

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2015 SEP 22 AM 9:54

FILED  
EPA REGION VIII  
HEARING CLERK

**IN THE MATTER OF:**

The Crow Tribe and Apsáalooke Water and  
Wastewater Authority,

Crow Agency Public Water System Treatment  
Plant 2 (TP02), PWS ID 083090011,

Respondents.

) Docket No.  
)  
)

) **ADMINISTRATIVE ORDER ON**  
) **CONSENT**

) **DOCKET No: SDWA-08-2015-0046**

) 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 Crow Tribe and Apsáalooke Water and Waste Water Authority (Respondents) enter into this Administrative Order on Consent (Consent Order) to resolve noncompliance with the National Primary Drinking Water Regulations (NPDWRs) at the Crow Agency Public Water System, Treatment Plant 2 (TP02).

**JURISDICTION**

1. The EPA has primary enforcement responsibility for public water systems in Indian country, including the Crow Reservation, pursuant to the regulations for implementation and enforcement of the NPDWRs at 40 C.F.R. part 141. No other governmental authority 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 officials.

3. Respondents neither admit nor deny the Findings of Facts and Conclusions of Law in paragraphs 7 through 28 of this Consent Order.

4. The EPA and Respondents recognize that the actions taken by Respondents in accordance with this Consent Order including, but not limited to, entering this Consent Order, do not constitute an admission of any liability or any violations of the NPDWRs, or any other requirement by Respondents.

### **PARTIES BOUND**

5. This Consent Order binds the Respondents, their elected officials, officers, directors, operators, employees, successors and assigns.

6. Respondents' undersigned signatories certify to their authority to execute this Consent Order and to legally bind the respective Respondents to the terms of this Consent Order.

### **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

7. Respondent Crow Tribe is a federally recognized tribe under section 104 of the Federally Recognized Indian Tribe List Act, 25 U.S.C. § 479a, and 79 Fed. Reg. 4748, 4752 (January 29, 2014), and therefore 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, and a "municipality" within the meaning of section 1401(10) of the Act, 42 U.S.C. § 300f(10), for purposes of federal enforcement.

8. Respondent Apsáalooke Water and Waste Water Authority (AWWWA) is an authorized organization of the Crow Tribe and therefore a "municipality" within the meaning of section 1401(10) of the Act, 42 U.S.C. § 300f(10), and also 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.

9. Respondents own and/or operate a public water system known as the Crow Agency Treatment Plant 2 (TP02) public water system (System) in Crow Agency, Montana, within the exterior boundaries of the Crow Reservation that provides the public with piped water for human consumption.

10. The System has approximately 406 service connections used by year-round residents and/or regularly serves an average of approximately 1,300 year-round residents 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.

11. Respondents own and/or operate the System and therefore are “suppliers of water” as defined in 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 requirements of the Act and its implementing regulations, the NPDWRs.

12. The source of the System’s water is surface water from the Little Bighorn River.

### **FINDINGS OF VIOLATION**

#### **Violation of Operator Certification Significant Deficiency**

13. The requirements to respond to a significant deficiency identified in sanitary surveys performed by the EPA are set forth in 40 C.F.R. § 141.723.

14. A sanitary survey is an onsite review of the water source, facilities, equipment, maintenance and monitoring compliance of a public water system to evaluate the adequacy of the public water system, its sources and operations, and the distribution of safe drinking water. 40 C.F.R. § 141.723(a).

15. A significant deficiency is defined by the NPDWRs to include a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or

distribution system that the EPA determines to be causing, or has the potential for causing, the introduction of contamination into the water delivered to consumers. 40 C.F.R. § 141.723(b).

16. For sanitary surveys performed by the EPA, systems must respond in writing to significant deficiencies identified in sanitary survey reports no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey. 40 C.F.R. § 141.723(c).

17. Systems must correct significant deficiencies identified in sanitary survey reports according to the schedule approved by the EPA, or if there is no approved schedule, according to the schedule reported under paragraph (c) of this section if such deficiencies are within the control of the system. 40 C.F.R. § 141.723(d).

18. The EPA performed a sanitary survey of the System on July 8 and 9, 2013.

19. During the sanitary survey of the System, the EPA identified the System's lack of a certified operator at the level required for the System as a significant deficiency.

20. The EPA issued the Respondents a final Sanitary Survey Report for the System on December 3, 2013, noting the lack of a certified operator as a significant deficiency.

21. According to the plan and schedule approved by the EPA, the Respondents were required to have at least one properly certified operator (MT 1B for treatment and MT 3A for distribution) by March 10, 2015.

22. The System's operators have not registered for or taken the appropriate operator certification exams for the System despite significant and costly compliance and training assistance provided by the EPA and its contractors.

23. The EPA provided Respondents with a Notice of Violation (NOV) based on the failure to complete corrective action on April 16, 2015, citing Respondents' failure to correct a significant deficiency according to the schedule approved by the EPA in violation of 40 C.F.R. § 141.723(d).

24. Respondents' failure to correct the operator certification significant deficiency by retaining a properly certified operator for the System by the EPA-approved deadline of March 10, 2015, constitutes a violation of 40 C.F.R. § 141.723(d).

#### **Incomplete Reporting for Disinfection Byproduct Precursors**

25. Respondents are required to monitor and report the System's water for disinfection byproduct (DBP) precursors by taking monthly paired samples of total organic carbon (TOC) in the source water and the treated water, with an alkalinity sample of the source water to be taken at the same time. 40 C.F.R. § 141.132(d)(1).

