



PUBLIC HEALTH DIVISION
Center for Health Protection, Drinking Water Services

Tina Kotek, Governor

Oregon
Health
Authority

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

In the Matter of

The City of Monroe, PWS OR4100540

Respondent

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

To: Dan Sheets, Mayor
The City of Monroe
664 Commercial Street
Monroe, OR 97456

Findings of Facts and Conclusions of Law

Pursuant to Oregon Revised Statute (ORS) 448.280, ORS 448.285, and Oregon Administrative Rule (OAR) 333-061-0090, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) intends to impose a civil penalty of \$7,500 against the City of Monroe, Oregon for violations of OAR 333-061-0090.¹

The City of Monroe, Oregon has at all times mentioned herein owned and operated, and continue to own and operate, the public water system serving the residences and businesses of Monroe, Oregon (hereinafter “Water System”), which is a community

¹ This Notice relies on the definitions provided in ORS 448.115 and OAR 333-61-0020, unless the context indicates otherwise.

public water system serving approximately 600 people and subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0272.

The City of Monroe, Oregon (hereinafter “Water Supplier”) is therefore a water supplier as defined in ORS 448.115(12) and OAR 333-061-0020 and has specific responsibilities as defined in OAR 333-061-0025 and OAR 333-061-0042. These responsibilities include taking all reasonable actions to assure water delivered to users does not exceed maximum contaminant levels and that water system facilities are free of public health hazards. OAR 333-061-0025. Maximum containment level (MCL) is defined in OAR 333-061-0020(83) and means the maximum allowable level of a contaminant in the water delivered to users of a public water system. The MCL for total trihalomethanes (TTHM) in drinking water is 0.080 mg/L as specified in OAR 333-061-0030(2)(b) and Table 3 of that rule. TTHM occur in drinking water as a byproduct of drinking water disinfection. OAR 333-061-0043(3)(m). OAR 333-061-0042 requires water suppliers to provide public notice to people served by public water systems when violations or other situations occur.

Due to the failure to comply with the MCL for TTHM, DWS served a Notice of Violation and Administrative Order to Water Supplier regarding the Water System on April 11, 2022 (hereinafter “Order”). The Order required Water Supplier to take several actions, including but not limited to: submit a copy of a feasibility study to DWS; submit a revised action plan to DWS within 90 days of completing the feasibility study; perform and complete the action plan by the deadlines identified in the action plan; after completing the action plan, demonstrate that the TTHM concentrations do not exceed the MCL for at least four consecutive calendar quarters and monitor for TTHM in accordance with OAR 333-061-0036(4)(e); publish public notice within 30 days of the date of service of the Order that informs customers of the TTHM MCL exceedance in accordance with OAR 333-061-0042; and submit a copy of the public notice to DWS within 10 days of distributing public notice. The Order is incorporated by reference.

Water Supplier did not appeal the Order and did not comply with the Order by the deadlines specified therein. Specifically, Water Supplier failed to submit a revised action plan within 90 days of completing the feasibility study, failed to publish a public notice within 30 days from the Order, failed to submit a copy of the public notice to DWS within 10 days of providing the notice to the public, and failed to provide public notice to customers every three months in accordance with the Order. Any one of these failures alone is sufficient to demonstrate a failure to comply with the Order in violation of OAR 333-061-0090(3)(i). Water Supplier also did not contact DWS regarding the Order and has not otherwise taken any apparent action to ensure water system facilities are free

from public health hazards and that TTHM concentrations will be reliably reduced to below the MCL.

Based on the above, DWS intends to issue a final order imposing civil penalties against Water Supplier based on the Water Supplier's failure to comply with the Order issued by DWS. OAR 333-061-0090(3)(i).

CIVIL PENALTY

Pursuant to OAR 333-061-0090, DWS intends to impose a total civil penalty in the amount of \$7,500 based upon the population served by the public water system and each violation of OAR 333-061-0090(3)(i). DWS considered mitigating and aggravating factors as described below in determining the total civil penalty amount.

Each violation is a separate and distinct offense according to OAR 333-061-0090. The per day civil penalty amount for a violation at a public water system serving 600 people is \$250 per day according to OAR 333-061-0090(4). DWS intends to impose a civil penalty of \$250 per day for each day of noncompliance as set out in the civil penalty schedule, for a total of 30 days. The number of days is based on the period of time from April 1, 2023 through April 30, 2023. This period of 30 days is appropriate because the Order directed Water Supplier to submit a revised action plan to DWS within 90 days of completing a feasibility study, which was completed as of December 19, 2022. The action plan must therefore have been submitted to DWS no later than March 19, 2023.

