



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

Bette Carter
Boulder Creek Water System/Rose
Lodge Water Co., Inc., PWS 4100722

Respondent

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

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

Pursuant to Oregon Revised Statutes (ORS) 448.280, 448.285, and Oregon Administrative Rule (OAR) 333-061-0090, the Department of Human Services, Office of Environmental Public Health, Drinking Water Program (Agency) intends to impose a civil penalty of \$2,700 against Rose Lodge Water Co., Inc. (Rose Lodge), for violations of OAR 333-061-0036(5)(b), OAR 333-061-0090(4)(i), and OAR 333-061-0230(2).

Rose Lodge has at all times mentioned herein operated, and continues to operate the Boulder Creek Water System (Boulder Creek), which is a community public water system serving 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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The Agency issued a Notice of Violation and Administrative Order (Order) on April 14, 2010 for violations of some of the rules specified above. The Order identified actions to be completed by Rose Lodge in order to comply with the rules allegedly violated. Rose Lodge did not appeal the Order, and did not comply with the Order by the deadlines specified therein. The Order is incorporated by reference.

The proposed civil penalty is based on the following violations:

1. OAR 333-061-0036(5)(b) requires that water systems utilizing surface water and providing filtration treatment monitor water quality and disinfection effectiveness. Rose Lodge has not submitted monitoring results for Boulder Creek that meet all the requirements specified in the rule, and is therefore in violation of the rule.
2. Rose Lodge failed to comply with the administrative order issued on April 14, 2010 by failing to submit information regarding the certified operator in direct responsible charge of the water system by May 15, 2010. Rose Lodge has also failed to submit water quality data as required by the Order, which constitutes a violation of OAR 333-061-0090(4)(i).
3. Rose Lodge contracts with a certified operator to serve as the operator in direct responsible charge of the water system, but Rose Lodge has not submitted a contract meeting the requirements of OAR 333-061-0230(2) to the Agency, which is a violation of the rule.

CIVIL PENALTY

Pursuant to OAR 333-061-0090, Rose Lodge will be assessed a civil penalty in the amount of \$100 for each distinct violation, for every day the violations occur. The total civil penalty of \$2,700 is based upon the violations listed above as specified below:

- o Rose Lodge was required to monitor surface water quality at Boulder Creek in May 2010 and submit that monitoring data no later than June 10, 2010. Because the monitoring data was not received by the deadline, Rose Lodge will be assessed a penalty for the time period from June 11, 2010 through June 27, 2010, inclusive. Each day within this seventeen day period has one associated violation for a penalty of \$1,700.

- For failure to comply with the administrative order and for failure to submit a contract meeting the specifications of OAR 333-061-0230(2), Rose Lodge will be assessed a penalty for the time period from June 23, 2010 through June 27, 2010, inclusive. Each day within this five day period has two associated violations for a penalty of \$1,000.

If the violations incorporated by reference in this notice continue, Rose Lodge may be subject to subsequent civil penalties of \$100 per day per violation.

CIVIL PENALTY FACTORS CONSIDERED

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

- The past history of the person incurring the penalty in taking all feasible steps or procedures necessary or appropriate to correct the violation:
 - Rose Lodge was notified on September 22, 1999 that it would need to develop a groundwater source, install filtration, or demonstrate that it met the criteria for remaining unfiltered. The water supplier did not complete any actions within the 18 months allowed for compliance with surface water treatment regulations, and an administrative order was issued on April 10, 2001 requiring compliance.
 - Rose Lodge developed groundwater sources to supply Boulder Creek in 2002, and the administrative order issued in 2001 was subsequently closed on April 8, 2003. Beginning in mid 2003, the groundwater wells were not producing sufficient water to supply Boulder Creek and the system began again actively using its original surface water source.
 - The Agency issued a second administrative order on November 24, 2004 requiring the development and construction of a surface water treatment system. Another series of extensions or new administrative orders followed with Rose Lodge eventually installing a surface water treatment system in June 2008, but the required tracer study has never been completed however such that final approval of the system could be granted.
 - In December 2008 the treatment system serving Boulder Creek was shut down by Rose Lodge for repairs, and notification of this event, dated December 10, 2008, was provided to the water users. The Agency never received confirmation that the treatment system was repaired.

- The Agency issued a letter notifying Rose Lodge of multiple monitoring violations for Boulder Creek on August 6, 2009. The letter required samples to be collected and submitted to the Agency for the water system to return to regulatory compliance, but Rose Lodge made no attempt to comply with the requirements of the letter while under the control of Bette Carter.

- Prior violations:

- Boulder Creek incurred one violation for failure to sample annually for nitrate as required by OAR 333-061-0036(2)(d) in 2009.
- Boulder Creek incurred three violations for failure to sample annually for volatile organic chemicals as required by OAR 333-061-0036(3)(b) in 2006, 2008, and 2009.
- Boulder Creek incurred four violations for failure to sample quarterly for disinfection byproducts as required by OAR 333-061-0036(4)(c) in each calendar quarter of 2009.
- Boulder Creek incurred fourteen violations for failure to monitor surface water quality every month as required by OAR 333-061-0036(5)(b) from May 2008 to November 2009.
- Boulder Creek incurred two violations for failure to sample for coliform bacteria as required by OAR 333-061-0036(6)(b) in September and November 2009.

- Economic and financial conditions of the person incurring the penalty:

- The Agency has no information about the economic or financial conditions of Rose Lodge.

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 the Agency within 20 days from the date this Notice was mailed. The request for hearing must be sent to: David E. Leland, Manager; DHS - Drinking Water Program; 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.

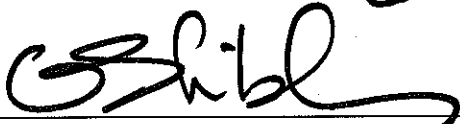
If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. Any hearing will be held by an administrative 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 the Agency or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Agency may issue a final order by default ordering you to pay a civil penalty. If the Agency issues a final order by default, the Agency 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 the Agency 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 \$2,700.

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, DHS-DWP at (971) 673-0407.

Dated this 28th day of June, 2010.



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

cc:

Fred Kalish, DHS-DWP
Kathy Miller, Public Utility Commission
Harold Rogers, USEPA

DATE of Service: June 29, 2010



Brad K Daniels

By certified and first class mail