

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Bureau of Indian Affairs (Respondent)
Chemawa Indian School (Facility)
Public Water System
PWS ID 104101132

DOCKET NO. SDWA-10-2019-0027

ADMINISTRATIVE COMPLIANCE
ORDER

I. JURISDICTION

1.1. This Administrative Compliance Order (“Order”) is issued pursuant to 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”), 42 U.S.C. § 300g-3(g). The Administrator has delegated this authority to the Regional Administrator, Region 10, who in turn delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

1.2. EPA directly implements the SDWA for the Bureau of Indian Affairs (“BIA”) Chemawa Indian School public water system pursuant to the regulations for implementation and enforcement under the National Primary Drinking Water Regulations set forth in 40 C.F.R. Parts 141-142.

1.3. EPA has provided notice to regional BIA leadership before the issuance of this Order, pursuant to SDWA Section 1414(a)(2)(B), 42 U.S.C. § 300g-3(a)(2)(B).

1.4. Each department, agency, and instrumentality of the federal government that owns or operates a public water system is subject to and must comply with all Federal, State,

interstate, and local requirements respecting public water systems pursuant to SDWA Section 1447(a), 42 U.S.C. § 300j-6(a).

II. FINDINGS

2.1. The BIA (“Respondent”) is a “Federal agency” within the meaning of SDWA Section 1401(11), 42 U.S.C. 300f(11), and is a “person” within the meaning of SDWA Section 1401(12), 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.

2.2. Respondent owns and/or operates the BIA Chemawa Indian School Public Water System (“System”), located at 3700 Chemawa Road Northeast in Salem, Oregon, which provides water for human consumption.

2.3. The System serves approximately 650 consumers daily, including 150 non-transient staff, 400 resident boarding students during the school year, and 30,000 transient patients yearly at the health clinic, and is a “medium-size water system” pursuant to 40 C.F.R. § 141.2.

2.4. The System is a “public water system” within the meaning of SDWA Section 1401(4), 42 U.S.C. § 300(f)(4), and 40 C.F.R. § 141.2.

2.5. The System serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents and is therefore a “community water system” within the meaning of SDWA Section 1401(15), 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2.

2.6. Respondent owns and/or operates the System and therefore is a “supplier of water” within the meaning of SDWA Section 1401(5), 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Pursuant to SDWA Section 1411, 42 U.S.C. § 300g, Respondent is required to comply with Part B of SDWA and its implementing regulations at 40 C.F.R. Part 141.

2.7. The System is solely supplied by a groundwater source.

2.8. During the three-year monitoring period between 2009–2011, the System had a 90th percentile copper level of 1.74 mg/L, which exceeded the copper action level of 1.3 mg/L under the Lead and Copper Rule, pursuant to 40 C.F.R. § 141.80(c).

2.9. On October 14, 2011, EPA sent notification of the copper action level exceedance to Respondent, which notified Respondent of the requirement to provide an optimal corrosion control treatment recommendation to EPA by June 30, 2012.

2.10. Respondent did not recommend optimal corrosion control treatment to EPA by June 30, 2012 as required by 40 C.F.R. § 141.81(e)(1).

2.11. Due to the action level exceedance, EPA increased the monitoring frequency to once every six months beginning in January of 2012 under the provisions of 40 C.F.R. § 141.86(d)(4).

2.12. Copper samples for the System collected by Respondent during the monitoring periods January–June 2012 and July–December 2012 were below the copper action level.

2.13. Due to the System being below the copper action level, EPA decreased the monitoring frequency to once annually beginning in January of 2013 under the provisions of 40 C.F.R. § 141.86(d)(4).

2.14. During the monitoring period between January–December 2013, the System had a 90th percentile copper level of 1.54 mg/L, which exceeded the copper action level of 1.3 mg/L under the Lead and Copper Rule, pursuant to C.F.R. § 141.80(c).

2.15. Respondent did not recommend optimal corrosion control treatment to EPA by June 30, 2014 as required by 40 C.F.R. § 141.81(e)(1).

2.16. During the monitoring period between January–December 2014, the System had a 90th percentile copper level of 1.42 mg/L, which exceeded the copper action level of 1.3 mg/L under the Lead and Copper Rule, pursuant to 40 C.F.R. § 141.80(c).

2.17. Respondent did not recommend optimal corrosion control treatment to EPA by June 30, 2015 as required by 40 C.F.R. § 141.81(e)(1).

2.18. On July 8, 2014, Respondent and EPA spoke via phone to discuss the copper action level exceedances. The System operator reported that after the 2011 action level exceedance, Respondent consulted EPA’s Corrosion Control Treatment Guidance Manual and determined that the most appropriate treatment for the System’s water quality was caustic soda (sodium hydroxide). Respondent reported to EPA that this chemical was purchased but not installed, because both rounds of monitoring in 2012 demonstrated copper levels below the 1.3 mg/L action level. EPA provided technical assistance to Respondent regarding the installation of treatment versus continuing to monitor with fluctuating results.

