



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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EPA REGION VIII  
HEARING CLERK

AUG - 9 2019

Ref: 8ENF-W-SD

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
and via email

Donovan White, Chairman  
Sisseton-Wahpeton Oyate  
P.O. Box 509  
Agency Village, South Dakota 57262

Mr. John Cloud, Manager  
Peever Flats Water System  
Lake Traverse Utility Commission  
PO Box 747  
Agency Village, South Dakota 57262

Re: Emergency Administrative Order under Section 1431 of the Safe Drinking Water Act,  
Peever Flats Water System, PWS ID #084690461  
Docket No. **SDWA-08-2019-0038**

Dear Chairman White and Mr. Cloud:

Enclosed is an Emergency Administrative Order (Order) issued by the U.S. Environmental Protection Agency to the Lake Traverse Utility Commission (Utility) and the Sisseton-Wahpeton Oyate (Tribe), under section 1431 of the Safe Drinking Water Act (Act), 42 U.S.C. § 300i.

The EPA has determined that conditions exist at the Peever Flats Water System (System) that may present an imminent and substantial endangerment to the persons served by the System. The EPA has made this determination based on a notification from the South Dakota Public Health Lab that the System has *E. coli* contamination, as described in the Order.

Pursuant to the authority set forth in section 1431 of the Act, 42 U.S.C. § 300i, the EPA is authorized to take actions necessary to protect human health. The Order and its requirements are necessary to ensure adequate protection of public health.

The enclosed Order sets forth the actions that must be taken to ensure that the people served by the System are provided with safe drinking water. The Order requires the Utility and Tribe to, among other things, take the following actions: issue a boil water advisory and provide an alternate source of water until notified by the EPA to discontinue; submit a plan and schedule for corrective actions; disinfect and flush the System; and take additional total coliform bacteria samples.

The penalties for failing to comply are set forth in the Order. If you have any questions or wish to discuss the Order, please contact Steven Latino at (800) 227-8917 extension 6440 or 303-312-6440, or by email at latino.steven@epa.gov. Any questions from counsel should be directed to Matthew Castelli, Assistant Regional Counsel, (800) 227-8917, extension 6491, or at (303) 312-6491, or by email at castelli.matthew@epa.gov.

Thank you for your attention to this matter.

Sincerely,



for Suzanne J. Bohan, Director  
Enforcement and Compliance Assurance Division

Enclosures

cc: Missy Haniewicz, EPA Regional Hearing Clerk  
Vivienne Tateyuskanskan, Acting Environmental Director (VTateyuskanskan@swo-nsn.gov)  
Jason Eastmen, Water Quality Coordinator (jeastman2408@yahoo.com)  
Jerwyn (JJ) Marks, Operator (ltuc@venturecomm.net)  
Francis Crawford, Lake Traverse District Representative (LTRep@swo-nsn.gov)  
Jonathan Ireland, IHS Sioux City Office (jonathan.ireland@ihs.gov)  
Mike Boland, IHS, Deputy Director, DSFC (mike.boland@ihs.gov)  
Ross Hanson, IHS, (ross.hanson@ihs.gov)

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IN THE MATTER OF )  
 )  
Sisseton-Wahpeton Oyate and )  
Lake Traverse Utility Commission, )  
Peever Flats Water System )  
PWS ID #084690461 )  
 )  
Respondents. )

Docket No. SDWA-08-2019-0038

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**EMERGENCY  
ADMINISTRATIVE ORDER**

**AUTHORITY**

1. This Emergency Administrative Order (Order) is issued by the U.S. Environmental Protection Agency (EPA) pursuant to the authority of section 1431(a) of the Safe Drinking Water Act (Act), 42 U.S.C. § 300i(a). The undersigned official has been properly delegated this authority.
2. The EPA may issue an order under section 1431(a) of the Act, 42 U.S.C. § 300i(a), when a contaminant that is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the health of persons, and appropriate state and local authorities have not acted to protect the health of such persons.

