



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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IDAHO PUBLIC
UTILITIES COMMISSION

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C.L. "Butch" Otter, Governor
Curt Fransen, Director

APR 02 2012

**CERTIFIED MAIL:
RETURN RECEIPT REQUESTED**

Tony Bowar
Brian Water Corporation
5120 Overland Road, Suite C, #228
Boise, ID 83705

Subject: Executed Amended Consent Order for Brian Water Corporation, PWS #ID4010017.

Enclosed is a fully executed copy of the Amended Consent Order (ACO) signed by Idaho Department of Environmental Quality's Director, Curt Fransen. The staff at the Boise regional office will be tracking compliance with the deadlines set forth in the CO. Please send required communications to:

Brandon Lowder, Regional Drinking Water Supervisor
Department of Environmental Quality
Boise Regional Office
1445 North Orchard
Boise, ID 83706

Thank you for working with the Department to resolve these issues.

Sincerely,

Barry N. Burnell
Water Quality Division Administrator

BNB:jt

Enclosure

c: Lisa Carlson, Deputy Attorney General
Jerri Henry, Drinking Water Rules and Enforcement Lead
Brandon Lowder, Regional Drinking Water Supervisor
Richard Lee, Boise Regional Office
Trim File

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

In the matter of:) AMENDED CONSENT ORDER
) Idaho Code § 39-108
Brian Water Corporation)

1. Pursuant to the Idaho Environmental Protection and Health Act, Idaho Code §§ 39-101 through 39-130, the Idaho Department of Environmental Quality (Department) enters into this Amended Consent Order with the Brian Water Corporation, (Brian Water), which operates a community public water system (System), PWS# ID4010017, which serves forty-six (46) connections and approximately one hundred forty (140) persons on a daily basis in Ada County, Idaho.

2. The owner of Brian Water entered into a Consent Order with the Department on April 27, 2011 to address compliance with the Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.08. This Amended Consent Order updates and replaces the April 27, 2011 Consent Order and describes 1) the terms and conditions of the Consent Order that have been met; 2) the terms and conditions of the Consent Order that have not been met, and; 3) an agreed upon revised schedule to bring the System into compliance with IDAPA 58.01.08.

3. The owner of Brian Water successfully completed 6.d. of the April 27, 2011 Consent Order. According to the Idaho Bureau of Occupational Licenses, the operator of Brian Water is a properly licensed drinking water operator.

4. The owner of Brian Water has been unable to fully comply with Subsection 6.c. of the Consent Order. Annual drinking water fees are required to be submitted to the Department no later than October 1, each fiscal year, in accordance with IDAPA 58.01.08.010. Annual fees are considered delinquent as of November 1 each fiscal year. According to Department records, annual drinking water fees have been submitted for fiscal years 2009 and 2010 as required. The owner of Brian Water has not submitted the required annual drinking water fees for the 2011 fiscal year, and is therefore delinquent.

The owner of Brian Water has not been able to comply with Subsection 6.e., and subsequent Subsections related to nitrate mitigation within the timelines established therein.

5. Samples taken from the System continue to exceed the nitrate Maximum Contaminant Level (MCL) of 10 milligrams per liter (mg/L), as specified in 40 CFR §141.62, and incorporated by reference in the Idaho Rules for Public Drinking Water Systems (Rules), IDAPA 58.01.08.050. Compliance with the MCL is specified in 40 CFR §141.23(h), and is incorporated by reference in the Rules, IDAPA 58.01.08.100. Brian Water is out of compliance with the nitrate MCL.

6. A second compliance conference was held with Tony Bowar, owner of Brian Water, and the Department on January 17, 2012 to discuss treatment options and entering into an Amended Consent Order.

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7. The owner of Brian Water hereby agrees to perform the following actions in the time periods set forth in order to achieve compliance with Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.08:

a. Public Notice. The owner of Brian Water shall continue to provide quarterly public notices concerning exceedances of the MCL for nitrate and the health effects related to these exceedances, in accordance with IDAPA 58.01.08.150, to each residence on the System by mail or hand delivery. Quarterly public notification shall continue until such time as the Department notifies the owner of Brian Water in writing that quarterly notices are no longer required.

