

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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IN THE MATTER OF)
)
The Fort Belknap Indian Community, Owner,)
and Prairie Mountain Utilities, Operator,)
Lodgepole Housing Public Water System)
PWS ID# 083090047)
)
Respondents.)
)
Proceedings under section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))
)

ADMINISTRATIVE ORDER

Docket No. **SDWA-08-2009-0005**

The following findings are made and administrative order (Order) issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) in the Safe Drinking Water Act (the Act), 42 U.S.C. § 300g-3(g), as properly delegated to the Supervisors in the Legal Enforcement Program, Office of Enforcement, Compliance and Environmental Justice and the Montana Office, EPA Region 8.

AUTHORITY

1. Section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), authorizes the Administrator to issue an administrative order requiring compliance and/or assessing a civil penalty for noncompliance with any applicable requirement.
2. EPA has primary enforcement responsibility for public water systems on the Fort Belknap Indian Reservation, pursuant to the regulations for implementation and enforcement of the National Primary Drinking Water Regulations (NPDWRs) set forth at 40 C.F.R. § 141.2.

FINDINGS

1. The Fort Belknap Indian Community (FBIC) is a federally-recognized tribal government comprised of the Assiniboine and Gros Ventre Tribes, and is a "person" within the meaning of 40 C.F.R. § 141.2 for purposes of federal enforcement.

2. The Prairie Mountain Utilities (the Utility) is a tribal agency under the laws of the Fort Belknap Indian Community Business Council and is therefore a "person" within the meaning of 40 C.F.R. § 141.2 for purposes of federal enforcement.

3. Respondent FBIC owns the Lodgepole Housing Public Water System (System), located near Lodgepole, Montana, within the exterior boundaries of the Fort Belknap Indian Reservation, which provides water for human consumption.

4. Respondent Utility operates the System.

5. The System is supplied solely by a ground water source consisting of one well, operating year-round and serves approximately 70 residents through 15 service connections.

6. The System is a "public water system" within the meaning of 40 C.F.R. § 141.2.

7. The System is a "community water system" within the meaning of 40 C.F.R. § 141.2.

8. Respondents FBIC and Utility own and/or operate the System and therefore are "suppliers of water" within the meaning of section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondents therefore are required to comply with the Act and its implementing regulations, 40 C.F.R. Part 141.

FINDINGS OF VIOLATION

1. 40 C.F.R. § 141.63(a)(2) imposes and defines the MCL for total coliform bacteria, applicable to public water systems collecting fewer than 40 samples per month, as no more than one sample collected during the month may be positive for total coliform bacteria. Respondents exceeded the monthly MCL for total coliform bacteria in October and December 2003, in violation of 40 C.F.R. § 141.63(a)(2).

2. 40 C.F.R. §141.63(b) defines the acute MCL for total coliform bacteria as a fecal coliform positive or E. coli positive repeat sample, or any total coliform positive repeat sample following a fecal coliform positive or E. coli positive routine sample. Respondents' sampling results during August 2007 exceeded the acute MCL for total coliform bacteria, in violation of 40 C.F.R. §141.63(b).

3. 40 C.F.R. § 141.21(b)(5) requires public water systems to collect a set of five routine samples after a total coliform positive sample in the preceding month. Respondents failed to collect at least five routine samples in November 2003, after a total coliform positive routine sample in the previous month, in violation of 40 C.F.R. § 141.21(b)(5).

4. 40 C.F.R. § 141.21(b) requires public water systems to collect a set of repeat samples within 24 hours of being notified of a total coliform positive routine sample. Respondents failed to collect repeat samples after a total coliform positive sample in August 2006, in violation of 40 C.F.R. § 141.21(b).

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5. 40 C.F.R. § 141.21(g)(1) requires systems that have exceeded the MCL for total coliform to report the violation to EPA no later than the end of the next business day after it learns of the violation. Respondents failed to notify EPA that the System exceeded the total coliform MCL in October and December 2003, and the acute coliform MCL in August 2007, in violation of 40 C.F.R. § 141.21(g)(1).

6. 40 C.F.R. § 141.21 requires community public water systems with an average daily population of less than 1,001 to monitor the water at least once per month to determine compliance with the MCL for total coliform bacteria as stated in 40 C.F.R. § 141.63.

Respondents failed to monitor in April 2007, in violation of 40 C.F.R. § 141.21.

7. The regulations require a system to notify the public of any violations of the NPDWRs. 40 C.F.R. Part 141 Subpart Q, §§ 141.201, et seq. Respondents failed to issue a public notice for the October and December 2003 total coliform MCL violations, in violation of the regulations.

8. 40 C.F.R. § 141.21(g)(2) requires a system to report any failure to comply with a coliform monitoring requirement to EPA within 10 days. Respondents did not report the November 2003 failure to collect 5 routine samples; the August 2006 failure to submit the required number of repeat samples; or the April 2007 failure to monitor, in violation of 40 C.F.R. § 141.21(g)(2).

