



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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Seattle, Washington 98101-3140

OFFICE OF
COMPLIANCE AND ENFORCEMENT

MAR 27 2017

Reply To: OCE-101

Chairman Bob Kelly
Nooksack Indian Tribe
5016 Deming Road
Deming, Washington 98244

RE: Unilateral Administrative Orders to Address Safe Drinking Water Act Violations by Six Public Water Systems Owned and Operated by the Nooksack Indian Tribe

Dear Chairman Kelly:

The purpose of this letter is to inform the Nooksack Indian Tribe that the U.S. Environmental Protection Agency (EPA) plans to issue six Unilateral Administrative Orders (Unilateral Orders) to address serious violations of the Safe Drinking Water Act (SDWA) at the public water systems (Systems) referenced below. The EPA will issue the Unilateral Orders unless, by April 3, 2017, the Nooksack Indian Tribe signs and returns the enclosed Administrative Orders on Consent (Consent Orders) or provides evidence that the underlying violations have been fully returned to compliance.

The EPA takes this step only after four years of efforts to cooperatively resolve these SDWA compliance issues with the Nooksack Indian Tribe have failed. In recent weeks, EPA scheduled several calls to speak with Katherine Canete, Nooksack Indian Tribe Councilmember and General Manager, about the violations and possible EPA enforcement response options. However, neither the Councilmember nor any other Nooksack Indian Tribe representatives participated at the appointed times or communicated with EPA by another means.

Serious Violator of the SDWA and Past Efforts to Address Violations Through Consent Orders

On July 14, 2016, EPA sent a letter with six proposed Consent Orders to you as Chair of the Nooksack Indian Tribe. The Consent Orders contained steps and schedules to bring the Systems (Five Cedars Water System; Nooksack River Casino Water System; Northwood Casino Water System; Rutsatz Road Water System; Sulwhanon Water System; and Whispering Cedars Water System) back into compliance. The letter also informed the Nooksack Indian Tribe that EPA would consider other available enforcement responses for addressing the violations, including the issuance of Unilateral Orders, in the absence of signed Consent Orders or evidence of full return to compliance.

EPA and tribal representatives reached agreement in principle on the Consent Orders in November 2016. To date, EPA has not received any signed Consent Orders nor evidence that the Systems have achieved full compliance. Please be advised that EPA updated the enclosed Consent Orders based on a number of factual and procedural changes since issuing the July 14, 2016, letter, including information on the remedying of some monitoring violations and significant deficiencies.

SDWA violations at the Systems remain unaddressed. The individual violations at each public water system are detailed in the enclosed Consent Orders. The violations generally concern the Nooksack Indian Tribe's failure to: (1) complete required monitoring for certain **drinking** water contaminants; (2) correct significant deficiencies identified following on-site sanitary surveys; and (3) notify system customers about these violations. The EPA considers these violations significant, and the Nooksack Indian Tribe as a serious violator of the SDWA.

The EPA has previously provided compliance and technical assistance to the Nooksack Indian Tribe to help address these violations. The EPA engagement with the Nooksack Indian Tribe about these violations, including the Nooksack Tribal Council, the Nooksack Tribal Maintenance Department, and the Systems' operator, occurred over the course of four years. However, the Nooksack Indian Tribe has failed to sign the Consent Orders or take steps necessary to achieve full compliance at the Systems. Consequently, people who **drink** the Systems' water face continued potential health risks.

Unilateral Orders

In the absence of signed Consent Orders, the Unilateral Orders will outline the specific actions and deadlines by which the Nooksack Indian Tribe will be required to address the violations. If the required actions in the Unilateral Orders are not timely met, EPA may assess a civil penalty of up to \$54,789 per day of violation. The EPA could also request that the U.S. Department of Justice file a complaint in the United States district court asking the district court to assess a penalty of up to \$54,789 per day of violation.

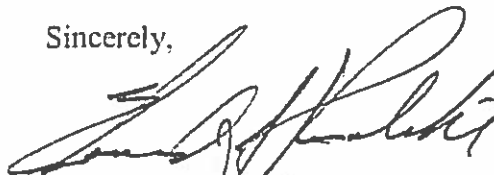
Consultation and Coordination

This letter continues the **consultation** and coordination process between the Nooksack Tribe and EPA on the Systems' noncompliance with the SDWA. The EPA is providing notice broadly to all recipients of this letter to ensure awareness of the noncompliance and EPA's plans to issue the Unilateral Orders unless the Nooksack Indian Tribe either signs and **returns** the Consent Orders or provides evidence that the underlying violations have been fully returned to compliance. **EPA must receive the signed Consent Orders or documentation of full return to compliance by April 3, 2017.**

As stated above, EPA has for years used a variety of methods of communication, including by letter, telephone, and email, to communicate with the Nooksack Indian Tribe about the Systems' compliance issues. These communications, compliance assistance efforts, and EPA's planned Unilateral Orders are undertaken in accordance with EPA's "Enforcement Response Policy under the Safe Drinking Water Act" (Enforcement Response Policy) and EPA's "Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy," which implement EPA's "Policy on Consultation and Coordination with Indian Tribes." The Enforcement Response Policy includes a definition of serious violator of the SDWA and generally outlines EPA's approach to enforcement of the SDWA.

If the Nooksack Indian Tribe has questions about the Systems' noncompliance and EPA's plans, please contact me at (206) 553-6695, or Adam Baron at (206)553-6361 or baron.adam@epa.gov or have your legal counsel contact Robert Hartman at (206) 553-0029 or hartman.robert@epa.gov to discuss the Unilateral Orders or enclosed Consent Orders. Thank you for your prompt attention to this important matter.

Sincerely,



Edward J. Kowalski, Director
Office of Compliance and Enforcement

Encl:

1. Proposed Administrative Order on Consent for Five Cedars Water System
2. Proposed Administrative Order on Consent for Nooksack River Casino Water System
3. Proposed Administrative Order on Consent for Northwood Casino Water System
4. Proposed Administrative Order on Consent for Rutsatz Road Water System
5. Proposed Administrative Order on Consent for Sulwhanon Water System
6. Proposed Administrative Order on Consent for Whispering Cedars Water System

cc: Mr. Rick D. George, Vice-Chairman, Nooksack Indian Tribe
Ms. Katherine Canete, General Manager, Nooksack Indian Tribe
Ms. Agripina Smith, Treasurer, Nooksack Indian Tribe
Ms. Nadene Rapada, Secretary, Nooksack Indian Tribe
Mr. Bob Solomon, Councilmember, Nooksack Indian Tribe
Ms. Lona Johnson, Councilmember, Nooksack Indian Tribe
Ms. Charity Bernard, Chief of Staff, Nooksack Indian Tribe
Mr. Rickie Wayne Armstrong, Tribal Attorney, Nooksack Indian Tribe
Mr. Richard Edwards, Director, Facilities and Maintenance, Nooksack Indian Tribe
Mr. Oliver Grah, Water Resource Manager, Nooksack Indian Tribe
Mr. Joseph Johnson-Bob, Water System Operator, Nooksack Indian Tribe
Mr. Michael O'Shea, Indian Health Services, U.S. Department of Health and Human Services
Mr. Matty Haith, Indian Health Services, U.S. Department of Health and Human Services