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I. INTRODUCTION

1. Pursuant to the Modifications procedures outlined in Paragraph 137, the United States Environmental Protection Agency (EPA) and the Omaha Tribal Utilities Program, Omaha Tribal Utilities Commission, and the Omaha Tribe of Nebraska (Respondents) jointly agree to modify the following deadlines required under Paragraphs 70, 75 and 79.

Deadline	Previous Date	Modified Date
Install fence, gate and signs at Mother Earth facility	Within 30 days of AOC effective date	April 29, 2011
Submit documentation demonstrating installation of fence, gate and signs at Mother Earth facility	Within 45 days of AOC effective date	May 16, 2011
Installation of new pressure regulation valves in drinking water distribution system	April 1, 2011	August 5, 2011
Prepare and issue past-due CCRs	January 1, 2011	May 6, 2011
Solicit bids from outside firms to operate Drinking Water System for a five year period, submit report to EPA	April 1, 2011	June 3, 2011
Provide monthly report of WWTF work, including: <ul style="list-style-type: none"> • Exercise valves at lagoon • Measure freeboard in lagoon • Mow lagoon • Clean lift station • Mark holes in lagoon berms • Fill holes in lagoon berms • Cut down trees and treat to prevent re-growth 	28 th of each month	10 th of each month

2. These Settlement Agreements and Administrative Orders on Consent (herein jointly referred to as this AOC) are entered into voluntarily by EPA and Respondents. This AOC provides that the Respondents agree to perform the Work to implement cleanup activities at the Mother Earth Recycling Center (the Recycling Facility); activities at the Macy Public Drinking Water System, EPA Id. # 070000007 (the Drinking Water System); activities at the Macy Public Waste Water Treatment Facility, NPDES Permit # NE-0061263 (Macy WWTF); and the Work is defined below and fully described herein Section VIII, Work to be Performed. Further, this AOC provides that Respondents agree to perform any Additional Work that may be required by Section XXII, Additional Work, in connection with said Recycling Facility, Drinking Water System, and the Macy WWTF.

3. In entering into this AOC, the mutual objectives of EPA and Respondents are to remedy or prevent the potential endangerment to human health or the environment at the Recycling Facility from the handling of solid wastes or constituents of such wastes; to conduct the Work at the Drinking Water System to prevent or eliminate an imminent and substantial endangerment to the health of persons; to conduct the Work at the Macy WWTF to eliminate Respondents' violations of the NPDES Permit and the CWA; and, to insure that the Work at the

Recycling Facility, the Drinking Water Facility and the Macy WWTF be designed and implemented to protect human health and the environment.

4. Respondents neither admit nor deny liability under federal environmental laws arising out of the transactions or occurrences described in Section V. Findings of Fact or Section VI. Conclusions of Law and Determinations in this AOC.

5. The Settlement Agreements and Administrative Orders on Consent for the Recycling Facility, Drinking Water System and Macy WWTF are combined into this AOC as a cross-program, multi-media settlement agreement to facilitate broader environmental protection and enhance the Respondents' correction of underlying compliance management problems which transcend specific violations in any one program area for each of the Tribal Utilities Program facilities subject to this AOC.

6. This AOC includes a First Amendment to the Emergency Administrative Order, EPA Docket No. SDWA-07-2010-0001 (EAO), and hereby incorporates by reference the findings, emergency order, and general provisions of said EAO. This AOC adds the Omaha Tribal Utilities Commission as another Respondent. This AOC controls for purposes of the work to be performed, which subsumes the work required under said EAO.

7. This AOC includes a Second Amendment to the Order for Compliance, EPA Docket No. CWA-07-2009-041 (AO), and hereby incorporates by reference the factual allegations, findings of violation, order for compliance, and general provisions of said AO. This AOC adds the Omaha Tribal Utilities Commission as another Respondent. This AOC controls for purposes of the Work to be performed, which subsumes the work required under said AO.

EPA Determinations

8. EPA has determined that Respondents have contributed or are contributing to the past or present handling, storage, treatment, transportation, or disposal of solid waste or constituents of such wastes at the Recycling Facility that may present an imminent and substantial endangerment to health or the environment.

9. EPA has determined that conditions at the Drinking Water System (System) may present an imminent and substantial endangerment to the health of persons due to Respondents' failure to ensure the integrity of the System and Respondents' management practices which has led to repeated incidents that threaten customers' health from potential exposures to contaminants in the System.

10. EPA has determined that Respondents have failed to ensure the integrity of the Macy WWTF and components of the treatment system and failed to operate and maintain systems of treatment to achieve compliance with the CWA and the conditions of the Macy WWTF permit issued by EPA under Section 402 of the CWA, 33 U.S.C. § 1312.

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11. EPA has notified the Tribal Council of the Omaha Tribe of Nebraska of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), on June 30, 2010.

12. Respondents' participation in this AOC shall not constitute or be construed as an admission of liability. Respondents neither admit nor deny the factual allegations and legal conclusions set forth in this AOC, Sections V and VI, Findings of Fact and Conclusions of Law.

13. EPA and Respondents acknowledge that this AOC has been negotiated by the parties in good faith and that this AOC is fair, reasonable, and in the public interest.

II. JURISDICTION

14. EPA Authorities. This AOC is issued under the authority vested in the Administrator of EPA by Section 7003 of the Resource Conservation and Recovery Act (RCRA), which authority has been delegated to the Regional Administrators of EPA by Delegations 8-22-A and 8-22-C (April 20, 1994), and redelegated to Director of the Air and Waste Management Division with the concurrence of the Regional Counsel of EPA Region 7 by Delegations R7-8-022-A and R7-8-022-C.

15. This AOC is issued under the authority vested in the Administrator of EPA by Section 1431 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300i, as properly redelegated to the Director, Water, Wetlands and Pesticides Division with the concurrence of the Regional Counsel, EPA, Region 7, Delegation R7-9-017.

16. This AOC is issued pursuant to the authority vested in the Administrator of EPA by Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), and Section 308, 33 U.S.C. § 1318, which authority has been delegated by the Administrator to the Regional Administrator, EPA Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, Delegations R7-2-013 and R7-2-022.

17. EPA is the authorized agency to enforce the RCRA and CWA programs and has primary enforcement responsibility for the SDWA public water supply protection program within the Omaha Indian Reservation. No other governmental authority has applied for and been approved to administer the RCRA, SDWA, or CWA authorities on the Omaha Indian Reservation.

18. Respondents agree to undertake and complete all actions required by the terms and conditions of this AOC. In any action by EPA or the United States to enforce the terms of this AOC, Respondents consent to and agree not to contest the authority or jurisdiction of the Region 7 Division Directors to issue or enforce this AOC, and agree not to contest the validity of this AOC or its terms or conditions.

III. PARTIES BOUND

19. This AOC shall apply to and be binding upon EPA, and on Respondents and Respondents' officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondents, as well as upon subsequent purchasers of the Recycling Facility, the Drinking Water System and the Macy WWTF. Respondents are jointly and severally responsible for carrying out all actions required of them by this AOC. Any change in the ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter Respondents' responsibilities under this AOC.

20. Respondents shall provide a copy of this AOC to any subsequent owners or successors before a controlling interest in ownership rights, stock, assets of the Recycling Facility, the Drinking Water System or the Macy WWTF is transferred. Respondents shall be responsible for and liable for completing all of the activities required pursuant to this AOC, regardless of whether there has been such a transfer of ownership or control or whether said activities are to be performed by employees, agents, contractors, subcontractors, laboratories, or consultants of Respondents. Respondents shall provide a copy of this AOC within seven (7) days of the Effective Date of this AOC, or the date that such services are retained, to all contractors, subcontractors, laboratories, and consultants that are retained to conduct or monitor any portion of the Work performed pursuant to this AOC. Respondents shall condition all contracts or agreements with contractors, subcontractors, laboratories, and/or consultants in connection with this AOC, on compliance with the terms of this AOC. Respondents shall ensure that its contractors, subcontractors, laboratories, and consultants comply with this AOC.

