

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

10 JAN 15 PM 4:12

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

\_\_\_\_\_ )  
 IN THE MATTER OF )  
 )  
 Omaha Tribal Utilities, Macy )  
 Omaha Tribe of Nebraska, Owner )  
 Macy, Nebraska 68039 )  
 PWS ID# 070000007 )  
 Respondents )  
 )  
 Proceeding under section 1431(a) )  
 of the Safe Drinking Water Act, )  
 42 U.S.C. § 300i(a) )  
 \_\_\_\_\_ )

EMERGENCY  
ADMINISTRATIVE  
ORDER

Docket No. SDWA-07-2010-0001

STATUTORY AUTHORITY

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by section 1431 of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300i, as properly redelegated to the Director, Water, Wetlands and Pesticides Division and the Regional Counsel, EPA, Region 7.

JURISDICTION

1. EPA has jurisdiction to issue emergency orders pursuant to section 1431 of the Act, 42 U.S.C. § 300i.
2. EPA has primary enforcement responsibility for the Act's public water supply protection program on the Omaha Reservation (the Reservation). No other governmental authority has applied for and been approved to administer the program on the Reservation.

### FINDINGS

1. Respondent Omaha Tribal Utilities Macy (the Utility) is a Tribal agency under the laws of the Omaha Tribe of Nebraska. Respondent Omaha Tribe of Nebraska (Omaha Tribe) is a federally recognized tribal government. The Utility and Omaha Tribe, collectively referenced as Respondents, are each a “person” as defined in 40 C.F.R. § 141.2 for purposes of federal enforcement of the Act.
2. The Omaha Tribal Water System (System) provides water for human consumption on the Reservation. The System serves approximately 1800 year-round residents annually through 350 service connections. The Omaha Tribe and the Utility, respectively, own and operate the System.
3. The System is a “public water system” and a “community water system” as defined in section 1401 of the Act, 42 U.S.C. § 300f and 40 C.F.R. § 141.2.
4. As the owner and operator, respectively, of the System, each 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, the Respondents are therefore required to comply with the Act and the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. Part 141.
5. The System is supplied solely by ground water from the Dakota Formation and the Quarternary alluvial aquifers.
6. On January 13, 2010, Respondents reported to EPA a system-wide loss of pressure which was attributed to a power failure on January 12, 2010, that

disabled the pump to the water supply well(s). Knowledge of the power failure was delayed by at least 12 hours due to failure by Respondents to ensure that access to the water treatment facility remained open after a snowfall.

Respondents further reported that, due to the power failure, the water levels in the ground storage tank and the elevated storage tank were very low, and the tanks may have been empty. Subsequently, on January 14, 2010, Respondents reported to EPA that four line breaks in the distribution system had been identified during the week of January 4, 2010. These breaks were reported to include a 2-inch main, and three 1-inch service lines.

7. On January 13, 2010, Respondents indicated to EPA of its intent to provide notice to its drinking water consumers of an advisory to boil water due to the system pressure loss. A copy of the boil advisory was provided to EPA on January 14, 2010. The advisory lacked multiple elements required by 40 C.F.R. § 141.205, including:

- a. A description of the emergency situation and potential contaminants of concern;
- b. When the situation occurred;
- c. A description of the potential adverse health effects from the situation;
- d. What actions consumers should take, including when they should seek medical help;
- e. What the system is doing to correct the situation; and
- f. When the water system expects to resolve the situation.

8. Also on January 14, 2010, Respondents reported that the ground storage tank had filled as of approximately 11:45 PM on January 13, 2010, but the elevated storage tank was not filling adequately. Respondents reported that they had not inspected all areas of the distribution system for other potential line breaks which may prevent the storage tank from filling.
9. Because cracks, breaks, or joints are common in pipes and other components of distribution systems, loss of pressure can draw water from outside into the distribution system, a condition known as backsiphonage, which presents a high potential for fecal contamination or other disease causing organisms to enter the distribution system. The presence of fecal coliforms or E. coli is considered an acute public health problem which may pose an acute risk to human health. Such contaminants may cause diarrhea, nausea, and/or stomach cramps. People with weakened immune systems are likely to have more severe and more persistent symptoms than healthy individuals.
10. EPA has determined that conditions at the System may present an imminent and substantial endangerment to the health of persons.
11. Prior to issuing this Order, EPA consulted with local (Tribal) authorities to confirm the information on which this Order is based and to ascertain the actions which such authorities were taking. After consultation, EPA has determined that actions to date by local authorities are not adequate to prevent potential endangerment to the health of persons served by the System.
12. This Order is necessary to ensure adequate protection of public health.

