

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

In the Matter of

Elderberry Nehalem Water System,  
PWS OR4100804

Respondent

NOTICE OF VIOLATION AND  
ADMINISTRATIVE ORDER

To: James R. Luttrell  
41266 Kampy Lane  
Seaside, OR 97138

You own and operate the Elderberry Nehalem Water System (hereinafter “Water System”) serving homes along and near Highway 26 and Gronnel Road in Clatsop County, Oregon. The Water System is a community public water system serving approximately 150 people and is subject to regulation under Oregon Revised Statutes 448.115 to 448.290 and Oregon Administrative Rules 333-061-0005 to 333-061-0272.

You (hereinafter “Water Supplier”) are 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, have 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 Water Supplier did not consistently report sample results for arsenic, nitrate, synthetic and volatile organic chemicals, and lead and copper. 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 333-061-0025(1) requires water suppliers to routinely collect and submit water samples for laboratory analyses at the frequencies prescribed by OAR 333-061-0036. OAR 333-061-0036 requires sampling for arsenic, nitrate, synthetic and volatile organic chemicals, and lead and copper at public water systems, but Water Supplier did not report sample results to DWS according to the rule, which constitutes a violation of OAR 333-061-0025(1) if samples were in fact not collected.
2. OAR 333-061-0036(2)(a) requires, in part, water suppliers to monitor for arsenic at least once every three years. Additionally, OAR 333-061-0040(1)(b)(A) requires water suppliers to report monitoring required by OAR 333-061-0036 to DWS within 10 days of the end of the required monitoring period. Arsenic monitoring has not been reported for the Water System since a sample collected on September 21, 2016 was reported on October 4, 2016. This constitutes a violation of OAR 333-061-0036(2)(a), or a violation of OAR 333-061-0040(1)(b)(A) if monitoring was conducted but not reported.
3. OAR 333-061-0036(2)(c) requires, in part, water suppliers to monitor for nitrate at least once every year. Additionally, OAR 333-061-0040(1)(b)(A) requires water suppliers to report monitoring required by OAR 333-061-0036 to DWS within 10 days of the end of the required monitoring period. Nitrate monitoring has not been reported for the Water System since a sample collected on June 23, 2020 was reported on June 26, 2020. This constitutes a violation of OAR 333-061-0036(2)(a), or a violation of OAR 333-061-0040(1)(b)(A) if monitoring was conducted but not reported.

4. OAR 333-061-0036(3)(a) requires, in part, water suppliers to monitor for synthetic organic chemicals at least once every three years. Synthetic organic chemical monitoring has not been reported for the Water System since a sample collected on November 16, 2016 was reported on December 29, 2016. This constitutes a violation of OAR 333-061-0036(3)(a), or a violation of OAR 333-061-0040(1)(b)(A) if monitoring was conducted but not reported.
5. OAR 333-061-0036(3)(b) requires, in part, water suppliers to monitor for volatile organic chemicals at least once every three years. Volatile organic chemical monitoring has not been reported for the Water System since a sample collected on November 16, 2016 was reported on November 28, 2016. This constitutes a violation of OAR 333-061-0036(3)(b), or a violation of OAR 333-061-0040(1)(b)(A) if monitoring was conducted but not reported.
6. OAR 333-061-0036(10) requires, in part, water suppliers to monitor for lead and copper in tap water at least once every three years. Lead and copper monitoring has not been reported for the Water System water system since samples collected on August 24, 2016 were reported on September 23, 2016. This constitutes a violation of OAR 333-061-0036(10), or a violation of OAR 333-061-0040(1)(b)(A) if monitoring was conducted but not reported.

#### 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 for arsenic at the Water System according to OAR 333-061-0036(2)(a) and report the monitoring results to DWS no later than July 15, 2022.
2. Water Supplier must monitor for nitrate at the Water System according to OAR 333-061-0036(2)(c) and report the monitoring results to DWS no later than July 15, 2022.
3. Water Supplier must monitor for synthetic organic chemicals at the Water System according to OAR 333-061-0036(3)(a) and report the monitoring results to DWS no later than July 15, 2022.

4. Water Supplier must monitor for volatile organic chemicals at the Water System according to OAR 333-061-0036(3)(b) and report the monitoring results to DWS no later than July 15, 2022.
5. Water Supplier must monitor for lead and copper at the Water System according to OAR 333-061-0036(10)(a) through (d).
  - This monitoring must be conducted between June 1 and June 30, 2022.
  - This monitoring must be reported to DWS no later than July 15, 2022.

#### 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 on July 16, 2022 for failure to report monitoring for arsenic, organic chemicals and lead and copper according to this Order, the proposed civil penalty could be as much as \$15,000.

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: David Emme, Manager; Oregon Health Authority, Drinking Water Services; PO Box 14450; Portland, OR 97293.**

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 503-735-5438.

Dated May 9, 2022.



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David Emme, Manager  
Drinking Water Services  
Oregon Health Authority

cc: Pete Farrelly, Oregon Health Authority, Drinking Water Services  
Meredity Reiley, Clatsop County Environmental Health  
Scott Shearer, Oregon Public Utility Commission

DATE of Service: May 10, 2022\_\_\_\_\_



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Signature

Brad K. Daniels  
Printed Name

By certified mail and first-class mail