2.19. On July 16, 2014, EPA and Indian Health Service (“IHS”) consulted on the history of copper issues at the System and potential solutions. EPA referred Respondent to a Tribal Utility Consultant from IHS to provide further technical assistance.

2.20. During the monitoring period between January–December 2015, the System had a 90th percentile copper level of 1.4 mg/L, which exceeded the copper action level of 1.3 mg/L under the Lead and Copper Rule, pursuant to 40 C.F.R. § 141.80(c).

2.21. Respondent did not recommend optimal corrosion control treatment to EPA by June 30, 2016 as required by 40 C.F.R. § 141.81(e)(1).

2.22. Due to the action level exceedances, EPA returned the monitoring frequency to once every six months effective July 1, 2015 under the provisions of 40 C.F.R. § 141.86(d)(4).

2.23. During the revised six-month monitoring period between July–December 2015, the System had a 90th percentile copper level of 1.5 mg/L, which exceeded the copper action level of 1.3 mg/L under the Lead and Copper Rule, pursuant to 40 C.F.R. § 141.80(c).

2.24. Respondent did not recommend optimal corrosion control treatment to EPA by June 30, 2016 as required by 40 C.F.R. § 141.81(e)(1).

2.25. Copper samples collected by Respondent at the System during the monitoring period between January–June 2016 were below the copper action level.

2.26. During the monitoring period between July–December 2016, the System had a 90th percentile copper level of 1.68 mg/L, which exceeded the copper action level of 1.3 mg/L under the Lead and Copper Rule, pursuant to 40 C.F.R. § 141.80(c).

2.27. On September 26, 2016, EPA notified Respondent of the copper action level exceedance in a letter and required corrosion control treatment steps, including an optimal corrosion control treatment recommendation.

2.28. Respondent did not recommend optimal corrosion control treatment to EPA by June 30, 2017 as required by 40 C.F.R. § 141.81(e)(1).

2.29. Copper samples collected during the monitoring period between January–June 2017 were below the copper action level.

2.30. On February 9, 2017, Respondent submitted an email to EPA which included a cover letter and corrosion control treatment analysis. The treatment analysis, completed in January 2016, compared various treatment options and determined that caustic soda was the

best option for raising pH to the desired target of 7.5. Respondent stated in the accompanying cover letter that the System would begin using caustic soda based on the study.

2.31. On February 10, 2017, one day after saying they would start using caustic soda, Respondent sent an email retracting their position on using caustic soda in favor of collecting data on use of an air stripper as an alternative corrosion control treatment.

2.32. Respondent thus failed to recommend optimal corrosion control treatment to EPA for approval as required by 40 C.F.R. § 141.81(e)(1).

2.33. On September 27, 2017, EPA and Respondent held a conference call to discuss plans for addressing copper exceedances. During that meeting, Respondent suggested fixture replacement as a short-term solution to addressing the copper action level exceedances while determining the best option for optimal corrosion control treatment. EPA agreed to this short-term approach, while a long-term corrosion control treatment option was under development.

2.34. On November 8, 2017, EPA sent Respondent a letter listing the faucets to be replaced by January 31, 2018 at nine sample sites with historically high copper levels.

2.35. On January 4, 2018, Respondent sent documentation to EPA demonstrating fixture replacement.

2.36. During the monitoring period between July–December 2017, the System had a 90th percentile copper level of 1.45 mg/L, which exceeded the copper action level of 1.3 mg/L under the Lead and Copper Rule, pursuant to 40 C.F.R. § 141.80(c).

2.37. Respondent did not recommend optimal corrosion control treatment to EPA by June 30, 2018, as required by 40 C.F.R. § 141.81(e)(1).

2.38. During the monitoring period between January–June 2018, the System had a 90th percentile copper level of 1.91 mg/L, which exceeded the copper action level of 1.3 mg/L under the Lead and Copper Rule, pursuant to 40 C.F.R. § 141.80(c).

2.39. Respondent did not recommend optimal corrosion control treatment to EPA by December 31, 2018, as required by 40 C.F.R. § 141.81(e)(1).

2.40. During the monitoring period between July–December 2018, the System had a 90th percentile copper level of 1.83 mg/L, which exceeded the copper action level of 1.3 mg/L under the Lead and Copper Rule, pursuant to 40 C.F.R. § 141.80(c).

2.41. As of the date of this Order, Respondent has not recommended optimal corrosion control treatment to EPA.

III. VIOLATIONS

3.1. 40 C.F.R. § 141.81(e)(1) requires public water systems that exceed the action level for copper to recommend optimal corrosion control treatment to EPA within six months after the end of the monitoring period during which it exceeds one of the action levels.

