

U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

KICKAPOO PUBLIC WATER SYSTEM
KICKAPOO TRIBE IN KANSAS, OWNER
PWS ID# 070000002

RESPONDENT

Proceedings under Section 1414(g) of the Safe
Drinking Water Act, 42 U.S.C. § 300g-3(g)

)
) DOCKET No. SDWA-07-2010-0002
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)
) FINDINGS OF VIOLATION and
) ORDER FOR COMPLIANCE ON
) CONSENT
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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 Water, Wetlands and Pesticides Division.

JURISDICTION

1. This Administrative Order on Consent (Order) is entered into voluntarily by and between the EPA and the Kickapoo Tribe in Kansas (the Respondent). This Order is issued pursuant to section 1414(g) of the Act, 42 U.S.C. § 300g-3(g). The Respondent neither admits nor denies the findings, legal conclusions, or determinations of the Order and agrees 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 the Respondent and EPA.
2. 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. Respondent is a "person" 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, Respondent 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 700 year-round residents annually through 195 service connections, including eight homes located outside the exterior boundaries of the Reservation.
6. The System is a "public water system" (PWS) 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, the Respondent is a "supplier 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, Respondent is therefore required to comply with the Act and the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. Part 141.
8. In August 2007, Respondent and EPA entered into a written Compliance Assistance Plan ("CAP"), signed by representatives of both Respondent and EPA, in which Respondent agreed to take certain steps in order to address significant violations of the SDWA. This CAP expired on January 1, 2009.
9. In January 2007, Respondent entered into a memorandum of agreement (MOA) with the United States Indian Health Service (IHS) to construct upgrades and modifications to Respondent's water treatment facilities. The MOA was amended in November 2009. Pursuant to the MOA, IHS has entered into a contract with Frontier Services, Inc., to perform upgrades to the Kickapoo Tribe Public Water System treatment plant. The upgrades, designed to reduce the formation of disinfection byproducts and to improve the removal of total organic carbon in the water treatment process via the installation of a chloramination treatment process, upgrades to the filtration system, and other actions, are to be performed in accordance with the schedule referenced in Paragraph 2 below of the Order.

FINDINGS OF VIOLATIONS

Count I

Noncompliance with MCLs for Trihalomethane (TTHM) / Haloacetic Acids (HAA5)

10. The Stage 1 Disinfection Byproducts Rule (DBPR) is the first of two stages of rulemaking by EPA intended to protect public health by regulating potentially harmful disinfectant byproducts ("DBPs"), such as total trihalomethanes ("TTHM") and haloacetic acids ("HAA5"), which are formed when chlorine reacts with naturally occurring DBP precursor organic matter in drinking water called total organic carbon ("TOC").
11. Pursuant to 40 C.F.R. §§ 141.64 and 141.130(b)(1), Respondent was to comply with the maximum contaminant levels ("MCLs") and other requirements of the Stage 1 DBPR beginning January 1, 2004.
12. Pursuant to 40 C.F.R. §§ 141.64, the MCL for TTHM is 0.080 mg/l. The MCL for HAA5 is 0.060 mg/l.
13. Pursuant to 40 C.F.R. § 141.132(b), Respondent must routinely monitor the water in its distribution system for TTHM and HAA5 by taking at least one water sample set per quarter at locations representing maximum residence time of the water in the distribution system.
14. Pursuant to 40 C.F.R. § 141.132(f), Respondent must monitor TTHM and HAA5 pursuant to a monitoring plan that Respondent develops and implements.
15. Pursuant to 40 C.F.R. § 141.134, systems subject to the DBPR must report monitoring results to EPA within 10 days after the end of each quarter in which samples were collected.
16. Pursuant to 40 C.F.R. § 141.133(b), compliance with the TTHM and HAA5 MCL is based on the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period.
17. EPA has received, from Respondent, copies of the monitoring results for the TTHM and HAA5 monitoring performed between January 1, 2005, and October 1, 2009, at Respondent's System. The monitoring results and running annual average concentrations are included in the table below:

