

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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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-07-2009-0001

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. EPA has determined that conditions at the System may present an imminent and substantial endangerment to the health of persons. The current emergency

conditions began on January 5, 2009, when the System suffered a water main break in its drinking water distribution system.

7. As a result of the water main break on January 5, 2009, the System's distribution system lost pressure that day. 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.
8. The Respondents contacted EPA approximately five hours after the System learned of this emergency situation. This is consistent with 40 C.F.R. §§ 141.202(b)(2) and 141.202(a)(9), which requires Respondents to notify EPA as soon as practical upon learning of a situation with significant potential to have serious adverse effects on human health as a result of short-term exposure.
9. 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. Local authorities have not yet taken all actions necessary to protect the health of persons served by the System, in that a boil order has not been issued to persons served by the System, and appropriate

notice of the public health threat posed by the loss of the System's pressure has not been disseminated to persons served by the System.

10. 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. Within 24 hours of receipt of this Order, Respondents shall provide public notice 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. Upon the effective date of this Order, Respondents shall 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 public notice to EPA within 24 hours of completion of the public notice, as required by 40 C.F.R. § 141.31(d). 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 violation, 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 from the violation or 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 violation or situation;
- 8) When the water system expects to return to compliance or 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. 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 5 below.
5. 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. On a daily basis, collect and submit for analysis special total coliform samples from the seven (7) locations identified in the December 23, 2008 Omaha Tribal Utilities Commission Coliform Bacteria Sampling Plan and at locations near all identified water line breaks;
 - b. On a daily basis, collect and analysis chlorine residual samples at the same locations identified in paragraph 5(a) above;
 - c. Respondents shall continue daily total coliform and chlorine residual sampling /monitoring until it receives written notice from EPA that it may discontinue daily sampling; and
 - d. Respondents shall report sampling results for both daily total coliform and residual chlorine, to EPA, by email or FAX, immediately upon receiving the laboratory results.
6. Upon receipt of this Order, Respondents shall monitor the distribution system pressure and report the water pressure measured for each zone to EPA daily by email or FAX until notified otherwise by EPA.
7. Beginning no later than 24 hours after 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 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 immediately upon receiving the laboratory results.

8. After Respondents receive written notification from EPA allowing them to discontinue daily total coliform sampling, Respondents shall conduct weekly bacteriological sampling to determine compliance with the MCL for total coliform bacteria as stated in 40 C.F.R. § 141.63. Respondents shall report weekly total coliform sampling results to EPA by email or FAX immediately upon receiving the laboratory results. Prior to having the samples analyzed, Respondents shall designate one set of samples as their monthly compliance samples required to determine compliance with the total coliform MCL.
9. Respondents shall continue weekly bacteriological monitoring until they receive notification from EPA that they may discontinue weekly bacteriological sampling. 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 result.
12. No additional distribution line breaks should occur and pressure in the distribution system must be maintained. If a distribution line break or low-pressure events recur, a Boil Order must be reinstated and public notice must be reissued immediately by the System, in accordance with the provisions in paragraph 2 above.
13. 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 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).

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

Stephen Pollard
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101
Phone: 913-551-7582
Fax: 913-551-7765
Email: Pollard.Stephen@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 \$32,500 (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).

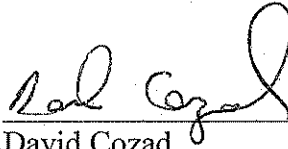
4. The effective date of this Order shall be the date of issuance.

Issued this 7th day of January, 2009.

5. This order constitutes final agency action.



William A. Spratlin
Director
Water, Wetlands and Pesticide Division



David Cozad
Regional Counsel
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original of this Emergency Administrative Order to the Regional Hearing Clerk, EPA, 901 North 5th Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a copy of the signed original Emergency Administrative Order to the following:

Mr. Amen Sheridan
Chairman
Omaha Tribe of Nebraska
100 Main Street
Macy, Nebraska
68039

Date

1/7/2009

