

ORIGINAL

OPEN MEETING



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MEMORANDUM

Arizona Corporation Commission

DOCKETED

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AZ CORP COMMISSION
DOCKET CONTROL

TO: THE COMMISSION

FROM: Utilities Division

DATE: June 3, 2013

DOCKETED BY *LM*

RE: IN THE MATTER OF COMMISSION UTILITIES DIVISION STAFF'S REQUEST FOR AUTHORIZATION TO IMPLEMENT INTERIM MANAGER FOR GREEN ACRES WATER COMPANY DOCKET NO. W-02271A-13-0158.

On May 30, 2013, Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") became aware that the Green Acres Water Company ("Green Acres" or "Company") had issued a letter to its customers asserting its intention to abandon water service on June 16, 2013. In order to prevent the health and safety risks caused by discontinuing water service in the summer season for the customers that Green Acres serves, Staff is requesting that the Commission authorize Staff on a preliminary basis to place an interim manager in control of the Company.

BACKGROUND

Green Acres is an Arizona public service corporation that provides water utility service in the Yuma area. The Company was certificated to provide water utility service by Decision No. 46192 (June 23, 1975). The Company's Certificate of Convenience and Necessity was revoked by Decision No. 72239 (December 13, 2010) for failure to file numerous utility annual reports.

On May 30, 2013, Staff was contacted by representatives from Senator Don Shooter's office informing Staff that a letter had been distributed by the Company to its customers on May 26. The letter asserts that a recent issuance of an Arizona Department of Environmental Quality ("ADEQ") Notice of Violation ("NOV") has placed the Company in a position where its owners are unwilling to continue providing potable water service and that in the event that a buyer for Green Acres cannot be located, the Company will discontinue providing water utility service on June 16, 2013. See Attachment A, Letter from Todd Brandenberger on behalf of Green Acres Water Company dated May 26, 2013.

ADEQ performed an inspection on December 19, 2012. Following the inspection, ADEQ issued a NOV against Green Acres on May 10, 2013, listing several deficiencies for the Green Acres system. See Attachment B, ADEQ NOV dated May 10, 2013. Among the deficiencies cited by the NOV are that the Company lacks the minimum adequate storage to serve its customers, it lacks a designated certified operator, it failed to obtain an Approval of Construction for portions of its water system, it is not maintaining its facilities by failing to seal its well access ports, absence of meters, poor condition of the well site, leakage preventing a

sanitary seal in the distribution system, security fencing in disrepair and that the Company lacks an emergency operation plan.

Staff has contacted Mr. Todd Brandenberger. Mr. Brandenberger is the current owner/operator of the Company. He informed Staff that he would prefer to work with ADEQ and the Commission to remedy the current situation as opposed to discontinuing water service. However, Mr. Brandenberger indicated that he would be forced to shut the water system down if a proper time table could not be worked out with ADEQ.

Staff would note that water service is a form of utility service that has been acknowledged to be one that is "clothed in the public interest." Indeed, the Commission has rules requiring the continuous provision of water service and requiring Commission authorization prior to a utility discontinuing the provision of water service. See e.g. Arizona Administrative Code Rules R14-2-402(C) and -407(C). Staff believes that the public interest requires appropriate action be taken to ensure the continuous delivery of drinking water service.

Staff anticipates that in the event that the Company does abandon the provision of water utility service the consequences would be severe. The Yuma community that Green Acres serves is in the desert part of Arizona. The summer months are the peak season for water usage and the loss of potable drinking water service during the summer months threatens the public health and safety with the strong potential for irreparable harm if it occurs.

In light of the threatened harm, Staff believes the benefits of maintaining continuous water service strongly outweigh the interests of the Company's ownership in avoiding the imposition of an interim manager. Implementation of an interim manager does not alter the ownership of the utility. Rather it puts in place managers that Staff selects from a list of known persons and companies who possess the requisite skill to competently operate a water utility. Compared with the harm posed by discontinuing drinking water service during the peak season, Staff believes that the balance of interests clearly weighs in favor of implementing an interim manager.

STAFF RECOMMENDATIONS

Due to the imminent health and safety risk posed by a possible discontinuation of potable water service leading into the peak summer months, Staff recommends the Commission grant preliminary relief by authorizing Staff to implement an interim manager to operate Green Acres and preserve the continuous delivery of potable water service, if the system is abandoned by its present owner/operator or for any other reason Staff believes that not appointing an interim manager would jeopardize the health and safety of the customers.

