

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY REGION 7
2013 FEB 27 PM 1:51

IN THE MATTER OF)
)
Omaha Tribal Utilities Program)
Omaha Tribe of Nebraska)
Omaha Tribal Utilities Commission)
Macy, Nebraska 68039)
PWS ID# 070000007)
Respondents)
)
) EMERGENCY
) ADMINISTRATIVE ORDER
)
Proceeding under section 1431(a))
of the Safe Drinking Water Act,)
42 U.S.C. § 300i(a))
_____) Docket No. SDWA-07-2013-0001
)

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 with concurrence of 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 Commission (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 Commission 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 1,800 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. In March 2011, Respondents entered into an Administrative Order on Consent (AOC) with the EPA that addresses, among other actions, Respondents' violations of the Safe Drinking Water Act. The AOC specifies actions to which Respondent agreed to implement to address SDWA compliance issues associated with the System, including a requirement that the System retain a certified operator and develop and implement an Operations and Maintenance Plan to address regular System activities.
7. On January 28, 2013, Respondents reported to EPA a system-wide loss of pressure which began some time on January 27, 2013, and was initially associated with a leak near the Macy school. Respondents indicated that they were investigating the cause of the pressure loss, and were advising customers to boil water for consumption purposes
8. Respondents reported additional low-pressure events within the System on January 30, January 31, February 20 and February 21, 2013. The number of residents affected and the scope of the pressure losses within the distribution system were not made clear to EPA.
9. Beginning January 28, 2013, Respondents reported a number of operational failures in the System which contributed, and continue to contribute to the low-pressure conditions, including failures of the Supervisory Control and Data Acquisition (SCADA) system (which automatically controls numerous

operations within the drinking water treatment plant and within the distribution system), failures in the high service pumps (which deliver water from the treatment plant into the distribution system), multiple leaks or line breaks in the distribution system, and failures in manual operations of the drinking water plant.

10. On January 31, 2013, Respondents indicated that they had issued an emergency declaration regarding the status of their drinking water system which stated that Respondents did not possess capability to address the situation.
11. On December 14, 2012, in response to a request for information from EPA, Respondents indicated that they were without the services of a certified drinking water plant operator as of December 14, 2012, in violation of the AOC. No certified operator was present to address operations of the drinking water plant during the above-referenced periods in which low-pressure events in the drinking water system were reported. In addition, the System has failed to develop and implement an Operations and Maintenance Plan, further in violation of the AOC. These violations of the AOC have created conditions which have contributed to the failures described in Paragraph 9 above, and the endangerment described herein.
12. Respondent is in violation of the Total Coliform Rule at 40 C.F.R. § 141.21 for failure to collect samples and report analytical results from sampling which was to have been completed in December 2012 and January 2013.
13. 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.

14. EPA has determined that due to on-going circumstances, including those associated with the System failures described in Paragraph 9 above, where pressure losses in the System have occurred or may occur, conditions may present an imminent and substantial endangerment to the health of persons.
15. 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.
16. 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 for the System 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. Upon the effective date of this Order, Respondents shall immediately comply with applicable public notification requirements at 40 C.F.R. § 141.201 et seq. following any future National Primary Drinking Water Regulations (NPDWRs) violation. 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 violation or 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. Within 24 hours of receipt of this Order, Respondents shall provide to EPA and Indian Health Services, Sioux City District Office (IHS), a detailed report of all

known System failures described in Paragraph 9, Findings. For any line breaks or leaks that have been identified, the location, line size, estimated leakage rate, and a digital photograph of the break or leak shall be provided. This detailed report shall be updated daily to reflect any newly identified System failures, including new line breaks or leaks, and to reflect progress made in repairing any System failures. Photographs shall be provided which illustrate the manner in which all line breaks or leaks have been repaired. Updates to the report of System failures and repairs shall be submitted to EPA and IHS by 3:00 PM the next business day.

6. Immediately upon receipt of this Order, Respondents shall begin work to repair system failures identified above in Paragraph 9, Findings. Further, Respondents shall proceed expeditiously to repair any newly identified system failures which may negatively impact successful operations of the System and/or potentially cause pressure losses within the distribution system. Within 48 hours of receipt of this Order, Respondent shall propose to EPA dates by which repairs to all system failures identified in Paragraph 5 above shall be repaired. This proposed schedule for system repairs shall be subject to approval by EPA. Schedules for repairs of newly identified system failures shall be submitted to EPA for review and approval within 24 hours of their discovery.
7. Upon receipt of this Order, Respondent shall operate and maintain the System to reduce, to the extent practicable, the potential for pressure losses in the System to

occur, and to ensure that water which has been adequately disinfected is provided to customers of the System.

