

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

IN THE MATTER OF: )  
 ) DOCKET No. SDWA-07-2020-0124  
 )  
KICKAPOO PUBLIC WATER SYSTEM, )  
KICKAPOO TRIBE IN KANSAS, OWNER ) FINDINGS OF VIOLATION and  
PWS ID# 070000002 ) ORDER FOR COMPLIANCE ON  
 ) CONSENT  
 )  
RESPONDENTS )  
 )  
Proceedings under Section 1414(g) of the Safe )  
Drinking Water Act, 42 U.S.C. § 300g – 3(g) )  
 )

**STATUTORY AUTHORITY**

The following findings are made and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 1414(g) of the Safe Drinking Water Act (“SDWA” or the “Act”), 42 U.S.C. § 300g – 3(g). The Administrator has delegated the authority to issue this Order to the Regional Administrator of EPA Region 7 who has further delegated such authority to the Director of the Enforcement and Compliance Assurance Division.

**JURISDICTION**

1. This Administrative Order on Consent (Order) is entered into voluntarily by and between the EPA, the Kickapoo Public Water System, and the Kickapoo Tribe in Kansas (Respondents). This Order is issued pursuant to Section 1414(g) of the Act, 42 U.S.C. § 300g – 3(g). Respondents neither admit nor deny the findings, legal conclusions, or determinations of the Order and agree not to contest the authority or jurisdiction of the Regional Administrator of EPA Region 7 or his designees to issue this Order in this or in any subsequent proceeding to enforce the terms of this Order. This Order constitutes an enforceable agreement between Respondents and EPA.
2. The EPA has primary enforcement responsibility for the Act’s public water supply protection program on the Kickapoo Tribal Reservation (the Reservation). No other governmental authority has applied for and been approved to administer the program on the Reservation.

**FACTUAL BACKGROUND**

3. The Kickapoo Tribe in Kansas is a federally recognized Indian Tribe within the United States (72 Fed. Reg. 13648, 13650) (March 22, 2007). The term “Indian Tribe” is defined by Section 1401(14) of the Act, 42 U.S.C. § 300f (14) as any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over any area.
4. Respondents are "persons" as defined by Section 1401(12) of the Act, 42 U.S.C. § 300f (12).
5. At all times relevant to the violations alleged herein, Respondents owned and operated a Public Water System (PWS), the Kickapoo Tribe Public Water System (the System), which provides water for human consumption on the Reservation. The System, located on the Reservation near 1107 Goldfinch Road in Horton, Kansas, serves approximately 560 year-round residents and 869 transient customers annually through 196 service connections.
6. The System is a “public water system” and “community water system” as defined by Section 1401 of the Act, 42 U.S.C. § 300f, and is designated as PWS Number 070000002.
7. As the owner and operator of the System, Respondents are “suppliers of water” as that term is defined in Section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. As provided in Section 1411 of the Act, 42 U.S.C. § 300g, Respondents are therefore required to comply with the Act and the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. Part 141.
8. Between May 14, 2019, and March 24, 2020, EPA Region 7 provided SDWA compliance assistance to Respondents through correspondence, site visits, and telephone calls. Despite the EPA’s assistance, Respondents remain out of compliance with the SDWA and its regulations as described herein.
9. Respondents violated the Safe Drinking Water Act as described in nine Notices of Violation issued by EPA Region 7 to Respondents as follows:
  - a. June 13, 2019: Failure to meet SDWA monitoring and reporting requirements of the Lead and Copper Rule, Revised Total Coliform Rule, and Phase II/V Rule.
  - b. June 14, 2019: Failure to meet SDWA monitoring and reporting requirements of the Surface Water Treatment Rule.
  - c. August 8, 2019: Failure to comply with the Significant Deficiency Corrective Action Plan.
  - d. August 9, 2019: Failure to meet SDWA monitoring and reporting requirements of the Stage 1 Disinfectants and Disinfection By-Products Rule, the Stage 2

Disinfectants and Disinfection By-Products Rule, and the Long Term 1 Enhanced Surface Water Treatment Rule.

