

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

In the Matter of

London Water Coop, PWS OR4100239

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Terri Finn-Kadrmaz, President
72762 Shoestring Road
Cottage Grove, OR 97424

London Water Coop 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 Joe Geer, London and Shoestring Roads, south of Cottage Grove, Oregon. The Water System is a community public water system serving approximately 60 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.

London Water Coop (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 drawn from Beaver Creek is provided to residents by the Water System after being filtered and disinfected; however, Water Supplier does not utilize a certified water system operator to manage the Water System's water treatment plant. Additionally, water quality exceeded the maximum contaminant level (MCL) for turbidity in filtered water five times in the last 3 years. 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.

Water Supplier entered into a bilateral compliance agreement (BCA) with DWS on September 17, 2019. In the BCA, Water Supplier agreed, in part, to submit an action plan to DWS identifying whether it would continue use of the existing surface water source at the water system or develop a groundwater source, and how and when Water Supplier would employ a certified operator to oversee water treatment processes. Water Supplier submitted an action plan as agreed but failed to provide deadlines as set forth in the BCA and despite several requests from DWS for additional information, Water Supplier has not provided the information necessary for DWS to approve the action plan. Additionally, Water Supplier has not published public notice as agreed upon in the BCA.

DWS hereby cancels the BCA because Water Supplier failed to satisfy the terms of the agreement.

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 333-061-0030(3)(b)(D) specifies, in part, that the MCL for turbidity at water systems where a filtration technology other than conventional or slow sand is used, measured at a point representing filtered water prior to any storage, must be 1 NTU or less in 95 percent of the measurements each month. Turbidity measurements reported for the Water System exceeded 1 NTU more than 5% of the time during the months of

February and March 2019 and most recently in December 2019. This violates the requirement that at least 95 percent of turbidity measurements be 1 NTU or less and constitutes a violation of OAR 333-061-0030(3)(b).

2. OAR 333-061-0225(1) requires, in part, water suppliers to at all times employ, contract with, or otherwise utilize an operator to be in direct responsible charge of every community public water system. Additionally, the operator must be certified at a level equal to or greater than the classification of the water system for which they are responsible. DWS records indicate that an operator certified at level 1 for water distribution and level 2 for water treatment must be in direct responsible charge of the Water System. Water Supplier has not designated a certified operator to be in direct responsible charge of the Water System, nor did it submit an action plan identifying how it would hire, train, or contract with a qualified operator. This constitutes a violation of OAR 333-061-0225.

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 provide to DWS, within 30 days of the date of service of this Order, reasonable deadlines or timeframes for the following actions, identified or suggested in the plan submitted to DWS on November 29, 2019:
 - i. Submitting construction plans to DWS for a new water source or water treatment that will deliver drinking water that meets all water quality standards to the Water System;
 - ii. Beginning construction of water system additions or modifications;
 - iii. Completing construction of water system additions or modifications; and
 - iv. Beginning operation of all new or modified water system facilities.

Water Supplier must also identify any additional actions it intends to complete to ensure the Water System produces safe drinking water and identify a reasonable deadline for completing that action.

For any construction, installation, or modification plans submitted to DWS according to this corrective action, Water Supplier must submit plans that meet the requirements in OAR 333-061-0060 for the construction or modification of any facilities at the

Water System. The plans must be approved by DWS, prior to any construction or installation taking place.

2. Water Supplier must complete all tasks in the action plan by the deadlines identified according to Corrective Action No. 1, above. 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 performed must be approved by DWS and meet the applicable construction standards in OAR 333-061-0050.
3. Water Supplier must designate a certified operator to be in direct responsible charge of the Water System within 30 days of completing construction of water system additions, improvements or modifications according to the plan submitted as specified in Corrective Action No. 1.
4. Water Supplier must conduct all applicable monitoring according to OAR 333-061-0036 for one year, after completing construction of water system additions, improvements or modifications according to the plan submitted as specified in Corrective Action No. 1. Monitoring must demonstrate that the drinking water delivered by the Water System meets all applicable state and federal water quality standards or other drinking water laws and rules. If monitoring indicates concentrations of any contaminant is above the maximum contaminant level as defined in OAR 333-061-0030 or doesn't meet any other water quality standard, DWS will require Water Supplier to take further corrective action.

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 April 5, 2020 for failure to provide deadlines or timeframes for corrective actions 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 971-673-0407.

Dated this 3rd day of March, 2020.


David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Mary Jackson, London Water coop
Jay MacPherson, Oregon Health Authority, Drinking Water Services

DATE of Service: March 4, 2020


Signature

Brad K. Daniels
Printed Name

By certified mail and first-class mail