Respondent failed to recommend optimal corrosion control treatment to EPA within six months after the end of the monitoring periods enumerated above in paragraphs 2.8 to 2.41. Therefore, Respondent is in violation of the requirements of 40 C.F.R. § 141.81(e)(1) and 40 C.F.R. § 141.80(k).

IV. ORDER

Based upon the foregoing Findings and Violations, and pursuant to SDWA Section 1414(g), 42 U.S.C. § 300(g)-3(g), it is hereby ordered as follows:

4.1. Pursuant to 40 C.F.R. § 141.81(e)(1) and § 141.82(a-c), Respondent shall submit an optimal corrosion control treatment recommendation within 60 days of the effective date of this Order to minimize the copper concentration at users' taps. The System will remain in violation of 141.81(e)(1) until optimal corrosion control treatment recommendation is submitted to EPA for approval.

4.2. Upon EPA's approval of the designated optimal corrosion control treatment pursuant to 40 C.F.R. § 141.81(e)(4) and § 141.82(d), Respondent shall complete installation of optimal corrosion control treatment at the System. Such installation shall be completed no later than 24 months from the date of EPA approval, pursuant to C.F.R. § 141.81(e)(5) and § 141.82(e).

4.3. Respondent may conduct additional alternative corrosion control activity, such as comprehensive copper pipe replacement within the same timeframe in Paragraph 4.2.

4.4. Respondent shall continue to provide Tier 2 public notice to users of the System every three months until treatment is installed, in accordance with 40 C.F.R. § 141.203(b)(2), and submit a copy to EPA along with certification.

4.5. Pursuant to 40 C.F.R. § 141.80(d), Respondent shall operate and maintain optimal corrosion control treatment that minimizes copper concentrations at users' taps while insuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

4.6. Respondent shall direct all communications and submissions required by this Order to:

U.S. EPA – Region 10
Enforcement and Compliance Assurance Division

Attn: Adam Baron, Mail Stop 20-CO4
1200 Sixth Avenue Suite 155
Seattle, Washington 98101-3140
206-553-6361
Baron.Adam@epa.gov

V. OPPORTUNITY TO CONFER

5.1. Within three business days of receipt of this Order, Respondent may request a conference with the EPA Region 10 Director of the Enforcement and Compliance Assurance Division to be held no later than ten business days after receipt of this Order. Request for a conference should be submitted to the compliance officer listed above in Paragraph 4.6.

5.2. The purpose and scope of the conference shall be to discuss the issue(s) that Respondent would like EPA to consider in connection with this Order. Respondent may submit any appropriate information regarding the issues to be discussed. The conference is not an evidentiary or adversarial hearing and is not part of any proceeding to enforce or challenge the Order. At any conference held pursuant to this paragraph, the Respondent may appear on its own behalf or be represented by an attorney or other representative, and the conference may be held over the phone or in person.

VI. SANCTIONS

6.1. For violations of this Order, the SDWA, or the implementing regulations at 40 C.F.R. Part 141, Respondent may be subject to a civil penalty of not more than \$38,954 per day per violation pursuant to SDWA Section 1447(b)(2), 42 U.S.C. § 300j-6(b)(2), and 40 C.F.R. Part 19.4 as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

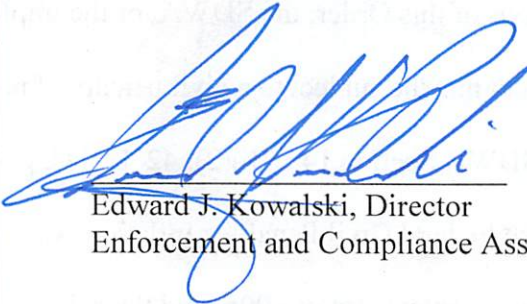
VII. GENERAL TERMS

7.1. Nothing in this Order shall be construed to relieve Respondent of any applicable requirements of Federal, State, Tribal, or local law. EPA reserves the right to take enforcement action as authorized by law for any violation of this Order, and for any future or past violation of any applicable legal requirements of the SDWA including, but not limited to, the violations identified in Part III of this Order.

7.2. The provisions of this Order are binding upon Respondent, and all officers, directors, agents, employees, successors, and assigns of Respondent.

7.3. This Order shall become effective within four business days of receipt of this Order if no conference is requested pursuant to Section V of this Order. If a conference is requested as provided in Section V, this Order shall become effective within three business days of the conference, unless the Director of the Enforcement and Compliance Assurance Division for EPA Region 10 communicates in writing to the Respondent some other effective date. All times for performance of work under this Order shall be calculated from the effective date.

Issued: July 1, 2019


Edward J. Kowalski, Director
Enforcement and Compliance Assurance Division