21. Not later than 60 days prior to any voluntary transfer by Respondents of any interest in the Recycling Facility, Drinking Water System, the Macy WWTP, or the operation of any said utilities, Respondents shall notify EPA of the proposed transfer. In the case of a voluntary transfer through a bankruptcy or receivership, Respondents shall notify EPA within 24 hours of the decision to transfer property. Respondents shall notify EPA of any involuntary transfers immediately upon Respondents' initial receipt of notice of any involuntary transfer. Not later than three days after any transfer, Respondents shall submit copies of the transfer documents to EPA.

IV. DEFINITIONS

22. Unless otherwise expressly provided herein, terms used in this AOC that are defined in the RCRA, SDWA, and CWA statutes shall have the meaning assigned to them in said statute. Whenever the terms listed below are used in this AOC the following definitions apply:

"AOC" shall mean this Administrative Order for Compliance on Consent, any amendments thereto, and any documents incorporated by reference into this AOC.

"CWA" shall mean the Clean Water Act, as amended, 33 U.S.C. §1251, et seq.

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“Data Quality Objectives” shall mean those qualitative and quantitative statements derived from the outputs of a scientific and legally defensible data collection planning process.

“Day” shall mean a calendar day unless expressly stated otherwise.

“Effective Date” shall be the date on which EPA signs this AOC following the public comment period which is held pursuant to Section XXIV (Public Comment on this AOC).

“Facility” or “Recycling Facility” shall mean the Mother Earth Recycling Center located on the Omaha Indian Reservation encompassing approximately two acres adjacent and north of BIA Road 5 (also designated as L Avenue), approximately 1.75 miles by road east-north-east of the City of Macy, Nebraska.

“Macy WWTP” shall mean the waste water treatment plant located in Macy, Nebraska operated by the Omaha Tribal Utilities Program.

“Public water system” means a system that provides piped drinking water for human consumption to persons within the meaning of Section 1401 (4) of the SDWA, 42 U.S.C. § 300f(4) and 40 C.F.R. § 141.2.

“RCRA” shall mean the Resource Conservation and Recovery Act (also known as the Solid Waste Disposal Act), as amended, 42 U.S.C. § 6901, et seq.

“SDWA” shall mean the Safe Drinking Water Act, 42 U.S.C. § 300, et seq.

“System” or “Drinking Water System” shall mean the public water system operated in Macy, Nebraska by the Omaha Tribal Utilities Program, 305 Main Street, Walthill, Nebraska 68067.

“Work” shall mean all the activities and requirements specified in this AOC including, but not limited to Section VIII, Work To Be Performed of this AOC.

“WWTP” shall mean the devices or systems used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage within the meaning of CWA regulations at 40 C.F.R. Section 122.2, Definitions.

V. FINDINGS OF FACT

Respondent Omaha Tribal Utilities Program and Respondent Omaha Tribal Utilities Commission are Tribal agencies authorized under the constitution and laws of the Omaha Tribe of Nebraska. Respondent Omaha Tribe of Nebraska (Omaha Tribe) is a federally recognized tribal government.

Finding of Facts on the Mother Earth Recycling Center Facility:

23. On March 16, 2010, EPA conducted an inspection in response to concerns of open dumping at the Recycling Facility. On several occasions in July 2010, EPA representatives visited the Recycling Facility and observed open dumping.

24. The Facility is partially fenced, has no gates restricting access, and has a "Keep Out" sign and a "No Trespassing" sign. The Facility is staffed with one employee of Respondents, whose shift is 8:00 am to 4:30 pm, Monday-Friday. At all other times the grounds of the Facility are uncontrolled and unmonitored. Approximately, 0.75 miles north-northeast of the Facility by road is the Omaha Tribe's Youth Horse Barn Club, where youth from Macy go horseback riding. The area surrounding the Facility is primarily farmland, in the alluvial floodplain of the Missouri River, which flows approximately 1.2 miles north-east of the Facility.

25. The Facility contains a metal-sided, 70' by 36' building used to store equipment and packaged recyclable items. The cardboard bundler recycling equipment located inside the building is inoperable. The building also houses an inoperable highloader which sits with flat tires. The only working equipment is a forklift and a Bobcat brand skidloader.

26. Until March of 2010, the Facility received approximately 70 tons of waste per month since April 2009. Waste has accumulated at the Facility before and was removed once in 2006 and a second time in April 2009. Waste at the Facility originated from trash collection dumpsters at Tribal offices and schools in nearby Macy, the Tribal Housing complex in Macy, private homeowners in Macy, and rural Tribal residents. During the calendar year 2009 and the winter of 2010, the Omaha Tribal Utilities Program picked up the waste coming from Macy, Nebraska and disposed of the waste at the Facility. Residents outside of Macy have hauled their own waste to the Facility.

27. During the Facility inspection and other visits, EPA observed different types of waste, including residential waste, medical waste, televisions, computers, used oil, propane and oxygen tanks, tires, scrap metal, appliances, construction debris, furniture, dead animals, and an empty gasoline container. Feral cats roam at the Facility. At the time of the inspection on March 16, 2010, wastes had accumulated in massive piles up to ten feet in height and extending over several thousand square feet of the Facility grounds.

28. The medical waste includes syringes, IV bags, and tubing possibly containing blood. The used oil includes a used oil collection unit and empty oil containers on the ground nearby. Propane tanks were piled up in one area, and an oxygen cylinder was mixed in with the propane tanks. Tires have been accumulated in several separate piles.

29. The accumulation of residential waste, animal carcasses, and tire piles promotes the proliferation of rodents, flies, and mosquitoes. Feral cats roam at the Facility

30. Burning of trash and equipment has occurred at the Facility without any control of the temperature or containment in an enclosed device and with uncontrolled emissions of the

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combustion products. Two waste hauling vehicles and two dumpsters have been burned, allegedly by arson. Piles of the accumulated trash have also been burned.

31. During substantial periods of time outside the working hours of the Respondents' employee, the Facility grounds are uncontrolled and unmonitored and subject to access by the general public, including children and youths residing in Macy and the surrounding area.

32. On the west side of the Facility, there is a drainage ditch containing water where EPA inspectors observed a scum/sheen on the surface. The Facility is located in the alluvial floodplain of the Missouri River and is approximately 1.2 miles distant from the Missouri River.

33. On March 19, 2010, Respondents submitted to EPA a document dated March 18, 2010, and entitled, "Correction Plan for Solid Waste." This document stated that Respondents had contracted for removal of excess solid waste over a 30-60 day period, with work by the contractor that was to begin on or about March 15, 2010. The EPA inspector did not observe any indication of such removal activities during his March 16, 2010, inspection.

34. During EPA compliance assistance visits to the Facility on June 8-9, and July 27, 2010, the EPA representative observed significant areas where waste had been removed, other areas where wastes had been burned, continued waste accumulation in open dumpsters near the Facility, and significant areas where waste residuals and constituents remain on the ground at the Facility.

Potential Threat to Health and the Environment at Mother Earth Recycling Center Facility:

35. Respondents accumulate residential and other waste on the Facility grounds and thereby operate an "open dump" as defined in RCRA section 1004(14), 42 U.S.C. §6903(14), and 40 C.F.R. §257.2. Congress has found that open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land. RCRA section 1002(b)(4), 42 U.S.C. §6901(b)(4).

36. Vehicles, dumpsters, and piles of waste at the Facility have been burned without any environmental controls. This burning will likely recur at the Facility due to alleged arson and substantial periods of uncontrolled and unmonitored access. Thus, "open burning" as defined at 40 C.F.R. §257.3-7(c) has occurred and may occur in the future at the Facility. EPA has found that facilities that do not control open burning of residential waste pose a reasonable probability of adverse effects of health or the environment. 40 C.F.R. §§257.3, 257.3-7.

37. There is a potential for proliferation of disease through disease vectors such as rodents, flies, and mosquitoes found at the Facility. EPA has found that facilities that do not control disease vectors pose a reasonable probability of adverse effects of health or the environment. 40 C.F.R. §§257.3, 257.3-6(c)(2).

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38. Oil and scum from the Facility has accumulated in a ditch near the Facility. This ditch is located in an alluvial plain near the Missouri River. EPA has found that facilities that do not control for discharges into waters of the United States and do not control for contamination of an underground drinking water source pose a substantial risk of adverse effects on health and the environment. 40 C.F.R. §§ 257.3, 257.3-3 and 257.3-4.