The owner of Brian Water shall provide the Department with proof of each quarterly notification via the Department's supplied notification form and a copy of each quarterly notification within ten (10) days of completion in accordance with IDAPA 58.01.08.150.

b. Sampling. The owner of Brian Water shall continue to submit quarterly water samples from the System for nitrate analysis by a certified laboratory. All sample results shall be submitted to the Department. The owner of Brian Water shall continue quarterly sampling until such time as the Department notifies the owner of Brian Water in writing that quarterly sampling is no longer required. The owner of Brian Water shall continue to submit all drinking water samples for all required parameters according to the schedule that has been established by the Department.

c. Annual Fees. No later than May 1, 2012, Brian Water shall submit the 2011 annual fee of two hundred and thirty dollars (\$230.00) to the Department.

Payment shall be submitted to:

Department of Environmental Quality
Financial Management
1410 North Hilton
Boise, Idaho 83706

d. Nitrate Mitigation. No later than June 1, 2012, the owner of Brian Water shall complete one of the following nitrate mitigation plans within the specified timeframes:

i. Enter into a contract with a professional engineer, licensed in the state of Idaho, to evaluate various treatment options to mitigate nitrate, and provide written documentation to the Department stating as such.

ii. Enter into an agreement with an existing public water system for interconnection and service, with a signed letter of agreement between the

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owner of Brian Water and an existing public water system for interconnection and service in accordance with IDAPA 58.01.08. The letter must also indicate a completion date which is subject to Department approval.

e. If the owner of Brian Water elects to hire an engineer as per Paragraph 7.d.i., then the owner of Brian Water shall complete the following actions within the specified timeframes:

i. No later than June 15, 2012, the owner of Brian Water and the engineer shall schedule and attend a nitrate treatment pre-design meeting with the Department.

ii. No later than December 15, 2012, the owner of Brian Water shall submit to the Department a Preliminary Engineering Report per IDAPA 58.01.08.503, that explains how the System will be brought into compliance with IDAPA 58.01.08. The Preliminary Engineering Report shall delineate the steps that the owner of Brian Water will take to obtain full compliance with IDAPA 58.01.08, including, but not limited to, the following:

a. Identification of available alternatives to meet the nitrate MCL and treatment requirements.

b. A proposed project implementation schedule for the recommendation(s) selected under the provisions of Paragraph 7.e.ii. The schedule shall include: plans and specifications, preparation of bidding documents, supervision of bid openings and bid awards, pre-construction meetings, construction schedules, construction inspection, and record drawings.

iii. The Department shall review, comment on, and/or approve the Preliminary Engineering Report as specified in Paragraph 8 of this Consent Order. The Department will advise the owner of Brian Water and their engineer that a Final Engineering Report may be submitted for approval.

iv. The conditions and completion dates in the Department approval letter for the Final Engineering Report, including the work plan described in Paragraph 7.e.ii of this Consent Order shall be incorporated by reference into this Consent Order and shall be enforceable as provided by applicable law.

v. Within 30 days of completion of the items described in the project implementation schedule of the Final Engineering Report incorporated by reference in Paragraph 7.e.iv, the owner of Brian Water shall submit

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record plans and specifications to the Department in accordance with Idaho Code §39-118 and IDAPA 58.01.08.504.09.

vi. The owner of Brian Water shall ensure project implementation and completion in accordance with the implementation schedule established in the Department-approved Final Engineering Report.

f. If the owner of Brian Water selects the option for interconnection with an existing public water system as per Paragraph 7.d.ii., then the owner of Brian Water shall submit to the Department for approval, no later than December 15, 2012, a letter from that public water system stating that they will be able to provide services to the System and the proposed date of interconnection. The owner of Brian Water shall ensure interconnection and service is completed in accordance with the signed letter of agreement and the Department-approved completion date.

