



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET - SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

SEP 27 2007

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Neil Foster, President
Bristlecone Water Improvement District
P.O. Box 640021
Bryce, UT 84764

Re: In the Matter of Bristlecone Water Improvement
District
Docket No. **SDWA-08-2007-0095**
Second Complaint and Notice of Opportunity for
Hearing

Dear Mr. Foster:

Enclosed please find a Second Complaint and Notice of Opportunity for Hearing (Second Complaint) issued by the U.S. Environmental Protection Agency (EPA) to the Bristlecone Water Improvement District (Bristlecone) pursuant to its authority under section 1414(g)(3) of the Safe Drinking Water Act (Act), as amended, 42 U.S.C § 300g-3(g)(3). EPA is issuing Bristlecone the Second Complaint as owner and operator of the Bristlecone Water Improvement District Public Water System (System) based on the System's continuing violations of the Administrative Order (Docket No. SDWA-08-2004-0022), dated May 7, 2004.

EPA provided Bristlecone with notice of the violations and the opportunity to settle the matter expeditiously in a letter dated June 11, 2007. Although the letter resulted in EPA discussing the alleged violations with System Operator Merrill Burrows, and confirming the System's monitoring and sampling activities directly with the Utah Division of Drinking Water, the violations have not been addressed. This unilateral action is taken in lieu of the parties negotiating a settlement pre-filing to fully resolve the violations.

It is EPA's intent that the System fully return to compliance with the Act following a Second Complaint for penalties. While a second penalty action is unfortunate, it appears necessary to compel compliance. Specifically, EPA alleges in the Second Complaint the following violations: failure to monitor for total coliform, 40 C.F.R. § 141.21; failure to monitor for nitrate, 40 C.F.R. § 141.23(d); failure to notify the public of NPDWR violations,



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40 C.F.R. § 141.201; failure to report analytical results to EPA, 40 C.F.R. § 141.31(a); and failure to report noncompliance with NPDWRs to EPA, 40 C.F.R. § 141.31(b). It is imperative that the System perform public notice for all violations set forth in and occurring after the Administrative Order, and copy both EPA and the State on the sampling results until the Administrative Order is closed. It is only after closure of EPA's Administrative Order that the System can return to its regular practice of submitting monitoring results solely to the State. Although EPA believed the System understood these requirements when the parties settled the violations alleged in the first penalty action, the only result received to date by EPA since filing the Consent Agreement was the 2nd quarter 2007 total coliform sample. The System never has performed public notice.

Despite the issues cited above and the basis for the enclosed action, EPA remains encouraged by the System's recent improvements including, but not limited to, hiring Mr. Burrows as operator in January 2006. Mr. Burrows, however, can only fully assist the System if he is informed of the System's compliance obligations. When EPA spoke with Mr. Burrows in June 2007, he did not have a copy of the Administrative Order, the Consent Agreement, or the Notice of Violation and Opportunity to Confer letter.

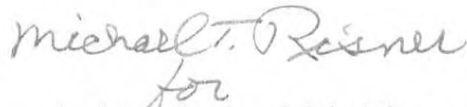
By law, you have the right to request a hearing regarding the matters set forth in the Second Complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If you do not respond to this Complaint within 30 days of receipt, a Default Judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In your Answer you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings. Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You may appear at the conference yourself and/or be represented by your counsel.

EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a Final Order by the Regional Judicial Officer, EPA Region 8. The issuance of a Consent Agreement shall constitute a waiver of your right to request a hearing on any matter to which you have stipulated therein. A request for an informal conference does not extend the 30 day period during which you must submit a written Answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneous with the adjudicatory hearing.

If you have any questions, the most knowledgeable people on my staff regarding this matter are Kathelene Brainish and Amy Swanson. Ms. Brainich is in our Drinking Water Technical Enforcement Program and can be reached at (303) 312-6481. Ms. Swanson is in our Legal Enforcement Program and can be reached at (303) 312-6906.

We urge your prompt attention to this matter.

Sincerely,

Handwritten signature of Michael T. Resner in cursive script.

for
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc: Ken Bousfield, UDEQ
Merrill Burrows, Bristlecone PWS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 SEP 27 PM 1:55

IN THE MATTER OF)
)
Bristlecone Water Improvement)
District)
Panguitch, Utah)
PWS ID # UT4914191/09077)
Respondent.)

Docket No. **SDWA-08-2007-0095**

SECOND COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

Proceeding under Section 1414(g)(3) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(g)(3)

COMPLAINT

1. This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency (EPA) by section 1414(g)(3) of the Safe Drinking Water Act, as amended (Act), 42 U.S.C. § 300g-3(g)(3). The Administrator has properly delegated this authority to the undersigned EPA official. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits (Consolidated Rules} set forth at 40 C.F.R. part 22, a copy of which is enclosed.

