



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

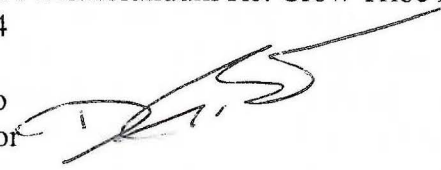
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

FEB 22 2019

MEMORANDUM

SUBJECT: Response to 12/13/2018 Memorandum Re: Crow Tribe Public Water Systems Concerns, Report No. 19-N-0044

FROM: Douglas H. Benevento
Regional Administrator 

TO: Kathlene Butler
Director, Office of Audit and Evaluation, Water Directorate
Office of Inspector General

EPA Region 8 appreciates and is sensitive to the Office of Inspector General's concern about potential human health threats posed by noncompliance with the Safe Drinking Water Act (SDWA) on the Crow Reservation. There is no higher priority for the EPA than protecting public health; ensuring the safety of our nation's drinking water is a critical component of our mission. Region 8, working with our federal partners and the Crow Tribe drinking water operator, has determined that drinking water provided by the Crow Tribe drinking water systems currently meets SDWA maximum contaminant levels (MCLs) and is negative for bacteriological contamination. I would like to take this opportunity to clarify some items contained within the December 13, 2018, OIG Memorandum (Memo) as well as provide an update on actions taken to ensure safe drinking water from these systems.

Response to Information Contained within the Background Section of the Memorandum

Crow Agency Water System

The Memo states, "Our concern regarding the Crow Agency water system stems from a July 19, 2018, letter EPA Region 8 issued to the system . . ." The EPA's July 19, 2018, letter addressed the **source water** bacterial levels in the Little Big Horn River. Source water, by definition, has not yet been treated and its bacterial levels are not a direct indication of the safety of the finished water served in the distribution system of the Crow Agency water system. Finished water from the Crow Agency water system has been and continues to be in compliance with all required MCLs, as well as negative for bacteriological contamination.

The Long Term 2 Enhanced Surface Water Treatment Rule (LT2 SWTR) (40 CFR 141.700 - 723) requires all surface water systems to conduct two rounds of source water monitoring for *Cryptosporidium* (40 CFR 141.700(c)(1)). Small systems, such as the Crow Agency water system, are allowed to monitor for *E. coli* as an indicator organism for *Cryptosporidium* to reduce the monitoring burden (40 CFR 141.701(a)(3)(i)). *Cryptosporidium* monitoring is only required if these systems exceed the *E. coli* "trigger level" of an average of 100 *E. coli*/100 ml over 12 months of monitoring (40 CFR 141.701(a)(4)), applicable trigger levels modified by a February 4, 2010, memorandum from EPA

headquarters to the Water Division Directors). During the second round of source water monitoring initiated in October 2017 (as per 40 CFR 141.701(c)), the Crow Agency's *E. coli* results exceeded the 100 *E. coli*/100 mL trigger level.

The compliance dates set forth in the July 19, 2018, letter from the EPA to the Crow Agency water system correspond to the National Primary Drinking Water Regulation (NPDWR) deadlines (e.g., submit monitoring schedule three months prior to the start of monitoring) (40 CFR 141.702(a)(1)) and our letter requires that the system begin monitoring for *Cryptosporidium* no later than April 2019 (40 CFR 141.701(c)). Our letter also provided the Crow Agency water system with three options: conduct source water *Cryptosporidium* monitoring, find a new water source, or increase the treatment provided. The Crow Agency water system selected the option of requiring *Cryptosporidium* monitoring of the Little Bighorn source water and has complied with the LT2 SWTR deadlines. Additional treatment for *Cryptosporidium* may be required following completion of this monitoring depending on the *Cryptosporidium* levels detected. However, Region 8 is not currently concerned about risks to public health from finished water because compliance samples collected in the distribution system indicate the treatment in place at Crow Agency is sufficient to remove or inactivate bacteria in the source water.

The Memo also notes OIG's concern regarding "...at least four significant deficiencies from 2017" We believe this refers to four new significant deficiencies and one uncorrected significant deficiency that were identified in the 2016 Crow Agency – Tribal Plant sanitary survey report. Adequate documentation to close out three of the new significant deficiencies and the uncorrected significant deficiency from a previous sanitary survey was provided to the EPA in March 2018 and June 2018. The remaining uncorrected significant deficiency is associated with lack of an adequate cover on the vent screen of one of the finished water storage tanks and EPA has approved an extension to the correction schedule through November 1, 2019 (40 CFR 141.723(d)). The vent is currently equipped with a #24 mesh screen, which is the primary means of preventing contamination from entering the storage tank. The vent cover protects this screen from damage and is therefore a secondary contamination barrier, making the extended timeframe that has been allowed for correction appropriate.