Monitoring Period	TTHM Quarterly Results (mg/l)	TTHM Running Annual Average (mg/l) [MCL = 0.080 mg/l]	HAA5 Quarterly Results (mg/l)	HAA5 Running Annual Average (mg/l) [MCL = 0.060 mg/l]
1 st Qtr 2004	No Data		No Data	
2 nd Qtr 2004	0.120		0.093	
3 rd Qtr 2004	0.110		0.087	
4 th Qtr 2004	0.120		0.130	
1 st Qtr 2005	0.120	0.118	0.084	0.099
2 nd Qtr 2005	0.160	0.130	0.160	0.115
3 rd Qtr 2005	0.130	0.133	0.110	0.121
4 th Qtr 2005	0.150	0.140	0.100	0.114
1 st Qtr 2006	0.095	0.134	0.078	0.112
2 nd Qtr 2006	0.150	0.131	0.120	0.102
3 rd Qtr 2006	0.160	0.139	0.150	0.112
4 th Qtr 2006	0.170	0.144	0.240	0.147
1 st Qtr 2007	0.120	0.150	0.150	0.165
2 nd Qtr 2007	0.190	0.160	0.220	0.190
3 rd Qtr 2007	0.370	0.212	0.270	0.220
4 th Qtr 2007	0.280	0.240	0.210	0.212
1 st Qtr 2008	0.200	0.260	0.170	0.217
2 nd Qtr 2008	0.320	0.293	0.380	0.258
3 rd Qtr 2008	0.260	0.265	0.180	0.235
4 th Qtr 2008	0.230	0.252	0.210	0.235
1 st Qtr 2009	0.130	0.235	0.130	0.225
2 nd Qtr 2009	0.310	0.232	0.160	0.170
3 rd Qtr 2009	0.250	0.230	0.230	0.183

18. From January 1, 2005, through October 1, 2009, the running annual arithmetic average concentration of TTHM exceeded the MCL for TTHM.
19. Respondent violated 40 C.F.R. § 141.64, by exceeding the 0.080 mg/l TTHM MCL.
20. From January 1, 2005, through October 1, 2009, the running annual arithmetic average concentration of HAA5 exceeded the MCL for HAA5.
21. Respondent violated 40 C.F.R. § 141.64 by exceeding the 0.060 mg/l HAA5 MCL.

Count II

Noncompliance with Total Organic Carbon Removal Ratio

22. Pursuant to 40 C.F.R. § 141.132(d), Respondent is required to monitor and take at least one sample per month for TOC in the source water prior to any treatment at Respondent's water treatment plant at the same time Respondent monitors for TOC in

the treated water. These samples are referred to as paired samples and must be taken at a time representative of normal operating conditions and influent water quality.

23. Pursuant to 40 C.F.R. § 141.132(f), Respondent must monitor TOC pursuant to a monitoring plan that Respondent develops and implements.
24. Pursuant to 40 C.F.R. § 141.133(d), compliance with the TOC percent removal requirement is based the TOC Removal Ratio calculated under 40 C.F.R. § 141.135(c). If the arithmetic average of the TOC Removal Ratio, as calculated pursuant to 40 C.F.R. § 141.135(c), is less than 1.0, the system is not in compliance with the TOC percent removal treatment technique requirement.
25. EPA has received, from Respondent, copies of the monitoring results for the TOC monitoring performed between June 2004 and October 2009 at Respondent's System. The TOC Removal Ratio running annual averages (RAA) are included in the table below:

Monitoring Period	TOC Removal Ratio Running Annual Average
3 rd Qtr 2005	0.61
4 th Qtr 2005	0.97
1 st Qtr 2006	0.88
2 nd Qtr 2006	0.97
3 rd Qtr 2006	0.95
4 th Qtr 2006	0.96
1 st Qtr 2007	0.91
2 nd Qtr 2007	0.83
3 rd Qtr 2007	0.69
4 th Qtr 2007	0.74
1 st Qtr 2008	0.76
2 nd Qtr 2008	0.83
3 rd Qtr 2008	0.84
4 th Qtr 2008	0.72
1 st Qtr 2009	0.68
2 nd Qtr 2009	0.69
3 rd Qtr 2009	0.94

26. From April 1, 2005, through October 1, 2009, the TOC removal ratio RAA was less than 1.00 at Respondent's facility.
27. Respondent violated 40 C.F.R. §§ 141.133(d) and 141.135(c) by failing to achieve the required TOC removal ratio during the time period between April 1, 2005, and October 1, 2009.

Count III

Failure to Develop Disinfection Profile

28. Pursuant to 40 C.F.R. § 141.530, Respondent is required to develop a disinfection profile. Pursuant to C.F.R. § 141.540, Respondent is required to develop a disinfection benchmark if a significant change to the disinfection practice is to be implemented.
29. Pursuant to 40 C.F.R. § 141.532, systems that serve 500 to 9,999 persons were to begin collecting data for their disinfection profile no later than July 1, 2003.
30. As of the date of this Order, Respondent has not developed a disinfection profile for its system. Nor has it begun to collect the required data for a disinfection profile. This is a violation of 40 C.F.R. §§ 141.530 and 141.532.

