

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

In the Matter of

Westport Heights Non-Profit Water
System, Inc., PWS OR4100195

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Chris Marten
Westport Heights Non-Profit Water System, Inc.
90809 Alderwood Road
Westport, OR 97016

Westport Heights Non-Profit Water System, Inc. has at all times mentioned herein owned and operated, and continues to own and operate, the public water system (hereinafter "Water System") serving homes along and near Alderwood Road and Trillium Drive in Clatskanie, Oregon. The Water System is a community public water system serving approximately 90 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.

Westport Heights Non-Profit Water System, Inc. (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 Water Supplier failed to correct significant deficiencies following a sanitary survey at the Water System. One significant deficiency constitutes a direct pathway for contamination to enter the water system. 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.

This Notice of Violation and Administrative Order (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 water 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. The lack of a watertight casing and sanitary seal for the Water System's groundwater well could allow contamination to enter the Water System and Water Supplier failed to demonstrate it corrected this deficiency since it was identified on October 25, 2019. This constitutes a violation of OAR 333-061-0025.
2. OAR 333-061-0076(5)(b) requires, in part, water suppliers responsible for water systems using only groundwater sources to have corrected any significant deficiencies identified during a sanitary survey, or to comply with an approved corrective action plan and schedule, within 120 days of written notice of the deficiency. The Clatsop County Health Department conducted a sanitary survey at the Water System on October 25, 2019 and mailed a letter to Chris Marten on October 28, 2019 identifying significant deficiencies discovered during the survey. The letter required that the significant deficiencies, including the lack of a watertight casing and sanitary seal for the Water System's groundwater well, be corrected by March 2, 2020. The lack of a watertight casing and sanitary seal for a groundwater well is considered a direct pathway for contamination to enter a water system and is a priority for correction.

Additionally, DWS mailed a letter to Chris Marten on November 23, 2020 requiring this deficiency be corrected within 30 days of the date of that letter but there was no response. The date for correcting this deficiency has passed without Water Supplier demonstrating it corrected the significant deficiency. This constitutes a violation of OAR 333-061-0076(5)(b).

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 effect compliance with the rule(s) violated (ORS 448.255(3)).

1. Water Supplier must demonstrate to the satisfaction of the Clatsop County Health Department that the lack of a watertight casing and sanitary seal for the Water System's groundwater well was corrected within 30 days of the date of service of this Order.

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 \$50 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 November 10 for failure to correct the significant deficiency according to this Order, the proposed civil penalty could be as much as \$1,500.

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: David Emme, Manager; Oregon Health Authority, Drinking Water Services; PO Box 14450; Portland, OR 97293.**

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 Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information, contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll-free telephone number.

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 at 503-735-5438.

Dated this 1st day of October, 2021.



David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Pete Farrelly, Oregon Health Authority, Drinking Water Services
Meredith Reiley, Clatsop County Environmental Health
Cheryle Warren, Westport Heights Non-Profit Water System, Inc.

DATE of Service: October 5, 2021



Signature

Brad K. Daniels
Printed Name

By certified mail and first-class mail