

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

In the Matter of

Skyview Acres Water Company, Public
Water System OR4100786

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

Respondents

Michael Persons, President
Skyview Acres Water Company
PO Box 2072
Sandy, OR 97055

Skyview Acres Water Company has at all times mentioned herein owned and operated, and continues to own and operate, the public water system (hereinafter “Water System”) serving homes along SE Bluff Road north of Sandy, Oregon. The Water System is a community public water system serving approximately 200 people and is subject to regulation according to Oregon Revised Statutes 448.115 to 448.290 and Oregon Administrative Rules 333-061-0005 to 333-061-0272.

Skyview Acres Water Company (hereinafter “Water Supplier”) is therefore a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020, and as a water supplier, has specific responsibilities that are identified in OAR 333-061-0025.

Pursuant to its authority established in ORS 431A.010 and ORS 448.255, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) has investigated the operation of the Water System.

DWS found, during its investigation, that drinking water provided by the Water System exceeds the maximum contaminant level (MCL) for both haloacetic acids (HAA5) and for total trihalomethanes (TTHM). Water Supplier is therefore unable to assure its water users that the water is sufficiently free from contaminants such that individuals will not be exposed to disease or harmful physiological effects (ORS 448.115(8)). This represents a potential public health hazard.

This Notice of Violation and Administrative Order (Order) is being issued to Water Supplier for the specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.290) and rules found during DWS' investigation as described below.

DESCRIPTION OF RULE VIOLATIONS

1. OAR 333-061-0030(2)(b) specifies that the MCL for HAA5 in drinking water is 0.060 mg/L. Sample results reported for the Water System, collected at the 38636 Hudson Road sample location and beginning with samples collected on December 9, 2021, exceeded the MCL of 0.060 mg/L. The average concentration of HAA5 in drinking water at this location, calculated according to OAR 333-061-0036(4)(c)(D) and based on samples collected between December 9, 2021 and September 23, 2022, is 0.070 mg/L. This exceeds the MCL of 0.060 mg/L and constitutes a violation of OAR 333-061-0030(2).

Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer. OAR 333-061-0097

2. OAR 333-061-0030(2)(b) specifies that the MCL for TTHM in drinking water is 0.080 mg/L. Sample results reported for the Water System, collected at the 38636 Hudson Road sample location and beginning with samples collected on December 9, 2021, exceeded the MCL of 0.080 mg/L. The average concentration of TTHM in drinking water at this location, calculated according to OAR 333-061-0036(4)(c)(D) and based on samples collected between December 9, 2021 and September 23, 2022, is 0.082 mg/L. This exceeds the MCL of 0.080 mg/L and constitutes a violation of OAR 333-061-0030(2).

Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer. OAR 333-061-0097

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

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

1. Water Supplier must monitor HAA5 and TTHM according to the applicable provisions of OAR 333-061-0036(4) until it satisfies the requirements of Compliance Action No. 3 as specified below.
2. Water Supplier must publish a public notice within 30 days and according to the applicable provisions of OAR 333-061-0042 until it satisfies the requirements of Compliance Action No. 3 as specified below.
 - Notice must be published any time the results of sample analysis are received from the laboratory indicating the MCL for either HAA5 or TTHM is exceeded, when calculated according to OAR 333-061-0036(4)(c)(D). The notice must inform customers that drinking water at the Water System exceeds the MCL for HAA5 or TTHM as appropriate and meet all the content requirements specified in OAR 333-061-0042.
 - Within 10 calendar days of distributing the public notice to customers, Water Supplier must submit a copy of the notice to DWS along with a written statement that it has fully complied with the distribution and public notification requirements according to OAR 333-061-0040(1)(i).
3. Water Supplier will comply with this Order and may return to monitoring HAA5 and TTHM according to OAR 333-061-0036(4)(c), if sample results reported for the Water System are below the MCL for both HAA5 and TTHM for four consecutive calendar quarters and demonstrate that the locational running annual average (LRAA) for HAA5 is less than or equal to 0.045 mg/L and the LRAA for TTHM is less than or equal to 0.060 mg/L.

- If compliance is not achieved within four consecutive calendar quarters following construction of the water filtration facility by the Portland Water Bureau, identified by PWS# OR4100657, and transmission of finished drinking water meeting all surface water and *Cryptosporidium* treatment requirements from that facility to the City of Sandy, identified by PWS# 4100789; Water Supplier must submit an action plan to DWS within six months of reporting sample results for the fourth calendar quarter which indicates how it will achieve compliance with the MCL for both HAA5 and TTHM at the Water System.

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 448.290) and Oregon Administrative Rules OAR 333-061-0005 to 333-061-0272, which remain in full force and effect.

This Order does not relieve Water Supplier 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 DWS to forgo any civil actions authorized under the Oregon Drinking Water Quality Act.

Failure to comply with any of the requirements in this Order by the specified due date may result in additional enforcement action, which could include assessment of civil penalties in the amount of \$100 per day per violation (OAR 333-061-0090). Civil penalties may be assessed beginning the day following the date of service of this Order and accruing through the date when DWS issues a Notice of Intent to Impose Civil Penalty. For example, if DWS issues a Notice of Intent to Impose Civil Penalty for failure to publish public notice 30 days after samples exceed the MCL for either HAA5 or TTHM according to this Order, the proposed civil penalty could be as much as \$3,000.

Pursuant to ORS 448.990(2), violations of a rule of the Oregon Health Authority may be a crime in Oregon and punishable as a Class A misdemeanor.

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 10 days from the date this Order was mailed. **The request for hearing must be sent to: Kari Salis, Manager; Oregon Health Authority, Drinking**

Water Services; and may be delivered by mail to PO Box 14450, Portland, OR 97293 or by email to karyl.l.salis@dhsosha.state.or.us.

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 make a timely request for a hearing, the Notice of Violation and Administrative 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 DWS subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

If you withdraw a request for hearing, or 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. 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 60 days from the day this Order was mailed. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

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>.

DWS has designated its complete file on the Water System 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 Order in an alternate format, or if you have any questions about the requirements in this Order, please contact Brad K. Daniels at bradley.k.daniels@dhsoha.state.or.us or 503-735-5438.

Date January 6, 2023



André Ourso, JD, MPH
Administrator
Center for Health Protection
Oregon Health Authority

cc: Joel Ferguson, Clackamas County Environmental Public Health
Keith Male, Oregon Health Authority, Drinking Water Services
Laura Patty, Skyview Acres Water Company

DATE of Service: January 9, 2023



Signature

Brad K. Daniels
Printed Name

By certified mail and first-class mail