ORDER FOR COMPLIANCE ON CONSENT

1. Based on the above findings and pursuant to the authority of Section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), EPA orders that Respondent immediately take any and all steps necessary to:
 - a. Comply with the MCLs for TTHM and HAA5 as required by 40 CFR § 141.64;
 - b. Comply with the TOC removal efficiency as required by 40 CFR § 141.135;
 - c. Establish a Disinfection Profile as required by 40 CFR §§ 141.530 – 141.536.

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

Compliance with MCLs for TTHM/HAA5 – 40 CFR § 141.64

2. In consultation with the Indian Health Service (IHS), Respondent shall install and operate chloramination equipment to reduce the formation of disinfection byproducts via a chloramination treatment process. Within fourteen (14) days of receipt of written notice by EPA, Respondent shall submit to EPA a schedule for completing design and construction of the chloramination equipment and associated modifications to the

Respondent's water treatment plant for review and approval by EPA. The schedule shall state specific milestone dates for completion of the following elements:

- a. Submission of Final Project Design and Construction Plans, in accordance with Paragraph 3 below;
- b. Initiation of Construction of Water Treatment Plant Upgrades;
- c. Construction Completion and Connection of New Contact Time (CT) Pipeline;
- d. Construction Completion of Filtration System Upgrades;
- e. Construction Completion of New System Control (SCADA) Instrumentation;
- f. System Re-Start and Testing;
- g. Completion of all Water Treatment Plant Upgrade Construction Activities; and
- h. Submission of updated Operations and Maintenance (O&M) Plan, in accordance with Paragraph 18 below.

Upon receipt of the above-referenced schedule from Respondent, EPA will review the schedule and if necessary provide comments, request modification, and/or directly modify the submittal before EPA approval in accordance with Paragraph 29 below.

Failure to submit an approvable schedule within fourteen (14) days of receipt of written notice by EPA or within twenty-one (21) days of receipt of any notice of deficiency and/or request for modification from EPA submitted in accordance with Paragraph 29 below shall constitute a violation of this Order.

The schedule submitted pursuant to this paragraph will be incorporated into this Order and fully enforceable pursuant to this Order upon written approval by EPA.

3. The Design Plans and Construction Work Plans to be submitted pursuant to the schedule referenced in Paragraph 2 of this Order shall include, at a minimum, the following information:
 - a. The complete plans and specifications for the treatment plant modifications;
 - b. The construction plans for implementing the treatment plant modifications;
 - c. A detailed description of the changes Respondent will be making to its disinfection procedures as a result of the upgrades associated with the chloramination construction activities, including a determination indicating

how the revised treatment process will achieve treatment requirements specified at 40 CFR § 141.711; and

- d. A detailed description of the methods and procedures that Respondent will use to notify the public of all changes to the disinfection processes.
4. Provide notification to EPA a minimum of 90 days prior to initial start-up of chloramination treatment process.
5. Submit to EPA for review and approval a Stage 1 DBP Compliance Monitoring Plan, as required by 40 CFR § 141.132(f), a minimum of 45 days prior to the initial start-up of the chloramination treatment process. The Plan should be based on the example in Appendix C of the EPA guidance document entitled "Complying with the Stage 1 Disinfectant and Disinfectant Byproducts Rule: Basic Guide" (see – http://www.epa.gov/OGWDW/mdbp/pdfs/guide_stage1_basic_final.pdf). The Monitoring Plan shall be initiated within one month of start-up of the chloramination treatment process.
6. Conduct monthly monitoring for TTHM and HAA5 at a sample location just following the Clearwell storage tank, within one month of start-up of the chloramination process, for a period of one year. Monitoring results shall be submitted to EPA within ten (10) days after the end of each month.
7. Respondent shall report to EPA results of TTHM/HAA5 monitoring described in Paragraph 6. Results shall be submitted to EPA within ten (10) days after the end of each quarter in accordance with 40 CFR 141.134.
8. Until the running annual average concentrations for TTHM and HAA5, based on monitoring described in Paragraph 6, are below the respective MCLs, Respondent shall comply with the appropriate public notice requirements of 40 CFR Part 141 Subpart Q, by providing public notice within 30 days of learning of an MCL exceedance.
9. Within ten (10) days of each public notice for exceedances of the TTHM or HAA5 MCL (as described in Paragraph 11), Respondent shall provide EPA with a certification that public notice has been made in accordance with Subpart Q of 40 CFR Part 141 and a copy of the actual public notice distributed.

