

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

IN THE MATTER OF:)
) Docket No. SDWA-10-2024-0116
Nooksack Indian Tribe,)
)
Respondent.) **ADMINISTRATIVE ORDER ON**
) **CONSENT**
)
Sulwhanon) Proceeding pursuant to section 1414(g) of the
PWS ID # 105300141) Safe Drinking Water Act, 42 U.S.C. § 300(g)-3(g).

INTRODUCTION

1. The U.S. Environmental Protection Agency, Region 10 (EPA) and the Nooksack Indian Tribe (“Nooksack Tribe”), which is the Respondent in this matter, enter into this Administrative Order on Consent (Consent Order) to resolve noncompliance with the Safe Drinking Water Act (“Act”), 42 U.S.C. section 300f et seq., and the National Primary Drinking Water Regulations (Part 141), 40 C.F.R. part 141 at the Sulwhanon Public Water System (System).

2. EPA has primary enforcement responsibility over public water systems on the Nooksack Indian Tribe Reservation (“Reservation”). No other governmental entity has applied for and been approved to administer the program on the Reservation.

3. EPA enters into and issues this Consent Order under the authority vested in EPA Administrator by section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), which has been delegated to the undersigned EPA official.

4. By entering into this Consent Order, the Nooksack Tribe (1) consents to EPA’s authority to issue and enforce this Consent Order; (2) neither admits nor denies the factual allegations as set forth in this Consent Order; (3) agrees to undertake all actions required by the terms and conditions of this Consent Order; (4) consents to be bound by the requirements set forth herein; and (5) agrees not to

contest the authority of EPA to issue or enforce this Consent Order or the validity of any terms or conditions in this Consent Order.

PARTIES BOUND

5. This Consent Order applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Consent Order to any successors-in-interest prior to transfer of any interest in the System. Any change in ownership or control of the System including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Consent Order.

6. Each undersigned signatory for Respondent certifies to her or his authority to execute this Consent Order and to legally bind Respondent to the terms of this Consent Order.

FINDINGS OF FACT

7. The Nooksack Tribe is a federally recognized Indian tribe and is a "person" within the meaning of 42 U.S.C. § 300f(10) and § 300f(12), for purposes of federal enforcement under the Act. Respondent owns and/or operates the System, which is a public water system, in Everson, Washington, located on land held in trust by the United States of America for the benefit of the Nooksack Indian Tribe. The System provides the public with piped water for human consumption.

8. The System has approximately thirty service (30) connections used by year-round residents and regularly serves an average of approximately 150 year-round residents. Therefore, the System is a "public water system" and a "community water system" within the meaning of sections 1401(4) and (15) of the Act, 42 U.S.C. § 300f(4) and (15), and 40 C.F.R. § 141.2.

9. Respondent owns and/or operates the System and therefore is a "supplier of water" as defined in section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent therefore is required to comply with the requirements of the Act and its implementing regulations, Part 141.

10. The System is solely supplied by a groundwater source. Therefore, the System is a “groundwater system” as defined in 40 C.F.R. § 141.400, and Respondent is required to comply with the Ground Water Rule in 40 C.F.R. Part 141, Subpart S.

FINDINGS OF VIOLATION AND CONCLUSIONS OF LAW

11. Respondent is required to conduct triggered source monitoring within 24 hours of being notified that a regular, routine total coliform monitoring sample is positive for total coliform. 40 C.F.R. § 141.402. Respondent must sample each groundwater source in use at the time of the sample, and have it analyzed for a fecal indicator (e.g., E. coli). Respondent failed to monitor the System’s source for a fecal indicator within 24 hours after being notified that a sample taken on August 8, 2023, was analyzed as total coliform positive and therefore violated this requirement. 40 C.F.R. § 141.402.