EMERGENCY ADMINISTRATIVE ORDER

1. Within 24 hours of receipt of this Order, Respondents shall notify EPA in writing of their intention to comply with the terms of this Order.
2. Respondents shall maintain public notice of the boil water advisory in the affected area as set forth in this Order. This public notice shall be posted in conspicuous locations throughout the area served by the water system and hand delivered to persons served by the water system, including but not limited to the hospital and schools. Respondents shall submit a copy of the published public notice to EPA for review and approval within 12 hours of publication of the public notice. If after review EPA determines the language of notice to be deficient, it may direct Respondents to revise the published notice. The public notice shall include the following information:
  - a. All requirements as specified in 40 C.F.R. § 141.205, including:
    - 1) A description of the circumstances, including the emergency situation and potential contaminants of concern, and (as applicable) the contaminant level;
    - 2) When the situation occurred;
    - 3) Any potential adverse health effects associated with situation (see section b. below);
    - 4) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking

water;

- 5) Whether alternative water supplies should be used (see section b. below);
- 6) What actions consumers should take, including when they should seek medical help, if known (see section b. below);
- 7) What the system is doing to correct the situation;
- 8) When the water system expects to resolve the situation;
- 9) The name, business address, and phone number of the water system owner, operator, or designee of the public water system as a source of additional information concerning the notice; and
- 10) A statement to encourage the notice recipients to distribute the public notice to other persons served by the system.

b. The following language announcing a Boil Water Order shall be included in the public notice:

The Omaha Tribe of Nebraska's Public Water System (System) experienced a loss of pressure in the distribution system, which can cause a net movement of water from outside the pipe to the inside through cracks, breaks, or joints in the distribution system that are common in all water systems. Such a system failure carries with it a high potential that fecal contamination or other disease causing organisms could enter the distribution system.

Inadequately treated water may contain disease-causing organisms. The presence of fecal coliforms or E. coli is considered an acute public health problem which may pose an acute risk to human health. Fecal coliforms and E. coli are generally not harmful by themselves, but their presence in drinking water is serious because they are usually associated with sewage

or animal wastes. The presence of these bacteria in drinking water is generally a result of a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and fatigue. These bacteria may pose a special health risk for infants, young children, elderly, and people with severely compromised immune systems. People at increased risk should seek advice about drinking water from their health care providers.

ALL WATER USED FOR DRINKING, BRUSHING TEETH, COOKING, MAKING ICE, WASHING DISHES, OR USED FOR HUMAN CONSUMPTION, ETC., SHALL BE BOILED UNTIL FURTHER NOTIFICATION FOR ONE TO THREE (3) MINUTES, AT A ROLLING BOIL, BEFORE USE. ALL STORED WATER, DRINK OR ICE MADE RECENTLY FROM THIS SUPPLY SHALL BE DISCARDED.

3. Respondents shall continue the public notice as set forth in paragraph 2 above until EPA, Region 7, provides written notification to discontinue public notice.
4. Using the public notice required in paragraph 2 above, Respondent shall notify the public that an alternate potable water supply is available upon request. The alternate water supply must be either 1) provided by a licensed water distributor, 2) purchased bottled water, or 3) provided by another public water system that meets the National Primary Drinking Water Regulations and shall be made available at no cost to all users of the water system as needed for drinking and cooking until Respondent receives written notification from EPA that alternative water is no longer necessary. Upon request by a consumer, Respondent shall provide at least one gallon of potable water daily per person at a central location that is accessible to all persons served by the water system making such requests.
5. Upon receipt of this Order, Respondents shall work to restore the system to

maintain a detectable disinfectant residual as measured at the far ends of the distribution system. Respondents shall monitor the disinfectant residual daily as explained in paragraph 6 below.

6. Beginning no later than 24 hours after a pressure of at least 25 pounds per square inch (psi) is regained throughout the distribution system and the distribution system is restored to service, Respondents shall perform the following sampling and reporting activities:
  - a. Collect and submit for analysis special total coliform samples from four (4) locations, two from each zone, selected from the December 23, 2008 Omaha Tribal Utilities Commission Coliform Bacteria Sampling Plan, and also at each location near all identified water line breaks;
  - b. On a daily basis, collect and analyze chlorine residual samples at the same locations identified in paragraph 6(a) above;
  - c. Respondents shall repeat sample collection outlined in paragraphs 6(a) and 6(b) above if any results are positive for total coliform, or until it receives written notice from EPA that it may discontinue daily sampling; and
  - d. Respondents shall report sampling results associated with sampling outlined in paragraphs 6(a) and 6(b) for total coliform and residual chlorine, to EPA, by email or FAX, within 12 hours of receiving the

laboratory results.

7. Upon receipt of this Order, on a daily basis Respondents shall monitor the distribution system pressure and report the status of the system to EPA daily by email or FAX until notified otherwise by EPA.
8. No later than 24 hours after pressure of at least 25 psi is regained throughout the distribution system and the distribution system is restored to service, Respondents shall begin collecting two total coliform samples each day of the treated water to determine compliance with the MCL for total coliform bacteria as set forth in 40 C.F.R. § 141.63. Respondents shall continue daily total coliform monitoring until receiving written notice from EPA that it may discontinue daily sampling. Respondents shall report daily total coliform sampling results to EPA by email or FAX within 12 hours of receiving the laboratory results.
9. After Respondents receive written notification from EPA allowing them to discontinue the boil water advisory, Respondents shall thereafter resume monthly total coliform sampling as required by 40 C.F.R. § 141.21 to determine compliance with the MCLs for total coliform bacteria as stated in 40 C.F.R. § 141.63. Respondents shall report analytical results to EPA within the first 10 days after the end of the month of sampling, as required by 40 C.F.R. § 141.31(a).
10. Respondents shall collect all total coliform samples at sites that are representative of water throughout the distribution system as identified in their December 23, 2008, Omaha Tribal Utilities Commission Coliform Bacteria Sampling Plan.

11. If any one of the designated compliance sample results is total coliform-positive, Respondents shall conduct repeat sampling as required by 40 C.F.R. § 141.21(b), including collecting at least (a) four repeat samples within 24 hours of being notified of the total coliform-positive sample and (b) five routine total coliform samples the month following a total coliform-positive sample results.
  
12. Within 30 days of the effective date of this Order, Respondent shall provide EPA with a compliance plan and schedule that outlines actions to be taken that will help to prevent future loss of pressure to the system. The plan shall identify the cause(s) of the pressure loss events that occurred in January 2010 and describe actions that Respondent will take to prevent a recurrence of pressure loss in the system, including the installation of a backup generator or other measures to prevent power loss. If applicable, the plan shall include proposed system modifications, estimated costs of modifications, and a schedule for completion of the project and compliance with the Order and Federal requirements. The proposed schedule shall include specific milestone dates and a final compliance date (to be within three months from the date of EPA's approval of the plan). Upon receipt of the compliance plan from Respondents, EPA will review the plan and if necessary provide comments, request modification, and/or directly modify the submittal before EPA approval. Within seven (7) days of receipt of any comments and/or request for modification, Respondents shall submit a revised

compliance plan, that has been revised to fully address all of EPA's comments or requests for modification. EPA may approve the revised submittal, or modify and approve the submittal. The plan and schedule must be approved by EPA before proposed construction or modifications may commence.

13. The plan and schedule required by paragraph 12, above, will be incorporated into this Order as enforceable requirements upon written approval by EPA. EPA may incorporate the above required plans into a new administrative order. If implementation of the plan fails to achieve permanent compliance, EPA may order further steps and/or seek penalties for noncompliance.
14. Respondents shall submit weekly reports to EPA on the status of all corrective measures until notified in writing by EPA to discontinue reports. Reports shall be submitted by electronic mail or fax by Friday of each week.
15. If Respondents learn of a violation or situation at the System with the potential to have serious adverse effects on human health as a result of short-term exposure to contaminants, including any loss of pressure or water outage comparable to the events described in the Findings section of this Order, or any other situation or violation determined to have such potential according to the NPDWRs or by EPA on a case-by-case basis, Respondents shall provide appropriate public notice and notify EPA as soon as practicable, but in no event more than 24 hours after such situation or violation occurs. 40 C.F.R. §§ 141.202(b)(2) and 141.202(a)(9).

16. All reports and notifications herein required shall be submitted to:

Scott Marquess  
U.S. EPA Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
Phone: 913-551-7131  
Fax: 913-551-7765  
Email: [marquess.scott@epa.gov](mailto:marquess.scott@epa.gov)

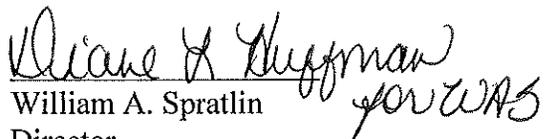
#### GENERAL PROVISIONS

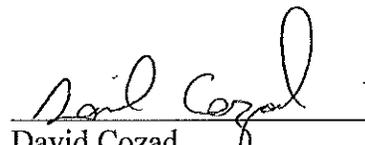
1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 et seq., or the Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
2. Violation of any term of this Order may subject the Respondents to a civil penalty not to exceed \$16,500 (adjusted for inflation according to 40 C.F.R. part 19) for each day in which such violation occurs or failure to comply continues, assessed by an appropriate U.S. District Court under section 1431(b) of the Act, 42 U.S.C. § 300i(b).
3. Violation of any requirement of the NPDWRs may subject the Respondents to a civil penalty of not more than \$37,500 (adjusted for inflation according to 40 C.F.R. part 19) per day of violation assessed by an appropriate U.S. District Court under section 1414(b) of the Act, 42 U.S.C. § 300g-3(b).

4. The effective date of this Order shall be the date of issuance.

Issued this 15th day of January, 2010.

5. This order constitutes final agency action.

  
William A. Spratlin  
Director  
Water, Wetlands and Pesticide Division

  
David Cozad  
Regional Counsel  
Office of Regional Counsel