

1.2 On September 13, 1994, the Department issued a Notice of Imposition of Penalties to Darrel Weden, owner and operator, in the amount of \$1,480 for failure to comply with the Order, as modified. On November 28, 1994, the Department issued a second Notice of Imposition of Penalties to Mr. Weden in the amount of \$2,960, also for failure to comply with the Order, as modified. Mr. Weden requested an adjudicative proceeding.

1.3 A Scheduling Order issued on February 15, 1995, scheduling a prehearing conference on June 14, 1995, and a hearing on August 2, 1995. At Mr. Weden's request, the hearing was continued until September 27, 1995, and again until December 4, 1995.

1.4 A hearing was held on December 4, 1995. John Thielemann, Alice Brooke, and Joanne McVicker testified. Exhibits 1 through 7 were admitted into evidence.

II. FINDINGS OF FACT

2.1 Chuckanut Falls Mobile Home Park public water system (Chuckanut) is located in Whatcom County, Washington, south of Bellingham and north of Lake Samish. The public water system serves 12 mobile homes, located at the mobile home park, and one house. The public water system serves more than 25 individuals.

2.2 Darrel Weden began managing Chuckanut in spring 1992. He purchased Chuckanut from its previous owner, William Carmody, in February 1994.

2.3 John Thielemann, P.E., Regional Engineer for the Northwest Region of the Division of Drinking Water, inspected Chuckanut in October 1993 after receiving complaints from residents of the mobile home park concerned about the reliability of the

water service, the use of the spring source, and fluctuating chlorine levels. The October 1993 inspection revealed a number of deficiencies in the system. Two springs located to the southwest of and some distance from the mobile home park supplied the water for the system. Chuckanut had never received Department approval for these sources. There was no covered collection gallery to prevent surface water from contaminating the spring water in the second spring source.

2.4 The spring sources fed into a concrete reservoir. The cover of the reservoir had openings which could allow entry of contaminants. The reservoir itself had cracks and leaks, which raised questions about its long term integrity. The chlorine disinfection system was inoperable. Chlorination was being performed manually, which is not an acceptable practice except in an emergency. The pipeline from the reservoir went under Chuckanut Creek, and was exposed in open trenches at several points. The water lines leaked in several places in and around the mobile home park.

2.5 These deficiencies were discussed with Mr. Weden. He was informed of the need to improve and obtain Department approval of the system, including source approval, adequate chlorination, and submission of construction documents for approval of the system and proposed improvements to it. After the October 1993 inspection, the complaints from residents continued.

2.6 On December 8, 1993, the Division of Drinking Water entered an Order citing violations of chapter 246-290 WAC and requiring Mr. Carmody and Mr. Weden, as owner and operator of Chuckanut, to take certain action to comply with chapter 246-290 WAC.

2.7 The December 8, 1993 Order identified nine violations of chapter 246-290

WAC: (a) failure to submit project report as required by WAC 246-290-110; (b) failure to obtain approval of source to be used as public water supply as required by WAC 246-290-130; (c) failure to submit construction documents, as required by WAC 246-290-120(2); (d) failure to provide continuous and effective disinfection, as required by WAC 246-290-250(4); (e) failure to monitor residual chlorine levels, as required by WAC 246-290-480(2); (f) failure to provide water at adequate pressure, as required by WAC 246-290-230(4); (g) failure to monitor for complete inorganic chemical and physical standards, as required by WAC 246-290-300(3); (h) failure to monitor volatile organic chemicals, as required by WAC 246-290-300(8); and (i) failure to monitor radionuclides, as required by WAC 246-290-300(7).

2.8 The Order imposed 13 requirements to bring the water system into compliance. The Order required disconnection of the second spring source within ten days. It required a minimum of 30 pounds per square inch pressure throughout the distribution system. Within 20 days, a professional engineer was to be hired and documentation of the work he was to perform was to be submitted. Within 30 days, notice of the issuance of the Order was to be provided to all customers of the water system. Within 90 days, a detailed project report, construction documents, and proof of monitoring for inorganic chemical, physical standards, volatile organic chemicals and radionuclides were to be submitted. Within 120 days, disinfection equipment was to be installed and operating, in accordance with a project report and construction documents approved by the Department. Finally, within 180 days, miscellaneous facilities and improvements outlined in the project report and construction documents were to be installed and operating.