The total proposed civil penalty is \$7,500 [30 x \$250].

If the violation identified in this Notice continues or if Water Supplier violates any other applicable law or rules, it may be subject to additional civil penalties per day per violation.

CIVIL PENALTY FACTORS CONSIDERED

In assessing the civil penalty, DWS considered the factors set out in ORS 448.285(2).

- (a) The past history of the person incurring the penalty in taking all feasible steps or procedures necessary or appropriate to correct the violation:
 - DWS notified Water Supplier in a letter dated October 14, 2019, that sample results exceeded the MCL for TTHM at the Water System. The letter required Water Supplier

to submit a written action plan and issue public notice and both actions were completed prior to the deadlines specified in the letter.

- DWS and Water Supplier executed a bilateral compliance agreement on June 17, 2020 after sample results at the Water System continued to exceed the MCL for TTHM. In the agreement, Water Supplier committed to submitting an action plan describing how it would ensure compliance with the TTHM MCL at the Water System and thereafter executing that plan. Water Supplier submitted an action plan according to the terms of the agreement and executed the plan but the actions were not sufficient to prevent TTHM from continuing to exceed the MCL in drinking water at the Water System.
- DWS issued an Administrative Order on April 11, 2022 ordering Water Supplier to submit a copy of a feasibility study report and a revised action plan identifying how Water Supplier would ensure ongoing compliance with the MCL for both haloacetic acids and TTHM. Water Supplier submitted a copy of the feasibility study report but has not, as of the date of this notice, submitted the revised action plan as required by the Order.
- DWS personnel reminded or encouraged Water Supplier to submit an action plan multiple times following submission of the completed feasibility study report on December 19, 2022. Water Supplier did not submit the action plan in response to any of the reminders.
- DWS issued a letter on April 25, 2023, notifying Water Supplier it had violated the administrative order of April 11, 2022 and warning of possible civil penalties. The letter allowed Water Supplier to immediately submit an action plan and publish public notice as required by the order to avoid being assessed civil penalties. Water Supplier has not responded to this letter and has not completed the actions required therein.
- Although Water Supplier engaged in some mitigation by completing an initial action plan and completing a feasibility study, Water Suppliers failure to submit a revised action plan or to otherwise take further action to address the exceedance leads DWS taking consider the Water Supplier's failure to take feasible steps or actions to correct the violations as an aggravating factor and support imposing the maximum civil penalty in this matter.

- (b) Prior violations:
 - Over the last five years, numerous violations of drinking water regulations occurred at the Water System, some on a repeat basis. These prior violations include:
 - 14 violations of OAR 333-061-0025(1), which requires monitoring according to OAR 333-061-0036. These violations stem from:
 - Six violations of OAR 333-061-0036(4)(e) for failing to report disinfection byproducts monitoring timely for:
 1. October 1 through December 31, 2021 (violation No. 900676978),
 2. July 1 through September 30, 2021 (violation No. 900676969),
 3. April 1 through June 30, 2021 (violation No. 900676958),
 4. January 1 through March 31, 2021 (violation No. 900676955),
 5. July 1 through September 30, 2020 (violation No. 900676942), and
 6. October 1 through December 31, 2018 (violation No. 900676932).
 - Two violations of OAR 333-061-0036(5)(b) for failing to report surface water treatment operations for the months of:
 1. September 2021 (violation No. 900676972), and
 2. March 2021 (violation No. 900676953).
 - One violation of OAR 333-061-0036(10)(c) and (d) for failing to report lead and copper tap water monitoring for July 1 through December 31, 2018 (violation No. 900676930).
 - Five violations of OAR 333-061-0036(10)(f) for failing to report water quality parameters for optimal corrosion control for the months of:
 1. December 2021 (violation No. 900676979),
 2. November 2021 (violation No. 900676974)
 3. September 2021 (violation No. 900676973)
 4. July 2021 (violation No. 900676962), and
 5. March 2021 (violation No. 900676956).
 - Six violations of OAR 333-061-0025(4), which requires notification to water users according to OAR 333-061-0042. These violations stem from:
 - Five violations of OAR 333-061-0042(3)(b) for failing to notify the public about:
 1. A violation of the MCL for haloacetic acids (HAA5) occurring between October 1 and December 31, 2022 (violation No. 900676990),
 2. A violation of the MCL for TTHM occurring between October 1 and December 31, 2021 (violation No. 900676980),
 3. A violation of the MCL for HAA5 occurring between April 1 and June 30, 2021 (violation No. 900676963),