Stage 2 Initial Distribution System Evaluation

10. Within 90 days after the initial start-up and operation of additional chloramination treatment processes, Respondent shall implement the Monitoring Plan attached as Appendix A to this Order to meet the requirements of 40 CFR § 141.601.
11. Respondent shall submit the Initial Distribution System Evaluation (IDSE) Report, consistent with requirements of 40 CFR § 141.601(c), within 15 months of initiating the monitoring referenced in Paragraph 10. Reporting format shall follow guidelines

described in EPA guidance – “Initial Distribution System Evaluation Guide for Systems Serving Fewer Than 10,000 People – For the Final Stage 2 Disinfectants and Disinfection Byproducts Rule”;
(see http://www.epa.gov/safewater/disinfection/stage2/pdfs/guide_idse_less-than.pdf)

Comply with Total Organic Carbon (TOC) Removal Efficiency – 40 CFR § 141.135

12. Within 90 days of receipt of this Order, Respondent shall submit for EPA review and approval an updated Operations and Maintenance Plan (O&M Plan) that describes regular maintenance, monitoring, and process control measures Respondent will implement to improve treatment plant operations and enhance TOC removal prior to implementing the chloramination treatment process. The O&M Plan shall establish criteria for process control and maintenance procedures for the efficient operation of the water treatment plant and distribution system, and include, at a minimum, the following information:
 - a. Weekly jar testing and associated log sheets;
 - b. Daily turbidity measurement of raw water and associated log sheets;
 - c. Measurement of chlorine residuals at key points in the treatment plant and associated log sheets;
 - d. Operational adjustments, including coagulant additions and associated log sheets;
 - e. A Leak Detection Survey Plan, including a schedule for the initial and regular implementation of the Survey, which identifies the methods to be used to locate and abate significant leaks in the water distribution system;
 - f. Equipment function, normal operation characteristics, and limiting conditions;
 - g. Assembly, installation, adjustment, and system checking instructions;
 - h. Operating instructions for startup, routine and normal operations, shutdown, and emergency conditions;
 - i. Maintenance instructions and schedules and associated log sheets;
 - j. Troubleshooting guidelines;
 - k. Daily process control measures and associated log sheets;
 - l. Spare parts inventory; and

- m. Inspection, and record keeping forms and check lists to track system performance, maintenance, and function.
13. Results of O&M activities referenced in Paragraph 12 above and any related process control measures shall be provided to EPA within (10) days after the end of each month. Results shall be reported on the log sheets outlined in the O&M Plan, or on other form(s) as approved by EPA.
 14. Submit to EPA for review and approval a TOC Monitoring Plan as required by 40 C.F.R. § 141.132(f) a minimum of 45 days prior to the initial start-up of the chloramination treatment process. The Plan should be based on the example in Appendix B of the EPA guidance document entitled: "Complying with the Stage 1 Disinfectant and Disinfectant Byproducts Rule: Supplement B" (see – http://www.epa.gov/safewater/mdbp/pdfs/guide_stage1_basic_supplement_b_final.pdf) The TOC Monitoring Plan shall be initiated within one month of initial start-up of the chloramination treatment process. Respondent shall conduct monitoring for TOC in raw and treated water, following start-up of the chloramination process, according to the Plan. However, for a period of one year following initial start-up of chloramination process, sampling shall be performed once every two weeks (bi-weekly) rather than monthly. For a period of one year following initial start-up of chloramination process, monitoring results shall be reported to EPA within ten (10) days after the end of each month.
 15. Beginning one year after the initial start-up of the chloramination treatment process, Respondent shall submit monthly TOC monitoring results to EPA within ten (10) days after the end of each month in accordance with 40 CFR § 141.134.
 16. The running annual average for TOC Removal Ratio shall be reported to EPA on a quarterly frequency. Until such time as the running annual average TOC Removal Ratio meets requirements of 40 CFR 141.135, Respondent shall comply with the appropriate public notice requirements of Subpart Q of 40 CFR Part 141 by providing public notice within 30 days of learning of a failure.
 17. Within ten (10) days of each public notice for non-compliance with the TOC removal requirements, Respondent shall provide EPA with a certification that public notice has been made in accordance with Subpart Q of 40 CFR Part 141.
 18. Following installation of the chloramination equipment, Respondent shall submit a revised O&M Plan for EPA review and approval. This revised O&M Plan shall contain at a minimum the information required to be in the O&M Plan submitted pursuant to Paragraph 12, and shall describe in detail how the Respondent will operate the water treatment plant with the chloramination equipment to ensure compliance with the requirements of the Safe Drinking Water Act. The O&M Plan shall be submitted to EPA pursuant to the schedule referenced in Paragraph 2 of this Order. Upon receipt of the O&M plan from Respondents, EPA will review the plan and if necessary provide

comments, request modification, and/or directly modify the submittal before EPA approval, in accordance with the provisions of Paragraph 29 below.