12. Respondent is required to monitor the System’s water annually for nitrate at every entry point to the distribution System which is representative of each well after treatment. 40 C.F.R. §§ 141.23(a) and (d). Following any sample in which the concentration of nitrate is greater than or equal to fifty percent of the maximum contaminant level, Respondent is required to conduct quarterly monitoring for at least one year. On July 7, 2021, sampling results from the System indicated a nitrate concentration of 6.7 mg/L. Respondent failed to monitor the System’s water for nitrate during the first, second, and fourth quarters of 2022; first, third and fourth quarters of 2023, and therefore violated this requirement.

13. Respondent is required to collect total trihalomethanes (TTHMs) and haloacetic acids (HAA5s) samples in the System’s distribution system during the month(s) of the highest disinfectant byproduct concentrations at the location(s) and on the date(s) identified in the System’s EPA-issued monitoring plan. 40 C.F.R. §§ 141.621 & 141.622(a)(1). The System’s monitoring plan specifies that TTHM and HAA5 samples are collected from Sample Site SH-05, located at 2551 Sulwhanon Drive;

however, in August 2020, Respondent collected a sample from sample site SH-02. Respondent failed to monitor the System's water for TTHMs and HAA5s at the required location during the 2020 monitoring period and therefore violated this requirement. Additionally, Respondent failed to collect samples in 2021, 2022, and 2023 and therefore violated this requirement.

14. Respondent is required to monitor the System's water for asbestos at every entry point to the distribution System which is representative of each well after treatment during the first three-year compliance period of each nine-year compliance cycle. 40 C.F.R. §§ 141.23(a) and (b). Respondent failed to monitor for asbestos during the 2020 to 2022 compliance period and therefore violated this requirement.

15. For each calendar year, Respondent is required, no later than July 1st of the following year, to prepare and distribute a Consumer Confidence Report (CCR) to EPA and the System's customers. Within three months thereafter, Respondent is required to certify to EPA that it has distributed the CCR to the System's customers. 40 C.F.R. §§ 141.151-141.155. Respondent failed to prepare and distribute an annual CCR for 2022 to the System's customers and to EPA within the required deadlines. Therefore, Respondent violated these requirements.

16. Respondent is required to deliver a consumer notice of individual tap monitoring results for lead and copper to the persons served at each sampled site no later than 30 days after the System learns of the tap monitoring results, in accordance with 40 C.F.R. § 141.85(d). Within 90 calendar days following the end of each monitoring period, Respondent is required to submit to EPA a sample copy of the consumer notification along with a certification that the notification has been distributed, in accordance with 40 C.F.R. § 141.90(f)(3). EPA's record reflects that Respondent failed to deliver a consumer notice to the persons served at each sampled site and failed to submit a copy of the consumer

notice and certification to EPA for monitoring periods in 2019 and 2020 and therefore violated this requirement.

17. Respondent is required to notify the public of certain violations of Part 141 and, within 10 calendar days after completing public notice, provide a copy of the public notice and certification to EPA. 40 C.F.R. §§ 141.31(d) and 141.201-141.211. The violations identified in paragraphs 11 through 16, above, are classified as violations requiring Tier 3 public notice within 1 year, according to 40 C.F.R. § 141.204. EPA's records reflect that Respondent failed to notify the public of the violations cited in paragraphs 11 through 16 and failed to submit a copy of the public notice and certification to EPA and therefore violated this requirement.

18. Respondent is required to report any failure to comply with Part 141 to EPA within 48 hours (except where Part 141 specifies a different time period). 40 C.F.R. § 141.31(b). Respondent failed to report the violations identified in paragraphs 11 through 17, above, to EPA and therefore violated this requirement.

ORDER ON CONSENT

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

19. Respondent shall at all times comply with Part B of SDWA, 42 U.S.C §§ 1401-1420, and its implementing regulations at 40 C.F.R Part 141, including the public notification requirements at 40 C.F.R. Part 141, Subpart Q.

