

BEFORE THE STATE OF OREGON
OREGON HEALTH AUTHORITY
OFFICE OF ENVIRONMENTAL PUBLIC HEALTH

In the Matter of

Brewster Community Homeowners
Association, PWS OR4100762

Respondent

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

To: Brewster Community Homeowners Association
Frank Rupp, President
Regina Harrison, Secretary
PO Box 18162
Salem, OR 97305

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, Office of Environmental Public Health, Drinking Water Program (Program) intends to impose a civil penalty of \$4,500 against Brewster Community Homeowners Association (Brewster CHA) for violations of OAR 333-061-0025(5), OAR 333-061-0036(2)(a), OAR 333-061-0036(2)(c), OAR 333-061-0036(2)(d), OAR 333-061-0036(3)(a), OAR 333-061-0036(3)(b), OAR 333-061-0036(7)(a), OAR 333-061-0090(4)(i), and OAR 333-061-0225.

Brewster CHA has at all times mentioned herein owned and operated and continues to own and operate a community public water system serving between 25 and 100 people along Niles Avenue in Northeast Salem, Oregon and is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0290.

The Program issued a Notice of Violation and Administrative Order (Order) on April 12, 2011 for violation of rules specified above. The Order identified actions to be completed by Brewster CHA in order to comply with the rules allegedly violated. Brewster CHA 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 333-061-0025(5) requires water suppliers to notify customers served by a water system when reporting requirements are not being met, but Brewster CHA failed to either publish a public notice as specified in OAR 333-061-0042 or a consumer confidence report as specified in OAR 333-061-0043 following the failure to report chemical sampling results by January 10, 2008.
2. OAR 333-061-0036(2)(a) requires sampling for inorganic chemicals every three-years, but inorganic chemical sampling results have not been submitted by Brewster CHA since June 26, 2000.
3. OAR 333-061-0036(2)(c) requires sampling for lead and copper, and Brewster CHA has been required to sample every six-months as prescribed by the rule, but lead and copper sampling results have not been submitted by Brewster CHA since November 19, 1996.
4. OAR 333-061-0036(2)(d) requires sampling for nitrate every year, but nitrate sampling results were not submitted by Brewster CHA for the 2010 monitoring period.
5. OAR 333-061-0036(3)(a) requires sampling for synthetic organic chemicals every three-years, but samples have not been submitted by Brewster CHA since June 26, 2000.
6. OAR 333-061-0036(3)(b) requires sampling for volatile organic chemicals every three-years, but samples have not been submitted by Brewster CHA since June 26, 2000.
7. OAR 333-061-0036(7)(a) requires sampling for radionuclides, and initial sampling should have been completed by December 31, 2007 as prescribed by the rule, but samples have not been submitted by Brewster CHA.

8. OAR 333-061-0090(4)(i) prescribes 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 to Brewster CHA on April 12, 2011 requiring the submission of public notice to the Program no later than May 3, 2011, but Brewster CHA failed to submit the required public notice and thereby did not comply with the order.
9. OAR 333-061-0225 requires water suppliers to at all times to employ, contract with, or otherwise utilize an operator to be in direct responsible charge of the water system, but Brewster CHA has not designated a person to serve in this capacity, 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 \$50 for each distinct violation and for every day the violation occurred based upon the population served by the public water system. The total civil penalty of \$4,500 is based on the period of time from June 1 through June 10, inclusive. Each day within this ten day period has nine associated violations for a total penalty of \$450 per day.

If the violations identified in this notice, or other violations incorporated by reference, continue, you may be subject to additional civil penalties of \$50 per day per violation.

CIVIL PENALTY FACTORS CONSIDERED

In assessing the civil penalty, the Program 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:
 - Brewster CHA was formally notified of the violations specified in this notice on at least three separate occasions as described below, but has taken little or no action to correct the violations.
 1. The Program issued an Administrative Order on May 18, 2006 ordering Brewster CHA to collect samples for inorganic chemicals, lead and copper, synthetic organic chemicals, and volatile organic chemicals. The order also required Brewster CHA

to publish public notice and designate a certified operator. Brewster CHA did not complete any of the required compliance actions specified in the order.

