



PUBLIC HEALTH DIVISION
Center for Health Protection, Drinking Water Services

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BEFORE THE STATE OF OREGON
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION
CENTER FOR HEALTH PROTECTION

In the Matter of

The Town of Canyon City Public Water
System, PWS OR4100165

Respondents

CANCELLATION OF BILATERAL
COMPLIANCE AGREEMENT

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

Steve Fischer, Mayor
Town of Canyon City
PO Box 276
Canyon City, OR 97820

The Town of Canyon City has at all times mentioned herein owned and operated, and continues to own and operate the public water system (hereinafter “Water System”) serving the residences and businesses of Canyon City, Oregon. The Water System is a community public water system serving approximately 650 people and is subject to regulation under Oregon Revised Statutes 448.115 to 448.290 and Oregon Administrative Rules 333-061-0005 to 333-061-0272.

The Town of Canyon City (hereinafter “Water Supplier”) is therefore a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020, and as a water supplier, has specific responsibilities that are identified in OAR 333-061-0025.

Pursuant to its authority established in ORS 431A.010 and ORS 448.255, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) has investigated the operation of the Water System.

DWS found, during its investigation, that drinking water provided by the water system is supplied by a source determined to be under the direct influence of surface water but does not undergo adequate treatment.

Water Supplier entered into a bilateral compliance agreement (BCA) with DWS on August 15, 2023. In the BCA, Water Supplier agreed, in part, to set a deadline for submitting complete construction plans to DWS and to abide by that date. Water Supplier submitted a corrective action plan and identified March 20, 2024 as the date by which it would submit construction plans to DWS for review and approval; however, as of the date of this Order, Water Supplier has not submitted construction plans to DWS and has not demonstrated progress toward achieving that goal.

Water Supplier did not request an extension to the agreed upon deadline in the BCA and has not demonstrated it satisfied the terms of the BCA. Water Supplier is therefore unable to assure its water users that the water is sufficiently free from contaminants such that individuals will not be exposed to disease or harmful physiological effects (ORS 448.115(8)). This represents a potential public health hazard.

DWS hereby cancels the BCA fully executed on August 28, 2023 because Water Supplier failed to satisfy the terms agreed upon therein. This Order is being issued to Water Supplier for the specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.290) and rules found during DWS' investigation as described below.

DESCRIPTION OF RULE VIOLATIONS

1. OAR 333-061-0025 requires water suppliers to take all reasonable actions to assure that the water delivered to users does not exceed maximum contaminant levels, that water system facilities are free of public health hazards and that water system operation and maintenance are performed as required by the rules. Water Supplier's failure to comply with the action plan submitted to DWS on January 26, 2024, as agreed upon by Water Supplier on August 15, 2023, or communicate with DWS about its inability to meet the deadline demonstrates Water Supplier has not taken all reasonable actions to ensure that water produced by Byram Gulch Spring receives

appropriate treatment for a groundwater source determined to be under the direct influence of surface water. This constitutes a violation of OAR 333-061-0025.

2. OAR 333-061-0032(1)(c) requires the appropriate water treatment be provided within 18 months of a groundwater source being determined to be under the direct influence of surface water. DWS determined the Byram Gulch Spring serving the Water System, identified as Source-AA, to be groundwater under the direct influence of surface water on December 8, 2021. As of June 8, 2023, Water Supplier had not provided the appropriate water treatment as required, which constitutes a violation of OAR 333-061-0032(1)(c).

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

Water Supplier is required to conduct the remedial actions described below which, if taken within the time specified in this Order, will constitute compliance with the rule(s) violated (ORS 448.255(3)).

1. Water Supplier must submit complete construction plans for treatment facilities that meet all applicable requirements for the treatment of groundwater under the direct influence of surface water supplied by the Byram Gulch Spring at the Water System.
 - The construction plans must be submitted to DWS no later than 60 days after the date of service of this Order.
 - The construction plans must meet all the applicable requirements of OAR 333-061-0060 and have sufficient detail to completely and clearly illustrate what will be constructed.
 - Construction of all improvements or modifications at the Water System must meet the applicable construction standards specified in OAR 333-061-0050.
2. Water Supplier must, after completing Corrective Action No. 1 as specified above, perform and complete all tasks in the action plan submitted to DWS on January 26, 2024 and according to the deadlines in the action plan.
 - Water Supplier must notify DWS in writing within 5 calendar days of completing all the tasks. For this corrective action to be met, any construction or installation that was performed must meet the applicable construction standards in OAR 333-061-0050, as approved by DWS.