- e. August 30, 2019: Failure to meet SDWA monitoring and reporting requirements for the Stage 1 Disinfectant By-Products Rule and the Long-Term 1 Enhanced Surface Water Treatment Rule for the month of July 2019.
  - f. October 4, 2019: Failure to meet SDWA monitoring and reporting requirements for Phase II/V Rule.
  - g. December 5, 2019: Failure to meet SDWA monitoring and reporting requirements for Stage 1 Disinfection Byproducts Rule, Long-Term 1 Enhanced Surface Water Treatment Rule, Surface Water Treatment Rule, Consumer Confidence Rule, and Public Notification Rule.
  - h. December 25, 2019: Failure to meet SDWA monitoring and reporting requirements for Long-Term 1 Enhanced Surface Water Treatment Rule and Surface Water Treatment Rule.
  - i. February 21, 2020: Failure to meet SDWA monitoring and reporting requirements for Long-Term 1 Enhanced Surface Water Treatment Rule, Surface Water Treatment Rule, and Public Notification Rule.
10. In May 2019, under the authority of Section 1445 of the SDWA and 40 C.F.R. § 141.21(d), the EPA performed a Sanitary Survey of Respondents' PWS.
11. A Supervisory Control and Data Acquisition (SCADA) system is required in order to collect continuous monitoring data that must be reported as described in Counts I, II, and III below. On March 12, 2020, the EPA was notified that the SCADA system that controls and monitors Respondents' drinking water treatment system and the associated reporting software was not fully functional and failed as early as January 2020.
12. On March 13, 2020, due to the SCADA malfunction and ongoing failure of Respondents to report information required under the Surface Water Treatment rules, the EPA advised Respondents to provide notice to customers of the Kickapoo PWS to boil their water before consumption, as neither EPA nor Respondents had information available to determine whether the PWS was providing adequate treatment or removal of pathogens. Per electronic mail correspondence dated March 13, 2020, Respondents posted public notification at the Reservation advising users of the Kickapoo System to boil their water before using it.
13. On March 18, 2020, and March 19, 2020, Respondents reported Kickapoo treatment plant turbidity monitoring data for the period March 1 – March 13, 2020, and chloramine residual data from the distribution system for the period March 1 – March 18, 2020, to the EPA. Based on the data provided by Respondents, the EPA recommended that

Respondents discontinue the public notification advising Kickapoo System users to boil their water as described in paragraph 12.

14. Ongoing SCADA failures will result in Respondents' inability to ensure its surface water treatment is adequate to address contaminants, including bacterial contaminants, which may be in the public water supply.

## **FINDINGS OF VIOLATIONS**

### **Count I**

#### **Noncompliance with Long-Term 1 Enhanced Surface Water Treatment Rule**

15. 40 C.F.R. § 141.560 requires Respondents to continuously monitor filter effluent turbidity from each Individual Filter Effluent (IFE) or alternatively, per 40 C.F.R. § 141.562, continuously monitor Combined Filter Effluent turbidity in lieu of IFE turbidity. In addition, 40 C.F.R. § 141.74(c)(1) requires Respondents to perform turbidity measurements on representative samples of the system's filtered water, either by grab sample every four hours the system is online or continuously.
16. 40 C.F.R. § 141.570 requires Respondents to report the required turbidity monitoring information to the EPA by the tenth day of the month following the monitoring period.
17. The turbidity monitoring information required by 40 C.F.R. § 141.570 for the following months was not reported to the EPA by the tenth day of the month following the monitoring period:

June 2019  
July 2019  
August 2019  
September 2019  
October 2019  
November 2019  
December 2019  
January 2020

18. Failure to report the required turbidity monitoring within the first ten days following the end of the monitoring periods are violations of 40 C.F.R. § 141.570 and violations of Section 1411 of the SDWA.

### **Count II**

#### **Noncompliance with Surface Water Treatment Rule**

19. 40 C.F.R. § 141.72(b)(1) requires Respondents to achieve at least 3-log inactivation and/or removal of *Giardia lamblia* cysts and 4-log inactivation and/or removal of viruses. In

order to ensure the system is continuously meeting these requirements, the total inactivation ratio for both *Giardia lamblia* cysts and viruses must be calculated daily using the temperature, pH and chlorine measurements collected from a sample location after the chlorine contact pipe, before the ammonia injection, at peak hourly flow.

20. 40 C.F.R. § 141.31(a) requires Respondents to report the calculated inactivation ratio for each day, and the results of the temperature, pH and chlorine measurements taken after the chlorine contact pipe, before the ammonia injection to the EPA by the tenth day of the month following each monthly monitoring period.
21. The daily inactivation ratios and the results for temperature, pH, and chlorine residual from samples taken after the chlorine contact pipe, before ammonia injection to demonstrate compliance with 40 C.F.R. § 141.72(b)(1) were not reported to the EPA in accordance with 40 C.F.R. 141.31(a) by the tenth day of the month following the monitoring period for the following months:

August 2019  
September 2019  
October 2019  
November 2019  
December 2019  
January 2020

22. Failure to report daily inactivation ratios and the results for temperature, pH, and chlorine residual by the tenth day of the month following the monitoring periods are violations of 40 C.F.R. § 141.31(a) and violations of Section 1411 of the SDWA.