Pryor and Wyola Water Systems:

Regarding the Pryor and Wyola Water Systems, I would like to provide some additional contextual information. Significant deficiencies identified during a sanitary survey do not necessarily result in a finding of violation. It is only a violation of the NPDWRs when a system fails to complete a corrective action within a specified period (40 CFR 141.860(b)). This information is not included in the Memo and, as a result, the Memo portrays an incomplete picture regarding compliance with the NPDWRs. Pertaining to concerns raised in the Memo regarding the chlorine residual, although some of the Revised Total Coliform Rule (RTCR) samples indicated that there was no chlorine residual in the system, this is not a violation of the NPDWRs as these groundwater systems are not required to disinfect under federal regulations.

Public Notice

EPA Region 8 understands the regulatory requirements for public notification and reporting to the primacy agency as outlined in 40 CFR 141.201 and 141.31(d), and we expect public water systems to comply with these regulations. However, due to Drinking Water Program resource limitations, EPA Region 8 does not routinely track either the successful completion of public notice requirements (40 CFR 141.201), or the reporting of public notice to the primacy agency (40 CFR 141.31(d)). As

mentioned in Footnote 3 of the Memo, EPA Region 8 outlined our resource limitations related to public notice tracking to the OIG in the 2018 *OIG Evaluation of Public Notification Questionnaire*. Region 8 does ensure that systems that experience an emergency situation that may pose acute risks to public health are required through an Emergency Administrative Order to issue a Tier 1 public notice within 24 hours.

The Memo specifically references two instances of public notice distribution at Crow Tribal drinking water systems. The first was a Tier 1 public notice required as a result of an Emergency Administrative Order issued by EPA Region 8 in October 2017, in response to a vandalism event at the Crow Agency Tribal drinking water plant. While EPA Region 8 has multiple assurances that public notice was issued in accordance with 40 CFR 141.201 in response to this event, including documentation from an On-Scene Coordinator who was deployed to the situation, we did not receive public notification certification as required under 40 CFR 141.31(d). The second reference to public notice in the Memo is Tier 3 public notices required for failure to conduct routine monitoring of drinking water contaminants. Community water systems, such as Crow Agency, Pryor, and Wyola, may meet the public notification requirement by including Tier 3 public notices in their annual Consumer Confidence Report (CCR). The 2018 CCRs submitted for each of the three water systems in question included Tier 3 public notices.

Region 8 Drinking Water Enforcement Summary

Enforcement plays an important role in ensuring safe drinking water. The national *EPA Drinking Water Enforcement Response Policy* requires that once a public water system is identified as an enforcement priority on the quarterly Enforcement Targeting Tool (ETT) issued by EPA headquarters, an appropriate formal action or return to compliance with the SDWA is required within two calendar quarters. The relevant offices within the Region meet quarterly to implement the enforcement processes outlined in the *1996 Region 8 Policy for Environmental Protection in Indian Country* and the *2001 Region 8 Guidance for Compliance Monitoring, Compliance Assistance and Enforcement Procedures in Indian Country* (R8 2001 Guidance) to resolve drinking water noncompliance at tribally-owned or operated public water systems in a timely and consistent manner. The Region begins working with tribal systems at the earliest signs of non-compliance to prevent systems from reaching priority status. By the time a Region 8 tribal water system reaches priority status under the ETT, the Region 8 Enforcement Program has already engaged the operator and tribal government to address non-compliance. As of the January 2019 ETT list, none of the three public water systems under control of the Crow tribal government are considered priority systems for enforcement.

Actions Taken by EPA Region 8

In addition to our regulatory responsibilities, Region 8 provides outreach and compliance assistance to water systems that includes yearly monitoring requirements, reminder emails and phone calls, and regular technical assistance by EPA contractors. The Region expanded these efforts on the Crow Reservation in early 2018 when we learned of the Tribe's financial troubles, which had resulted in diminished managerial and financial capacity at the Crow Tribal Water and Wastewater Utility.

In October 2018, EPA Region 8 established an intra-office workgroup to ensure that all Region 8 programs working with the Crow Tribe were aware of the Tribe's increasing financial difficulties and coordinating on how best to ensure environmental and public health protection on the Crow Reservation.