39. Children and youth in the area traveling from residences in Macy to the Youth Horse Barn may be attracted to the open dump and by trespass become exposed to contaminants, disease vectors, and medical waste including sharps that may carry blood-borne disease and cause infection.

Findings of Fact at the Public Water System in Macy, Nebraska:

40. The System provides water for human consumption on the Reservation. The System serves approximately 1,800 year-round residents annually through 350 service connections. The Respondents own and operate the System. The system serves a number of Tribal facilities owned or operated by the Omaha Tribe, Indian Health Service (IHS) or the Bureau of Indian Affairs (BIA) including, but not limited to, the Omaha Tribe's Senior Citizen Center at 100 Senior Circle, Macy, Nebraska, the Omaha Indian Schools at 206 Main Street, Macy, Nebraska, 68039, and the Omaha Tribal Correction Facility in Macy, Nebraska. Sensitive populations at these facilities include the elderly and the very young.

41. The System is supplied solely by ground water from the Dakota Formation and the Quaternary alluvial aquifers.

42. From November 24, 2008, through August 24, 2010, Respondents' management of the Drinking Water System resulted in ten instances where customers were advised to boil their water due to various system breakdowns, leaks, pressure losses, and other problems. The boil notices were issued by Respondent and reported to EPA because harmful contaminants may have entered the drinking water system, due to the various failures as described in Paragraph 42 below. 40 C.F.R 141, Subpart Q requires reporting of such incidents by Respondent to EPA within 24 hours. Respondent did not consistently meet this reporting requirement. In general, Respondent required 7 to 30 days to restore the system such that boil notices were no longer necessary. Dates where boil notices were instituted by Respondent include:

November 24, 2008
January 7, 2009
July 28, 2009
August 5, 2009
January 14, 2010
March 19, 2010
July 13, 2010
August 2, 2010
August 12, 2010
August 25, 2010.

43. EPA issued Emergency Administrative Orders to Respondent pursuant to authorities of Section 1431 of the SDWA on January 7, 2009, and January 15, 2010, as hereby amended, to abate potential health risks associated with System failures.

44. The facts as described in EPA's Emergency Administrative Order, EPA Docket # SDWA-07-2010-0001, issued on January 15, 2010, are hereby incorporated by reference into this AOC. In general, those facts describe an early January 2010, system-wide loss of pressure which was attributed to a power failure on or about January 12, 2010, disabling the pump to the water supply wells. Respondents' knowledge of the power failure was delayed by at least 12 hours because Respondent could not access the water treatment facility due to snowfall. Respondents reported to EPA that, due to the power failure, water levels in storage tanks 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 on or about January 9, 2010. Respondents worked with EPA to provide notice to its drinking water consumers of an advisory to boil water due to the system pressure loss and line breaks. A copy of the initial boil water advisory was provided to EPA on January 14, 2010. However, that advisory lacked multiple elements required by SDWA regulations at 40 C.F.R. § 141.205, thus, Respondents subsequently had to send another complete advisory to customers. Respondents have not complied with the original terms of the January 15, 2010, Order.

45. 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 back siphonage, 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.

Monitoring and reporting violations.

46. Respondents have not collected drinking water samples for analysis of Stage 1 disinfection byproducts (DBPs), including Trihalomethanes (TTHM), and Five Haloacetic Acids (HAA5). In accordance with the requirements in 40 C.F.R. Section 141.130, such samples should have been collected annually during the month of warmest water temperature. On October 30, 2009, EPA notified the Respondents of their failure to collect and analyze the samples. Respondents have not collected nor submitted samples for analysis.

47. Respondents did not issue a complete Consumer Confidence Report (CCR) by July 1, 2009, and did not issue a CCR by July 1, 2010, in accordance with the requirements in 40 C.F.R. Section 141.155. By letter of October 30, 2009, and by verbal notice on July 1, 2010, and August 9, 2010, EPA notified the Respondents of their failure to issue an acceptable CCR. Issuance of a CCR is an annual requirement which must be completed by July 1 every year.

48. EPA conducted a sanitary survey of Respondents' Drinking Water System on or about April 6, 2009. Significant deficiencies and recommendation to address other deficiencies in the System were identified and described in a Sanitary System Report sent to the Tribe on May 6, 2009. The Respondents have not taken corrective actions to address the identified deficiencies, which include, but are not limited to the following components of the System:

- a. meter calibration for source water production;
- b. finished water clearwell;
- c. 13 pressure regulation valves;
- d. storage tanks;
- e. high service pumps;
- f. system security;
- g. supervisory control and data acquisition;
- h. backwash ponds;
- i. finished water high lift pumps; and
- j. cross-connection control

49. EPA believes, and has determined, that conditions at the System may present an imminent and substantial endangerment to the health of persons due to Respondents' failure to ensure the integrity of the System; Respondents' management allowing repeated incidents of power losses, pressure losses, and intermittent service breaks; and Respondents' inadequate and late notification to EPA of circumstances that may threaten customers' health from potential exposures to contaminants in the System.

50. Prior to issuing this AOC, EPA officials consulted with Tribal Chairman and Omaha Environmental Department staff during the Regional Tribal Operations Committee quarterly meeting on April 15, 2010. In addition, Region 7 senior management consulted with the Omaha Tribal Council in Chambers on June 30, 2010, regarding the Tribal Utilities Program matters including conceptualization of this Order. After consultation, EPA has determined that actions to date by local authorities are not adequate to prevent imminent potential endangerment to the health of persons served by the System.

51. This Order is necessary to ensure adequate protection of public health.

Findings of Fact at the WWTF in Macy, Nebraska:

52. On or about August 1, 2006, NPDES Permit No. NE0061263 was issued to Respondents by EPA pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The permit will expire on September 30, 2011.

53. Between March 25 and 27, 2009, EPA personnel conducted a compliance evaluation inspection of the Macy WWTF to determine compliance with the CWA and Respondents' NPDES permit.

54. During the abovementioned inspection, EPA observed numerous violations of the Respondents' NPDES Permit. As a result, EPA issued an Administrative Order for Compliance, EPA Docket # CWA-07-2009-041, issued February 27, 2009, as amended April 29, 2009. The facts as described in said Administrative Order for Compliance are hereby incorporated by reference into this Settlement Agreement and Second Amendment. Among other things, those facts state that the Respondents: did not comply with the conditions in the NPDES permit that prohibit discharges at any location not authorized by the permit; did not comply with the requirements to maintain the facility to ensure the integrity of the components of the treatment system; did not operate and maintain all facilities and treatment systems to achieve compliance with permit conditions, including provision of back up or auxiliary facilities when the operation of such facilities is necessary to achieve compliance with the permit conditions; did not submit to EPA discharge monitoring reports (DMRs), including flow and sample results for effluent quality on a quarterly basis; did not submit to EPA an Annual Sludge Summary Report by February 19 of each year and include all information required pursuant to 40 C.F.R. § 503.17; and furthermore, did not report to EPA any noncompliance that may endanger the health or the environment within 24 hours from discovery.

55. Specifically, during the March 2009 inspection, EPA inspectors observed that Respondents had failed to ensure the integrity of the components of the treatment system and failed to operate and maintain all facilities and treatment systems to achieve compliance with the conditions of the permit, including:

- a. The berm of the WWTP's Lagoon Cell 1 was damaged by waste haul vehicles backing up to the lagoon and discharging waste water in and around the berm.
- b. Significant damage to the berms of all three lagoon cells occurred from rodent burrowing, including a discharge to surface waters from a large burrow hole in Cell #3.
- c. The WWTP's lift station was wired for temporary operation, which eliminated flow monitoring capability and created a potential for lift station failure. Additionally, the lift station lacked a back-up power generator.
- d. Respondents failed to submit all required DMRs, failed to timely submit numerous DMRs, and failed to complete DMRs with all required information, including flow information as required under Respondents' NPDES permit.

56. Respondents were aware of the breached lagoon, as identified in Paragraph 54b, in June 2008, and Respondents failed to report to EPA this condition within 24 hours from discovery. Respondents completed partial repair to said breached lagoon in June 2009, which alleviated the observable direct discharge from the lagoon.

57. In March 2010, according to reports from the Respondents to EPA, the sewage lift station malfunctioned causing sewage backup in residents' homes. Additional information from Respondents to EPA suggested that the lift station was repaired and is functioning properly.