2.9 Following the issuance of the Order, Mr. Weden retained an engineer. The second spring source was disconnected. A chlorination system was installed but only operated for a short period of time. However, no plans or project report for the chlorination equipment were ever submitted, and the Department did not approve the equipment that was installed. Mr. Weden had a well drilled closer to the mobile home park in February 1994. The well was to replace the springs as the water source for the system. According to Mr. Thielemann, the purpose of the new well was initially unclear; it appeared to him that the well was being drilled to serve a residence on another parcel of property. Mr. Weden never received approval of the well as a source of water for the system.

2.10 In April 1994, Mr. Weden retained a new engineer, Steve Goodrich, P.E. Mr. Goodrich submitted an updated scope of work and schedule for the work required by the Order, an outline of work already performed, and a request for extending the dates for compliance set forth in the Order. In a letter dated May 18, 1994, the time to submit a project report and construction documents was extended from 90 days to 150 days from the date of the Order; the time to install improvements identified in the project report was extended from 180 days to 240 days from the date of the Order; and the time for compliance with the monitoring requirements was extended from 90 days to 150 days. The May 18, 1994 letter modifying the Order appears in the record as Exhibit 2.

2.11 Chuckanut residents continued to experience low water pressure and water outages. Alice Brooke and Joanne McVicker, Chuckanut residents, kept records of low water pressure and water outages from November 1993 to January 1994, and

from August 1994 to March 1995. Residents experienced water outages on one or more days during February, April, August, and October 1994. Residents also experienced periods when water pressure was extremely low. The water pressure was at times so low that the toilets would not flush, the residents could not shower, and it could take as long as 40 minutes for a washing machine to fill.

2.12 Although Mr. Weden took some steps to repair the water system, such as replacing lines, he did so without consulting the Department, and did not comply with many of the requirements of the Order.

2.13 On September 13, 1993, the Department issued a Notice of Imposition of Penalties (the First Notice) for failure to comply with the Order, as modified. The First Notice imposed a penalty of \$1,480 for eight violations of the Order: failure to maintain water pressure at 30 pounds per square inch; failure to produce a project report within 150 days; failure to submit construction documents for approval within 150 days; failure to install and operate disinfection equipment according to the project plan submitted to the Department within 120 days; failure to install miscellaneous facilities identified in the project report within 240 days; and failure to complete inorganic chemical, volatile organic chemical, and radionuclide analysis. The record indicates that as of the date of the First Notice, Mr. Weden had in fact failed to comply with those eight provisions of the Order.

2.14 The \$1,480 penalty against Chuckanut was calculated under a Department formula that for each violation considers the public health risk posed by the violation, the record of compliance, and the size of the system. The formula multiplies these three factors together and multiplies the resulting number by \$10 to arrive at the

penalty for each violation. (The Department chose not to use a fourth factor, the number of days the system was in violation. Use of this factor would have increased the penalty.) For the eight violations cited in the First Notice, the Drinking Water Division used a value of 2.0 for both the size of the system and the record of compliance. Values ranging from 3.0 to 6.0 were used for the public health risk posed by the various violations. Multiplying the three factors for each violation, then adding those eight numbers, resulted in a total score of 148. That number multiplied by \$10 resulted in a penalty of \$1,480.

2.15 Based on Mr. Weden's continued failure to comply with the Order, the Department issued another Notice of Imposition of Penalties on November 28, 1994 (the Second Notice). The Second Notice imposed an additional penalty of \$2,960 for the failure to comply with the same eight provisions of the Order cited in the First Notice, as set forth in Finding of Fact 2.14. The penalties in the Second Notice were imposed for Mr. Weden's continuing failure to comply with the Order during the period since the First Order had been issued. The record indicates that as of the date of the Second Notice, Mr. Weden had in fact failed to comply with those eight provisions of the Order.

2.16 The Department used the formula set forth in Finding of Fact 2.15 to calculate the penalties under the Second Notice. The same numerical values were assigned for the public health risk and system size factors for each violation. However, for the record of compliance factor, the value was increased from 2 to 4, to reflect the failure to comply since issuance of the First Notice. Multiplying the three factors for each violation, then adding those eight numbers, resulted in a total score of 296. That

number multiplied by \$10 resulted in a penalty of \$2,960.

2.17 Mr. Weden alleged that the residents took steps to sabotage the water system, and thus caused outages and low pressure. The residents deny taking such action. There is no evidence to establish that any of the deficiencies of the water system identified in the Order or Mr. Weden's failure to comply with the Order were the result of actions taken by Chuckanut residents.