2. Marion County conducted a sanitary survey of the Brewster CHA water system on August 20, 2009 and identified the lack of water quality sampling as a significant deficiency. Brewster CHA was notified of the survey results in a letter and directed to collect the required water samples and report the sampling results to the Program. Brewster CHA has not reported any sampling results following the sanitary survey.
3. The Program mailed a notice to Brewster CHA on November 23, 2010 identifying the lack of sampling for arsenic, inorganic chemicals, synthetic organic chemicals, and volatile organic chemicals. The notice also stated that samples were required to be collected prior to end of 2010. Brewster CHA has not reported any samples in response to the notice.

- (b) Prior violations:

- Brewster CHA violated OAR 333-061-0025(1), which requires water suppliers to collect and submit samples for laboratory analyses at the frequencies prescribed in OAR 333-061-0036 by failing to complete the sampling requirements specified below.
- Brewster CHA violated OAR 333-061-0025(5) by failing to notify the customers of the Brewster CHA water system that reporting requirements were not being met.
- Brewster CHA violated OAR 333-061-0036(2)(a) three times between January 1, 2002 and December 31, 2010 by failing to sample for inorganic chemicals as required by the rule.
- Brewster CHA violated OAR 333-061-0036(2)(c) twenty-eight times between January 1, 1997 and December 31, 2010 by failing to sample for lead and copper as required by the rule.
- Brewster CHA violated OAR 333-061-0036(2)(d) once in 2010 by failing to sample for nitrate required by the rule.

- Brewster CHA violated OAR 333-061-0036(2)(e) three times between January 1, 2002 and December 31, 2010 by failing to sample for nitrite as required by the rule.
- Brewster CHA violated OAR 333-061-0036(3)(a) three times between January 1, 2002 and December 31, 2010 by failing to sample for synthetic organic chemicals as required by the rule.
- Brewster CHA violated OAR 333-061-0036(3)(b) three times between January 1, 2002 and December 31, 2010 by failing to sample for volatile organic chemicals as required by the rule.
- Brewster CHA violated OAR 333-061-0036(6)(b) three times between January 1, 2007 and December 31, 2010 by failing to sample for coliform bacteria as required by the rule.
- Brewster CHA violated OAR 333-061-0036(7) by failing to complete the initial sampling for radionuclides as required by the rule.
- Brewster CHA violated OAR 333-061-0043(6)(c) three times between 2008 and 2010 by failing to submit to the Program a copy the annual consumer confidence report as required by the rule.
- Brewster CHA violated OAR 333-061-0225 by failing to designate a certified operator to be in direct responsible charge of a water system.
 - (c) Economic and financial conditions of the person incurring the penalty:
- The Program has no information about the economic or financial details of the Brewster CHA.

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 Program 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.

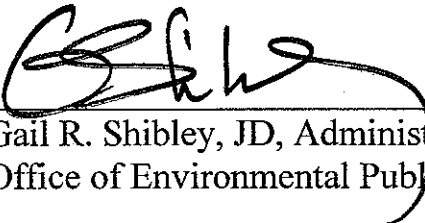
If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. Any hearing will be held by an administrative 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 Program or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Program may issue a final order by default ordering you to pay a civil penalty. If the Program issues a final order by default, the Program 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 Program 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 \$4,500.

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, DHS-DWP at (971) 673-0405.

Dated this 9th day of June, 2011.



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

cc: Gregg Baird, OHA-DWP
Greg DeBlase, Marion County Environmental Health Program

CERTIFICATE OF MAILING

On the 17TH day of June 2011, I mailed the foregoing FINAL ORDER

BY CERTIFIED AND FIRST CLASS MAIL:

Frank Rupp, President
Brewster Community Homeowners Association
1520 Norway St. NE
Salem, OR 97301

Regina Harrison, Secretary
Brewster Community Homeowners Association
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Salem, OR 97305

Albert C. Depenbrock, Registered Agent
Brewster Community Homeowners Association
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Brad K. Daniels
Enforcement Coordinator