g. No later than August 1, 2013 the Brian Water System shall achieve full compliance with the requirements of the nitrate MCL as specified in 40 CFR §141.23(h), and incorporated by reference in the Rules, IDAPA 58.01.08.050.

h. If any event occurs that causes, or may cause, delay in the achievement of any requirement of this Consent Order, then the owner of Brian Water shall notify the Department in writing within ten (10) days of the date the owner of Brian Water knew, or should have known, of the delay. Any notice under this paragraph shall describe in detail the anticipated length of the delay, all anticipated consequences of the delay, measures taken by the owner of Brian Water to prevent or minimize the delay, and a timetable by which those measures shall be implemented. The owner of Brian Water will utilize all reasonable measures to avoid or minimize any such delay. If the Department determines that the delay or anticipated delay in achieving any requirements of this Consent Order has been or will be caused by circumstances beyond the reasonable control of the owner of Brian Water, then the Department may grant an extension for a period of time agreeable to both the owner of Brian Water and the Department.

8. Department Submittal Review Process. Unless otherwise set forth specifically herein, the following document submittal and review process (Submittal Review Process) shall be followed regarding submittals required by this Consent Order. This process shall be followed until the Department approves the document or the document review time frame has expired.

a. Within forty-two (42) calendar days of receipt of the owner of Brian Water's submittal, the Department shall 1) notify the owner of Brian Water in writing the document is approved; 2) notify the owner of Brian Water in writing of any deficiencies in the document; or, 3) notify the owner of Brian Water of the Department's extension of the Department's review and comment period. If the Department notifies the owner of Brian Water of deficiencies in the document, the

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owner of Brian Water shall submit a revised document to resolve those deficiencies within thirty (30) calendar days of receipt of the Department's notice.

b. The Submittal Review Process shall be repeated until the Department notifies the owner of Brian Water the document is approved. However, the submittal must meet the Department's approval within sixty (60) days from the due date for the first submittal of the document, unless the Department provides the owner of Brian Water with a written extension of the sixty (60) day time frame. The owner of Brian Water's failure to obtain Department approval of a submittal within such time frames shall constitute a violation of this Consent Order.

c. Once the Department approves these documents, they shall be incorporated herein and enforceable as a part of this Consent Order.

9. All communications required of the owner of Brian Water by this Consent Order shall be addressed to:

Brandon Lowder, Drinking Water Compliance Supervisor
Department of Environmental Quality
Boise Regional Office
1445 North Orchard
Boise, ID 83706

10. All notices, reports and submittals required of the Department by this Consent Order shall be addressed to:

Tony Bowar
Brian Water Corporation
5120 Overland Road, Suite C, #228
Boise, ID 83705

11. This Consent Order shall not in any way relieve the owner of Brian Water from any obligation to comply with any provision of the Idaho Rules for Public Drinking Water Systems, or any applicable local, state, or federal laws.

12. The owner of Brian Water recognizes that failure to comply with the terms in this Consent Order may result in district court action seeking specific performance of this Consent Order; assessment of costs and expenses; available penalties under Idaho Code §39-108; restraining orders; injunctions; attorney fees; and other relief available by statute or rule as the court considers to be just and reasonable under the circumstances.

13. This Consent Order shall remain in full force and effect until the Department acknowledges in writing that the Consent Order is terminated and that the owner of Brian Water has fulfilled all requirements of this Consent Order.

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14. This Consent Order shall bind the owner of Brian Water, its successors and assigns, until terminated in writing by the Department.

15. Each undersigned representative to this Consent Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order, and to execute and legally bind such party to this document.

16. The effective date of this Consent Order shall be the date of signature by the Director of the Idaho Department of Environmental Quality.

DATED this 12 day of March, 2012.

By: Tony Bowar
Tony Bowar, Owner
Brian Water Corporation

DATED this 30 day of March, 2012.

By: Jim Fransen
for Jim A. Fransen, Director
Department of Environmental Quality