

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

In the Matter of

Robert M. Cook/
Golf Mobile City public water system,
PWS OR4100588

Respondent

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

To: Robert M. Cook
Golf Mobile City
155 Caldwell Blvd.
Nampa, ID 83651

Pursuant to Oregon Revised Statutes (ORS) 448.280, 448.285, and Oregon Administrative Rules (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 \$3,500 against you for violations of OAR 333-061-0025, 333-061-0036(2)(a), 333-061-0036(2)(e), 333-061-0036(3)(a), 333-061-0036(3)(b), 333-061-0036(7), and 333-061-0090(4)(i).

You have at all times mentioned herein owned and operated, and continue to own and operate, the Golf Mobile City (Golf Mobile) water system, which is a community public water system located at 3375 SW 18th Avenue in Ontario, Oregon, serving between 25 and 100 people, and subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0290.

DWS issued a Notice of Violation and Administrative Order (Order) to you on May 27, 2011 for violation of rules specified above. The Order also identified actions to be completed in order to comply with the rules being violated. You did not appeal the Order, did not comply with the Order by the deadlines specified therein, and are now in violation of the Order. The Order is incorporated by reference.

The proposed civil penalty is based on the following violations:

1. OAR 333-061-0025 requires, in part, water suppliers to take all reasonable precautions to assure that the water delivered to water users does not exceed maximum contaminant levels. Water samples collected at the Golf Mobile water system indicate that water provided by the system exceeds the maximum contaminant level (MCL) for both arsenic and nitrate as specified in OAR 333-061-0030(1). You were officially notified on May 27, 2011 that you needed to ensure that the Golf Mobile water system delivers water with levels of arsenic and nitrate below the respective MCL. You have however failed to demonstrate that you have taken all the reasonable actions or precautions to ensure that water does not exceed the MCL by seeking an alternate water source or beginning the process to install a treatment system. This constitutes a violation of OAR 333-061-0025.
2. OAR 333-061-0036(2)(a) requires sampling for inorganic chemicals, but inorganic chemical sampling results have not been submitted for the Golf Mobile water system, which is a violation of the rule.
3. OAR 333-061-0036(2)(e) requires sampling for nitrite, but nitrite sampling results have not been submitted for the Golf Mobile water system, which is a violation of the rule.
4. OAR 333-061-0036(3)(a) requires sampling for synthetic organic chemicals, but synthetic organic chemical sampling results have not been submitted for the Golf Mobile water system, which is a violation of the rule.
5. OAR 333-061-0036(3)(b) requires sampling for volatile organic chemicals, but volatile organic chemical sampling results have not been submitted for the Golf Mobile water system, which is a violation of the rule.
6. OAR 333-061-0036(7) requires sampling for radionuclides, but radionuclide sampling results have not been submitted for the Golf Mobile water system, which is a violation of the rule.

7. OAR 333-061-0090(4)(i) allows for the assessment of civil penalties when a party fails to comply with an order issued by the Administrator. In this case, the Administrator issued an order on May 27, 2011 requiring you to demonstrate that every person served by the Golf Mobile water system receives drinking water that consistently meets all applicable state and federal drinking water laws and rules no later than September 30, 2012. You failed to demonstrate this and therefore did not comply with the order, which is a violation of the rule.

CIVIL PENALTY

Pursuant to OAR 333-061-0090, you will be assessed a civil penalty in the amount of \$3,500 based upon the population served by the public water system, for each distinct violation, and for every day the violation occurred. The total civil penalty of \$3,500 is based on the period of time from October 1, 2012 through October 10, 2012, inclusive. Each day within this ten (10) day period has seven (7) associated violations in the amount of \$50 per violation, for a total penalty of \$3,500.

If the violations identified in this notice, or other violations incorporated by reference, continue, you may be subject to additional civil penalties in the amount of \$50 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:
 - You were formally notified of the violations specified in this notice as described below, but have taken little or no action to correct the violations.
 1. You were notified by letter on April 5, 2010 that corrective action was required due to levels of nitrate over the MCL at the Golf Mobile water system, but you have not taken action since the date of this letter to ensure that water delivered to users does not exceed the MCL. Nitrate in excess of the MCL is considered a situation with the significant potential to have serious adverse effects on human health as the result of short term exposure.