3. Water Supplier must submit an annual progress report to DWS no later than January 31 every calendar year that identifies all of Water Supplier's activities during the previous calendar year related to the construction of drinking water facilities at the Water System.
 - Water Supplier must continue to submit the annual progress report to DWS every year until all other corrective actions specified in this order are completed.
4. Water Supplier must conduct tests or measurements according to the applicable requirements of OAR 333-061-0036(5) and report the results to DWS within sixty (60) calendar days of notifying DWS that all the tasks of the action plan have been completed that demonstrate the drinking water produced by the Water System is treated according to OAR 333-061-0032(1) through (5) as applicable.

GENERAL PROVISIONS AND CIVIL PENALTIES

This Order does not constitute a waiver, suspension or modification of the requirements of the Oregon Drinking Water Quality Act (ORS 448.115 to 448.290) and Oregon Administrative Rules OAR 333-061-0005 to 333-061-0272, which remain in full force and effect.

This Order does not relieve Water Supplier of any responsibilities or liabilities established pursuant to any applicable federal, state, or local law or regulation.

Issuance of this Order is not an election by DWS to forgo any civil actions authorized under the Oregon Drinking Water Quality Act.

Failure to comply with any of the requirements in this Order by the specified due date may result in additional enforcement action, which could include assessment of civil penalties in the amount of \$250 per day per violation (OAR 333-061-0090). Civil penalties may be assessed beginning the day following the date of service of this Order and accruing through the date when DWS issues a Notice of Intent to Impose Civil Penalty. For example, if DWS issues a Notice of Intent to Impose Civil Penalty on October 1, 2024 for failure to submit complete construction plans according to this Order, the proposed civil penalty could be as much as \$15,000.

Pursuant to ORS 448.990(2), violations of a rule of the Oregon Health Authority may be a crime in Oregon and punishable as a Class A misdemeanor.

NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedure Act (Oregon Revised Statutes, Chapter 183). If you want a hearing you must file a written request for hearing with DWS within 10 days from the date this Order was mailed. **The request for hearing must be sent to: Samina Panwhar, Manager; Oregon Health Authority, Drinking Water Services; and may be delivered by mail to PO Box 14450, Portland, OR 97293 or by email to samina.t.panwhar@oha.oregon.gov.**

If you request a hearing, DWS will notify you of the time and place at which the hearing will be held. You may enlist representation by legal counsel. Per ORS 413.041, a party that is not a natural person may be represented by an attorney or by any officer or authorized agent or employee of the party. Parties are ordinarily represented by counsel. DWS will be represented by an Assistant Attorney General. Prior to the hearing date, DWS will provide you with information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing. An administrative law judge from the Office of Administrative Hearings will be assigned to preside over the hearing, as required by ORS 183.635.

If you do not make a timely request for a hearing, the Notice of Violation and Administrative Order will become final and effective 11 days after the date this Order was mailed. If the Order becomes final in this manner, you will have the right to appeal the order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 71 days from the day this order was mailed. If you do not file a petition for judicial review within the 71-day time period, you will lose your right to appeal.

If you do not request a hearing and DWS subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

If you withdraw a request for hearing, or notify DWS or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, DWS may issue a final order by default. If the Order becomes final in this manner, you will have the right to appeal the Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was mailed. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

Notice to Active Duty Servicemembers

Active-duty service members have a right to stay proceedings under the federal Service members Civil Relief Act and may contact the Oregon State Bar at 1 (800) 452-8260 or the Oregon Military Department at 503-584-3571 for more information. The internet address for the United States Armed Forces Legal Assistance Locator website is <http://legalassistance.law.af.mil>.

DWS has designated its complete file on the Water System as the record in this case for purposes of proving a prima facie case upon default.

If you need to receive the information in this Order in an alternate format, or if you have any questions about the requirements in this Order, please contact Brad K. Daniels bradley.k.daniels@oha.oregon.gov or 503-735-5438.

Date 7/16/2024



Samina Panwhar, Manager
Drinking Water Services
Oregon Health Authority

cc: Bill Goss, Oregon Health Authority, Drinking Water Services
Tim Madden, Town of Canyon City
Amy Word, Oregon Health Authority, Drinking Water Services

DATE of Service: July 17, 2024



Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail