

### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8

1595 Wynkoop Street Denver, CO 80202-1129 Phone 800-227-8917 www.epa.gov/region08

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Ref: 8ENF-W-SD

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Brush Creek, LLC CT Corporation System, Registered Agent 1908 Thomas Avenue Cheyenne, Wyoming 82001-3527

Re: Administrative Order issued to Brush Creek, LLC regarding Brush Creek Ranch Public Water System, PWS ID # WY5601644, Docket No. **SDWA-08-2020-0017** 

### Dear Sir/Madam:

Enclosed is an Administrative Order (Order) issued by the United States Environmental Protection Agency under the authority of section 1414(g) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(g). Among other things, the Order alleges that Brush Creek, LLC (Company), as owner and/or operator of the Brush Creek Ranch Public Water System (System), has violated the EPA's drinking water regulations at 40 C.F.R. part 141 (Part 141).

The Order is effective upon the date received. Please review the Order and within 10 business days provide the EPA with any pertinent information you believe the EPA may not have (e.g., any monitoring that may have been done but not submitted, any updates to the number of service connections and/or individuals served). If the EPA does not hear from you, the EPA will assume this information is correct. If you comply with the Order, the EPA may close the Order without further action.

Failure to comply with the Order may trigger immediate action by the EPA, including a complaint seeking administrative penalties. The complaint may lead to assessment of civil penalties of up to \$57,317 (as adjusted for inflation) per day of violation, a federal court injunction ordering compliance, or both.

The Small Business Regulatory Enforcement and Fairness Act (SBREFA) may apply to this situation. Enclosed is a small business information sheet, outlining compliance assistance resources available to small businesses and small entities, in case these are relevant. SBREFA does not eliminate the responsibility to comply with the Order or Part 141. Also enclosed are several templates and fact sheets to assist you in addressing the outstanding violations.

Please be aware that you are required to submit to the EPA a plan and schedule for bringing the System into compliance with Part 141. The EPA's approval of your schedule does not substitute for any other approval that may be required by any other governmental entity for modifying the System. The EPA encourages you to contact any such governmental agency or agencies regarding any applicable approval

requirements. In addition, please contact the Wyoming Department of Environmental Quality (WDEQ) to inform them if any changes are made to your water System. The contact person at WDEQ for your region is Dennis Lewis. He can be reached at 307-777-7088 or dennis.lewis@wyo.gov.

You are required to notify the public regarding the System's nitrate maximum contaminant level violation quarterly by completing a public notice (PN) until the EPA notifies you in writing that the violation is resolved. Please submit a copy of the completed PN and certification, as detailed in the Order, to the EPA each quarter.

If you have any questions or to request an informal conference with the EPA, please contact Steven Latino via email at latino.steven@epa.gov, or by phone at (800) 227-8917, extension 6440, or (303) 312-6440. Any questions from your attorney should be directed to Mia Bearley, Senior Assistant Regional Counsel, via email at Bearley.Mia@epa.gov or by phone at (800) 227-8917, extension 6554, or (303) 312-6554.

We urge your prompt attention to this matter.

Sincerely,

Colleen Rathbone, Chief Water Enforcement Branch

Enforcement and Compliance Assurance Division

Colleen Rathbone

#### Enclosures

cc: WY DEO/DOH (via email)

Carbon County Commissioners (johnjohnson@carbonwy.com)

Melissa Haniewicz, EPA Regional Hearing Clerk

Chad Lybrook, Director of Operations (chad.lybrook@brushcreekranch.com)

Travis Walker, Operator (travis.walker@brushcreekranch.com)

Mike Williams, Vice President (mwilliams@brushcreekranch.com)

Kyle Wilson (kyle.wilson@brushcreekranch.com)

Christopher Brown w/ WY DEO, UIC Program (Christopher.Brown@wyo.gov)

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8

IN THE MATTER OF:	2020 JAN 14 PM 1 16
	) Docket No. <b>SDWA-08-2026-6617</b>
Brush Creek, LLC	) A K EGION VIII
Respondent	) ADMINISTRATIVE ORDER FPK
	) )
Brush Creek Ranch Public Water System	)
PWS ID #WY5601644	)