**FINDINGS**

3. The Sisseton-Wahpeton Oyate (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.
4. The Lake Traverse Utility Commission is a tribal agency organized under the laws of the Tribe and therefore is a "person" as that term is defined in the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
5. The Tribe and the Lake Traverse Utility Commission (Respondents) own and/or operate the Peever Flats Water System (System) located within the exterior boundaries of the Lake Traverse Reservation, South Dakota. The System provides water to the public for human consumption through pipes or other constructed conveyances
6. The System is supplied by a groundwater purchased source accessed via consecutive connection from Brown Day Marshall Rural Water System and provides no additional treatment. The System is operated year-round.
7. The System has 29 service connections and regularly serves 145 individuals daily for at least 60 days out of the year.

8. The System is a “public water system” as defined in 40 C.F.R. § 141.2 and section 1401(4) of the Act, 42 U.S.C. § 300f(4), and, therefore, is subject to the requirements of the Act and the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. part 141.

9. Prior to issuing this Order, the EPA consulted with the System to confirm the facts stated in this Order and with tribal and local authorities to ascertain they have not acted to protect the health of persons in this instance.

10. The EPA has determined that conditions exist at the System that may present an imminent and substantial endangerment to the health of humans, based on the facts indicated in paragraphs 11 and 12, below. The EPA has determined that this Order is necessary to protect public health.

11. *E. coli* are bacteria whose presence indicates that the water may have been contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

12. On August 7, 2019, the EPA was notified that a routine bacteriological sample collected from the System on August 5, 2019, was analyzed as positive for total coliform and *E. coli*. On August 9, 2019, the EPA was notified that 3 repeat bacteriological samples (see 40 C.F.R. § 141.858), all of which were collected on August 7, 2019, tested positive for total coliform and *E. coli*.

13. In addition, a violation of the maximum contaminant level (MCL) for *E. coli* occurs if a system has any combination of a total coliform positive and *E. coli* positive routine and repeat samples. These circumstances have occurred at the System, as set forth in paragraph 12, above, and, therefore, Respondents have violated the *E. coli* MCL. 40 C.F.R. § 141.860.

14. On August 9, 2019, the EPA provided Respondents with a public notice template for a boil water advisory, and Respondents notified persons served by the System of the contamination on August 9, 2019.

### **ORDER**

#### **INTENT TO COMPLY**

15. Within 24 hours of receipt of this Order, Respondents shall notify the EPA in writing of their intent to comply with this Order. Notification by e-mail to the EPA point of contact identified below is acceptable.

### **BOIL ORDER AND PUBLIC NOTICE**

16. The boil water advisory referenced in paragraph 14, above, shall remain in place until the EPA provides written notification to Respondents that the boil order is no longer needed.

17. Respondents must carry out the public notice and other notice requirements as required by 40 C.F.R. part 141, subpart Q.

### **ALTERNATE WATER SUPPLY**

18. Using the public notice referenced in paragraph 14, above, Respondent shall, no later than 24 hours after receipt of this Order, notify the public that an alternative potable water supply is available at no cost to all users of the System as needed for drinking, cooking, maintaining oral hygiene, and dish washing. Respondents shall provide at least two liters of potable water daily per person at a central location that is accessible to all persons served by the System. The alternate water supply shall be made available until the Respondents receive written notification from the EPA that it is no longer necessary to supply it.

19. No later than five days after the effective date of this Order (see paragraph 37, below), Respondents shall provide the EPA with a copy of their notification concerning an alternate water supply is available.

### **CORRECTIVE MEASURES**

20. Within 15 days after the effective date of this Order, Respondents shall provide the EPA with a plan and schedule that outlines corrective actions taken and/or to be taken to prevent future *E. coli* contamination at the System. The plan shall identify the cause of the contamination referenced in paragraph 12, if possible, and include proposed system modifications, estimated costs of modifications, and a schedule for completion of the project. The proposed schedule shall include specific milestone dates and a final completion date (to be within three months from the date of the EPA's approval of a schedule). The schedule must be approved by the EPA before construction or modifications may commence.