### Count III

#### Noncompliance with Surface Water Treatment Rule

23. 40 C.F.R. § 141.74(c)(2) requires Respondents to continuously monitor the residual disinfectant concentration of the water entering the distribution system and report the lowest daily value.
24. 40 C.F.R. § 141.75(b)(2) requires Respondents to report the residual disinfectant concentration information to the EPA by the tenth day of the month following each monthly monitoring period.
25. The residual disinfectant concentration information required by 40 C.F.R. § 141.75(b)(2) for the following months was not reported to the EPA by the tenth day of the month following the monitoring period:

June 2019  
July 2019  
August 2019

September 2019  
October 2019  
November 2019  
December 2019  
January 2020

26. Failure to report the required residual disinfectant concentration by the tenth day of the month following the end of the monitoring periods are violations of 40 C.F.R. § 141.75(b)(2) and violations of Section 1411 of the SDWA.

#### **Count IV**

##### **Failure to Correct Significant Deficiencies Identified in Sanitary Survey**

27. EPA Region 7 conducted a Sanitary Survey at Respondents' PWS in May 2019. EPA transmitted the findings of the Sanitary Survey to Respondents via letter dated May 30, 2019. EPA identified multiple significant deficiencies in the Sanitary Survey, including:
- i. Operator Compliance / Operator Certification - Respondents did not have an appropriately certified operator on staff to operate the water system; and
  - ii. Monitoring, Reporting, and Data Verification - Chlorine Monitoring - Respondents used improper techniques to measure chlorine residuals in the distribution system; and Respondent failed to provide results of routine calibration of chlorine residual monitoring equipment.
28. Respondents are required to respond to EPA within 45 days and correct significant deficiencies identified in the Sanitary Survey pursuant to 40 C.F.R. § 141.723(d).
29. By letter dated August 8, 2019, the EPA transmitted to Respondents a Corrective Action Plan (CAP) outlining deadlines by which the significant deficiencies identified in the May 2019 Sanitary Survey were to be corrected.
30. Per the August 2019 CAP, and subsequent discussions between EPA and the Respondents, the deadlines to correct the significant deficiencies described in paragraph 27 were as follows:
- i. Deadline to correct the Operator Compliance / Operator Certification significant deficiency – October 7, 2019; and
  - ii. Deadline to correct the Monitoring, Reporting, and Data Verification - Chlorine Monitoring significant deficiency – October 7, 2019.
31. To date, Respondents have not provided documentation or other assurances that either of the significant deficiencies noted above have been corrected.
32. The failure to timely correct these significant deficiencies is a violation of 40 C.F.R. § 141.723(d) and a violation of Section 1411 of the SDWA.

**Count V**

**Failure to Comply with Public Notification Rule**

33. As noted in Count IV (paragraphs 27 - 32), Respondents violated 40 C.F.R. § 141.723(d) for failure to correct two significant deficiencies in accordance with the schedule established in the August 2019 Corrective Action Plan. Because the Tribe violated 40 C.F.R. 141.723(d), a Tier 2 public notice, written in accordance with the requirements of 40 C.F.R. § 141.203, was required to be provided to the public no later than January 5, 2020.
34. 40 C.F.R. § 141.31(d) requires Respondents to submit to the EPA a copy of any required public notification and certification that the public notice has been completed within 10 days of completing such public notification.
35. Respondents did not submit to the EPA a copy of the required Tier 2 public notification and certification that it was completed by the January 5, 2020, deadline.
36. Failure to issue a Tier 2 public notice within 30 days of learning of the violation and failure to timely report public notification to the EPA are violations of 40 C.F.R. § 141.203(b) and 40 C.F.R. § 141.31(d), respectively, and are violations of Section 1411 of the SDWA.

**ORDER FOR COMPLIANCE ON CONSENT**

Based on these findings and pursuant to the authority of Section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), EPA orders and Respondents agree to immediately take any and all steps necessary to:

37. Comply with the Long-Term 1 Enhanced Surface Water Treatment Rule, including provisions at 40 C.F.R. § 141.560, 40 C.F.R. § 141.562, 40 C.F.R. § 141.74(c)(1) and 40 C.F.R. § 141.570 as described in Count I above.
38. Comply with the Surface Water Treatment Rule, including provisions at 40 C.F.R. § 141.72(b)(1) and 40 C.F.R. § 141.31(a) as described in Count II and III above.
39. Correct Significant Deficiencies identified in the May 2019 Sanitary Survey identified in Count IV above.
40. Provide appropriate Public Notification as required by 40 C.F.R. § 141.203 and § 141.204, to address violations outlined in Count V above.