EPA visited the Macy WWTF on July 23, 2010, but EPA observed the lift station from a distance only because Respondents did not provide access to the lift station. The EPA representative could not verify that lift station capability has been corrected. EPA's representative observed no back-up power generator at the lift station which is necessary for emergency operations. To date, the Respondents' have provided no documentation to EPA of specific actions taken to correct the lift station malfunction.

58. An EPA compliance assistance visit on July 23, 2010, and a Facility visit on July 28, 2010, revealed that rodent holes remain in numerous places in the three cell lagoon system, trees were growing on the lagoon berms, and insufficient mowing allowed grasses to reach four to six feet in height. Rodent holes, trees and lack of mowing creates potential for breaches and unauthorized discharge from the lagoons.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and an administrative record supporting this AOC, EPA has determined that:

59. Respondents are each a "person" as defined in 40 C.F.R. § 141.2 for purposes of federal enforcement of the SDWA. The Respondents are each a "person" as defined by Section 502(4) and (5) of the CWA, 33 U.S.C. § 1362(4) and (5), owns or operates the WWTP for the city of Macy, Nebraska.

60. The System is a "public water system" and a "community water system" as defined in Section 1401 of the SDWA, 42 U.S.C. § 300f and 40 C.F.R. § 141.2.

61. As the owner or operator of the System, each Respondent is a "supplier of water" as that term is defined in section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. As provided in section 1411 of the SDWA, 42 U.S.C. § 300g, the Respondents are therefore required to comply with the SDWA and the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. Part 141.

62. The WWTP is a "point source" that discharges "pollutants" to the Blackbird Creek, which is a "navigable water," as defined by Section 502 of the CWA, 33 U.S.C. § 1362. Respondents are therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq.

63. Respondents' NPDES permit violations, as identified in Paragraphs 52 through 56, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and 1342.

64. The Utility and Omaha Tribe, collectively referenced as Respondents, are each a "municipality" as defined in RCRA section 1004(13), 42 U.S.C. § 6903(13), and municipalities are in turn are a "person" as defined in RCRA section 1004(15), 42 U.S.C. § 6903(15).

65. Respondents have handled "solid waste" at the Facility within the meaning of RCRA section 1004(27), 42 U.S.C. § 6903(27).

66. Respondents have handled, stored, treated, transported or disposed of solid waste at the Facility within the meaning of RCRA section 7003, 42 U.S.C. §6973.

67. Respondents' handling, storage, treatment, transportation, or disposal of solid waste at the Facility may present an imminent and substantial endangerment to health or the environment within the meaning of RCRA section 7003, 42 U.S.C. §6973.

VII. ORDER ON CONSENT

Based upon the administrative record for this AOC, Section V, Findings of Fact, and Section VI, Conclusions of Law and Determinations, set forth above, and in consideration of the promises set forth herein, the following is hereby agreed to and ordered.

68. EPA hereby orders Respondents to perform the Work specified in this AOC in the manner and by the dates specified herein. All Work undertaken shall be performed in a manner consistent with this AOC, all documents incorporated herein pursuant to this AOC, and all applicable laws.

69. Respondents shall finance and perform the Work in accordance with this AOC, and the plans, standards, specifications, and schedules set forth in this AOC or developed by Respondents and approved by EPA pursuant to this AOC.

VIII. WORK TO BE PERFORMED

70. Mother Earth Facility Work: Respondents shall perform the following work at the Mother Earth Recycling Center Facility in accordance with the schedule for completion in Table 1 below.

Table 1

DUE DATE	TASKS
Upon the effective date of the Order	Respondents shall cease bringing any solid waste to, or accumulating any solid waste at the Facility and shall cease accepting or accumulating any solid waste from any other persons bringing such waste to the Facility.
Upon the effective date of the Order	Respondents shall cease open burning of solid waste at the Facility and prohibit all other persons from open burning of solid waste at the Facility.
Upon the effective date	Respondents shall inform EPA of any wastes the Respondents are continuing to pick up or collect from households, businesses, and establishments served by the Utility for waste pickup.
Within 30 days of the effective date of the Order	Respondents shall mail the following notice to all households, businesses, and establishments served by the Utility for waste pickup, and to all rural residents allowed by the Utility to drop off waste at the Facility. Upon mailing, Respondents shall provide EPA a copy of the notice and a list of the addressees

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	<p>of the notice.</p> <p>“Notice to all Residents and Businesses: The Omaha Tribe of Nebraska Mother Earth Recycling Center is now closed to the acceptance of all trash and other waste from residents and businesses. Residents and businesses are prohibited from entering the facility for dumping or for any other purpose. At some time in the future, recycling services may be restored, at which time you will be notified that such services are available.</p> <p style="text-align: right;">--The Omaha Tribe of Nebraska”</p>
Upon the effective date of the Order	Respondents shall dispose of municipal wastes only at a lawfully permitted landfill and shall identify such recipient landfill to EPA.
April 29, 2011	<p>Respondents shall:</p> <ol style="list-style-type: none"> a. install a fence around the perimeter of the Facility to prevent unauthorized entry to the Facility; b. install a gate with locks at the entrance of the Facility and lock such gates at all times when Respondents’ personnel in charge of day to day operations are not physically present at the Facility; and c. install, on the north, south, east and west property line of the Facility, eight (8) all weather signs measuring 3 feet by 2 feet, two on each direction, identifying the name of the facility and stating in clearly visible lettering: DANGER - NO TRESPASSING - NO DUMPING OMAHA TRIBAL UTILITIES PERSONNEL ONLY OMAHA TRIBE OF NEBRASKA MOTHER EARTH RECYCLING CENTER
May 16, 2011	Respondents shall submit to EPA substantiating documentation, including but not limited to photographs, demonstrating that Respondents have installed the fence, gates, lock, and signs at the Facility.
Within 120 days of the effective date of the Order	Respondents shall advertise a request for bid proposals for a trash collection services contract for collection of trash from Tribal Utilities Program customers. The request for bids must also include a provision for recycling services. Respondents shall prepare a detailed budget plan for financing and operating the trash collection services. By the due date, Respondents shall submit a report to EPA that compiles all of the bids received from outside firms to operate and maintain the trash collection services, and includes Respondent’s detailed budget plan.
Within 60 of the advertisement for bid proposals	<p>Respondents shall update the Tribal Integrated Solid Waste Management Plan (ISWMP) (2006) to reflect the changes to the solid waste management activities. The ISWMP should:</p> <ol style="list-style-type: none"> a. provide a detailed description of how solid and hazardous waste is managed on the reservation and how the solid waste activities are funded; b. identify a designated-operator, responsible, in-charge, and trained at the appropriate level; c. estimate the cost of contracting for trash collection based on bid

	<p>proposals;</p> <p>d. describe a plan to work toward the goal of 100% collection of fees from Utility customers, and,</p> <p>e. identify all locations of open dumps.</p>
January 10, 2011	<p>Respondents shall submit to EPA monthly reports describing all solid waste activities conducted in the prior month including but not limited to collection, disposal, transportation, costs, expenses, fees paid and revenues or accounts receivable. Respondents shall submit the required monthly reports, in any case, if the Tribal Utility Program continues operations or if a solid waste contractor is selected to operate the trash collection and disposal. The initial report shall be submitted by the due date, and subsequent reports shall be submitted no later than the 10th day of the month for a period of 12 months.</p>
Within 60 days of the advertisement for bid proposals	<p><u>Removal and Disposal Plan for Residual Wastes.</u> Respondents shall submit the following plan of action for cleanup of the residual wastes at the Facility:</p> <p>a. identify the volumes of residual waste to be removed and disposed, including tire piles;</p> <p>b. identify any hazardous wastes or other waste streams that require special handling or disposal, white goods, tire piles, propane tanks, medical wastes, batteries, etc.;</p> <p>c. identify the recipient permitted landfill that will be receiving the wastes and traffic routes for vehicles hauling the residual waste to said landfill;</p> <p>d. provide a sampling and analysis plan for areas where burning or waste piles were located (including oil spills and the nearby ditch with sheen and scum) to determine if soil removal or other more extensive decontamination procedures are necessary;</p> <p>e. provide names of contractors, subcontractors, and consultants, or other persons or entities, to be engaged to perform the tasks;</p> <p>f. estimate the costs for the tasks; and,</p> <p>g. identify sources and amounts of financial support from the Respondents or from other sources sufficient to pay the estimated costs</p>
Upon EPA Approval	<p>Upon written approval by EPA and in accordance with the schedule approved by EPA, Respondents shall implement the Removal and Disposal Plan.</p>

71. Nothing in this Order is intended to affect any obligation imposed on Respondents as a result of any applicable Tribal, Federal, or State law, ordinance or regulation.