19. Within ten (10) days after the end of each month, following installation of the chloramination equipment, Respondent shall submit to EPA copies of all log sheets related to the operation and maintenance of the drinking water treatment plant for a period of one year following initial start-up of the chloramination process.

Enhanced Filtration and Disinfection (Disinfection Profile) – 40 CFR §§ 141.500 – 141.571

20. Within 30 days of receipt of this Order, Respondent shall begin the collection of data associated with the development of a disinfection profile and benchmark. At a minimum, Respondent shall collect the required data specified in 40 CFR § 141.533. Required data shall be collected up until the time at which the chloramination treatment process is in place and operational.
21. Using the data referenced in Paragraph 20, Respondent shall determine the total log inactivation for the disinfection process, as required under 40 CFR § 141.533, on a weekly basis. Results shall be provided to EPA within (10) days after the end of each month.
22. Upon completion of the data collection described in Paragraph 20, Respondent shall submit to EPA a complete Disinfection Profile and Benchmark. The Disinfection Profile and Benchmark shall be submitted no later than thirty (30) days after completion of the required monitoring.
23. Within thirty (30) days after the initial start-up of the chloramination treatment process, Respondent shall begin the collection of data associated with the development of a disinfection profile and benchmark. At a minimum, Respondent will collect the required data specified in 40 CFR § 141.533 and 40 CFR § 141.535.
24. Using the data referenced in Paragraph 23, Respondent shall determine the total log inactivation for *Giardia lamblia* and viruses for the disinfection process, as required under 40 CFR § 141.533 and 40 CFR § 141.535, on a weekly basis. Results shall be provided to EPA within (10) days after the end of each month.
25. After start-up of the chloramination treatment process, and upon completion of twelve (12) consecutive months of weekly monitoring as described in Paragraph 23, Respondent shall submit to EPA a complete Disinfection Profile and Benchmark. The Disinfection Profile and Benchmark shall be submitted no later than thirty (30) days after completion of the required monitoring.

Asset Management

26. Within 120 days of receipt of this Order, Respondent shall submit to EPA an Asset Management Plan that outlines a sustainable plan for managing the water supply

system. The Plan must include descriptions of: the current state of system assets; the desired level of service to be provided by the system; critical assets of the system; minimum life cycle costs associated with system capital equipment; and a long-term funding plan. EPA recommends the use of the "Check Up Program for Small Systems" (CUPSS) software for assistance in developing such an Asset Management Plan.

Operator Training/Certification

27. Within 60 days of receipt of this Order, Respondent shall submit a letter to EPA which designates an operator-in-responsible-charge, certified at or above the level of the treatment facility. Respondent shall maintain an operator-in-responsible-charge, at all times that the water system is operational, consistent with requirements of 40 CFR § 141.70 (c). Respondent shall notify EPA of any change of operator-in-responsible-charge within 10 calendar days of such changes.
28. Respondent shall encourage and support the training and certification of additional water system operators as necessary to provide continual oversight of the water system, and respond to emergency situations. Respondent shall insure that the designated operator-in-responsible charge maintain their certification, consistent with EPA's policy (see EPA Region 7 Tribal Operator Certification Program, 8/26/08). Per the policy, once certified, an operator is required to complete applicable training, approved by EPA, over a two-year period, as follows:

Class I and II operators – 10 hours

Class III and IV operators – 20 hours

EPA Approval of Plans and Other Submissions

29. After review of any plan, report or other submittal that is required to be submitted for approval pursuant to this Order, EPA, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. EPA's approval shall not be unreasonably withheld. However, EPA shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 21 days thereof, except where to do so would cause serious disruption to the work associated with the order or where previous submission(s) of the same plan, report or other submittal have been disapproved due to material defects and the deficiencies in the latest submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

EPA also retains the right to modify or develop the plan, report or other submittal. Respondent shall implement any such plan, report, or submittal as modified or developed by EPA.