2.18 Mr. Weden also asserts that he did make some improvements to the system. Those improvements he did make were not made pursuant to a project report and construction documents which he was required to submit for approval but did not. For example, although he apparently installed some chlorination equipment that functioned for some period of time, he did not install it based on a project report and construction documents approved by the Department, as required by the Order.

2.19 Finally, Mr. Weden asserts that he did not have the financial resources necessary to comply with the Order. Due to a legal dispute with Mr. Weden, the residents have paid their rent into an escrow account rather than to Mr. Weden since April 1994.

III. CONCLUSIONS OF LAW

3.1 The Department has jurisdiction over Chuckanut, Mr. Weden, and the subject matter of this proceeding. Chuckanut is a "public water system" as defined by RCW 70.119A.020(4) and WAC 246-290-010. Chuckanut is a "Class A community water system", as defined in WAC 246-290-020(3). Mr. Weden was, at all times material to this proceeding, a "purveyor" as defined by RCW 70.119A.020(6) and

WAC 246-290-010.

3.2 The Department may impose penalties for failure to comply with an order of the Department, when the order requires a purveyor to cease violating any regulation pertaining to public water systems or to take specific actions within a specified time to place a public water system in compliance with such regulations.

RCW 70.119A.030(2)(c). The amount of the penalty shall be not less than five hundred dollars nor more than five thousand dollars per violation per day.

RCW 70.119A.040(1). The amount of the fine shall reflect the health significance of the violation and the purveyor's previous record of compliance. Id.

3.3 As set forth in Findings of Fact 2.13, Mr. Weden had failed to comply with the eight provisions of the Order cited in the First Notice, as of the date of that notice.

3.4 As set forth in Findings of Fact 2.15, Mr. Weden had failed to comply with the eight provisions of the Order cited in the Second Notice, as of the date of that notice.

3.5 Mr. Weden asserts that the actions of the residents and his lack of financial resources should excuse his full compliance with the Order. As noted in Finding of Fact 2.17, the residents did not sabotage the water system, or prevent his compliance with the Order. In addition, there is no authority for relieving him of his legal obligations under chapter 70.119A RCW, chapter 246-290 WAC, or the Order on the grounds that he can not afford to fulfill those obligations.

3.6 The calculation of the penalties under both the First and Second Notices, as set forth in Findings of Fact 2.14 and 2.16, was reasonable, consistent with RCW 70.119A.040, and supported by the record in this proceeding.

IV. ORDER

Based on the foregoing Procedural History, Findings of Fact, and Conclusions of Law, the Presiding Officer enters the following:

4.1 The \$1,480 penalty imposed on Darrell Weden by the September 13, 1994 Notice of Imposition of Penalties is AFFIRMED.

4.2 The \$2,960 penalty imposed on Darrell Weden by the November 28, 1994 Notice of Imposition of Penalties is AFFIRMED.

As provided in RCW 34.05.461(3), 34.05.470, and WAC 246-10-704, either party may file a petition for reconsideration. The petition must be filed, within ten (10) days of service of this Order, with the Office of Professional Standards, 2413 Pacific Avenue, P.O. Box 47872, Olympia, Washington 98504-7872. The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration shall not stay the effectiveness of this Order. The petition for reconsideration is deemed to have been denied twenty (20) days after the petition is filed, if the Office of Professional Standards has not acted on the petition or served written notice of the date by which action will be taken on the petition.

“Filing” means actual receipt of the document by the Office of Professional Standards. RCW 34.05.010(6). This Order was “served” upon you on the day it was deposited in the United States mail. RCW 34.05.010(18).

Proceedings for judicial review may be instituted by filing a petition in superior court in accord with the procedures specified in chapter 34.05 RCW, Part V, Judicial

Review and Civil Enforcement. The petition for judicial review must be filed within thirty (30) days after service of this Order, as provided in RCW 34.05.542.

DATED THIS 21st DAY OF FEBRUARY, 1996.

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BRIAN D. PEYTON, Health Law Judge
Presiding Officer

I declare that today I served a copy of this document upon the following parties of record:

DARREL WEDEN, LILIA LOPEZ by mailing a copy properly addressed with postage prepaid.

DATED AT OLYMPIA, WASHINGTON THIS _____ DAY OF FEBRUARY, 1996.

Office of Professional Standards

cc: DAVE CLARK