THE COMMISSION

May 31, 2013

Page 3

As facts continue to emerge in this developing matter, Staff will monitor the situation and make the appropriate filings before the Commission in the event that Staff determines that further action or potential enforcement is warranted by the circumstances.



Steven M. Olea
Director
Utilities Division

SMO:CHH:red

Originator: Steven M. Olea

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

IN THE MATTER OF COMMISSION
UTILITIES DIVISION STAFF'S REQUEST
FOR AUTHORIZATION TO IMPLEMENT
INTERIM MANAGER FOR GREEN ACRES
WATER COMPANY.

DOCKET NO. W-02271A-13-0158

DECISION NO. _____

ORDER

Open Meeting
June 11 and 12, 2013
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On May 30, 2013, Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") became aware that the Green Acres Water Company ("Green Acres" or "Company") had issued a letter to its customers asserting its intention to abandon water service on June 16, 2013. In order to prevent the health and safety risks caused by discontinuing water service in the summer season for the customers that Green Acres serves, Staff is requesting that the Commission authorize Staff on a preliminary basis to place an interim manager in control of the Company.

2. Green Acres is an Arizona public service corporation that provides water utility service in the Yuma area. The Company was certificated to provide water utility service by Decision No. 46192 (June 23, 1975). The Company's Certificate of Convenience and Necessity was revoked by Decision No. 72239 (December 13, 2010) for failure to file numerous utility annual reports.

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1 3. On May 30, 2013, Staff was contacted by representatives from Senator Don Shooter's
2 office informing Staff that a letter had been distributed by the Company to its customers on May 26.
3 The letter asserts that a recent issuance of an Arizona Department of Environmental Quality
4 ("ADEQ") Notice of Violation ("NOV") has placed the Company in a position where its owners are
5 unwilling to continue providing potable water service and that in the event that a buyer for Green
6 Acres cannot be located, the Company will discontinue providing water utility service on June 16,
7 2013. See Attachment A, Letter from Todd Brandenberger on behalf of Green Acres Water
8 Company dated May 26, 2013.

9 4. ADEQ performed an inspection on December 19, 2012. Following the inspection,
10 ADEQ issued a NOV against Green Acres on May 10, 2013, listing several deficiencies for the Green
11 Acres system. See Attachment B, ADEQ NOV dated May 10, 2013. Among the deficiencies cited
12 by the NOV are that the Company lacks the minimum adequate storage to serve its customers, it
13 lacks a designated certified operator, it failed to obtain an Approval of Construction for portions of its
14 water system, it is not maintaining its facilities by failing to seal its well access ports, absence of
15 meters, poor condition of the well site, leakage preventing a sanitary seal in the distribution system,
16 security fencing in disrepair and that the Company lacks an emergency operation plan.

17 5. Staff has contacted Mr. Todd Brandenberger. Mr. Brandenberger is the current
18 owner/operator of the Company. He informed Staff that he would prefer to work with ADEQ and the
19 Commission to remedy the current situation as opposed to discontinuing water service. However,
20 Mr. Brandenberger indicated that he would be forced to shut the water system down if a proper time
21 table could not be worked out with ADEQ.

22 6. Staff would note that water service is a form of utility service that has been
23 acknowledged to be one that is "clothed in the public interest." Indeed, the Commission has rules
24 requiring the continuous provision of water service and requiring Commission authorization prior to a
25 utility discontinuing the provision of water service. See e.g. Arizona Administrative Code Rules
26 R14-2-402(C) and -407(C). Staff believes that the public interest requires appropriate action be taken
27 to ensure the continuous delivery of drinking water service.

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IT IS FURTHER ORDERED that this decision shall become effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2013.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

SMO\CHH:red

1 SERVICE LIST FOR: Green Acres Water Company
2 DOCKET NO. W-02271A-13-0158

3 Green Acres Water Company
4 ATTN: Todd Brandenberger
5 4820 W. Sharon Ln.
6 Somerton, AZ 85350

7 Mr. Melvin Swenson
8 Green Acres Water Company
9 2891 Patricia Lane
10 Yuma, Arizona 85364

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DOCKET NO. W-02271A-13-0158

5/26/2013

Green Acres Water Co.
4820 W. Sharon LN.
Somerton, AZ. 85350
928-502-1282

To the attention of our valued customers and friends, I am afraid that this notice is bringing

Bad news to all of you and it has devastated us.