2. You were notified on May 19, 2010, following a sanitary survey at the Golf Mobile water system, that corrective action was required due to levels of nitrate over the MCL at the Golf Mobile water system. You were also notified that sampling as specified in this Notice was required, and while you ensured correction of some deficiencies identified in the survey, you have not taken action to ensure that water delivered to users does not exceed the MCL for nitrate or that the required sampling is completed.
3. DWS issued an Administrative Order on May 27, 2011 ordering you to take corrective action, collect chemical samples, submit sampling results, and to publish public notice. You published public notice as required, completed some of the required sampling, but have not completed the corrective action necessary to ensure that safe drinking water is delivered to people served by the Golf Mobile water system.

Furthermore, you have not complied with the terms of the Order and have not requested an extension to the deadlines identified in the Order. Specifically, you failed to submit construction plans to DWS that identified how the Golf Mobile water system would be made to produce water with levels of arsenic and nitrate below the MCL. You also failed to subsequently complete construction of a project after submitting the plans as specified above.

- (b) Prior violations:
 - You violated OAR 333-061-0025 by failing to take substantive corrective action to ensure drinking water at the Golf Mobile water system has levels of arsenic and nitrate below the MCL. OAR 333-061-0025, in part, requires water suppliers to take all reasonable precautions to assure that the water delivered to water users does not exceed maximum contaminant levels,
 - You violated OAR 333-061-0025(1), more than twenty times since January 1, 2007 by failing to complete the sampling requirements as identified below. OAR 333-061-0025(1) requires water suppliers to collect and submit samples for laboratory analyses at the frequencies prescribed in OAR 333-061-0036.
 - You violated OAR 333-061-0025(2) by failing to take or initiate immediate action to correct the situation when you were notified that arsenic and nitrate sampling results exceeded the MCL at the Golf Mobile water system. OAR 333-061-0025(2) requires water suppliers to take immediate corrective action when the

results of analyses or measurements indicate that maximum contaminant levels have been exceeded.

- The Golf Mobile water system exceeded the MCL for coliform bacteria as specified in OAR 333-061-0030(4) two times between June 1, 2011 and July 31, 2011 when sampling results indicated levels of coliform bacteria were detected in more samples than allowed by the rule.
- You violated OAR 333-061-0036(2)(a) two times between January 1, 2008 and December 31, 2011 by failing to sample for inorganic chemicals as required by the rule.
- You violated OAR 333-061-0036(2)(c) three times between July 1, 2010 and June 30, 2012 by failing to sample for lead and copper as required by the rule.
- You violated OAR 333-061-0036(2)(d) one time between July 1, 2011 and September 30, 2011 by failing to sample for nitrate required by the rule.
- You violated OAR 333-061-0036(2)(e) one time between January 1, 2008 and December 31, 2011 by failing to sample for nitrite as required by the rule.
- You violated OAR 333-061-0036(3)(a) two times between January 1, 2010 and December 31, 2011 by failing to sample for synthetic organic chemicals as required by the rule.
- You violated OAR 333-061-0036(3)(b) two times between January 1, 2010 and December 31, 2011 by failing to sample for volatile organic chemicals as required by the rule.
- You violated OAR 333-061-0036(6) four times between January 1, 2011 and September 30, 2012 by failing to sample for coliform bacteria as required by the rule.
- You violated OAR 333-061-0036(7) nine times between July 1, 2010 and September 30, 2012 by failing to sample for radionuclides as required by the rule.

- (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 Golf Mobile water system.

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 20 days from the date this Notice was mailed. **The request for hearing must be sent to: David E. Leland, Manager; OHA - Drinking Water Services; PO Box 14450; Portland, OR 97293-0450. If a request for hearing is not received with the 20-day period, you will have waived your right to a hearing.**


If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. Any hearing will be held by an administrative law judge from the Office of Administrative Hearings (ORS 183.635).

If you do not request a hearing within 20 days, or if you withdraw a request for hearing, 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 ordering you to pay a civil penalty. If DWS issues a final order by default, DWS designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purposes of proving a prima facie case upon default.

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 \$3,500.

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, OHA-DWS at (971) 673-0405.

Dated this 10th day of November, 2012.


Gail R. Shibley, JD, Administrator
Center for Health Protection

cc: Eric Evans, Malheur Environmental Health Program
Bill Goss, OHA-DWS
Amy Word, OHA-DWS

DATE of Service: November 7, 2012

Brad K Daniels

By certified and first class mail