PROJECT COORDINATORS FOR SOLID WASTE COMPLIANCE ACTIVITIES

72. Within three (3) days after the Effective Date of this Order, Respondents shall designate a qualified Project Coordinator for the Work to be performed at the Mother Earth Facility and shall submit the name, address, and telephone number of the Tribal Project Coordinator and his or her qualifications to perform the responsibilities of the Project Coordinator to EPA for review and approval. Respondents' Tribal Project Coordinator shall be responsible for overseeing Respondents' implementation of this Order as it pertains to the Mother Earth Facility. If Respondents wish to change their Tribal Project Coordinator,

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Respondents shall provide written notice to EPA, five days prior to changing their Coordinator, of the name and qualifications of the new Tribal Project Coordinator.

73. EPA hereby designates Nicole Moran as the EPA Project Coordinator. Ms. Moran may be reached at telephone number 913-551-7641 and facsimile number 913-551-7201 or at the address listed in Section X, Notices. EPA has the unreviewable right to change its Project Coordinator. If EPA changes its Project Coordinator, EPA will inform Respondents in writing of the name, address, and telephone number of the new Project Coordinator.

74. EPA and Tribal Project Coordinators will be responsible for overseeing the implementation of the Work at the Mother Earth Facility to be performed under the Order. The EPA Project Coordinator will be EPA's primary designated representative for this purpose. To the maximum extent possible, all communications, whether written or oral, between Respondents and EPA concerning the Work to be performed at the Mother Earth Facility pursuant to this Order shall be directed through the Project Coordinators.

75. Drinking Water System Work: Respondents shall perform the following Work at the Macy Drinking Water System in accordance with the schedule for completion in Table 2 below.

Table 2

DUE DATE	TASKS
Within 14 days of the effective date of the Order	Respondents shall monitor the System for disinfection byproducts (DBPs) including Trihalomethanes (TTHM) and Five Haloacetic Acids (HAA5) as required by 40 C.F.R. Subpart L (see 40 C.F.R. 141.132). Monitoring shall begin by the due date. Respondents shall report monitoring results to EPA within 10 days after the end of each month in which samples were collected, as required by 40 C.F.R. Section 141.134.
Within 120 days of the effective date of the Order	Respondents shall conduct the following activities and submit a report to EPA describing the actions completed by the due date: <ul style="list-style-type: none"> • Calibrate flow meters for North and South Wells and Aeralator inlet flow meter; • Add a flow meter to East Well; • Inspect and perform required maintenance on source well high service pumps; • Inspect and perform required maintenance on finished water high lift pumps; • Inspect and perform required maintenance on Supervisory Control and Data Acquisition System (SCADA); • Inspect distribution system to identify any illegal connections where backflow/cross-contamination prevention has not been installed; Remove illegal connections; • Inspect and perform required maintenance (cleaning) of clearwell; • Inspect and perform required maintenance at Backwash Water Collection Ponds;

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	<ul style="list-style-type: none"> • Inspect, repair and repaint water storage tanks; elevated and ground; and • Install secure access to all supply wells and ground level storage tank
Within 120 days of the effective date of the Order	<p>Respondents shall conduct the following activities and submit a report to EPA describing the actions completed by the due date:</p> <ul style="list-style-type: none"> • Install permanent back-up generators to supply power to the pumps at the water supply wells; • Install surge protection devices to protect against lightning strikes that may interrupt power to the treatment plant and water supply pumps; • Install a permanent back-up generator at the drinking water treatment plant; • Install fuel storage tanks with sufficient capacity to operate the generators at the wells and the treatment plant for seven days; • Provide access to the fuel storage tanks, wells, and the treatment plant during inclement weather. This could include a contract with a vendor to provide snow clearance, or clear evidence of tribal capacity to provide such access.
August 5, 2011	Respondents shall install new pressure regulation valves throughout the drinking water distribution system.
October 1, 2011	Respondents shall prepare and issue the CCR for monitoring completed in 2010 to all customers by the due date, and submit certification of the CCR to EPA Region 7 by October 1, 2011.
May 6, 2011	Respondents shall prepare and issue past-due CCRs for monitoring completed in 2008 (REVISED), and in 2009 by the due date. Submit certification of the CCR to EPA Region 7 within 14 days of issuance.
June 3, 2011	Respondents shall solicit bids from outside firms to operate and maintain the Drinking Water System for a five year period. Respondents shall prepare a detailed budget plan for financing and operating the Drinking Water System. By the due date, Respondents shall submit a report to EPA that compiles all of the bids received from outside firms to operate and maintain the System, and includes Respondent's detailed budget plan.
Within 90 days of the effective date of the Order	<p>Respondents shall submit for EPA review and approval a drinking water system management plan by the due date. Components of the System Management Plan shall include:</p> <ol style="list-style-type: none"> a. Asset Management Plan including descriptions of: the current state of system assets; the desired level of service to be provided by the system; critical assets of the system; minimum life cycle costs associated with system capital equipment; and a long-term funding plan. EPA recommends the use of the "Check Up Program for Small Systems" (CUPSS) software for assistance in developing such an Asset Management Plan. b. Designated operator-in-responsible-charge, certified at the appropriate level, consistent with 40 C.F.R. 141.70(c) and the EPA Region 7 Tribal Operator Certification Program, dated August, 27, 2008. c. Operation & Maintenance (O&M) Plan for the drinking water System covering all activities described in the following list. Respondents shall ensure that these activities are conducted in accordance with the O&M plan: <ol style="list-style-type: none"> 1. Daily –

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	<ul style="list-style-type: none"> • Check water meter readings and record water production; • Check and record water levels in ground water and elevated storage tanks; • Inspect any chemical feed pump; • Check and record chlorine residual at the point of application; • Check and record chlorine residual in the distribution system; • Check well pump for running times and pump cycle starts; and • Inspect well pumps, motors, and controls. <p>2. Weekly –</p> <ul style="list-style-type: none"> • Inspect chlorine testing equipment and testing to determine effectiveness iron and manganese removal; • Clean pump house and grounds. Make sure fire hydrants are accessible; • Record pumping rate for each well or source water pump; • Check backup power sources to ensure it will operate when needed; • Inspect fencing and gates; • Inspect all pump house plumbing for leaks; • Check all sump pumps for proper operations; and, • Check all station alarms; <p>3. Monthly –</p> <ul style="list-style-type: none"> • Read electric meter at pump house and record • Take appropriate monthly water quality samples such as for Total Coliform • Check and record static and pumping levels of each well • Read all customer meters and compare against total water produced for the month • Inspect well heads • Lubricate locks • Check on-site readings against lab results • Confirm submittal of monthly reports <p>4. Quarterly –</p> <ul style="list-style-type: none"> • Take appropriate quarterly water quality samples • Confirm submittal of quarterly reports • Document that all repairs have been completed that were found in daily, weekly, or monthly checks or inspections • System-wide leak detection
<p>March 10, 2011</p>	<p>Respondents shall submit monthly reports to EPA that describe all O&M activities completed in the prior month conducted in accordance with the EPA-approved O&M Plan. The initial report shall be submitted by the due date, and subsequent reports shall be submitted no later than the 10th day of the month for a period of 12 consecutive months.</p>
<p>May 1, 2011</p>	<p>Respondents shall prepare reports to address the following issues and submit reports to EPA by the due date:</p> <ul style="list-style-type: none"> • Feasibility Study Report to assess need to repair or replace Aeralator treatment unit;

	<ul style="list-style-type: none"> Standard Operating Procedures Report that specifies processes for responding to line breaks, providing public notification, and for routine sampling to be conducted monthly, quarterly, or annually.
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76. If implementation of the Work to be performed in the previous paragraph fails to achieve permanent compliance, EPA may order further steps.