8. Immediately upon receipt of this Order, Respondents shall maintain a detectable disinfectant residual as measured at the far ends of the distribution system.
Respondents shall monitor the disinfectant residual daily as explained below.
9. Immediately upon receipt of this Order, Respondents shall perform the following sampling and reporting activities:
 - a. On a weekly basis, collect and submit for analysis special total coliform samples from four (4) locations, two from the North Zone and two from the South Zone, selected from the 2010 Omaha Tribal Utilities Commission Coliform Bacteria Sampling Plan (see Attachment A), additional samples will be collected at or near any identified water line breaks. All samples collected for analysis shall be submitted to a laboratory certified for total coliform analysis;
 - b. Each time a total coliform sample is collected as described in Paragraph 9(a) above, chlorine residual measurements must be made at the same location;
 - c. Respondents shall repeat sample collection outlined in paragraphs 9(a) and 9(b) above until it receives written notice from EPA that it may discontinue sampling.
 - d. Respondents shall report sampling results associated with sampling

outlined in paragraphs 9(a) and 9(b) for total coliform and residual chlorine, to EPA, by email or FAX, within 12 hours of receiving the laboratory or sample results.

10. Upon receipt of this Order, on a daily basis Respondents shall monitor the distribution system pressure to confirm there is a minimum 20 psi throughout the distribution system, and report the status of the System to EPA daily until notified otherwise by EPA. Specifically, Respondent shall consult with the EPA to establish a minimum of 3 locations in each of the two zones (North Zone and South Zone) of the distribution system (6 total locations) where line pressure shall be monitored by connecting a pressure gauge. Monitoring results shall be reported to EPA by 3:00 PM the day following measurements, until written notice by EPA.
11. Upon receipt of this Order, on a daily basis Respondents shall regularly monitor operating conditions at the drinking water treatment plant and within the System, and ensure that qualified personnel are present to observe operating conditions at the plant no less frequent than every 4 hours. Respondents shall indicate their presence at the drinking water treatment plant by signing a log sheet which indicates the time personnel are present at the plant. The times reported on the log sheet shall be verified by the Tribal Chairman, who shall attest to activity at the plant by signing the following statement on each log sheet; "I certify that information reported on this log sheet to be true and accurate". Log sheets shall

be submitted to EPA by 9:00 AM each Friday, summarizing the prior week of activity.

12. Respondents shall regularly monitor, record, and report to EPA certain operational elements of the System as follows:

The following operational elements shall be monitored and recorded daily at the following times – 6AM, 12AM, 6PM, 12PM

Clearwell elevation

Elevated tank elevation

Ground Storage Tank elevation

Well pump operating hours (for each well)

Chlorine residual within treatment plant

Also, every Monday Respondent shall provide an estimate of the amount of gaseous chlorine on hand at the treatment plant.

Log sheets reporting this information shall be submitted to EPA by 9:00 AM every Friday, summarizing the prior week of activity.

13. 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).

14. Respondents shall collect all total coliform samples at sites that are representative of water throughout the distribution system as identified in their 2010 Omaha Tribal Utilities Commission Coliform Bacteria Sampling Plan (Attachment A).
15. 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.
16. Pursuant to 40 C.F.R. §§ 141.202(b)(2) and 141.202(a)(9), 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, 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.
17. A summary of the required submittals to EPA under this Order is included below:

EAO Paragraph	Description of Required Submittal	Deadline for Submittal to EPA
2	Boil Advisory Public Notice	Within 12 hrs of Notice
5	Report of Known System Failures	Within 24 hrs of receipt of EAO; Update daily by 3PM

6	Proposed Schedule for Repair of System Failures	Within 48 hrs of EAO; Updated within 24 hrs of new failure identification
9	Total Coliform and Chlorine Residual Results	Within 12 hrs of receipt
10	System Pressure Monitoring Results	Daily by 3PM
11	Water Plant Operating Personnel Log	Weekly - by Friday 9AM
12	System Operating Information	Weekly - by Friday 9AM

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

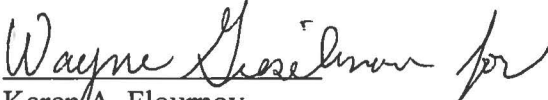
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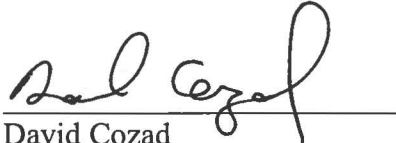
GENERAL PROVISIONS

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. Respondent may seek federal judicial review of the Order pursuant to section 1448(a) of the Safe Drinking Water Act, 42 U.S.C. § 300j-7(a).
5. The effective date of this Order shall be the date of issuance.

Issued this 27th day of February, 2013.


Karen A. Flourney
Director
Water, Wetlands and Pesticide Division


David Cozad
Regional Counsel
Office of Regional Counsel