In order to meet these requirements, Respondents shall, at a minimum, implement the following actions:

**Compliance with Long-Term 1 Enhanced Surface Water Treatment Rule**

41. Within 14 days of the effective date of this order, Respondents shall submit documentation indicating the location where the CFE filter effluent is monitored and the date the monitoring location was changed consistent with the EPA's letter dated December 5, 2019.
42. In accordance with 40 C.F.R. § 141.560, 40 C.F.R. § 141.562, and 40 C.F.R. § 141.74(c)(1), Respondents shall continuously monitor filter effluent turbidity.
43. In accordance with 40 C.F.R. § 141.570, Respondents shall report to the EPA by the tenth day of the month following each monthly monitoring period, the results of filter effluent turbidity monitoring.
44. Within 30 days of the effective date of this Order, Respondents shall report results of filter effluent turbidity monitoring as required by 40 C.F.R. § 141.570 for the months where it was not previously reported, as described in paragraph 17.

**Compliance with Surface Water Treatment Rule**

45. In accordance with 40 C.F.R. § 141.72(b)(1), Respondents shall continue to achieve at least 3-log inactivation and/or removal of *Giardia lamblia* cysts and 4-log inactivation and/or removal of viruses. In order to ensure the system is continuously meeting these requirements, the total inactivation ratio for both *Giardia lamblia* cysts and viruses must be calculated daily using the temperature, pH and chlorine measurements collected from a sample location after the chlorine contact pipe, before the ammonia injection, each day at peak hourly flow.
46. In accordance with 40 C.F.R. 141.31(a), the calculated inactivation ratio for each day, and the monitoring results for temperature, pH, and chlorine residual from samples taken after the chlorine contact pipe, before ammonia injection to demonstrate compliance with 40 C.F.R. § 141.72(b)(1) shall be reported to the EPA by the tenth day of the month following each monthly monitoring period.
47. Within 30 days of the effective date of this Order, Respondents shall report results of the calculated inactivation ratio for each day, and the monitoring results for temperature, pH, and chlorine residual as required by 40 C.F.R. 141.31(a) for the months where it was not previously reported, as described in paragraph 21.
48. In accordance with 40 C.F.R. § 141.74(c)(2), Respondents shall continuously monitor the residual disinfectant concentration of the water entering the distribution system and record the lowest daily value.
49. In accordance with 40 C.F.R. § 141.75(b)(2), Respondents shall report the following disinfection information required by 40 C.F.R. § 141.74(c)(2) to the EPA by the tenth day of the month following each monthly monitoring period; including:



- i. The lowest daily residual disinfectant concentration of water entering the distribution system; and
- ii. The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below 0.2 mg/L, and when the EPA was notified of the occurrence.

50. Within 30 days of the effective date of this Order, Respondents shall report disinfection information as required by 40 C.F.R. § 141.75(b)(2) for the months where it was not previously reported, as described in paragraph 25.

### **Addressing Significant Deficiencies**

51. To address the Operator Compliance / Operator Certification significant deficiency described in paragraph 27(i); within 14 days of the effective date of this Order, Respondents shall submit a letter to EPA designating an operator-in-responsible-charge, certified for treatment at or above the level required for Respondents' treatment facility, and for distribution, at or above the level required for Respondents' distribution system. Operator certification shall be obtained from one of the following EPA recognized programs: State Operator Certification Program, The Intertribal Council of Arizona, or the United South and Eastern Tribes. Respondents shall notify EPA of any change of operator-in-responsible-charge within 10 calendar days of such changes.
52. Respondents shall insure that the designated operator-in-responsible-charge attends ongoing appropriate training necessary to maintain their certification.
53. To address the Monitoring, Reporting, and Data Verification / Chlorine Monitoring significant deficiency described in paragraph 27(ii), Respondents shall take the following actions:
- i. Beginning the effective date of this Order, Respondents shall conduct quarterly calibration checks of each HACH Colorimeter II portable chlorine analyzer used to monitor disinfectant residuals and record and maintain the results of the calibration checks in a log book. Calibration checks shall be performed consistent with manufacturer specifications. If the HACH Colorimeter II does not read within the manufacturer's specifications, then the HACH Colorimeter II shall be calibrated by a qualified manufacturer's representative. Any calibrations performed shall also be recorded in the log book. Quarterly calibration checks of the HACH Colorimeter IIs shall continue until notified by the EPA.
  - ii. Within 14 days of the effective date of this Order, Respondents shall conduct weekly comparability checks between each of the on-line chlorine analyzers (HACH CL-17) and the verified HACH Colorimeter II portable chlorine analyzer (as checked / calibrated per paragraph 53(i)), and record and maintain the results of the comparability checks in a log book. Consistent with EPA Method 334.0, if the on-line HACH CL-17 chlorine analyzer is not within +/- 15% of the reading of the verified HACH Colorimeter II portable chlorine analyzer, then the HACH CL-17