77. 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 of Fact section of this AOC, 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).

78. All reports and notifications regarding the System required shall be submitted to:

Scott Marquess
 U.S. EPA, Region 7
 901 North 5th Street
 Kansas City, Kansas 66101
 Phone: 913-551-7131
 Fax: 913-551-7765
 Email: marquess.scott@epa.gov

79. Macy WWTF Work: Respondents shall perform the following work at the Macy WWTF in accordance with the facility NPDES permit and the schedule for completion. All tasks in Table 3 below commence in accordance with the Effective Date of this Order.

Table 3

Due Date	Tasks	Reporting
Quarterly	Submit DMRs	Submit in a timely manner by January, April, July, and October 28 th of every year
Within 45 days of the effective date of the Order	Provide documentation for repairs to lift station. Invoices, work orders, job tickets, etc.	Provide a report of work performed and the names of the contractors that performed the work
Within 180 days of the effective date of the Order	Install back-up generator at lift station	Submit invoice and installation documentation
Monthly	Exercise valves at lagoon	Provide report of work performed by the 10 th of each month.
Monthly	Measure freeboard in lagoon	Provide report of work performed by the 10 th of each month.
May-October:	Mow lagoon	Submit digital, date-stamped photos by

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Twice a month <u>November-April:</u> weather permitting		the 10 th of each month.
Monthly	Clean lift station	Provide report of work performed by the 10 th of each month.
Monthly	Mark holes in lagoon berms	Report count and provide digital, date-stamped photos by the 10 th of each month.
Monthly	Fill holes in lagoon berms as they occur	Provide report of work performed and digital, date-stamped photos by the 10 th of each month.
Monthly	Cut down trees and treat to prevent re-growth	Provide report of work performed and digital, date-stamped photos by the 10 th of each month.
Every 180 days	Perform pre-discharge sampling	Provide lab data for review to EPA before discharge occurs.
Every 180 days.	Perform sampling of discharge as required by permit	Provide lab data for review to EPA during discharge.

80. Respondents shall submit to EPA for review the name and qualifications of the designated operator-in-responsible-charge, with appropriate training and experience needed to operate and maintain the system.

81. Within 120 days of the effective date, Respondents shall solicit bids from outside firms to operate and maintain the Macy WWTF for a five year period.

- a. Respondents shall prepare a summary report that compiles all of the bids received from outside firms to operate and maintain the WWTF, and includes Respondent's detailed budget plan.
- b. No later than March 1, 2011, Respondents shall submit a summary report comparing the cost estimates from the bid proposals for contract certified wastewater operator services to cost estimates for continuation of Tribal Utilities Program operation of the Macy WWTF.

82. Respondents shall submit to EPA at the address identified in paragraph 92 all reports required in Paragraph 78 in accordance with the specified due dates, regardless of whether the Tribal Utility Program continues operations or if a certified wastewater treatment contractor is selected to operate the Macy WWTF.

IX. EPA APPROVAL OF DELIVERABLES

83. Deliverables required by this AOC shall be submitted to EPA for approval or modification pursuant to Paragraph 83. All deliverables must be received at EPA by the due date specified in this AOC or by schedules developed pursuant to this AOC.

84. After review of any deliverable that is required pursuant to this AOC, EPA will: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. However, EPA will not modify a submission without first providing Respondents at least one notice of deficiency and an opportunity to cure within 10 days, except where EPA determines that to do so would cause serious disruption to the Work or where EPA has disapproved previous submission(s) due to material defects and EPA determines that the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

85. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 83(a), (b), or (c), Respondents shall proceed to take any action required by the deliverable, as approved or modified by EPA subject only to Respondents' right to invoke the Dispute Resolution procedures set forth in Section XIV (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 83(c) and EPA determines the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XV (Penalties).

86. Resubmission of Deliverable. Upon receipt of a notice of disapproval, in whole or in part, pursuant to Paragraph 83(d), Respondents shall, within 10 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XV (Penalties), shall accrue during the 10-day opportunity to cure period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 83 and 84.

87. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 82(d), Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties for the deficient portion of the deliverable under Section XV (Penalties).

88. In the event that a resubmitted deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondents to correct the deficiencies, in accordance with the preceding paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Respondents shall implement any action as required in a deliverable which has been modified or developed by EPA, subject only to Respondents' right to invoke the procedures set forth in Section XIV (Dispute Resolution).

89. If, upon resubmission, a deliverable is disapproved or modified by EPA due to a material defect, Respondents shall be deemed to have failed to submit such deliverable timely and adequately unless Respondents invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution) and EPA's action to disapprove or modify a deliverable is overturned

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pursuant to that Section. The provisions of Section XIV (Dispute Resolution) and Section XV (Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XV (Penalties).

90. All deliverables required to be submitted to EPA under this AOC, shall, upon approval or modification by EPA, be incorporated into and be enforceable under this AOC. In the event EPA approves or modifies a portion of a deliverable required to be submitted to EPA under this AOC, the approved or modified portion shall be enforceable under this AOC.

X. NOTICES

91. All reports and notifications required for the Recycling Facility shall be submitted to:

Nicole Moran
Air and Waste Management Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101
Phone: (913) 551-7641
Fax: (913) 551-7201
E-mail: Moran.nicole@epa.gov

92. All reports and notifications required for the Drinking Water System shall be submitted to:

Scott Marquess
Water, Wetlands and Pesticides Division
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101
Phone: 913-551-7131
Fax: 913-551-7765
Email: marquess.scott@epa.gov

93. All reports and notifications required for the Macy WWTF shall be submitted to:

Kimberly Willis
Compliance Officer
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

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Phone: (913) 551-7069
Fax: (913) 551-7765
E-mail: willis.kimberly@epa.gov

XI. SAMPLING, ACCESS, AND DATA AVAILABILITY

94. All results of sampling, testing, modeling or other data generated (including raw data if requested) by Respondents, or on Respondents' behalf, during implementation of this AOC shall be validated by Respondents and submitted to EPA within 30 days of Respondents' receipt of the data. Respondents shall tabulate data chronologically by media. EPA will make available to Respondents data generated by EPA for the purposes of oversight of the Work unless it is exempt from disclosure by any federal or state law or regulation.

95. Respondents shall orally notify EPA at least 20 days prior to conducting field sampling. At EPA's request, Respondents shall allow split or duplicate samples to be taken by EPA or EPA's representative.

96. Confidential Business Information. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this AOC under 40 C.F.R. § 2.203 in the manner described at 40 C.F.R. § 2.203(b) and substantiated with the information described at 40 C.F.R. 2.204(e)(4). Information EPA determines is confidential will be given the protection specified in 40 C.F.R. Part 2. If no such claim or substantiation accompanies the information when it is submitted to EPA, it may be made available to the public by EPA, or the state, without further notice to Respondents. Respondents agree not to assert confidentiality claims with respect to any data related to Facility conditions, sampling, monitoring, or the Work performed pursuant to this AOC.

97. Privileged Documents. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege in lieu of providing documents, Respondents shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the author's name and title; (4) the name and title of each addressee and recipient; (5) a description of the contents; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this AOC shall be withheld on the grounds that they are privileged.

98. All data, information, and records created or maintained relating to the Recycling Facility, the Drinking Water System, or the Macy WWTF shall be made available to EPA upon request unless Respondents assert a claim that such documents are legally privileged from disclosure. Respondents shall have the burden of demonstrating to EPA by clear and convincing evidence that such privilege exists.

99. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or

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engineering data, or any other documents or information evidencing conditions at or around the Facility.

100. Nothing in this AOC shall be construed to limit EPA's right of access, entry, inspection, and information gathering pursuant to applicable law, including but not limited to SDWA, CWA, RCRA and CERCLA.

XII. COMPLIANCE WITH OTHER LAWS

101. Respondents shall perform all actions required pursuant to this AOC in accordance with all applicable local, state, and federal laws and regulations. Respondents shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations in a timely manner so as not to delay the Work required by this AOC.

XIII. RECORD RETENTION

102. Respondents shall preserve all documents and information, including raw data, relating to the Work performed under this AOC, the Recycling Facility, the Drinking Water System, or the Macy WWTF, for 10 years following completion of the Work required by this AOC.