GENERAL ALLEGATIONS

2. The following general allegations apply to and are incorporated into each of the counts alleged in this Complaint:

3. Respondent Bristlecone Water Improvement District (Respondent) is an association and therefore a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.

4. Respondent owns and/or operates a system, the Bristlecone Water Improvement District Water System (the System), located in Garfield County, Utah, for the provision to the public of piped water for human consumption.

5. The System has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least sixty (60) days out of the year and is therefore a "public water system" within the meaning of section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "non-community water system" within the meaning of 40 C.F.R. § 141.2.

6. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. part 141.

7. Respondent operates a system that is supplied solely by a ground water source consisting of one well operating year-round, and serves approximately 160 persons through 10 service connections. Three residential and 3 non-residential/commercial connections are used year round. The remaining four non-residential connections are used 3 to 4 months of each year.

8. The Utah Department of Environmental Quality has primary enforcement authority for the Act in the State of Utah (the State). On March 2, 2004, EPA issued a Notice of Violation pursuant to section 1414(a) of the Act, 42 U.S.C. § 300g-3(a), to the State requesting that it enforce the violations at Respondent's System within thirty (30) days. The State elected not to commence an appropriate enforcement action against the System for the violations within the thirty day time frame set forth in section 1414(a) of the Act, 42 U.S.C. § 300g-3(a).

9. On May 7, 2004, EPA issued an Administrative Order (Order) (Docket No. SDWA-08-2004-0022) to the Respondent pursuant to section 1414(g)(1) of the Act, 42 U.S.C. § 300g-3(g)(1), citing violations of the National Primary Drinking Water Regulations (NPDWRs) (40 C.F.R. part 141).

10. The Order required Respondent to achieve compliance with the NPDWRs that Complainant found Respondent violated.

11. On August 5, 2004, and May 11, 2006, EPA sent Respondent "Violation of Administrative Order" letters citing Respondent's failure to comply with the Administrative Order and the NPDWRs.

12. On March 3, 2005, EPA filed a Complaint and Notice of Opportunity for Hearing (First Complaint) (Docket No. SDWA-8-2004-0022) against the Respondent pursuant to section 1414(g)(3) of the Act, 42 U.S.C. § 300g-3(g)(3), citing violations of the Administrative Order and the NPDWRs.

13. On December 1, 2005, Region 8's Regional Judicial Officer issued a Final Order which approved the Consent Agreement resolving the violations alleged in the First Complaint. Respondent paid a penalty per the terms of the Consent Agreement.

14. Pursuant to Section 1414(g)(3) of the Act, 42 U.S.C. § 300g-3(g)(3), and 40 C.F.R. part 19, the Administrator may assess an administrative civil penalty not to exceed \$32,500 for each day of violation occurring after March 15, 2004, whenever the Administrator determines that any person has violated, or fails or refuses to comply with, an order under section

1414(g) of the SDWA, 42 U.S.C. § 300g-3(g). This action addresses violations of the Order and underlying NPDWRs occurring after, and separate from, the violations included in the 1st Complaint.

SPECIFIC ALLEGATIONS

Count I

Failure to Monitor for Total Coliform Bacteria

15. 40 C.F.R. § 141.21 requires public water systems to monitor the water at least once per quarter to determine compliance with the Maximum Contaminant Level (MCL) for total coliform bacteria as stated in 40 C.F.R. § 141.63.

16. The Order required Respondent to comply with the requirement of 40 C.F.R. § 141.21(a) to perform quarterly bacteriological monitoring to comply with the MCL as stated in 40 C.F.R. § 141.63. The Order also required Respondent to report analytical results to EPA and the State within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).

17. Respondent failed to monitor the System's water for contamination by total coliform bacteria during the 2nd and 3rd Quarters (April – June, July – September) of 2005 and 1st Quarter (January – March) of 2006 and failed to report analytical results to EPA within the first 10 days of the end of the monitoring period, in violation of the Order and 40 C.F.R. §§ 141.21(a) and 141.31(a).

Count II
Failure to Monitor for Nitrate

18. 40 C.F.R. § 141.23(d) requires public water systems to monitor annually for nitrate to determine compliance with the nitrate MCL as stated in 40 C.F.R. § 141.62.

19. The Order required Respondent to comply with the nitrate monitoring requirements as stated in 40 C.F.R. § 141.23(d) to determine compliance with the nitrate MCL appearing at 40 C.F.R. § 141.62(b). The Order also required Respondent to report analytical results to EPA and the State within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).

20. Respondent failed to monitor the System's water for nitrate in 2006 and failed to report analytical results to the EPA, in violation of the Order and 40 C.F.R. §§ 141.23(d) and 141.31(a).

Count III
Failure to Notify the Public
of NPDWRs Violations

21. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any NPDWR violations.