If upon resubmission, a plan, report, or submittal is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or submittal timely and adequately unless Respondent invokes dispute resolution pursuant to Paragraph 31 (Dispute Resolution) and Respondent's position is upheld in the resolution of the dispute.

If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required. All plans, reports, and other items required to be submitted to EPA pursuant to this Order shall, upon approval or modification by EPA, be enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other submittal required to be submitted to EPA pursuant to this Order, the approved or modified portion shall be enforceable pursuant to this Order.

No informal advice, guidance, suggestion, or comment by EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

Excused Delay – Force Majeure

30. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed or prevented by events which constitute *force majeure*. For purposes of this 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 Order despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance. 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 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 Order, and to discover and keep apprised of any and all circumstances which may result in a delay or prevention of the work required under this Order. A delay caused by EPA, and otherwise conforming with the terms of this Section, shall be treated as beyond the Respondent's control.

If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondent shall notify the EPA contact referenced below 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 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. Such notification shall not in and of itself relieve Respondent of any of its obligations under this Order. Respondent's failure to timely and properly notify EPA as required by this paragraph shall nullify any claim of *force majeure* for a period equal to Respondent's delay in providing proper notification. Respondent shall have the burden of proving to EPA's satisfaction that an event constituting *force majeure* has occurred.

Dispute Resolution

31. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes concerning this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

If Respondent objects to any EPA action taken pursuant to this Order, Respondent shall notify EPA in writing of its objection(s) within 10 days of such action, unless the objection(s) has/have been resolved informally. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis and opinion supporting the Respondent's position, and all supporting documentation on which Respondent relies ("Statement of Position"). Unless the Respondent's objection(s) has/have been resolved informally, EPA shall provide Respondent a written response specifically addressing the points raised in the Statement of Position. EPA and Respondent shall have 90 days from EPA's receipt of Respondent's Statement of Position to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended by agreement of both the Respondent and EPA.

Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, the Water, Wetlands and Pesticides Division Director will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Order. Respondent's other obligations under this Order shall not be tolled by submission of any notice of dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the Water, Wetlands and Pesticides Division Director's decision, whichever occurs. As provided in this Order, penalties shall continue to accrue during any dispute resolution period, but Respondent shall be

liable for only those penalties required by the agreement reached or by the Water, Wetlands and Pesticides Division Director's decision, whichever occurs.

General Provisions

32. Each submittal made pursuant to this Order shall be sent by U.S. mail, by certified mail with receipt requested, facsimile, or electronically to the following addressee:

U.S. EPA, Region 7
Attn: Scott Marquess
WENF/WWPD
901 North 5th Street
Kansas City, Kansas 66101
Fax: 913-551-7131
marquess.scott@epa.gov

This Order is effective upon receipt. This Order shall remain in effect until completion by the Respondent of the requirements of this Order, at which time EPA shall issue a written notice of termination. Proceedings to terminate this Order may be initiated by EPA on its own accord or upon petition by the Respondent to EPA. EPA will not unreasonably withhold its determination to terminate this Order.

33. 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.
34. Any deadline for compliance by Respondent set forth in this Order may be extended by written approval by EPA without formal amendment to this Order.

Enforcement: Penalties for Noncompliance

35. For each day that the Respondent fails to comply with the requirements of this Order, Respondent shall be liable for stipulated penalties as set forth below. "Compliance" by Respondent shall include the completion of the activities, including deliverables, under this Order or any work plan or other plan approved under this Order to EPA's satisfaction, in accordance with all applicable requirements of law, this Order, and any plans or documents approved by EPA pursuant to this Order and within the specified time schedules established and approved under this Order. Penalties begin to accrue on the day that performance is due or a violation occurs, and extend through the period of correction. EPA will provide written notice for violations that are not based on timeliness; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within 30 days of receipt of a demand letter from EPA.
36. Respondent shall pay interest on the unpaid balance of a penalty, which shall begin at the end of the 30-day period, at the rate established by the Department of Treasury

pursuant to 30 U.S.C. Section 3717. Respondent shall further pay a handling charge of 1 percent, to be assessed at the end of each 31 day period, and a 6 percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due. Respondent shall make all payments as directed by EPA Region 7 by certified check. A copy of the certified check shall be sent to the EPA contact referenced in Paragraph 32 above within five (5) days of payment.

