

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

In the Matter of

City of Huntington Public Water
System, PWS OR4100393

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Wiley Harding, Mayor
PO Box 369
Huntington, OR 97907

The City of Huntington owns and operates the public water system (hereinafter “Water System”) serving the residents and businesses of the City of Huntington in Baker County, Oregon. The Water System is a community public water system serving approximately 450 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 City of Huntington (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 did not consistently report sample results for disinfection byproducts, lead and copper, and nitrate. 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(1) requires water suppliers to routinely collect and submit water samples for laboratory analyses at the frequencies prescribed by OAR 333-061-0036. OAR 333-061-0036 requires, in part, monitoring for disinfection byproducts, lead and copper, and nitrate at public water systems, but Water Supplier did not report sample results to DWS, which constitutes a violation of OAR 333-061-0025(1) if samples were in fact not collected.
2. OAR 333-061-0036(2)(c) requires water suppliers to monitor for nitrate at least once every year at public water systems. Additionally, OAR 333-061-0040(1)(b)(A) requires water suppliers to report monitoring required by OAR 333-061-0036 to DWS within 10 days of the end of the required monitoring period. Water Supplier has not reported nitrate monitoring for the Water System since reporting a sample collected on December 19, 2019. This constitutes a violation of OAR 333-061-0036(2)(a), or a violation of OAR 333-061-0040(1)(b)(A) if monitoring was conducted but not reported.
3. OAR 333-061-0036(4)(c) and (d) require, in part, water suppliers to monitor for disinfection byproducts (haloacetic acids and total trihalomethanes) at community water systems, at the monitoring locations and during the months identified in the monitoring plan for the water system. Samples must be collected at least once every third year at water systems serving less than 500 people and supplied only by groundwater sources. Water Supplier has not reported disinfection byproduct monitoring for the Water System since reporting samples collected on September 25,

2014. This constitutes a violation of OAR 333-061-0036(4)(d), or a violation of OAR 333-061-0040(1)(b)(A) if monitoring was conducted but not reported.

4. OAR 333-061-0036(10) requires, in part, water suppliers to monitor for lead and copper in tap water at least once every three years at community water systems. Water Supplier has not reported lead and copper monitoring for the Water System since reporting samples collected between July 5th and July 6th, 2016. This constitutes a violation of OAR 333-061-0036(10), or a violation of OAR 333-061-0040(1)(b)(A) if monitoring was conducted but not reported.

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 immediately monitor for nitrate at the Water System according to OAR 333-061-0036(2)(c) and report the monitoring results to DWS no later than October 31, 2021.
2. Water Supplier must monitor for haloacetic acids and total trihalomethanes at the Water System, according to all the applicable provisions of OAR 333-061-0036(4)(c) and (d). Monitoring must be conducted during the month of September 2021 and reported to DWS no later than October 31, 2021.
3. Water Supplier must monitor for lead and copper at the Water System, according to all the applicable provisions of OAR 333-061-0036(10)(a) through (d). Monitoring must be conducted no later than September 30, 2021 and reported to DWS no later than October 31, 2021.

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 November 30, 2021 for failure to report any of the monitoring according to this Order, the proposed civil penalty could be as much as \$22,500.

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 Daniels at 503-735-5438.

Dated this 16th day of August, 2021.

A handwritten signature in black ink, appearing to read "David Emme".

David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Bill Goss, Oregon Health Authority, Drinking Water Services
Jennifer Young, City of Huntington

DATE of Service: August 18, 2021

A handwritten signature in black ink, appearing to read "Brad K. Daniels".

Signature

Brad K. Daniels
Printed Name

By certified mail and first-class mail