- 1. This Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by section 1414(g) of the Safe Drinking Water Act (Act), 42 U.S.C. § 300g-3(g), as properly delegated to the undersigned official.
- 2. Brush Creek, LLC (Respondent) is a Wyoming Corporation that owns and operates the Brush Creek Ranch Public Water System (System), which provides piped water to the public in Carbon County, Wyoming, for human consumption.
- 3. The System is supplied by a groundwater source accessed via 13 wells that serves nine different distribution systems. Three distribution systems are operated seasonally from May to October. Six distribution systems are operated year-round. One of these six distribution systems includes a sampling location at issue for this Order: the DIST4- Lodge Area location (SP10). The water is filtered prior to SP10.
- 4. Respondent is a "person" as defined in section 1401 of the Act, 42 U.S.C. § 300f(12), and is subject to the Act and 40 C.F.R. part 141 (Part 141). Part 141 is an "applicable requirement" as defined in section 1414(i) of the Act, 42 U.S.C. § 300g-3(i).
- 5. The System has approximately 45 service connections and/or regularly serves an average of approximately 552 individuals daily at least 60 calendar days out of the year. Therefore, the System is a "public water system" as defined in section 1401(4) of the Act, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2. Further, the System is a non-community water system that does not regularly serve at least 25 of the same persons over six months per year and, as such, is also a "transient, non-community water system" as defined in 40 C.F.R. § 141.2.

### **VIOLATIONS**

6. The maximum contaminant level (MCL) for nitrate is 10 milligrams per liter (mg/L), with compliance to be based on the average of an initial and a confirmation sample. 40 C.F.R. §§ 141.23(f)(2), (f)(3) and 141.62(b). The initial sample, taken at SP10 on January 7, 2020, was 11.85 mg/L, and the confirmation sample, taken at the same location on January 9, 2020, was 13.16 mg/L. The average of the initial sample and the confirmation sample is 12.51 mg/L, and therefore, Respondent violated the nitrate MCL.

### ORDER

Respondent is ordered to perform the following actions upon Respondent's receipt of this Order (unless a different deadline is specified below):

- 7. The System shall keep the January 10, 2020, public notification (PN) posted until notified in writing by the EPA. Within 10 calendar days after providing public notice, Respondent shall submit a copy of the public notification, as well as a template-based certification to the EPA. Templates are available at: https://www.epa.gov/region8-waterops/reporting-forms-drinking-water-systems-wyoming-and-tribal-lands-epa-region-8#pn. Thereafter, following any future violation of Part 141, Respondent shall comply with any applicable public notice provisions of 40 C.F.R. Part 141, Subpart Q.
- 8. Respondent shall notify the public quarterly beginning on April 10, 2020, by completing a PN until the nitrate MCL violation is resolved. Respondent shall submit a copy of the completed PN and appropriate certification 10 calendar days after the PN was provided. 40 C.F.R. §§ 141.31(d) and 141.201(c)(3).
- 9. Within 30 calendar days after receipt of this Order, Respondent shall submit to the EPA a proposed schedule (Schedule) and plan to bring the System into compliance with the nitrate maximum contaminant level (MCL) as identified in 40 C.F.R. § 141.62(b). The plan shall include proposed modifications to the System and estimated costs of such modifications. The Schedule shall include a project start date, interim milestone deadlines, and a final compliance deadline (which shall be within six months of the project start date). Respondent shall not begin construction or modifications to the System before the EPA has approved Respondent's Schedule.
  - a. Each milestone in the Schedule shall be incorporated into this Order as an enforceable requirement upon written approval by the EPA.
  - b. Within 90 calendar days after receipt of the EPA's approval of the Schedule, Respondent shall begin to provide the EPA with quarterly reports on the progress made toward bringing the System into compliance with the nitrate MCL. Each quarterly report is due by the 10th calendar day of the month following the relevant calendar quarters (e.g., April 10 for the first calendar quarter).
  - c. Within 10 calendar days after completing all tasks included in the Schedule, Respondent shall notify the EPA of the project's completion.
- 10. The System shall achieve compliance with the nitrate MCL by the final compliance deadline specified in the EPA-approved Schedule. If Respondent's plan fails to achieve permanent compliance, the EPA may order further steps and/or seek penalties for noncompliance.
- 11. For any future violation of Part 141 for which this Order does not specify a reporting period, Respondent shall report the violation to the EPA within 48 hours of the violation occurring, as required by 40 C.F.R. § 141.31(b). However, if Part 141 specifies a different time period for reporting the

Brush Creek, LLC Public Water System Page 3 of 3

particular violation, Respondent shall report the violation to the EPA within that different period.

- 12. If Respondent (a) leases or sells the System to another person or entity, or (b) contracts with or hires any other person or entity to operate the System, Respondent shall, within 10 calendar days, provide a copy of this Order to the lessee, purchaser, or contractor and notify the EPA in writing of the change. In either of these circumstances, Respondent shall remain obligated to comply with this Order.
- 13. Respondent shall send all reporting and notifications required by this Order to the EPA at:

Email: R8DWU@epa.gov, and latino.steven@epa.gov

### **GENERAL PROVISIONS**

- 14. This Order shall be binding on Respondent, its successors and assigns, and any person (*e.g.*, employee, contractor, or other agent) acting in concert with Respondent.
- 15. This Order shall not constitute a waiver, suspension, or modification of any requirement of the Act or Part 141. Issuance of this Order is not an election by the EPA to forgo any civil or criminal action.
- 16. Violation of any part of this Order, the Act, or Part 141 may subject Respondent to a civil administrative penalty of up to \$57,317 (as adjusted for inflation) per day of violation, a court injunction ordering compliance, or both. 42 U.S.C. § 300g-3; 40 C.F.R. part 19; 84 Fed. Reg. at 2059 (February 6, 2019).
- 17. Respondent may seek federal judicial review of this Order pursuant to section 1448(a) of the Act, 42 U.S.C. § 300j-7(a).

Issued: <u>January 14</u>, 20**30**.

Colleen Rathbone, Chief

Water Enforcement Branch

Enforcement and Compliance Assurance Division



### U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

### Office of Small and Disadvantaged Business Utilization (OSDBU)

www.epa.gov/aboutepa/about-officesmall-and-disadvantaged-businessutilization-osdbu

EPA's OSBBU advocates and advances business, regulatory, and environmental compliance concerns of small and socio-economically disadvantaged businesses.

### EPA's Asbestos Small Business Ombudsman (ASBO)

www.epa.gov/resources-smallbusinesses/asbestos-small-businessombudsman or 1-800-368-5888

The EPA ASBO serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

# Small Business Environmental Assistance Program

https://nationalsbeap.org

This program provides a "one-stop shop" for small businesses and assistance providers seeking information on a wide range of environmental topics and statespecific environmental compliance assistance resources.

## EPA's Compliance Assistance Homepage

www.epa.gov/compliance

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

### Compliance Assistance Centers

www.complianceassistance.net

EPA sponsored Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

### Agriculture

www.epa.gov/agriculture

### **Automotive Recycling**

www.ecarcenter.org

# Automotive Service and Repair www.ccar-greenlink.org or 1-888-GRN-LINK

### Chemical Manufacturing

www.chemalliance.org

#### Construction

www.cicacenter.org

#### Education

www.campuserc.org

### **Food Processing**

www.fpeac.org

### Healthcare

www.hercenter.org

### **Local Government**

www.lgean.org

### Surface Finishing

http://www.sterc.org

### **Paints and Coatings**

www.paintcenter.org

### **Printing**

www.pneac.org

#### Ports

www.portcompliance.org

### **Transportation**

www.tercenter.org

# U.S. Border Compliance and Import/Export Issues

www.bordercenter.org

### EPA Hotlines and Clearinghouses www.epa.gov/home/epa-hotlines

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Examples include:

### Clean Air Technology Center (CATC) Info-line

www.epa.gov/catc or 1-919-541-0800

# Superfund, TRI, EPCRA, RMP, and Oil Information Center 1-800-424-9346

### **EPA Imported Vehicles and Engines Public Helpline**

www.epa.gov/otaq/imports or 1-734-214-4100

## National Pesticide Information Center www.npic.orst.edu or 1-800-858-7378

National Response Center Hotline to report oil and hazardous substance spills - http://nrc.uscg.mil or 1-800-424-8802

### Pollution Prevention Information Clearinghouse (PPIC) -

www.epa.gov/p2/pollution-prevention-resources#ppic or 1-202-566-0799

### Safe Drinking Water Hotline -

www.epa.gov/ground-water-and-drinking-water/safe-drinking-water-hotline or 1-800-426-4791

### **Toxic Substances Control Act (TSCA) Hotline**

tsca-hotline@epa.gov or 1-202-554-1404

### U.S. Small Business Resources

#### **Small Entity Compliance Guides**

https://www.epa.gov/reg-flex/small-entity-complianceguides

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

#### Regional Small Business Liaisons

www.epa.gov/resources-small-businesses/epa-regional-office-small-business-liaisons

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

### **State Resource Locators**

www.envcap.org/statetools

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

### State Small Business Environmental Assistance Programs (SBEAPs)

https://nationalsbeap.org/states/list

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

#### EPA's Tribal Portal

www.epa.gov/tribalportal

The Portal helps users locate tribal-related information within EPA and other federal agencies.

**EPA Compliance Incentives** 

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

### **EPA's Small Business Compliance Policy**

www.epa.gov/enforcement/small-businesses-and-enforcement

#### **EPA's Audit Policy**

www.epa.gov/compliance/epas-audit-policy

### Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

### Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.



### EPA Region 8 Drinking Water Unit - Tips for WY and Tribal Systems How to Stay in Compliance with Monitoring Requirements

### **Check your Monitoring Schedule**

- Monitoring and Reporting Requirements (Schedules) are emailed to you in February of each year. This schedule
  notes all contaminants your water system must monitor for, along with the required number of samples,
  sampling point location(s), frequency and timeframe.
- For more detailed info on your Monitoring Schedule, please refer to "What You Need to Do Next with Monitoring Requirements" which can be found at: <a href="https://www.epa.gov/region8-waterops/quick-guide-drinking-water-monitoring-requirements-wyoming-and-tribal-lands-epa">https://www.epa.gov/region8-waterops/quick-guide-drinking-water-monitoring-requirements-wyoming-and-tribal-lands-epa</a>
- Suggestions: Post your Monitoring Schedule on your bulletin board. Note when you must sample on your desk
  or wall calendar. Use a scheduler on your computer (like Outlook) to identify sampling dates and set reminders.
- If you misplace your Monitoring Schedule, a copy can be found on Drinking Water Watch (DWW) or call EPA for a replacement copy.
- Work with your Certified Lab Once you receive your Monitoring Schedule, share it with your lab(s).
- Schedule what bottles you will need for the sampling required for the year and ask for extra Total Coliform Rule (TCR) sample bottles just in case you have a total coliform (TC) positive and need to take repeats or source samples for the Ground Water Rule. It saves time!
- Check to see if your lab will copy EPA when they email you your results. This will save you a step! <u>But</u> <u>ultimately, you are responsible for making sure that EPA receives your sample results.</u>
- Check your email for messages from EPA. Every month EPA sends out a reminder to the administrative contact (and others who request to be opted-in) of what chemical (including radiological) samples remain to be collected for the monitoring period.
- Use DWW to print out your chemical sample collection form for the pending requirements. It will contain information to help your lab understand what to test your samples for.

When to Sample and When to Report Results to EPA - <u>ALWAYS</u> sample as early in the month or monitoring period as you can — on a Monday if possible! This way, if a sample is lost or exceeds a holding time, you will still have time to collect another sample before the weekend or end of the month. This is a super easy way to avoid a violation.

- If the lab is not copying EPA on your sample results, send them in to EPA as soon as you receive them. This way you can avoid getting a violation for Failure to Monitor. *Tip:* TCR results are due by the 10<sup>th</sup> of the month following the month you sampled. For all other samples, send results to EPA as soon as you receive them from the lab.
- Samples results can be emailed to: r8dwu@epa.gov or faxed to: 1-877-876-9101

Where to Sample – Take your samples according to your Monitoring Schedule during the correct time period and at the correct location(s). Some samples must be collected at the entry point while others must be collected in the distribution system. Use your approved sampling/monitoring plans for distribution system samples!