20. Within 24 hours of being notified that a routine total coliform monitoring result is positive, Respondent shall conduct source water monitoring as required by 40 C.F.R. § 141.402. If the sample is negative, Respondent shall report that result to EPA no later than 10 calendar days after the end of the month in which the sample is taken. If a sample is E. coli positive, Respondent shall notify

EPA immediately for appropriate assistance 40 C.F.R. § 141.403(a)(4). Respondent shall comply with the treatment technique requirements, according to 40 C.F.R. § 141.403(a), and providing appropriate public notification pursuant to 40 C.F.R. § 141.402(g) within 24 hours as required by 40 C.F.R. § 141.202(b)(1). Thereafter, Respondent shall comply with all source water monitoring and related requirements in 40 C.F.R. § 141.402. When reporting any triggered source water sample result, Respondent shall specify that it is a triggered source water sample. Respondent shall report results to EPA within the first 10 calendar days following the end of the required monitoring period. 40 C.F.R. § 141.31(a).

21. Within 30 calendar days of the Effective Date of this Consent Order, and as required by Part 141 thereafter, Respondent shall monitor the System's water quarterly for nitrate in accordance with 40 C.F.R. §§ 141.23(a) and (d). Respondent shall report results to EPA within the first 10 calendar days following the end of the required monitoring period. 40 C.F.R. § 141.31(a).

22. Respondent shall monitor the System's water annually for TTHMs and HAA5s at the specific location during the month identified in the System's EPA-issued monitoring plan, as required by 40 C.F.R. §§ 141.620-141.622. Respondent shall submit the sampling results to EPA within 10 calendar days following the end of the monitoring period, as specified by 40 C.F.R. § 141.629.

23. Within 30 calendar days after receipt of this Order, and as required by Part 141 thereafter, Respondent shall monitor the System's water for asbestos, as required by 40 C.F.R. §§ 141.23(a) and (b). Respondent shall report results to EPA within the first 10 calendar days following the end of the required monitoring period. 40 C.F.R. § 141.31(a).

24. Respondent shall monitor the System's water for lead and copper in the six-month monitoring periods between January 1 and June 30, 2024 and again between July 1 and December 31, 2024, and thereafter as directed by EPA, according to the System's Lead and Copper Rule Tap Sample

Site Plan, as required by 40 C.F.R. §§ 141.86(a)-(d). Within the first 10 calendar days following the end of each monitoring period, Respondent shall report analytical results to EPA, as required by 40 C.F.R. § 141.90.

25. Within 30 calendar days after receipt of this Order, and thereafter, no later than 30 days after the System learns of the tap monitoring results, Respondent shall deliver a consumer notice of individual tap monitoring results to the persons served at each sampled site, in accordance with 40 C.F.R. § 141.85(d). Within 45 days after receipt of this Order, and thereafter, within 90 calendar days following the end of each monitoring period, Respondent shall submit to EPA a sample copy of the consumer notification along with a certification that the notification has been distributed, in accordance with 40 C.F.R. § 141.90(f)(3). Templates and instructions are available at Attachment A of this Consent Order.

26. EPA sent Respondent a Sanitary Survey letter dated April 7, 2023, which detailed significant deficiencies noted in prior sanitary surveys. EPA's records reflect that Respondent has not yet completed all corrective actions. Within 30 calendar days of receipt of this Consent Order, Respondent shall consult with EPA regarding all outstanding significant deficiencies and shall submit a proposed schedule and plan to EPA for completion of all corrective actions necessary to address the significant deficiencies. The plan shall include proposed modifications to the System and estimated costs of modifications. Upon written approval by EPA, the approved plan and schedule ("Schedule") shall be incorporated into this Consent Order with each milestone to be an enforceable requirement upon written approval by EPA. Within 10 calendar days after completing all tasks included in the Schedule, Respondent shall notify EPA of the project's completion. Respondent shall provide sufficient evidence of the project's completion to EPA, including photographs of the corrective actions. Thereafter, if EPA identifies any significant deficiency at the System, Respondent shall complete corrective action for each

significant deficiency and provide notification to EPA within 30 calendar days of completion, as required by 40 C.F.R. §§ 141.403(a) and 141.405(a)(2).