On 5/21/2013 we received a notice of violation from A.D.E.Q. stating many items that they consider to be very bad for you the people, and in as much as all of the items cited require considerable investment

From an apparent supply of money that does not exist we are trying to sell the water Co...

Unfortunately if this does not happen by 6/16/2013 we will be shutting the doors of the company

Forever. I realize that this creates a hardship for all involved so I would like to offer a little explanation.

When we purchased this company we believed it to be a simple water delivery system of Potable water, but then as we discovered A.D.E.Q which is Arizona E.P.A. considers potable water to mean drinking water not just water for bathing, toilets and yards. Anyway this puts the company under a whole new set of rules and regulations, such as cannot change a pipe or modify the system in any way without first having it engineered and obtaining the approval of A.D.E.Q. Next we will need to produce a consumer confidence report for you the consumers so that you will know what everyone upstream from our wells are putting in the ground. I could go on forever but I have the letter from A.D.E.Q. and some copies so if anyone would like a copy, please give me a call and I will be very happy to provide it to you

As I believe that you all would agree that anytime you needed to call me for anything I tried my best to respond immediately.

Thank you very much for your indulgence. And I will be looking forward in hearing from all of you.

Sincerely Todd Brandenberger

cc: Yuma County Health Department

Amanda E. Stone A.D.E.Q. Southern Regional Office

Steven Vevang Manger A.D.E.Q. Water Division

U.S. E.P.A. in Washington

Decision No. _____



Janice K. Brewer
Governor

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov



Henry R. Darwin
Director

CERTIFIED MAIL

7012 2210 0000 3767 1658

Return Receipt Requested

May 2, 2013

Mr. Todd Brandenberger
4820 W. Sharon Lane
Somerton, AZ 85350

Inspection#: 192331

Case ID#: 136206

Place ID #: 15981

Re: Follow-up action resulting from the Compliance Inspection of Green Acres Water Company (AZ0414065) performed on December 19, 2012

Dear Mr. Brandenberger:

This letter constitutes the monthly update on the status of Arizona Department of Environmental Quality ("ADEQ") action resulting from ADEQ's inspection of the above-referenced facility completed on December 19, 2012, as required by A.R.S. § 41-1009(I).

The attached Notice of Violation ("NOV") is an informal compliance assurance tool used by ADEQ to put a responsible party (such as a facility owner or operator) on notice that the Department believes a violation of an environmental requirement has occurred. It describes the facts known to ADEQ at the time of issuance and cites the requirement that ADEQ believes the party has violated.

Although ADEQ has the authority to issue appealable administrative orders compelling compliance, an NOV has no such force or effect. Rather, an NOV provides the responsible party an opportunity to do any of the following before ADEQ takes formal enforcement action: (1) meet with ADEQ and discuss the facts surrounding the violation, (2) demonstrate to ADEQ that no violation has occurred, or (3) document that the violation has been corrected.

ADEQ reserves the right to take a formal enforcement action, such as issuing an administrative order or filing a civil lawsuit, regardless of whether the Department has issued an NOV. Neither ADEQ's issuance of an NOV nor its failure to do so precludes the Department from pursuing these remedies. However, the timeliness of a complete response to this notice will be considered by ADEQ in determining if and how to pursue such remedies.

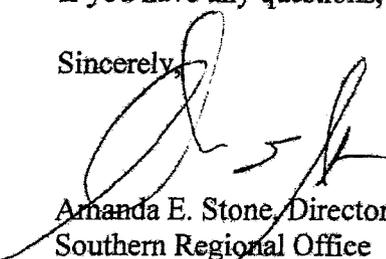
Southern Regional Office
400 West Congress Street • Suite 433 • Tucson, AZ 85701
(520) 628-6733

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Decision No. _____

If you have any questions, please contact Jerry Helton at 520-628-6718 or 1-888-271-9302.