37. The following stipulated penalties shall be payable per violation per day to EPA for any noncompliance with this Order:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day</u>
1 st - 7th day	\$ 100
8 th - 14 th day	\$ 500
Each day thereafter	\$ 1,500

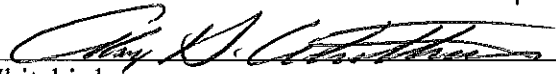
38. Respondent may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures of this Order. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondent does not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondent prevails upon resolution, no penalties shall be paid.
39. In the event that EPA provides for corrections to be reflected in the next deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.
40. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondent's failure to comply with this Order. Provided, however, that EPA will not seek civil penalties under the SDWA for any violation for which a stipulated penalty is provided, except in the case of a willful violation of the Order. Payment of stipulated penalties does not alter Respondent's obligation to complete performance under this Order.

Civil Penalties:

41. Federal law states that violation of any terms of this Order may subject Respondent to an administrative civil penalty of up to \$32,500 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 \$37,500 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).
42. This Order shall be binding on the public water system cited herein and all its heirs, successors, and assignees. No change in ownership of the PWS shall alter the responsibility of the PWS under this Order.

2-25-2010

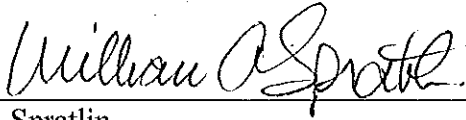
Date



Arlan Whitebird
Chairman
Kickapoo Tribe in Kansas

2/25/10

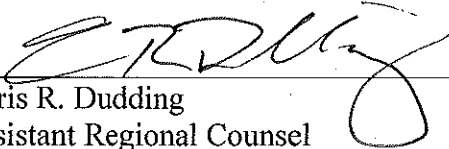
Date



William Spratlin
Director
Water, Wetlands and Pesticides Division, EPA Region 7

2/25/2010

Date



Chris R. Dudding
Assistant Regional Counsel
Office of Regional Counsel, EPA Region 7

Appendix A

Standard Monitoring Plan Form for Systems Serving < 10,000

I. GENERAL INFORMATION

A. PWS Information*

B. Date Submitted*

PWSID: 070000002

PWS Name: KICKAPOO WATER DEPT.

PWS Address: 1107 GOLDFENCH RD

City: HORTON

State: KS

Zip: 66439

Population Served: _____

System Type:	Source Water Type:	Buying / Selling Relationships:
<input checked="" type="checkbox"/> CWS	<input checked="" type="checkbox"/> Subpart H	<input type="checkbox"/> Consecutive System
<input type="checkbox"/> NTNCWS	<input type="checkbox"/> Ground	<input type="checkbox"/> Wholesale System
		<input checked="" type="checkbox"/> Neither

C. PWS Operations

Residual Disinfectant Type: Chlorine Chloramines Other: _____

Number of Disinfected Sources: 1 Surface GWUDI Ground Purchased

D. Contact Person*

Name: JAMES W. CONKLEN

Title: KICKAPOO WATER PLANT OPERATOR

Phone #: (785) 486-2773

Fax #: (785) 486-2176

E-mail: KUTHUMDER @ YAHOO . COM

II. IDSE REQUIREMENTS*

A. Number of Sites	B. Schedule	C. Standard Monitoring Frequency
Total: <u>2</u>		
Near Entry Point: _____	<input type="checkbox"/> Schedule 1	<input type="checkbox"/> During peak historical month (1 monitoring period)
Avg Residence Time: _____	<input type="checkbox"/> Schedule 2	<input checked="" type="checkbox"/> Every 90 days (4 monitoring periods)
High TTHM: <u>1</u>	<input type="checkbox"/> Schedule 3	<input type="checkbox"/> Every 60 days (6 monitoring periods)
High HAA5: <u>1</u>	<input checked="" type="checkbox"/> Schedule 4	

Standard Monitoring Plan Form for Systems Serving < 10,000

III. SELECTING STANDARD MONITORING SITES

A. Data Evaluated Put a "✓" in each box corresponding to the data that you used to select each type of standard monitoring site. Check all that apply.