9. 40 C.F.R. § 141.31(b) requires a system to report other NPDWR violations to EPA within 48 hours. Respondents failed to report the public notice violations noted in paragraph 7 above, in violation of 40 C.F.R. § 141.31(b).

ORDER

Based on the findings of violations above, the Respondents are ordered to do the following:

1. Upon the effective date of this Order, Respondents shall comply with the total coliform and acute total coliform MCL. 40 C.F.R. § 141.63(a) and 40 C.F.R. § 141.63(b).
2. Upon the effective date of this Order, Respondents shall comply with all total coliform routine sampling requirements. 40 C.F.R. § 141.21(b)(5). This requires that Respondents take no fewer than five routine total coliform bacteria samples during the next month after having one or more total coliform positive samples. Respondents shall report any analytical results to the EPA within the first 10 days following the end of the monitoring period. 40 C.F.R. § 141.31(a).
3. Upon the effective date of this Order, Respondents shall comply with all total coliform repeat sampling requirements. 40 C.F.R. § 141.21(b). This requires that Respondents take no fewer than four repeat total coliform bacteria samples within 24 hours of being notified of a total coliform positive routine sample. Respondents shall report any analytical results to the EPA within the first 10 days following the end of the monitoring period. 40 C.F.R. § 141.31(a).
4. Upon the effective date of this Order, Respondents shall report any violation of the total coliform or acute coliform MCL to EPA by the end of the next business day after learning of the violation. 40 C.F.R. §§ 141.21(g)(1) and 141.63.
5. Upon the effective date of this Order, Respondents shall monitor monthly for total coliform bacteria. 40 C.F.R. § 141.21. Respondents shall report analytical results to EPA within

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the first 10 days following the month in which sample results were received, as required by the regulations. 40 C.F.R. § 141.31(a).

6. Upon the effective date of this Order, Respondents shall comply with 40 C.F.R. § 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R. § 141.21 to EPA within 10 days of discovery.

7. Except where a different reporting period is specified above, upon the effective date of this Order, Respondents shall report any failure to comply with any NPDWR to EPA within 48 hours. 40 C.F.R § 141.31(b).

8. Within 90 days of the effective date of this Order, Respondents shall provide EPA with a compliance plan and schedule for the System to come into consistent compliance with the total coliform MCL and implement recommendations identified in the sanitary survey dated May 4, 2005 (attached to and incorporated herein). The plan shall include proposed physical and operational modifications (possibly including the interconnection of the System with the Agnes Leggins System), estimated costs of modifications, and a schedule for completion of the project and compliance with the total coliform MCL. The proposed schedule shall include specific milestone dates and a final compliance date (to be within 3 months from the date of EPA's approval of the plan). The plan and schedule must be approved by EPA before construction or modifications can commence.

9. The plan and schedule required by paragraph 8, above, will be incorporated into this Order as enforceable requirements upon written approval by EPA.

10. Respondents must achieve and maintain compliance with the total coliform MCL by the final date specified in the approved plan, or no later than 3 months after receiving EPA's approval of the plan and schedule required by paragraph 8 above, whichever is earliest. If implementation of the plan fails to achieve permanent compliance, EPA may order further steps and/or seek penalties for noncompliance.

11. Within 30 days of the effective date of this Order, Respondents shall provide public notice for the October and December 2003 MCL violations in the manner specified in the regulations. Such notice is intended to ensure that the public has been notified of all violations and shall contain all of the information required by the regulations. 40 C.F.R. §§ 141.201, 141.204 and 141.205. (Model templates and a table summarizing the violations are enclosed.) Respondents shall submit a copy of the public notice to EPA within 10 days of completion of the public notice. 40 C.F.R. § 141.31(d).

12. Respondents shall send any reports required in this Order to EPA by certified mail to:

Barbara Burkland
U.S. EPA Region 8, Montana Office
10 West 15th St., Suite 3200
Helena, MT 59626

GENERAL PROVISIONS

13. Issuance of this Order does not constitute a waiver, suspension, or modification of any Federal law or regulation, nor is it an election by EPA to forgo any civil or criminal action otherwise authorized by law.


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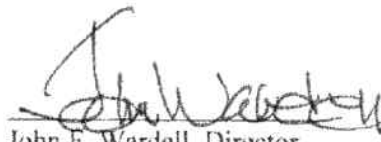
14. Violation of any term of this Order may result in an administrative civil penalty of up to \$27,500, or a civil penalty of not more than \$32,500 per day of violation assessed by the U.S. District Court. 42 U.S.C. § 300g-3(g)(3).

15. Violation of any requirement of the SDWA or its implementing regulations may subject Respondents to a civil penalty of not more than \$32,500 per day of violation assessed by the U.S. District Court. 42 U.S.C. § 300g-3(b).

16. This Order is effective upon receipt.

Issued this 9th day of October, 2008.


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


John F. Wardell, Director
Montana Office