22. The Order required Respondent, within thirty days of the effective date, to provide a public notice for the violations specified in the Order and to comply with the public notification requirements at 40 C.F.R. § 141.201 et seq. following any future NPDWR violation and submit a copy of the public notice to EPA and the State within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d).

23. Respondent failed to notice to the public of the violations of the Order as set forth in the Consent Agreement and subsequent violations, and failed to submit a copy of the public notice to EPA, in violation of the Order and 40 C.F.R. §§ 141.201 et seq and 141.31(d).

Count IV
Failure to Report Analytical Results to EPA

24. 40 C.F.R. § 141.31(a) requires suppliers of water to report to the State the results of any test measurement or analysis required by the NPDWRs within the first ten days following the end of the monitoring period.

25. The Order required Respondent to comply with the requirement of 40 C.F.R. § 141.21(a) to perform quarterly bacteriological monitoring to comply with the MCL as stated in 40 C.F.R. § 141.63 and to report analytical results to EPA and the State within the first 10 days of the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).

26. The Order required Respondent to comply with the nitrate monitoring requirements as stated in 40 C.F.R. § 141.23(d) to determine compliance with the nitrate MCL appearing at 40 C.F.R. § 141.62(b) and to report analytical results to EPA and the State within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).

27. Respondent failed to report total coliform analytical results to EPA and the State within the first 10 days of the end of the monitoring period, as required by the Order and 40 C.F.R. § 141.31(a) for the following quarters: the first (January – March) and the fourth (October through December) of 2005; the second, third and fourth (April - December) of 2006; and the first (January – March) of 2007, in violation of the Order and 40 C.F.R. § 141.31(a).

28. Respondent failed to report the 2005 and 2007 nitrate analytical results to EPA within the first 10 days of the end of the monitoring period, as required by the Order and 40 C.F.R. § 141.31(a), in violation of the Order and 40 C.F.R. § 141.31(a).

Count V
Failure to Report Noncompliance
with NPDWRs to EPA

29. 40 C.F.R. § 141.31(b) requires that except where a different period is specified by 40 C.F.R. part 141, public water systems shall report any failure to comply with the NPDWRs (40 C.F.R. part 141) to the State within 48 hours.

30. 40 C.F.R. § 141.21(g)(2) requires public water systems that have failed to comply with a coliform monitoring requirement under 40 C.F.R. § 141.21 to report the monitoring violation to the State within ten days after the system discovers the violation.

31. The Order required Respondent to comply with 40 C.F.R. § 141.31(b) by reporting to EPA and the State any failure to comply with any NPDWR (40 C.F.R. part 141) within 48 hours.

32. The Order required Respondent to comply with 40 C.F.R. § 141.21(g)(2) by reporting to EPA and the State any failure to comply with coliform monitoring requirements within 10 days after the system discovers the violation.

33. Respondent failed to report to EPA and the State instance of noncompliance detailed in Counts I-IV as set forth above, in violation of the Order and 40 C.F.R. §§ 141.21(g)(2) and 141.31(b).

PROPOSED PENALTY

Pursuant to section 1414(g)(3) of the Act, 42 U.S.C. § 300g-3(g)(3), and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violation continues, up to a maximum total of \$32,500 for violation of an order issued under section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1). Complainant proposes the assessment of administrative penalties against the Respondent in the amount of **\$6,050**. Complainant proposes this penalty after considering the applicable statutory penalty factors in section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b). These factors include the seriousness of the violation, the population at risk, and other appropriate factors such as Respondent's degree of willfulness and/or negligence, history of non-compliance, if any, and ability to pay.

TERMS OF PAYMENT FOR QUICK RESOLUTION

If Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within 30 calendar days of receipt of this 2nd Complaint, no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt. Payment shall be made by remitting a cashier's or certified check, including the name and docket number of the case, for the amount, payable to the "**Environmental Protection Agency**" to:

US checks by regular

US postal service mail:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

**Federal Express, Airborne,
Or other commercial carrier:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Wire transfers:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D
68010727 Environmental Protection Agency "

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

A copy of the check or wire transfer shall be simultaneously sent to:

Kathelene Brainich (8ENF-W)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

As provided in the Act, you have the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with sections 22.15 and 22.38 of the Consolidated Rules

within 30 calendar days after receipt of this Complaint. Your Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis for opposing the proposed relief; and (5) specifically request an administrative hearing, if desired. Failure to admit, deny or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The Answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and a copy must be sent to the following attorney:

Amy Swanson, Enforcement Attorney (8ENF-L)
U.S. EPA Region 8, Legal Enforcement Program
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: (303) 312-6906

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 CFR §22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

SETTLEMENT CONFERENCE

The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Amy Swanson at (303) 312-6906. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.**

Date: 9/27/07

By: Michael T. Bisner
for Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice