

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
OFFICE OF PROFESSIONAL STANDARDS**

In the Matter of the Public Water System of:	)	
	)	Docket No. 01-03-C-1041DW
	)	
WESTBOURNE ACRES,	)	FINDINGS OF FACT,
Walla Walla County,	)	CONCLUSIONS OF LAW,
ID #950478,	)	AND FINAL ORDER
	)	
Respondent.	)	
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This matter came before Senior Health Law Judge Eric B. Schmidt, Presiding Officer for the Department of Health, pursuant to RCW 70.119A.040, WAC 246-10-102 and WAC 246-10-107. Westbourne Acres (the Respondent) appeared through its registered agent, James H. Smith, who waived the right to be represented by counsel and waived the right to an adjudicative hearing. The Drinking Water Division of the Department of Health (the Division) was represented by Jonathon Gurish, Assistant Attorney General. Having considered the evidence presented and the pleadings filed in this matter, the Presiding Officer hereby issues the following:

**I. PROCEDURAL HISTORY**

1.1 On May 13, 1999, the Division issued an Order regarding the Westbourne Acres Water System in Walla Walla County (the Order). The Order made findings regarding the failure of the purveyor of the system, Westbourne Acres, whose registered agent is James H. Smith, to comply with State Board of Health regulations pertaining to public water systems. The Order directed the purveyor to notify

consumers of high levels of nitrates, to comply with monitoring requirements, to employ a professional engineer, to submit a project report, to submit a small water system management program, to submit construction documents, to install facilities, and to notify consumers of the imposition of the Order.

1.2 On March 16, 2001, the Division issued a Notice of Imposition of Penalties in Docket No. 01-010 (the Notice) against the Respondent for failure to comply with the Order. The Division imposed a penalty of \$3,330.00, payable within 28 days, unless an application for an adjudicative proceeding was submitted within that time.

1.3 On April 23, 2001, the Respondent filed a Request for Adjudicative Proceeding challenging the Notice. In the Request, the Respondent checked the box stating "I DO waive my right to a formal hearing. I understand that if I waive my right to a formal hearing, the Department may decide this matter solely with reference to information in the Department's possession and to such written statements and supporting documents as I may have submitted." The Respondent submitted letters to the customers of the water system and water sampling reports as supporting documents.

## **II. FINDINGS OF FACT**

2.1 Westbourne Acres Water System is a public water system in Walla Walla County, Washington. There are approximately 33 residences connected to the system.

2.2 Westbourne Acres, a Washington corporation, has been the owner of the Westbourne Acres Water System at all times relevant to this proceeding.

2.3 On May 13, 1999, the Division issued an Order regarding the Westbourne Acres Water System (the Order). The Order made findings regarding the failure of the purveyor of the system, Westbourne Acres, whose registered agent is James H. Smith, to comply with State Board of Health regulations pertaining to public water systems. The Order directed the purveyor to notify consumers of high levels of nitrates, to comply with monitoring requirements, to employ a professional engineer, to submit a project report, to submit a small water system management program, to submit construction documents, to install facilities, and to notify consumers of the imposition of the Order.

2.4 On March 16, 2001, the Division issued a Notice of Imposition of Penalties in Docket No. 01-010 (the Notice) against the Respondent for failure to comply with the Order. The Notice found eight violations of the Order, including failure to notify consumers of the issuance of the Order, failure to notify consumers of high nitrate levels, failure to monitor for organic chemicals, failure to employ a professional engineer, failure to produce a project report, failure to submit a small water system management plan, failure to submit construction documents, and failure to install facilities. The Division imposed a penalty of \$3,330.00, payable within 28 days, unless an application for an adjudicative proceeding was submitted within that time.

2.5 On April 23, 2001, the Respondent filed a Request for Adjudicative Proceeding challenging the Notice.

2.6 The Respondent's response to the Notice is that it "is attempting to comply with regulations but lack of funds slows down expensive tests. This small system does not generate enough money to hire lawyers and engineers and run

constant tests. Any penalty or fine will impose a real hardship on operations.” The Respondent submitted reports from sampling done in June 1999 regarding inorganics and from sampling done in December 2000 regarding inorganics, organics, ethylene dibromide, and DBCP.

2.7 The Presiding Officer finds that while the Respondent has made efforts to correct the problems with the system, those efforts do not excuse it from penalties for the violations of the Order. The requirements imposed in the Order are reasonably related to providing the consumers of the system with safe and reliable drinking water. The Order required compliance with its items by dates specified in the Order. The Respondent did not timely comply with the requirements of the Order for which penalties were imposed. The Respondent has presented no evidence it complied with the orders to notify consumers of the issuance of the Order or of the high nitrate levels by June 23, 1999. The Order required the Respondent to provide proof of monitoring for organics by June 23, 1999. The Respondent did not take samples for such monitoring until December 2000, and did not submit the results to the Division until January 2001. The Respondent has not submitted a small water system management plan. The Respondent has not provided documentation that it has retained a qualified professional engineer, that it has produced a project report, that it has submitted construction documents, or that it has installed facilities. The Presiding Officer finds the Division did not err in imposing penalties for violations of the Order.

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### III. CONCLUSIONS OF LAW

3.1 The Presiding Officer shall issue findings of fact, conclusions of law, and an order resolving the proceeding. WAC 246-10-602, 246-10-605.

3.2 The Westbourne Acres Water System is a "public water system", as defined in RCW 70.119A.020(4) and WAC 246-290-010. (See Finding of Fact 2.1).

3.3 Westbourne Acres is the "purveyor" of the Westbourne Acres Water System, as defined in RCW 70.119A.020(6) and WAC 246-290-010. (See Finding of Fact 2.2).

3.4 The Westbourne Acres Water System is characterized as a "Group A community water system", as defined in WAC 246-290-020(4). (See Finding of Fact 2.2).

3.5 The Department of Health has the authority to adopt regulations relating to the operation of public water systems, pursuant to RCW 43.20.050 and 70.119.050. Regulations so adopted are contained in chapter 246-290 WAC.

3.6 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). 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)(a). The amount of the fine shall reflect the health significance of the violation and the purveyor's previous record of compliance. Id.

3.7 Based on Findings 2.1 through 2.7, the Presiding Officer concludes the Division acted properly in imposing the Order and in finding the violations contained in the Notice. The Division acted within its statutory mandate, and acted consistent with its policy in imposing the penalties. The Presiding Officer concludes the Respondent has not shown the actions taken toward it were inappropriate. The Presiding Officer concludes the violations and penalties contained in the Notice should be affirmed

#### **IV. DECISION AND ORDER**

Based on the above Findings of Fact and Conclusions of Law, the Presiding Officer hereby issues the following ORDER:

4.1 The penalty of \$3,330, imposed in the March 16, 2001, Notice of Imposition of Penalties, is AFFIRMED.

“Filing” means actual receipt of the document by the Adjudicative Clerk Office. 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(19).

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 Adjudicative Clerk Office, 1107 Eastside Street, P O Box 47879, Olympia, WA 98504-7879. 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