26. Respondents are required to report compliance calculations for the TOC removal requirements to the EPA within 10 days following the end of each quarter. 40 C.F.R. § 141.134(a) and (d)(1).

27. Respondents failed to timely submit the RAA compliance calculations for the 1<sup>st</sup> quarter of 2015 for the System.

28. Respondents' failure to submit a complete and timely DBP precursor report for the 1<sup>st</sup> quarter of 2015 constitutes a violation of 40 C.F.R. § 141.134.

#### **ORDER**

Based on the foregoing Findings of Violations, and pursuant to section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), Respondents agree and are hereby ORDERED to perform the following:

29. **Certified Operator:** Within 90 days of signing this Consent Order, Respondents shall provide the EPA evidence that at least one of the System's operators have taken either the MT 1B treatment and MT 3A distribution operator certification exams, or Treatment Level 2 and Distribution Level 1 exams provided by an EPA-approved certification program. Respondents shall further provide the EPA with the results of such testing within 5 days of their receipt from the applicable testing agency. If the System's operator(s) did not successfully pass the certification exam the first time, Respondents agree such operator(s) shall continue to diligently pursue obtaining certification. In the event no operator(s) have passed the required certification exams within 6 months of signing this Consent Order, Respondents agree to begin the process of hiring a contract operator possessing current certification at levels appropriate for the System. Respondents are required to have a properly certified operator for the System within 1 year of signing this Consent Order.

30. **DBP Reporting:** Beginning with the reporting period for 2<sup>nd</sup> quarter of 2015 and for each consecutive quarter thereafter, Respondents shall monitor the System's water each month for DBP precursors as required by 40 C.F.R. § 141.132(d). Within the first 10 days after the end of each quarter, Respondents 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. § 141.132(d).

31. Respondents must submit all information required under this Consent Order to:

Sienna Meredith  
U.S. EPA Region 8 Montana Office  
10 W 15 Street Suite 3200  
Helena, MT 59626  
[Meredith.sienna@epa.gov](mailto:Meredith.sienna@epa.gov)

## FORCE MAJEURE

32. Respondent agrees to perform all requirements of this Consent Order within the time limits established herein, unless the performance is delayed or prevented by events which constitute *force majeure*. For purposes of this Consent Order, *force majeure* is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Consent Order despite Respondent's best efforts to fulfill the obligation. When an event constituting *force majeure* occurs, Respondent shall perform the affected activities within a time period not to exceed the time provided in this Consent Order and the period of delay attributable to *force majeure*. Respondent shall use best efforts to avoid or minimize any delay or prevention of performance of its obligations under this Consent Order, and to discover and keep apprised of any and all circumstances which may result in a delay or prevention of the implementation of this Consent Order. A delay caused by EPA, and otherwise conforming with the terms of this Section, shall be treated as beyond the Respondent's control.

33. If any event occurs, or has occurred, that may delay the performance of any obligation under this Consent Order, whether or not caused by a *force majeure* event, Respondent shall notify the EPA contact referenced above verbally within 5 days of when Respondent's Project Coordinator first had actual knowledge that the event might cause a delay. Within 10 days after the date Respondent first became aware of the circumstances which may delay or prevent any performance of any activity required by this Consent Order, Respondent shall provide to EPA written notice of the reasons for the delay. Such written notice shall be accompanied by all available pertinent documentation including, but not limited to, third-party

correspondence, and shall contain: (1) a description of the circumstances and the Respondent's rationale for interpreting such circumstances as being beyond its control; (2) the actions (including pertinent dates) Respondent has taken and/or intends to take to minimize any delay; (3) the date or time period Respondent proposes to complete the delayed activities; and (4) a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment.

### **GENERAL PROVISIONS**

34. Respondents 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.

35. This Consent Order shall not constitute a waiver, suspension, or modification of any requirement of the Act or the NPDWRs. Issuance of this Consent Order is not an election by the EPA to forgo any civil or criminal action.

36. Violation of any part of this Consent Order or the NPDWRs may subject Respondents to a civil penalty of up to \$37,500 (as adjusted for inflation) per day of violation. 42 U.S.C. § 300g-3; 40 C.F.R. part 19.

37. Respondents waive any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondents may have with respect to this Consent Order, including any right of judicial review under section 1448(a) of the Act, 42 U.S.C. § 300j-7(a).

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

39. This Consent Order is effective upon the date a fully executed, file-stamped copy is filed with the EPA Region 8 Hearing Clerk.

40. This AOC shall terminate upon written request to and approval by the EPA following successful completion of the requirements agreed to in the AOC, including obtaining the services of an appropriately certified operator and timely submittal of the quarterly reports for a minimum period of 18 – 24 months from the AOC's effective date.

IT IS SO AGREED AND ORDERED:

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant.**

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

9/21/2015

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Arturo Palomares, Director  
Water Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice

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

9/16/2015

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James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice

**CROW TRIBE,**  
Respondent.

Date: 9-9-15

  
\_\_\_\_\_  
The Honorable Darrin Old Coyote  
Chairman

**APSAALOOKE WATER AND WASTE  
WATER AUTHORITY,**  
Respondent.

Date: 9/9/15

  
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Alvin Not Afraid, Sr.  
Cabinet Head