4. A violation of the MCL for TTHM occurring between April 1 and June 30, 2021 (violation No. 900676965),
 5. A violation of the MCL for TTHM occurring between April 1 and June 30, 2020 (violation No. 900676940), and
 6. A violation of the MCL for TTHM occurring between July 1 and September 30, 2019 (violation No. 900676936).
- 19 violations of OAR 333-061-0030(2)(b) for:
 1. Exceeding the HAA5 MCL between October 1 and December 31, 2022 (violation No. 900676988),
 2. Exceeding the HAA5 MCL between July 1 and September 30, 2022 (violation No. 900676987),
 3. Exceeding the TTHM MCL between July 1 and September 30, 2022 (violation No. 900676986),
 4. Exceeding the HAA5 MCL between April 1 and June 30, 2022 (violation No. 900676985),
 5. Exceeding the TTHM MCL between April 1 and June 30, 2022 (violation No. 900676984),
 6. Exceeding the TTHM MCL between January 1 and March 31, 2022 (violation No. 900676982),
 7. Exceeding the TTHM MCL between October 1 and December 31, 2021 (violation No. 900676975),
 8. Exceeding the TTHM MCL between July 1 and September 30, 2021 (violation No. 900676967),
 9. Exceeding the HAA5 MCL between April 1 and June 30, 2021 (violation No. 900676961),
 10. Exceeding the TTHM MCL between April 1 and June 30, 2021 (violation No. 900676960),
 11. Exceeding the HAA5 MCL between January 1 and March 31, 2021 (violation No. 900676948),
 12. Exceeding the TTHM MCL between January 1 and March 31, 2021 (violation No. 900676949),
 13. Exceeding the HAA5 MCL between October 1 and December 31, 2020 (violation No. 900676946),
 14. Exceeding the TTHM MCL between October 1 and December 31, 2020 (violation No. 900676945),
 15. Exceeding the TTHM MCL between July 1 and September 30, 2020 (violation No. 900676943),
 16. Exceeding the TTHM MCL between April 1 and June 30, 2020 (violation No. 900676939),

- 17.Exceeding the TTHM MCL between January 1 and March 31, 2020 (violation No. 900676937),
 - 18.Exceeding the TTHM MCL between October 1 and December 31, 2019 (violation No. 900676935), and
 - 19.Exceeding the TTHM MCL between July 1 and September 30, 2019 (violation No. 900676933).
- One violation of OAR 333-061-0076(5)(a) for failing to correct significant deficiencies identified during a sanitary survey conducted on August 10, 2022.

More information about the violations is included in the Drinking Water Data Online available at <https://yourwater.oregon.gov/inventory.php?pwsno=00540>. A copy of the violation history for Water Supplier is attached and hereby incorporated.

- DWS considered these prior violations as an aggravating factor to support imposing the maximum civil penalty in this matter.
 - (c) Economic and financial conditions of the person incurring the penalty:
- DWS has no information about your economic or financial details, or the economic or financial conditions at the Water System. DWS considered this factor neutral when determining the appropriate civil penalty in this matter.

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). To request a hearing, you must file a written request with DWS within 20 days from the date this notice 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 request a hearing within the 20 days, withdraw the request for hearing, notify DWS or the administrative law judge that you will not appear at a scheduled hearing, or fail to appear at a scheduled hearing, DWS may issue a final order by default imposing a civil penalty. If DWS issues a final order by default, DWS designates its files on this matter as the record for the purpose of proving a *prima facie* case upon default.

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>.

For purposes of ORS 293.229 through 293.233 and ORS 293.250, the civil penalty specified herein will become a liquidated debt if a final order is issued. Pursuant to ORS 293.231 DWS is required to assign liquidated and delinquent civil penalties to the Department of Revenue, as provided in ORS 293.250, not later than 90 days after the final order is issued. Reasonable administrative costs, collection costs, attorney's fees, and all other costs and charges necessary for the collection of any amount not paid when due, including but not limited to collection charges assessed by the Department of Revenue may be added to the amount due of \$7,500.

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

6/23/23

Date



Samina Panwhar, Manager
Drinking Water Services
Oregon Health Authority

cc: Steve Martinenko, City of Monroe
Chuck Scholz, City of Monroe
Shawn Stevenson, Oregon Health Authority, Drinking Water Services

DATE of Service: June 26, 2023



Brad K Daniels

By certified and first class mail