Data Type	Type of Site			
	Near Entry Pt.	Avg. Residence Time	High TTHM	High HAA5
System Configuration				
Pipe layout, locations of storage facilities		✓	✓	
Locations of sources and consecutive system entry points				
Pressure zones				
Information on population density			✓	
Locations of large customers				
Water Quality and Operational Data				
Disinfectant residual data			✓	
Stage 1 DBP data		✓		
Other DBP data				
Microbiological monitoring data (e.g., HPC)		✓		
Tank level data, pump run times				
Customer billing records				

B. Summary of Data* Provide a summary of data you relied on to justify standard monitoring site selection (attach additional sheets if needed)

Standard Monitoring Plan Form for Systems Serving < 10,000

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IV. JUSTIFICATION OF STANDARD MONITORING SITES*

Standard Monitoring Site ID (from map) ¹	Site Type	Justification
PT. 1	<input checked="" type="checkbox"/> Near Entry Pt <input type="checkbox"/> Avg. Res. Time <input type="checkbox"/> High TTHM <input checked="" type="checkbox"/> High HAA5	THIS SITE IS NEAR ENTRY POINT FOR THE SYSTEM. Far east end of distribution
PT 2	<input type="checkbox"/> Near Entry Pt <input type="checkbox"/> Avg. Res. Time <input checked="" type="checkbox"/> High TTHM <input type="checkbox"/> High HAA5	THIS SITE IS BY A Large tower
	<input type="checkbox"/> Near Entry Pt <input type="checkbox"/> Avg. Res. Time <input type="checkbox"/> High TTHM <input type="checkbox"/> High HAA5	
	<input type="checkbox"/> Near Entry Pt <input type="checkbox"/> Avg. Res. Time <input type="checkbox"/> High TTHM <input type="checkbox"/> High HAA5	

¹ Verify that site IDs match IDs in Section IV and on your distribution system schematic (See Section VII of this form).

V. PEAK HISTORICAL MONTH AND STANDARD MONITORING SCHEDULE

A. Peak Historical Month* AV6

B. If Multiple Sources, Source Used to Determine Peak Historical Month (write "N/A" if only one source in your system)

C. Peak Historical Month Based On* (check all that apply)

- High TTHM Warmest water temperature
 High HAA5

If you used other information to select your peak historical month, explain here (attach additional sheets if needed)

Standard Monitoring Plan Form for Systems Serving < 10,000

V. PEAK HISTORICAL MONTH AND STANDARD MONITORING SCHEDULE (Continued)

D. Proposed Standard Monitoring Schedule*

Standard Monitoring Site ID (from map) ¹	Projected Sampling Date (date or week) ²			
	Period 1	Period 2	Period 3	Period 4
PT 1	May 09	Aug 09	Nov 09	Feb 10
PT 2	May 09	Aug 09	Nov 09	Feb 10

¹ Verify that site IDs match IDs in Section IV and on your distribution system schematic (See Section VII of this form).

² period = monitoring period. Complete for the number of periods from Section II.C. Can list exact date or week (e.g., week of 7/9/07)

VI. PLANNED STAGE 1 DBPR COMPLIANCE MONITORING SCHEDULE*

Stage 1 DBPR Monitoring Site ID (from map) ¹	Projected Sampling Date (date or week) ²			
	Period 1	Period 2	Period 3	Period 4
Stage 1	May 09	Aug 09	Nov 09	Feb 10

¹ Verify that site IDs match IDs on your distribution system schematic (See Section VII of this form).

² period = monitoring period. Complete for the number of periods in which you must conduct Stage 1 DBPR monitoring during IDSE monitoring. Can list exact date or week (e.g., week of 7/9/07)

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VII. DISTRIBUTION SYSTEM SCHEMATIC*

ATTACH a schematic of your distribution system.

Distribution system schematics are not confidential and should not contain information that poses a **security risk** to your system. EPA recommends that you use one of two options:

Option 1: Distribution system schematic with no landmarks or addresses indicated. Show locations of sources, entry points, storage facilities, standard monitoring locations, and Stage 1 compliance monitoring locations (required). Also include pressure zone boundaries and locations of pump stations. Provide map scale.

Option 2: City map without locations of pipes indicated. Show locations of sources, entry points, storage facilities, standard monitoring locations, and Stage 1 compliance monitoring locations (required). Also include boundaries of the distribution system, pressure zone boundaries and locations of pump stations. Provide map scale.

VIII. ATTACHMENTS

- Distribution System Schematic* (Section VII).
- Additional sheets for the summary of data or site justifications (Sections III and IV).
- Additional copies of Page 3 for justification of Standard Monitoring Sites (Section IV).
- Additional sheets for explaining how you used data other than TTHM, HAA5, and temperature data to select your peak historical month (Section V).
- Additional sheets for planned Stage 1 DBPR compliance monitoring schedule (Section VI).

Total Number of Pages In Your Plan 4

Note: Fields with an asterisk (*) are required by the Stage 2 DBPR

BRM Recd AUG 15 2008

KICKAPOO NATION WATER SYSTEM, TULSA DISTRICT 2006/670000002