21. The schedule required by paragraph 20, above, will be incorporated into this Order as an enforceable requirement upon written approval by the EPA. If implementation of the plan fails to correct and/or prevent *E. coli* contamination, the EPA may order further steps.

22. Respondents shall notify the EPA in writing within 24 hours after completing corrective action.

## DISTRIBUTION SYSTEM DISINFECTION AND MONITORING REQUIREMENTS

23. Within 24 hours after providing the notification required by paragraph 22, above, Respondents shall disinfect and flush the System.
24. Following disinfecting and flushing of the System, beginning on the first date when chlorine levels returned to normal, Respondents shall collect consecutive daily (one sample per day) "special" purpose (defined in 40 C.F.R. § 141.853(b)) samples from the System's distribution system until notified by the EPA that consecutive daily sampling may be discontinued. Respondents shall ensure that each sample is analyzed for total coliform and *E. coli* and shall email each result to the EPA upon receipt of the analysis from the laboratory. These samples must be marked "Special."
25. After Respondents receive written notification from the EPA that they may discontinue daily total coliform sampling, Respondents shall collect weekly "special" bacteriological samples (one sample per week) to determine compliance with the *E. coli* MCL as stated in 40 C.F.R. § 141.860.
26. After Respondents receive written notification from the EPA that they may discontinue weekly total coliform sampling, Respondents shall thereafter resume monthly routine total coliform sampling as required by 40 C.F.R. § 141.855.
27. Respondents shall remain obligated to comply with the requirements in 40 C.F.R. § 141.858 (to collect three repeat samples within 24 hours of being notified of a routine total coliform-positive sample result). If a future repeat sample is positive for total coliform, Respondents shall, within 24 hours of being notified of the positive sample result, consult with the EPA for appropriate responsive actions.
28. Respondents shall collect all routine total coliform samples at sites that are representative of water throughout the System according to the Sample Siting Plan submitted to the EPA by Respondents. Additionally, Respondents shall report all sampling results to the EPA by email immediately upon (*i.e.*, as soon as practicable, and in no event more than 24 hours after) receiving the results.
29. The EPA may require Respondents to increase total coliform sampling at any time while this Order is in effect.

## REPORTING

30. Respondents must give daily updates to the EPA on the progress of disinfecting and flushing the System, and monitoring for total coliform and chlorine residual. Updates must be submitted to the EPA daily until the EPA provides written notification to the Respondents that reports may be submitted less frequently or discontinued. These reports may be submitted via e-mail.

31. Any notices or reports required by this Order to be submitted to the EPA shall be submitted to:

Steven Latino  
via e-mail: Latino.Steven@epa.gov  
Telephone (800) 227-8917, ext. 6440, or (303) 312-6440

32. This Order does not relieve Respondents from the obligation to comply with any applicable federal, tribal or local law.

33. Failure to comply with this Order may result in civil penalties of up to \$23,963 per day. 42 U.S.C. § 300i(b); 40 C.F.R. part 19; 84 Fed. Reg. 2056, 2059 (February 6, 2019) and 84 Fed. Reg. 5955 (February 25, 2019).

34. This Order constitutes final agency action. Respondents may seek federal judicial review of this Order pursuant to section 1448(a) of the Act, 42 U.S.C. 300j-7(a).

35. The EPA may modify this Order. The EPA will communicate any modification(s) to Respondents in writing and they shall be incorporated into this Order.

36. The provisions of this Order shall be deemed satisfied upon Respondents' receipt of written notice from the EPA that Respondents have demonstrated, to the satisfaction of EPA, that the terms of this Order have been satisfactorily completed.

37. Issued and effective this 9<sup>th</sup> day of August, 2019.

Colleen Rathbone  
for Suzanne J. Bohan, Director  
Enforcement and Compliance Assurance Division