Prior to the release of the Memo, EPA Region 8 sent a contractor to the Pryor and Wyola groundwater systems to collect special bacteriological samples of finished water at both systems. Our contractor met

with the Systems' operator and together they collected samples at Pryor on December 12, 2018, and December 14, 2018, and at Wyola on December 13, 2018, and December 14, 2018. All four samples were analyzed by Energy Labs in Billings, Montana, and were paid for by Region 8, via our contract. All four samples came back negative for total coliform and *E. coli*. Although not a regulatory requirement, all four samples also demonstrated a detectable chlorine residual in the distribution system.

On January 14, 2019, Region 8 contractors again collected total coliform and *E. coli* special samples from the Pryor and Wyola distribution systems, and again all results were negative for bacteriological contamination. The January samples demonstrated a detectable chlorine residual at the Wyola water system, but not at the Pryor water system. Region 8 contractors also collected nitrate/nitrite samples from the Pryor and Wyola systems in January 2019. These results came back below the maximum contaminant levels for nitrate/nitrite. (40 CFR § 141.23).

Because all special samples collected in December and January by EPA contractors at Pryor and Wyola were safe (absent of bacteriological contamination, and below the maximum contaminant level for nitrate/nitrite), EPA Region 8 has determined there is no current acute health risk nor an imminent and substantial endangerment to public health at the Pryor and Wyola water systems. Further, because all samples were negative for total coliform, EPA has determined that there is no current bacteriological contamination of the Pryor and Wyola systems. However, both systems remain out of compliance with the SDWA for failure to monitor under the RTCR and nitrate rule. This is a serious situation and Region 8 will continue to pay for a contractor to take special total coliform samples at the Pryor and Wyola water systems on a monthly basis to ensure the safety of the water supplies. While these do not represent compliance samples (collecting and paying for compliance samples is the responsibility of the public water system), they will be taken at the same frequency as the required compliance samples. Region 8 will continue to fund this sampling until such time as the Crow Tribe is able to collect compliance samples.

On December 14, 2018, our Deputy Regional Administrator engaged in a phone call with other Regional leaders from Bureau of Reclamation (BOR), Bureau of Indian Affairs (BIA), Indian Health Services (IHS), and the Tribe. The results of this call are as follows:

- IHS agreed to pay for required source water *Cryptosporidium* monitoring at the Crow Agency water system (24 samples at the raw water intake for a total cost of approximately \$20,000).
- BIA agreed to provide funding to the Tribal Water and Wastewater Utility for the costs of remaining in compliance with the SDWA for the next year (approximately \$7,300 to purchase needed treatment chemicals and take required compliance samples). The week of February 4, 2019, the Systems' operator was able to access those funds and purchase treatment chemicals for the Pryor and Wyola water systems. Region 8 is working with BIA and the operator to ensure the funds continue to be made available for compliance sampling.

EPA Region 8 issued an Informational Letter to the Crow Tribe on December 21, 2018. The letter informed the tribal government of the actions it must take to return the Pryor and Wyola drinking water systems to compliance so that formal enforcement is not necessary.

EPA, IHS, BOR, BIA, and the Crow Tribe were planning a formal in-person meeting on January 8, 2019, to discuss a path forward. Due to the federal government shutdown, preparatory interagency meetings were delayed. This meeting is being rescheduled.

After the shutdown, Region 8 conducted a follow-up call on February 6, 2019, with BIA, IHS, and BOR to discuss the status of the water systems as well as the funding committed. Additional interagency calls were held on February 13, 2019 and February 20, 2019, to discuss immediate needs, preventing an emergency, agency actions in the event of an emergency, and additional funding that may be available. Immediate needs include repairs needed at the tribally-owned treatment plant for the Crow Agency water system. Once viable, short-term strategy actions and options are identified to address immediate needs, EPA will coordinate with the Crow Tribe and other federal agencies to discuss the short term and determine longer-term options.

EPA Region 8, through a grant with the Environmental Finance Center (EFC), is also working with the Crow Tribe to set up a billing and collection system. This will allow the Utility to begin charging some commercial customers for water, in the hope of bringing some financial sustainability to the utility. This is an additional type of capacity development assistance EPA provides to tribal utility departments experiencing compliance problems due to inadequate funding. On January 16, 2019, the EFC representative met with the Crow Tribe. During this initial work session, a list of commercial customers in Pryor and Wyola was generated.

EPA Region 8 remains committed to working with the Tribe and other federal agencies to ensure public health and environmental protection across environmental programs.