27. Within 30 calendar days of the Effective Date of this Consent Order, Respondent shall notify the public of the violations cited in paragraph 11 through 16, above. Thereafter, following any future violation of Part 141, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. Part 141, Subpart Q. Within 10 calendar days after providing public notice, Respondent shall provide EPA a certification of having provided public notice, along with a representative copy of the public notice. 40 C.F.R. § 141.31(d). Templates and instructions are available at Attachment B of this Consent Order.

28. For each calendar year, Respondent shall prepare and distribute a CCR by July 1st of the following year and provide a certification to EPA within three months, as required by 40 C.F.R. §§ 141.151- 155.

29. During the pendency of this Consent Order, Respondent shall report any violation of Part 141 to EPA within 48 hours of the violation occurring, as required by 40 C.F.R. § 141.31(b). However, if a different time period for reporting is specified in this Consent Order or Part 141, Respondent shall report within that different period.

30. EPA and Respondent shall participate in quarterly videoconferencing meetings to discuss the status of Respondent's compliance with this Order and Part 141. Those quarterly videoconferencing meetings shall include, at minimum, one member of senior leadership for EPA, one member of senior leadership for Respondent, and Respondent's staff member responsible for ensuring compliance with this Consent Order and Part 141.

NOTICES

31. All notifications, documentation, submissions, and other correspondence required to be submitted to EPA by this Consent Order shall be submitted electronically to EPA at the following email addresses: miller.jessica.L@epa.gov and R10TribalDW@epa.gov. All monitoring results required by this Consent Order also shall be submitted to EPA in accordance with applicable regulations.

32. Respondent shall designate a Project Coordinator to oversee Respondent's implementation of the provisions of this Consent Order and receive on behalf of Respondent all notifications and correspondence from EPA relating to this Consent Order. Within ten (10) days of the Effective Date of this Consent Order, Respondent shall notify EPA of the Project Coordinator's name and email address.

GENERAL PROVISIONS

33. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review of this Consent Order under section 1448(a) of the Act, 42 U.S.C. § 300j-7(a).

34. Respondent 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. Nothing in this Consent Order shall be construed to relieve Respondent of any applicable requirements of federal, state, tribal, or local law. EPA reserves the right to initiate enforcement as authorized by law for any violation of this Consent Order and for any future or past violation of any applicable legal requirements of SDWA, including, but not limited to, the violations identified in this

36. Violation of any part of this Consent Order, the Act, or Part 141 may subject Respondent to a civil penalty of up to \$69,733 (as adjusted for inflation) per day of violation, a court injunction ordering compliance, or both. 42 U.S.C. § 300g-3; 40 C.F.R. Part 19; 88 Fed. Reg. 89309 (December 27, 2023).

37. This Consent Order may be amended or modified by written agreement of EPA and Respondent.

38. The Effective Date of this Consent Order is the date upon which a fully executed copy is received by Respondent.

TERMINATION

39. No sooner than twelve (12) months after the Effective Date of this Consent Order, Respondent may request termination of this Consent Order and submit to EPA a written certification of completion summarizing all actions taken to comply with all requirements of this Consent Order.

40. EPA will review Respondent's certification of completion to determine whether Respondent complied with the terms of this Consent Order and Part 141. If EPA concludes that Respondent has failed to comply with any requirement of this Consent Order or Part 141, EPA may (1) pursue civil penalties and (2) deny Respondent's request for termination, in which case this Consent Order remains effective.

41. If EPA denies a request for termination, Respondent may submit a subsequent request for termination and certification of completion to EPA for review and approval no sooner than six (6) months after receiving EPA's denial.


42. This Consent Order will terminate when Respondent receives written notification from EPA that its request for termination has been approved.

43. Notwithstanding the procedure for termination set forth above, EPA may terminate this Consent Order upon its sole discretion by written notice to Respondent.

IT IS SO STIPULATED AND AGREED.

FOR RESPONDENT:

5-30-24
DATE


Chairwoman Rosemary LaClair
Nooksack Indian Tribe

IT IS SO ORDERED AND AGREED.

FOR COMPLAINANT:

Edward J. Kowalski, Director
Enforcement and Compliance Assurance Division
EPA Region 10