Sincerely,



Amanda E. Stone, Director
Southern Regional Office

cc: Yuma County Health Department
Mindi Cross, Manager, WQCS, WQD, ADEQ
Vivian Adams, DWMPU, DWS, WQD, ADEQ

Decision No. _____



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street Phoenix, Arizona 85007
(602) 771-2300 www.azdeq.gov



Henry R. Darwin
Director

CERTIFIED MAIL
Return Receipt Requested

Case ID #: 136206

May 10, 2013

Todd Brandenberger
4820 W Sharon Ln
Somerton, AZ 85350-7128

Subject: Green Acres Water Company, Place ID 15981
2300 W 32nd St / Yuma, AZ 85365

NOTICE OF VIOLATION

The Arizona Department of Environmental Quality (ADEQ) has reason to believe that Todd Brandenberger as the owner/operator of Green Acres Water Company has violated a requirement of the Arizona Revised Statutes (A.R.S.), a rule within the Arizona Administrative Code (A.A.C.), or an applicable permit/license, administrative order or civil judgment. ADEQ discovered the violations alleged below during an inspection completed on December 19, 2012.

I. LEGAL AUTHORITY and NATURE OF ALLEGED SIGNIFICANT VIOLATION(S)

1. **40 CFR § 141.152(b) / 40 CFR § 141.155(a) / A.A.C. R18-4-117**

Failure of a community water system to mail or otherwise directly deliver a copy of its Consumer Confidence Report (CCR) to each customer by July 1, annually.

Green Acres Water Company did not mail or otherwise directly deliver a copy of its Consumer Confidence Report to each consumer by July 1 for the years 2010 and 2011.

2. **A.A.C. R18-4-204(A)**

Failure of a water supplier for a community water system to develop and keep an emergency operations plan in an easily accessible location.

At the time of inspection there was no Emergency Operations Plan (EOP) available for review. Mr. Brandenberger stated that all documentation prior to July 2011 was destroyed in a fire. He further commented that since he has acquired the system he has not developed an EOP.

3. **A.A.C. R18-5-104(A)(1)**

A facility has an operator in direct responsible charge is certified for the class of the facility and at or above the grade of the facility.

Mr. Sam Day, the designated Operator on file, stated in a phone interview conducted on 1-9-2013 at 10:45 am that he is not the designated operator for Green Acres Water Company.

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400 West Congress Street Suite 433 Tucson, AZ 85701
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Notice of Violation
 Green Acres Water Company
 May 10, 2013
 Page 2

4. **A.A.C. R18-5-503(A)**

Failure to provide the required minimum storage capacity for a community water system or a noncommunity water system that serves a residential population or a school.

Green Acres Water Company serves a residential population of 95. The minimum required storage for this system is 9,500 gallons. No additional storage capabilities were observed within the distribution system during the inspection.

5. **A.A.C. R18-5-507(A)**

Failure to obtain an Approval of Construction from ADEQ prior to operation of an alteration of an existing public water system which affects its treatment, capacity, water quality, flow, distribution, or operational performance resulting in a reasonable probability of material harm to public health.

The inspector noted that modifications and additions to Green Acres Water Company's facilities had been connected to the system and were in use. Additionally, Green Acres Water Company has disconnected their water storage tank. ADEQ has no records of Approvals of Construction (AOC) issued for Green Acres Water Company that would document these modifications and additions.

II. LEGAL AUTHORITY and NATURE OF OTHER ALLEGED VIOLATION(S)

1. **40 CFR § 141.155(c) / A.A.C. R18-4-117**

Failure of a community water system to mail a certification to ADEQ, by October 1 annually, that confirms its Consumer Confidence Report has been distributed to customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to ADEQ.

Green Acres Water Company did not mail a certification to the department by October 1, for the years 2010 and 2011, confirming that its Consumer Confidence Report was distributed to customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to ADEQ.

2. **A.A.C. R18-4-203**

Failure of a water supplier to maintain and keep in proper operating condition all facilities used in production, treatment, and distribution of the water supply

Deficiencies in operation and maintenance were observed by the inspector during the inspection of Green Acres Water Company's facilities. The deficiencies observed include the following:

- Well vents not screened
- No sealed access port to wells
- No metering devices
- Well casing not 12 inches above well slab
- Well slabs not the required 3 feet in any direction from casing and/or cracked through slab
- The security fencing at both facilities need repaired

Notice of Violation
Green Acres Water Company
May 10, 2013
Page 3

Leaks in the distribution system prevent a sanitary seal
Well not atmospherically vented
Pipe and components in use not stamped or with any supporting documentation to confirm ANSI/NSF-61 certification.
Vegetation removal and general cleanup required at both facilities