103. Respondents shall acquire and retain copies of all documents that relate to the Recycling Facility, the Drinking Water System, or the Macy WWTF that are in the possession of its employees, agents, accountants, contractors or attorneys.

104. Respondents shall make available to EPA all employees and persons, including contractors, who engage in activities under this AOC and ensure their cooperation with EPA with respect to this AOC.

105. After the 10-year retention period and 90 days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies (at no extra cost) of such documents and information to EPA. Notification shall be in writing and shall reference the effective date, caption, and docket number of this AOC and shall be addressed to the RCRA Enforcement Branch Chief. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the 10-year retention period at the written request of EPA.

106. All documents pertaining to this AOC shall be stored by Respondents in a centralized location on the Omaha Reservation, or an alternative location mutually approved by Respondents and EPA, to promote easy access by EPA or its representatives.

XIV. DISPUTE RESOLUTION

107. Respondents shall raise any disputes concerning the Work required under this AOC to EPA (excluding any decision document(s) issued by EPA), in writing, within 15 days after receiving written notice from EPA regarding any aspect of the Work required under this AOC that Respondents dispute. EPA and Respondents shall expeditiously and informally attempt to resolve any disagreements. EPA and Respondents shall first confer at the Project Coordinator level in an effort to resolve the dispute. If the Project Coordinators are unable to informally resolve the dispute within three days of their initial conference, Respondents shall notify in writing the EPA Branch Chief with authority over the dispute within five days. Written objections regarding issues with the Drinking Water System and Waste Water Treatment Facility shall be sent to Diane Huffman, Chief, Water Enforcement Branch. Written objections regarding issues with the Recycling Facility shall be sent to Donald Toensing, Chief, RCRA Enforcement Branch. Any notice shall identify Respondents' objections, state the basis for those objections, and provide all data, analyses and information relied upon by Respondents. EPA and Respondents then have an additional 14 days from EPA's receipt of the objections to reach agreement. If an agreement is not reached within the 14 days, Respondents may request in writing, within five days, a determination resolving the dispute by EPA's Division Director of Water Wetlands and Pesticides, William (Art) Spratlin or for RCRA matters, Director of Air and Waste Management, Becky Weber.

108. The request should provide all information that Respondents believe is relevant to the dispute. If such request is submitted within five days, the appropriate Division Director shall issue a determination in writing. EPA's final decision shall be incorporated into and become an enforceable part of this AOC and shall no longer be subject to dispute pursuant to this AOC. Respondents shall proceed in accordance with the Division Director's decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If Respondents do not agree to perform or do not actually perform the Work in accordance with EPA's decision, EPA reserves the right in its sole discretion to conduct the Work itself, seek reimbursement from Respondents, seek enforcement of this AOC, seek stipulated penalties, or any other appropriate relief. Any disputes arising under this AOC are not subject to judicial review until such time as EPA seeks to enforce this AOC.

109. If EPA and Respondents reach agreement on the dispute at any stage, the agreement shall be set forth in writing and shall, upon signature of both parties, be incorporated into and become an enforceable part of this AOC.

110. The existence of a dispute and EPA's consideration of matters placed in dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this AOC during the pendency of the dispute resolution process except as agreed by EPA in writing. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this AOC.

XV. PENALTIES

Stipulated Penalties

111. Any time Respondents fail to comply with any requirement of this AOC, the Omaha Tribal Utilities Program, Omaha Tribal Utilities Commission, and the Omaha Tribe of Nebraska shall be solely liable for stipulated penalties in the amounts set forth in this section unless a Force Majeure event has occurred as defined in Section XX (Force Majeure) and EPA has approved the extension of a deadline as required by Section XX (Force Majeure). The following stipulated penalties shall be payable per violation per day to EPA for any noncompliance with this AOC:

Period of Failure to Comply	Penalty per Day
1 st through 7 th day	\$250
8 th through 14 th day	\$600
Each day thereafter	\$1,000

112. Penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the violation or completion of the activity. Payment shall be due within 30 days of receipt of a demand letter from EPA. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this AOC, even where those violations concern the same event (e.g., submission of a deliverable that is late and is of unacceptable quality).

113. If payment is not made within 30 days of the date of Respondents' receipt from EPA of a written demand for payment of the penalties or of the date of agreement or decision resolving the dispute, interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the first day after Respondents' receipt of EPA's demand letter, or the date of the agreement or decision resolving the dispute, and will accrue until such penalties and interest have been paid in full. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. An additional penalty of six percent (6 %) per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for ninety (90) days or more. The applicable rate of interest shall be the rate in effect at the time the interest accrues.

114. Respondents shall make payments by money order, certified check, company check, electronic funds transfer, or cashier's check payable to the Treasurer of the United States within thirty (30) days of Respondents' receipt of EPA's request, and shall be submitted to the following address:

US Environmental Protection Agency
Fines and Penalties
PO Box 979077
St. Louis, Missouri 63197-9000.

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115. Docket No. SDWA-07-2010-0001, CWA-07-2009-041, and RCRA-07-2011-0003, should be clearly typed on the check to ensure proper credit. Respondents shall send simultaneous notices of such payments, including copies of the money order, certified check, company check, electronic funds transfer, or cashier's check to the following:

Regional Hearing Clerk
US Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

116. Respondents may dispute an EPA determination that it failed to comply with this AOC by invoking the dispute resolution procedures under Section XVIII (Dispute Resolution) unless the matter has already been in or is the subject of dispute resolution. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondents do not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondents prevail upon resolution, no penalties shall be paid. In the event that Respondents prevail in part, penalties shall be due on those matters in which Respondents did not prevail. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondents' obligation to comply with the terms and conditions of this AOC. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondents' failure to comply with any of the terms and conditions of this AOC.

117. No payments under this Section shall be deducted for federal tax purposes.

118. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this AOC.

Civil Penalties

119. RCRA. Violation of this AOC pertaining to work required to be done pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, may subject Respondents to civil penalties of at least six thousand five hundred dollars (\$7,500.00) (adjusted for inflation according to 40 C.F.R. part 19) per violation per day. The assessment of such penalties are provided for in Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. Should Respondents violate this AOC or any portion hereof, EPA may carry out the required actions unilaterally pursuant to any applicable authorities, and/or may seek judicial enforcement of this AOC. This AOC does not constitute a waiver, suspension, or modification of any of the requirements of RCRA, all of 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 RCRA.

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CWA. Violation of this AOC may cause EPA to assess civil penalties of at least \$37,500 (adjusted for inflation according to 40 C.F.R. part 19) per violation per day as provided for in Section 309(d) of CWA, 33 U.S.C. § 1319(d). Issuance of this AOC shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for any violation whatsoever. Moreover, compliance with the terms of this AOC shall not relieve Respondents of liability for, or preclude EPA from initiating, an enforcement action to recover penalties for any violations of the CWA, of this AOC, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et. seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Section 309 of the CWA, 33 U.S.C. § 1319, for any violation cited in this AOC.

SDWA. 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 SDWA, 42. U.S.C. § 300i(b). Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the SDWA. This AOC does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. 141.1 *et seq.*, or the SDWA, which remain in full force and effect.

XVI. FORCE MAJEURE

120. Respondents agree to perform all requirements under this AOC, within the time limits established under this AOC, unless the performance is delayed by a force majeure. For purposes of this AOC, a force majeure is defined as any event arising from causes beyond the control of Respondents, or any entity controlled by Respondents or Respondents' contractors, which delays or prevents performance of any obligation under this AOC despite Respondents' best efforts to fulfill the obligation. The requirement that the Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (1) as it is occurring, and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. Force majeure does not include financial inability to complete the Work, increased cost of performance, changes in Respondents' business or economic circumstances, or inability to attain media cleanup standards.

