

FILED

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**U.S. EPA REGION 8
HEARING CLERK**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)
)
Brush Creek LLC)
)
)
Respondent.)
)
Brush Creek Ranch Public Water System)
PWS ID #WY5601644)

Docket No. SDWA-08-2024-0011

ADMINISTRATIVE ORDER

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 limited liability company formed in Illinois that owns and/or 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 12 wells that serve 10 different distribution systems. One of these 10 distribution systems includes the sampling location at issue for this Order: Ranch Manager Distribution (DIST9). DIST9 is supplied by a groundwater source accessed via one well (WL13). The water from WL13 is filtered and runs through a water softener prior to distribution. DIST9 is operated year-round.
4. The System has approximately 50 service connections and regularly serves an average of approximately 717 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.
4. Respondent is a “person” as defined in section 1401(12) 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).

VIOLATIONS

5. 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(i)(3) and 141.62(b). The initial sample, taken at SP09 on January 2, 2024, was 10.46 mg/L nitrate, and the confirmation sample, taken at the same location on January 4, 2024, was 10.61 mg/L nitrate. The average of the initial sample and the confirmation sample is 10.54 mg/L nitrate, 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):

6. Respondent is ordered to comply with all provisions of the Act and Part 141, including but not limited to each requirement cited above.
7. Tier 1 public notice is required when a water system violates the nitrate MCL. 40 C.F.R. § 141.202(a)(2). Respondent must provide the Tier 1 public notice as soon as practical but no later than 24 hours after learning of the violation. 40 C.F.R. § 141.202(b). On January 5, 2024, the EPA provided Respondent with a public notice template, and Respondent used this public notice to notify persons served by the System of the contamination on January 6, 2024. The public notice shall remain posted until notified by the EPA. Within 10 calendar days after providing public notice, Respondent shall submit a copy of the certification and notice (both can be based upon the template found in the link below) to the EPA. 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. Templates and instructions are available at: <https://www.epa.gov/region8-waterops/reporting-forms-drinking-water-systems-wyoming-and-tribal-lands-epa-region-8#pn>.
8. Respondent shall notify the public quarterly beginning on April 1, 2024, by completing a public notice based upon the template provided in the link above, and shall continue to post the public notice until notified by EPA. Respondent shall submit a copy of the template-based completed public notice and certification to the EPA within 10 calendar days after the public notice was issued. 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 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 one year of the date of issuance, found on the last page of this Order). 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 the Respondent's plan fails to achieve permanent compliance, the EPA may order further steps and/or seek penalties for noncompliance.

11. Respondent shall monitor the System's water for nitrate quarterly at every entry point to the distribution system (DIST9), which is representative of each well after treatment. 40 C.F.R. § 141.23(g). Respondent shall report results to the EPA within the first 10 calendar days following the end of the required monitoring period. 40 C.F.R. § 141.31(a).

12. Within 24 hours of notification of nitrate analytical results that indicate the System's water exceeds the MCL of 10 mg/L, Respondent shall collect a nitrate confirmation sample from the System's water. See 40 C.F.R. §§ 141.23(f)(2) and 141.62. Thereafter, Respondent shall comply with all nitrate monitoring requirements at 40 C.F.R. § 141.23. Respondent shall report results to the EPA within the first 10 calendar days following the end of the required monitoring period. 40 C.F.R. § 141.31(a).

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

14. If the population or number of connections served by the System **at least 60 days of the year** falls below 25 individuals or 15 connections, Respondent shall notify the EPA in writing within 10 calendar days by submitting a completed basic information form. The form is available at: <https://www.epa.gov/region8-waterops/reporting-forms-drinking-water-systems-wyoming-and-tribal-lands-epa-region-8#new>.

15. 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.

16. Respondent shall send all reporting and notifications required by this Order to the EPA at:

Email: R8DWU@epa.gov, and
brown.christopher.t@epa.gov

GENERAL PROVISIONS

17. 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.
18. 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.
19. Violation of any part of this Order, the Act, or Part 141 may subject Respondent to a civil penalty of up to \$69,733 (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; 88 Fed. Reg. at 89309 (December 27, 2023).
20. 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: January 9, 2024.

Colleen Rathbone, Chief
Water Enforcement Branch
Enforcement and Compliance Assurance Division