**Surface Water Treatment Rule** – For compliance guidance, please refer to the EPA Region 8 SWTR Fact Sheet located at: <a href="https://www.epa.gov/region8-waterops/swtr-fact-sheet-epa-region-8-may-2018">https://www.epa.gov/region8-waterops/swtr-fact-sheet-epa-region-8-may-2018</a>

#### **Total Coliform Rule**

- Anytime you have a E.coli (EC+) sample you must call EPA IMMEDIATELY at 1-800-227-8917 and ask to speak
  with the RTCR Manager. Then take repeat TCR samples, as well as Ground Water Rule source sample(s) (if
  applicable).
- If you have a TC Positive but an E. Coli Negative, follow the 5 steps outlined in "Follow-up to an Unsafe/Total Coliform Positive Sample Tech Tip", which can be found at: <a href="https://www.epa.gov/region8-waterops/addressing-total-coliform-positive-or-ecoli-positive-sample-results-epa-region-8">https://www.epa.gov/region8-waterops/addressing-total-coliform-positive-or-ecoli-positive-sample-results-epa-region-8</a>
- Avoid sampling at new faucets or newly repaired faucets, leaky faucets, outdoor faucets or those faucets
  connected to softeners, hot water heaters, or pressure tanks; setting down the bottle lid or exposing the inside
  of the lid or bottle to anything other than the sample water (do not rinse or remove powder); and rushing your
  sample collection. The TCR samples must be taken at specified locations throughout the distribution system as
  designated by your sampling plans.

### Disinfection Byproducts Rule (DBPR)

- Sample according to your approved monitoring plan you can also find what month(s) you are required to monitor and locations on your Monitoring Schedule.
- Submit your sample results and your LRAA forms (applicable to quarterly sampling) as a package as soon as you receive the results from your lab.
- Complete and submit the TTHM HAA5 OEL Calculator, which can be found on Drinking Water Online at:
   https://www.epa.gov/region8-waterops/reporting-forms-drinking-water-systems-wyoming-and-tribal-lands-epa-region-8#dbpr2, together with your compliance reports if the TTHM or HAA5 MCL is exceeded during any quarter.

Nitrates – This is an acute contaminant. If your nitrate sample result is over 10 mg/L you must take a confirmation sample within 24 hours and call EPA IMMEDIATELY at 303-312-6791.

#### **Lead and Copper Rule**

- Be sure to check your Monitoring Schedule, as lead and copper samples must be collected during certain months. Also, be sure to follow your lead and copper sample siting plan when collecting samples. You must collect samples from approved locations. If you don't have to sample this year, your Monitoring Schedule will tell you that.
- Always collect a first-draw sample from a tap where the water has been standing in the pipes for at least 6 hours. Avoid sample locations that have been vacant for weeks or months. The goal is to sample at homes and taps in these homes that are routinely used. Always follow your monitoring plan.

Other Rules - Check your sample results as soon as you receive them from the lab. If you see any sample has exceeded an MCL or *E. coli* positive, contact EPA immediately.

**Drinking Water Online -** This is where you can find the link to DWW and general info, including: emergencies, what to do if you lose pressure in your system, sanitary survey info, certified lab info, sampling and treatment techniques, reporting forms and instructions, rules and guidance and much more: Be sure to check this very helpful website: <a href="https://www.epa.gov/region8-waterops">https://www.epa.gov/region8-waterops</a>

**Drinking Water Watch** - This online system allows you view data we maintain about your water system(s). The information includes the following:

- size and type of population served
- contact information
- water system facilities, such as wells, intakes, treatment plant, storage tanks, and distribution
- · treatment used
- · monitoring schedules
- · sampling results reported to EPA
- violations
- plus, even more...

The Public Access Version of DWW (DWWPUB) allows anyone who is interested to view much of the available information for each regulated Public Water System (PWS) in Wyoming and within EPA R8 Tribal Lands, without the need to register or remember passwords. The Public Access Version of DWW can be found at: <a href="https://sdwisr8.epa.gov/Region8DWWPUB/default.jsp">https://sdwisr8.epa.gov/Region8DWWPUB/default.jsp</a>

Emergencies (After Hours) - If you need to report an emergency (flooding or loss of your water source, contamination in your drinking water, loss of pressure in the distribution system, or anything else that could require immediate public notice), after hours call the Region 8 Emergency Hotline at 303-293-1788. Inform the operator that you are a drinking water system in EPA Region 8.