121. If any event occurs or has occurred that may delay the performance of any obligation under this AOC, whether or not caused by a force majeure event, Respondents shall orally notify EPA within 48 hours of when Respondents knew or should have known that the event might cause a delay. Such notice shall: (1) identify the event causing the delay, or anticipated to cause delay, and the anticipated duration of the delay; (2) provide Respondents' rationale for attributing such delay to a force majeure event; (3) state the measures taken or to be taken to prevent or minimize the delay; (4) estimate the timetable for implementation of those measures; and (5) state whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or the environment. Respondents shall undertake

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best efforts to avoid and minimize the delay. Failure to comply with the notice provision of this paragraph and to undertake best efforts to avoid and minimize the delay shall waive any claim of force majeure by Respondents. Respondents shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

122. If EPA determines that a delay in performance or anticipated delay in fulfilling a requirement of this AOC is or was attributable to a force majeure, then the time period for performance of that requirement will be extended as deemed necessary by EPA. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure, then EPA will notify Respondents, in writing, of the length of the extension, if any, for performance of such obligations affected by the force majeure. Any such extensions shall not alter Respondents' obligation to perform or complete other tasks required by this AOC which are not directly affected by the force majeure.

123. If EPA disagrees with Respondents' assertion of a force majeure, then Respondents may elect to invoke the dispute resolution provision, and shall follow the procedures set forth in Section XVIII (Dispute Resolution). In any such proceeding, Respondents shall have the burden of demonstrating, by a preponderance of the evidence, that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that Respondents' best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of this section. If Respondents satisfy this burden, then EPA will extend the time for performance as EPA determines is necessary.

XVII. RESERVATION OF RIGHTS

124. Notwithstanding any other provisions of this AOC, the United States retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Facility, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.

125. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of the requirements of this AOC, including without limitation the assessment of penalties under Section 7003 of RCRA, 42 U.S.C. § 6973.

126. This AOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.

127. This AOC is not intended to be nor shall it be construed to be a permit. Respondents acknowledge and agree that EPA's approval of the Work and/or Work Plan does

not constitute a warranty or representation that the Work and/or Work Plans will achieve the required cleanup or performance standards. Compliance by Respondents with the terms of this AOC shall not relieve Respondents of their obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

128. Notwithstanding any other provision of this AOC, no action or decision by EPA pursuant to this AOC, including without limitation, decisions of the Regional Administrator, the Director Directors, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this AOC, including an action for penalties or an action to compel Respondents' compliance with the terms and conditions of this AOC.

XVIII. OTHER CLAIMS

129. By issuance of this AOC, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA will not be deemed a party to any contract, agreement or other arrangement entered into by Respondents or their officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this AOC.

130. Respondents waive all claims against the United States relating to or arising out of conduct of this AOC, including, but not limited to, contribution and counterclaims.

131. Respondents shall bear their own litigation costs and attorney fees.

132. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Facility, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

XIX. INSURANCE

133. Prior to commencing the on-site Work under this AOC, Respondents shall secure, and shall maintain in force for the duration of this AOC and for two years after the completion of all activities required by this AOC, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit, naming EPA as an additional insured. Prior to commencement of the Work under this AOC, and annually thereafter on the anniversary of the Effective Date of this AOC, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondents demonstrates by evidence satisfactory to EPA that its contractors and subcontractors maintain insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser

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amount, then Respondents need provide only that portion of the insurance described above which is not maintained by the contractors and subcontractors.

134. For the duration of this AOC, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and worker's compensation insurance for all persons performing the Work on behalf of Respondents, in furtherance of this AOC.

135. At least seven days prior to commencing the Work under this AOC, Respondents shall certify to EPA that their contractors and subcontractors have obtained the required insurance.

XX. INDEMNIFICATION

136. Respondents agree to indemnify, save and hold harmless the United States, its officials, agents, contractors, employees, and representatives from any and all claims or causes of action: (a) arising from, or on account of, acts or omissions of Respondents, Respondents' directors, officers, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this AOC; and (b) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any persons for performance of the Work on or relating to the Facility, including claims on account of construction delays. In addition, Respondents agree to pay the United States all costs incurred by the United States, including litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in the preceding sentence.

XXI. MODIFICATION OF THIS AOC

137. Except as specifically stated in this AOC, including any Modification of the Work Plan as provided in Section XXII, this AOC may only be modified by the mutual agreement of EPA and Respondents. Any agreed modifications shall: be in writing; be signed by both parties; have as their effective date the date on which they are signed by EPA; and be incorporated into this AOC.

138. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain such formal approval as may be required by this AOC, and to comply with all requirements of this AOC unless it is formally modified. Any deliverables, plans, technical memoranda, reports, specifications, schedules and attachments required by this AOC are, upon approval by EPA, incorporated into and enforceable under this AOC.

XXII. ADDITIONAL WORK

139. EPA may determine or Respondents may propose that certain tasks are necessary in addition to or in lieu of the tasks included in any EPA-approved Work Plan when such additional work is necessary to meet the objectives set forth in Section I (Introduction). EPA may determine that Respondents shall perform any additional work and EPA will specify, in writing, the basis for its determination that any additional work is necessary. Within five days after the receipt of such determination, Respondents shall have the opportunity to meet or confer with EPA to discuss any additional work. Respondents shall submit for EPA approval a Work Plan for any additional work. Such Work Plan shall be submitted within 10 days of Respondents' receipt of EPA's determination that any additional work is necessary, or according to an alternative schedule established by EPA. Upon approval of a Work Plan for any additional work, Respondents shall implement the Work Plan for any additional work in accordance with the schedule and provisions contained therein. The Work Plan for any additional work shall be incorporated by reference into this AOC.

XXIII. TERMINATION AND SATISFACTION

140. The provisions of this AOC shall be deemed terminated and satisfied by Respondents upon written notice from EPA that Respondents have demonstrated that all of the terms of this AOC, including any additional work, as may be performed pursuant to Section XXVII (Additional Work), and any stipulated penalties demanded by EPA under Section XV (Penalties), have been addressed to the satisfaction of EPA. Termination of this AOC shall not terminate Respondents' obligation to comply with: Sections XI (Sampling, Access and Data Availability); XIII (Record Retention); XVII (Reservation of Rights); and XX (Indemnification) of this AOC, and to maintain its Tribal Utilities Programs in compliance with federal and Tribal laws.

XXIV. PUBLIC COMMENT ON THIS AOC

141. EPA shall provide public notice, opportunity for a public meeting and a reasonable opportunity for public comment on the proposed settlement in accordance with Section 7003 of RCRA. After consideration of any comments submitted during a public comment period of not less than 30 days (which EPA may extend), EPA may withhold consent or seek to amend all or part of this AOC if EPA determines that comments received disclose facts or considerations which indicate that this AOC is inappropriate, improper, or inadequate.

XXV. SEVERABILITY

142. If a court issues an order that invalidates any provision of this AOC or finds that Respondents have sufficient cause not to comply with one or more provisions of this AOC, Respondents shall remain bound to comply with all provisions of this AOC not invalidated or determined to be subject to a sufficient cause defense by the court's order.

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XXVI. EFFECTIVE DATE

143. This AOC shall be effective when EPA issues and the Respondents receive a notice that the AOC is effective after the close of the public comment period and after EPA considers any comments received as specified in Section XXIV (Public Comment on this AOC), above. Within two (2) business days of the Effective Date of this AOC, EPA will provide Respondents with a fully-executed copy of this AOC and a copy of the EPA's summary in response to comments, if any. The undersigned representative of Respondents certify that he is fully authorized to enter into the terms and conditions of this AOC and to bind the parties he represents to this document. Respondents agree not to contest the validity or terms of this AOC, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms or seek penalties for its violation. Respondents retain their right to assert claims against any third parties with respect to these facilities.

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FOR THE OMAHA TRIBAL UTILITIES PROGRAM, THE OMAHA TRIBAL UTILITIES COMMISSIONS AND THE OMAHA TRIBE OF NEBRASKA:

Agreed this 13th day of JUNE, 2011.

By: Amen Sheridan Secretary - Omaha Tribal Council.
Amen Sheridan
Tribal Chairman
Macy, Nebraska

FOR THE US ENVIRONMENTAL PROTECTION AGENCY:

It is so ORDERED and Agreed this 15th day of June, 2011.

By: Karen A. Flourney
Karen A. Flourney
Acting Director
Water, Wetlands and Pesticides Division

EFFECTIVE DATE: March 7, 2011

It is so ORDERED and Agreed this 20 day of June, 2011.

By: Becky Weber
Becky Weber
Director
Air and Waste Management Division