

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2011 AUG 31 PM 3:07

IN THE MATTER OF )  
Bryan Pownell, Owner/Operator )  
Bryan's Place Public Water System )  
Campbell County, WY, )  
Respondent )  
Proceeding under section 1414(g) )  
of the Safe Drinking Water Act, )  
42 U.S.C. § 300g-3(g) )

Docket No. SDWA-08-2011-0025 REGION VIII

**SUPPLEMENTAL DECLARATION OF  
KATHELENE BRAINICH**

This Supplemental Declaration of Kathelene Brainich is filed at the request of the Honorable Elyana R. Sutin, Regional Judicial Officer, in support of Complainant's Motion for Default against Respondent Bryan Pownell dated June 28, 2011, and the relief requested therein. As Ordered by the Judge in the Order to Supplement the Record dated August 3, 2011, this Supplemental Declaration clarifies the violations for which EPA proposed a penalty in the Administrative Complaint filed February 17, 2011. This Supplemental Declaration also clarifies the timeframes and factors included in the penalty calculation for the proposed penalty amount discussed in the Declaration of Kathelene Brainich that accompanied the default motion.

I, Kathelene Brainich, further declare as follows:

1. All of the information and attestations included in the previous Declaration of Kathelene Brainich are true and accurate.
2. The Administrative Order (Order) issued by EPA on May 20, 2010, accurately cites the Respondent for the drinking water violations that prompted issuing the Order including failing to monitor for total coliform for the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2009 and the 1<sup>st</sup> quarter of 2010. The Order also cites the Respondent for failing to monitor for nitrate in 2009, and failing

to report any failure to comply with the National Primary Drinking Water Regulations (drinking water regulations) to EPA within 48 hours (except where a different reporting period is specified in the drinking water regulations).

3. The Respondent pursuant to the Order was required to monitor total coliform quarterly, report analytical results to EPA within ten days of the following month, and report any violations of the total coliform monitoring requirements to EPA within ten days of discovery. The Order also required the Respondent within thirty days of its receipt to monitor nitrate, report timely results to EPA, and notify EPA within 48 hours of any violation of the nitrate monitoring requirements.

4. EPA filed the Complaint based on the Respondent's failure to comply with the Order's requirements, the Act, and the drinking water regulations. Count I alleges that the Respondent failed to monitor for total coliform for the 3<sup>rd</sup> and 4<sup>th</sup> quarter 2010. Count II of the Complaint alleges that the Respondent failed to monitor for nitrate for 2009 within thirty days of receipt of the Order. Count III of the Complaint alleges that the Respondent failed to report to EPA the violations alleged in Counts I and II within the prescribed timeframes. The Complaint proposes a penalty of \$1,200 based on the violations alleged.

1. As a point of clarification, the violations cited in the Complaint and warranting a penalty are violations of the Order's requirements as authorized by section 1414(g)(3)(A) of the Safe Drinking Water Act (Act), 42 U.S.C. § 300g-3(g)(3)(A). Section 1414(g)(3) of the Act, 42 U.S.C. § 300g-3(g)(3), authorizes the assessment of a civil administrative penalty of up to \$27,500 for violation of an order issued under § 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1). This amount has been increased for inflation to \$37,500 per day for violations occurring after January 12, 2009. (40 C.F.R. Part 19.)

5. The violations and their duration are correctly referenced in the Memorandum in Support of Default Motion and Declaration of Kathelene Brainich. Whereas the Declaration of Kathelene Brainich also includes the violations the past violations prompting the Order, these violations are not inconsistent with those alleged in the Complaint; just in addition to, intended as background information and to illustrate the Respondent's history of noncompliance.

6. Based on the above distinction, Complainant respectfully states that the proposed penalty corresponds to the correct violations and applicable penalty criteria.

7. As an additional point of clarification, the Complaint and penalty calculation reference the same number of violations. EPA for pleading purposes simply consolidated the two failure to report violations in Count III of the Complaint, but separated them consistent with the 1994 Public Water System Supervision Program Settlement Policy (Penalty Policy) to calculate the penalty.

8. The five letters used to calculate the penalty in addition to the two Technical Water Enforcement Program Administrative Order Violations letters are violation letters issued by the Drinking Water Program, Office of Partnerships and Regulatory Assistance, for a total of seven. Pursuant to the Penalty Policy, history of noncompliance is calculated by multiplying the number of violation letters and AOVs (in this case a total of 7) by a factor of 1.1, and then multiplying the number of administrative orders by the Penalty Policy factor of 1.2.

9. Because the Penalty Policy is a settlement policy as opposed to pleading, the Technical Water Enforcement Program as standard protocol to create reasonable latitude between the pleading and settlement figure increase the calculated bottom-line by 20% to 25% to formulate a pleading amount. In cases such as this where the gravity amount of the penalty calculation is below \$1,000, the Penalty Policy specifies that "[r]egardless of calculations, as a

matter of policy, absent unusually compelling circumstances, in no instances shall the "bottom-line" settlement penalty be less than \$1,000 in administrative cases. . ." (Penalty Policy at 3)  
EPA arrived at the proposed penalty in this case by increasing the minimum bottom-line of \$1,000 by 20% to arrive at a figure of \$1,200.

I declare the foregoing to be true and correct to the best of my knowledge, information and belief under penalty of perjury.

Date: 8/31/11

By: Kathelene Brainich  
Kathelene Brainich  
U.S. EPA, Region 8,  
Drinking Water Program

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the SUPPLEMENTAL DECLARATION OF KATHELENE BRAINICH were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that true copies of the same were sent as follows:

Via hand delivery to:

The Honorable Elyana R. Sutin  
Regional Judicial Officer  
U.S. EPA Region 8 (8RC)  
1595 Wynkoop Street  
Denver, CO 80202-1159

Via certified mail to:

Mr. Bryan Pownell, Owner/Operator  
Bryan's Place  
1416 Highway 51  
Rozet, WY 82727-8825

8/31/2011  
Date

Judith M. McTernan  
Signature