



Oregon

Theodore R. Kulongoski, Governor

Department of Human Services

Public Health Division

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BEFORE THE STATE OF OREGON
DEPARTMENT OF HUMAN SERVICES
OFFICE OF ENVIRONMENTAL PUBLIC HEALTH

In the Matter of

Boulder Creek Water System/Rose
Lodge Water Co., Inc., PWS
OR4100722

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Bette Carter
Boulder Creek Water System/Rose Lodge Water Co., Inc.
PO Box 123
Otis, OR 97368

Rose Lodge Water Co., Inc. (Rose Lodge) is a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(211) that owns and operates the Boulder Creek Water System (Boulder Creek WS).

Rose Lodge, as a water supplier, has specific responsibilities that are identified in OAR 333-061-0025.

The Boulder Creek WS is a community public water system that serves between 101 and 300 people and is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0295.

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Pursuant to its authority under ORS 448.150, the Oregon Department of Human Services, Public Health Division, Office of Environmental Public Health, Drinking Water Program (Agency) has investigated the operation of the Boulder Creek WS.

The Agency found, during its investigation, that in December 2008 the surface water treatment system operated by Rose Lodge failed, and that water being delivered to customers was not being treated as required by OAR 333-061-0032(4). This represents a potential public health hazard. The Agency also found that Rose Lodge failed to report the results of the turbidity monitoring required by OAR 333-061-0036(5)(b) for the monthly monitoring periods from January through November 2009.

This Notice of Violation and Administrative Order (Order) is being issued to Rose Lodge for specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.285) and rules found during the Agency's investigation.

DESCRIPTION OF RULE VIOLATIONS

- Violation No. 1: On December 15, 2008 the Agency received a copy of a notice sent by Rose Lodge to customers of the Boulder Creek WS stating that the water system's filtration system was being temporarily turned off, and would be restored shortly thereafter. The filtration system was not restored, and the system operated without filtration treatment throughout the calendar year 2009, and continues to operate, without complying with the treatment requirements for water systems utilizing surface water. This violates the treatment technique requirements specified in OAR 333-061-0032.
- Violation No. 2: Rose Lodge failed to report the results of the monitoring required by OAR 333-061-0036(5)(b) to verify that the Boulder Creek WS is in compliance with the maximum contaminant level (MCL) for turbidity as specified in OAR 333-061-0030(3)(b). OAR 333-061-0040(1)(e) requires that the monitoring specified in OAR 333-061-0036(5)(b) be reported within 10 days of the end of the month. Rose Lodge failed to report the results of the required monitoring, which constitutes eleven violations of OAR 333-061-0040(1)(e).
- Violation No. 3: Rose Lodge failed to submit nitrate sampling results for the 2009 annual monitoring period as required by OAR 333-061-0036(2)(d).

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- Violation No. 4: A water treatment plant inspection of the Boulder Creek WS conducted on June 4, 2008 identified that a tracer study or alternative had not been completed to verify disinfectant contact time as required by OAR 333-061-0050(6)(a)(R). Agency records do not indicate that a tracer study has been completed to date.
- Violation No. 5: The December 31, 2009 sanitary survey identified that the disinfection contact chamber at the Boulder Creek WS does not possess an effluent flowmeter or adequate alternative, which is a violation of OAR 333-061-0050(6)(a)(S) and also identified as a significant deficiency in OAR 333-061-0076(4)(d)(A).

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

Rose Lodge is required to conduct the corrective actions described below which, if taken within the time specified in this Order, will effect compliance with the rule(s) allegedly violated (ORS 448.255(3)).

- Compliance Action No. 1: Rose Lodge must submit construction plans indicating how the raw water conveyance and surface water filtration system at the Boulder Creek WS will be improved to produce water meeting all the requirements of OAR 333-061-0032(4) and (5) of sufficient quantity to supply all the customers of the water system. These construction plans must be submitted no later than June 30, 2010.
 - Plans must be prepared by a professional engineer pursuant to OAR 333-061-0060(1)(b), and approved in advance, before installation, by the Agency (OAR 333-061-0060(1)(a)).
 - Plans shall have sufficient detail to completely and clearly illustrate what will be constructed and how the changes to the water system will meet construction standards (OAR 333-0061-0060(1)).
 - Submit any plans and the required plan review fee to: Marsha Fox, DHS – Drinking Water Program, PO Box 14450, Portland, OR 97293-0450. Please contact the Agency for the plan review fee amount, and make the check out to DHS Health Services.
- Compliance Action No. 2: Rose Lodge must complete construction of the improvements to the surface water filtration system no later than October 31, 2010.