shall be calibrated by a qualified manufacturer's representative. Any calibrations performed shall also be recorded in the log book. Weekly calibration checks of the HACH CL-17 shall continue until written notification by the EPA.

- iii. Beginning the effective date of this Order, Respondents shall submit results of quarterly calibration checks recorded in the log book as described in paragraph 53(i) and weekly comparability checks recorded in the log book as described in paragraph 53(ii) to the EPA within the first ten days following the end of the monitoring periods.

### **Providing Public Notification**

54. Within 14 days of the effective date of this Order, Respondents shall complete the required Tier 2 public notification as described in Count V above.
55. Within 10 days of completing the required public notification as noted in paragraph 54, Respondents shall submit to the EPA a copy of the public notification and certification that it has been completed.

### **Address Managerial Capacity**

56. Within 180 days of the effective date of this Order, Respondents shall insure a second or backup operator that is certified for treatment at or above the level required for Respondent's treatment facility, and for distribution, at or above the level required for Respondent's distribution system is employed by Respondent to assist in providing oversight of the water system, and to respond to emergency situations.

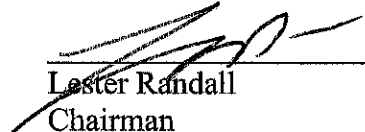
### **Monitoring and Reporting**

57. Within seven days of the effective date of this Order, Respondents shall submit to the EPA a plan and implementation schedule for any necessary repairs or upgrades to the SCADA system along with a plan and implementation schedule for ongoing maintenance of the SCADA to ensure that routine monitoring information required under the Surface Water Treatment rules is available and may be reported timely to the EPA. The plan and schedule shall be subject to review by the EPA.
58. Within seven days of the effective date of this Order, Respondents shall submit to the EPA a monitoring plan which may be implemented in the event of SCADA failure that will enable Respondents to comply with the monitoring and reporting requirements of the Surface Water Treatment rules. The monitoring plan shall be subject to review by the EPA. The monitoring plan shall be implemented in the event of SCADA failure or malfunction
59. Until such time as any necessary repairs, upgrades or maintenance to Respondents' SCADA system are made pursuant to paragraph 58, Respondents shall report monitoring information outlined in paragraphs 42, 46, and 48 to the EPA on a daily basis. Such

monitoring information shall be reported to the EPA by 3:00 PM Central Daylight Time each day, reporting all required monitoring information of the previous day.

**General Provisions**

60. Each submittal made pursuant to this Order shall be sent by email to:  
*marquess.scott@epa.gov*.
61. If the EPA identifies any deficiencies in the deliverables described in paragraphs 57 and 58, Respondents shall correct all deficiencies and resubmit the deliverable, or disapproved portions thereof, within five calendar days of notification, or such longer time as agreed to by the EPA in writing
62. This Order is effective upon the EPA's signature. This Order will remain in effect until the EPA provides notice of its termination.
63. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. Part 141 or of the Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forego any civil or any criminal action otherwise authorized under the Act.
64. Federal law states that violation of any terms of this Order may subject Respondents to an administrative civil penalty of up to \$39,936 under Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(A), or a civil penalty of not more than \$57,317 per day of violation, assessed by an appropriate United States District Court, under Sections 1414(g)(3)(A) and (C) of the Act, 42 U.S.C. §§ 300g-3(g)(A) and (C).
65. This Order shall be binding on Respondents and all their heirs, successors, and assignees. No change in ownership of the PWS shall alter the responsibility of the PWS under this Order.

  
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Lester Randall  
Chairman  
Kickapoo Tribe in Kansas

9-15-2020  
\_\_\_\_\_  
Date

\_\_\_\_\_  
David Cozad  
Director  
Enforcement and Compliance Assurance Division  
EPA Region 7

\_\_\_\_\_  
Date

\_\_\_\_\_  
Christopher Muehlberger  
Assistant Regional Counsel  
Office of Regional Counsel  
EPA Region 7

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Date