III. DOCUMENTING COMPLIANCE

1. Within 30 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or submit documentation that that the Consumer Confidence Reports (CCR) for 2010 and 2011 have been generated and distributed to all consumers. Please send the documentation to both the contact listed below (for tracking your response to this Notice) and to the Arizona Department of Environmental Quality, Water Quality Compliance Data Unit, 1110 W. Washington St. Phoenix, Arizona 85007 MC: 5415B-1 (for ADEQ records and entry into our database).
2. Within 60 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or develop an Emergency Operation Plan (EOP) specific to Green Acres Water Company's Community Water System. Submit a copy of the EOP and documentation that the EOP is easily accessible at each facility. Please send the documentation to the contact listed below (for tracking your response to this Notice).
3. Within 10 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or provide documentation that an ADEQ Certified Water Distribution Operator has been employed by Green Acres Water Company that is in direct responsible charge of the Community Water System and is certified for the class of the facility. Please send the documentation to the contact listed below (for tracking your response to this Notice).
4. Within 60 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or submit an application for an Approval to Construct (ATC) to ADEQ for modifications to the water system; specifically the addition of an approved storage medium of sufficient capacity.
5. Within 90 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or submit an application to ADEQ for an Approval to Construct (ATC) for all modifications to the distribution system. Once ADEQ provides an ATC for the modifications Green Acres Water Company needs to provide ADEQ all required documentation and test results along with an application for an Approval of Construction (AOC).
6. Within 30 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or submit certifications to ADEQ that the Consumer Confidence Reports (CCR) for 2010 and 2011 have been generated and distributed to all consumers. Please send the documentation to both the contact listed below (for tracking your response to this Notice) and to the Arizona Department of Environmental Quality, Water Quality

Notice of Violation
Green Acres Water Company
May 10, 2013
Page 4

Compliance Data Unit, 1110 W. Washington St. Phoenix, Arizona 85007 MC: 5415B-1 (for ADEQ records and entry into our database).

7. Within 90 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or submit documentation that the deficiencies observed by the Inspector have been corrected. Please send the documentation to the contact listed below (for tracking your response to this Notice).

The deficiencies observed include the following:

- Well vents not screened
- No sealed access port to wells
- No metering devices
- Well casing not 12 inches above well slab
- Well slabs not the required 3 feet in any direction from casing and/or cracks through slab
- The security fencing at both facilities need repaired
- Leaks in the distribution system prevent a sanitary seal of finished water.
- Well not atmospherically vented
- Pipe and components in use not stamped or documented as ANSI/NSF-61 certified
- Vegetation removal and general cleanup required at both facilities

IV. SUBMITTING COMPLIANCE DOCUMENTATION

Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Arizona Department of Environmental Quality, Attention: Jerry R. Helton, SRO Compliance Programs Unit, 400 W Congress, Ste 433, Tucson, AZ 85701 MC: N/A

V. STATEMENT OF CONSEQUENCES

Significant Violations

1. The time frames within this Notice for achieving and documenting compliance for the violation(s) alleged in Section I of this Notice are firm limits. Failure to achieve or document compliance for the violation(s) alleged in Section I of this Notice within the time frames established in this Notice will result in an administrative compliance order or civil action requiring compliance within a reasonable time frame, substantial civil penalties, and/or the suspension or revocation of an applicable permit/license. ADEQ will agree to extend the time frames for achieving and documenting compliance for the violation(s) alleged in Section I of this Notice only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.

Notice of Violation
Green Acres Water Company
May 10, 2013

Page 5

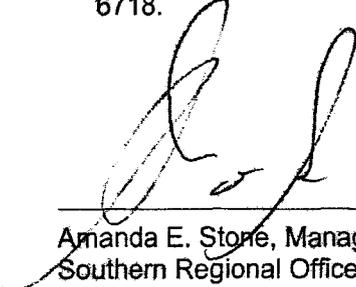
- Achieving compliance does not preclude ADEQ from seeking civil penalties, and/or suspending or revoking an applicable permit/license for the violation(s) alleged in Section I of this Notice as allowed by law.

Other Violations

- ADEQ may take any enforcement action authorized by law for the violation(s) alleged in Section II of this Notice, if the violation(s) are not corrected, or if ADEQ determines that the violation(s) have not been corrected in the time frames within this Notice.

VI. OFFER TO MEET

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact Jerry R. Helton at (520) 628-6718.



Amanda E. Stone, Manager
Southern Regional Office



Jerry R. Helton
SRO Compliance Programs Unit