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- Compliance Action No. 3: Rose Lodge must complete a tracer study to verify that its disinfection process is meeting water treatment requirements and achieves adequate contact time, as required by OAR 333-061-0050(6)(a)(R), no later than October 31, 2010.
- Compliance Action No. 4: Rose Lodge must install a flowmeter or an adequate alternative on the effluent line from the reservoir used for disinfectant contact time, as required by OAR 333-061-0050(6)(a)(S), no later than October 31, 2010.
- Compliance Action No. 5: Rose Lodge must submit monitoring results demonstrating that all system users receive drinking water that consistently meets all applicable state and federal drinking water laws and rules no later than December 10, 2010.
- Compliance Action No. 6: Rose Lodge must submit nitrate sampling results no later than January 10, 2011.
- Compliance Action No. 7: Rose Lodge must issue a public notice for failure to comply with surface water treatment requirements within 10 days of the date this Order was mailed. The notice will direct water users to boil water before using the water for drinking or cooking purposes, and include the adverse health effects language specified in OAR 333-061-0097(5)(c). The notice must be issued every calendar quarter, until all corrections are made, and all system users receive drinking water that meets all applicable state and federal drinking water laws and rules (OAR 333-061-0025). The notice must be hand delivered to every customer served by the water system, and also posted in conspicuous locations within the area served by the water system (OAR 333-061-0042(3)(a)(D)). A copy of the notice must be submitted to the Agency no later than 10 days after completing the public notification in accordance with OAR 333-061-0040(1)(i).
- Compliance Action No. 8: Rose Lodge must submit to the Agency by May 15, 2010, the identification of the certified operator currently in direct responsible charge of the Boulder Creek WS, as well as a copy of the contract identifying the duties, responsibilities, and expectations of the operator in the performance of their duties as the DRC operator for the system (OAR 333-061-0065 and OAR 333-061-0225).

INTERIM OPERATING REQUIREMENTS

- Rose Lodge must accurately record the turbidity every day, prior to any water storage, and immediately notify the Agency if the recorded turbidity ever exceeds 5 NTU. Rose Lodge must also accurately record the pH, temperature, and chlorine residual every day, after any water storage and prior to the first water user. All of this information must be reported to the Agency within 10 days of the end of every calendar month until completion of all compliance actions identified in 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 448.285 and administrative rules OAR 333-061-0005 to 333-061-0295, which remain in full force and effect.

This Order does not relieve Rose Lodge 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 the Agency to forgo any civil actions authorized under the Oregon Drinking Water Quality Act.

Failure to comply with all requirements in this Order by the specified due dates may result in additional enforcement action, which may include assessment of civil penalties in the amount of \$100 per day per violation (OAR 333-061-0090).

NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedure Act (chapter 183, Oregon Revised Statutes). If you want a hearing you must file a written request for hearing with the Agency within 10 days from the date this notice was mailed. 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. The request for hearing must be sent to: David E. Leland, Manager; DHS - Drinking Water Program; PO Box 14450; Portland, OR 97293.

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If you do not make a timely request for a hearing, the 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 the Agency subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

The Agency has designated the Agency's complete file on Boulder Creek WS 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 letter in an alternate format, or if you have any questions about the requirements in this Order, please contact Brad Daniels at 971-673-0407.

Dated this 14th day of April, 2010.


Gail R. Shibley, JD, Administrator
Office of Environmental Public Health

- cc: Fred Kalish, DHS-DWP
- Kathy Miller, PUC
- Shannon O'Fallon, Oregon Department of Justice
- Harold Rogers, USEPA
- Elizabeth Walter, Boulder Creek WS

DATE of Service: April 14, 2010


Brad K. Daniels

By certified and first class mail.