order further steps.

21. Respondent shall notify the EPA in writing within 24 hours after completing any corrective action(s).

DISTRIBUTION SYSTEM DISINFECTION AND MONITORING REQUIREMENTS

22. Within 24 hours after corrective action that restores pressure to all parts of the System, Respondent shall disinfect and flush the System.

23. After disinfecting and flushing the System, Respondent shall take the following action beginning on the first date when chlorine levels return to normal: collect daily (two samples per day, one sample from a location in the distribution system upstream of the pressure loss, and one sample from a location in the distribution system downstream of the pressure loss) "special" purpose total coliform samples (defined in 40 C.F.R. § 141.853(b)) from the System's distribution system until notified in writing by the EPA that consecutive daily sampling may be discontinued. These daily samples should be labeled as "special" samples, not for use for determining compliance. Respondent shall ensure that each sample is analyzed for total coliform and *E. coli* and shall email each result to the EPA immediately upon receipt of the analysis from the laboratory (*i.e.*, as soon as practicable, and in no event more than 24 hours after). Along with the total coliform sample collection, Respondent shall measure the chlorine residual indicating free or total, and provide these measurements along with the total coliform analysis from the laboratory.

24. After Respondent receives written notification from the EPA to discontinue “special” daily total coliform sampling, Respondent shall thereafter resume monthly routine total coliform sampling as required by 40 C.F.R. §§ 141.854-857 to determine compliance.

25. The EPA may require Respondent to increase sampling and reporting at any time while this Order is in effect.

REPORTING

26. Within 24 hours of receipt of this Order, Respondent shall submit daily (Monday through Friday) updates on the progress of corrective actions, disinfecting and flushing the System, and sampling and monitoring for total coliform, *E. coli*, and chlorine residual to the EPA. The updates must continue daily until the EPA provides written notification to the Respondent that reports may be submitted less frequently or discontinued. These reports may be submitted via e-mail.

27. Any notices, reports, or updates required by this Order to be submitted to the EPA shall be submitted to:

Steven Latino
via e-mail: latino.steven@epa.gov
Telephone (800) 227-8917, ext. 6440, or (303) 312-6440

28. This Order does not relieve Respondent from the obligation to comply with any applicable federal, tribal, or local law.

29. Pursuant to section 1447(a) of the Act, Respondent is subject to and shall comply with all federal, state, interstate, and local requirements, both substantive and procedural, respecting public water systems, in the same manner and to the same extent as any person subject to such requirements, including, but not limited to, administrative orders and all civil and administrative penalties and fines. 42 U.S.C. § 300j-6(a).

30. Failure to comply with this Order may result in civil penalties of up to \$48,586 per day. 42 U.S.C. § 300j-6(b); 40 C.F.R. part 19; 88 Fed. Reg. at 89309 (December 27, 2023).

31. Respondent shall seek all existing funds to meet the requirements of this order. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligations to comply with the order. Nothing in this order shall be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

32. This Order constitutes a final agency action.
33. The EPA may modify this Order. The EPA will communicate any modification(s) to Respondent in writing and they shall be incorporated into this Order.
34. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from the EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Order have been satisfactorily completed.
35. Issued and effective this 18 day of January, 2024.

for Colleen Rathbone, Manager
Water Enforcement Branch
Enforcement and Compliance Assurance Division