



PUBLIC HEALTH DIVISION
Center for Health Protection, Drinking Water Services

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Authority

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

In the Matter of

Evergreen Acres Water Service, PWS
OR4100805

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Tony Cavin
Evergreen Acres Water Service
82362 Maple Rd.
Seaside, OR 97138

Evergreen Acres Water Service has at all times mentioned herein owned and operated, and continues to own and operate, the Evergreen Acres public water system (hereinafter "Water System") serving residences located between Highway 103 and the Nehalem River in Vinemaple, Oregon. The Water System is a community public water system serving approximately 100 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.

Evergreen Acres Water Service (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 water provided by the Water System exceeds the maximum contaminant level (MCL) for *E. coli* bacteria. Also, Water Supplier did not allow Clatsop County Public Health to investigate the presence of bacteria in water samples and did not consistently report sample results for the groundwater source supplying the Water System. 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 requires water suppliers to take all reasonable actions to assure that the water delivered to water users does not exceed maximum contaminant levels, that water system facilities are free of public health hazards and that water system operation and maintenance are performed as required by the rules. Water samples collected at the Water System indicate that water provided by the system exceeds the MCL for *E. coli* bacteria as specified in OAR 333-061-0030(4). Water Supplier was notified on October 26, 2022 that it must take conduct source water monitoring and allow for a coliform investigation to determine the source of *E. coli* bacteria in drinking water. Water Supplier failed to allow the required coliform investigation to occur and failed to respond to repeated attempts to re-schedule the investigation. Water Supplier also failed to conduct source water monitoring as required. Water Supplier therefore demonstrated it did not take all reasonable actions to ensure that water does not exceed the MCL. This constitutes a violation of OAR 333-061-0025.
2. 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(6)(i) requires sampling for coliform bacteria at public water systems, but Water Supplier did not report sample results to DWS as described in Violation No. 6 below, which constitutes a violation of OAR 333-061-0025(1), if samples were in fact not collected.

3. OAR 333-061-0025(2) requires water suppliers to take immediate corrective action when the results of analyses or measurements indicate that maximum contaminant levels have been exceeded. Water samples reported on October 18, 2022 and not reported on December 21, 2022 indicated that water provided by the Water System exceeded the MCL for *E. coli* bacteria as prescribed by OAR 333-061-0030(4). Water Supplier did not allow for the required coliform investigations or demonstrate taking other corrective action to resolve the presence of bacteria in the Water System. This constitutes a violation of OAR 333-061-0025(2).
4. OAR 333-061-0025(4) requires water suppliers to notify all customers of the water system, as well as the general public in the service area, when maximum contaminant levels have been exceeded. Water samples reported on October 18, 2022 and not reported on December 21, 2022, as described in Violation No. 5 below, indicated that water provided by the Water System exceeded the MCL for *E. coli* bacteria. Water Supplier did not publish public notice as prescribed by OAR 333-061-0042. This constitutes a violation of OAR 333-061-0025(4).
5. OAR 333-061-0030(4) specifies, in part, that the MCL for *E. coli* applies to all public water systems and is exceeded or violated when a total coliform-positive repeat sample follows an *E. coli*-positive routine sample or all the required repeat samples are not collected following an *E. coli*-positive routine sample. Coliform monitoring reported for the Water System indicates that on October 18, 2022, a total coliform-positive repeat sample was reported following a *E. coli* -positive routine sample reported on October 13, 2022. Additionally, only one repeat sample was reported instead of the required three samples, following a *E. coli* -positive routine sample reported on December 15, 2022. This exceeds the MCL for *E. coli* and constitutes a violation of OAR 333-061-0030(4).

E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. OAR 333-061-0097

6. OAR 333-061-0036(6)(i) requires, in part, water suppliers to conduct source water monitoring when total-coliform positive samples are reported and when chlorine, UV, or another oxidant is used at groundwater systems but where 4-log inactivation of viruses is not achieved. 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. Water Supplier has not reported source water monitoring for the Water System for total-coliform positive samples reported on September 16, 2020, July 30, 2021, April 14, 2022, October 13, 2022, December 15, 2022 and January 12, 2023. This constitutes a violation of OAR 333-061-0036(6)(i), or a violation of OAR 333-061-0040(1)(b)(A) if the monitoring was conducted but not reported.

7. OAR 333-061-0042 requires, in part, water suppliers to provide public notice to people served by public water systems when the MCL for *E. coli* is exceeded. Water suppliers must distribute the public notice as soon as practical but no later than 24 hours after learning of the violation or situation. Additionally, OAR 333-061-0040(1)(i) requires, in part, water suppliers to submit a representative copy of any public notification as prescribed by OAR 333-061-0042 to DWS within 10 days after completing the notification. Water Supplier failed to submit a copy of the public notice required within 24 hours after DWS was notified that the presence of *E. coli* bacteria exceeded the MCL at the Water System as described in Violation No. 5 above. This constitutes a violation of OAR 333-061-0042, or a violation of OAR 333-061-0040(1)(i) if a public notice was distributed but a copy was not submitted.
8. OAR 333-061-0078(3)(c) requires, in part, water suppliers to submit to and ensure level 2 coliform investigations are conducted as soon as possible after being triggered. Sample results reported or not reported to DWS on April 19, 2020, May 24, 2020, July 14, 2020, August 10, 2021, October 18, 2022, and December 27, 2022 triggered coliform investigations but Water Supplier did not allow for the respective investigations to be completed by Clatsop County Public Health. This constitutes a violation of OAR 333-061-0078(3).

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 constitute compliance with the rule(s) violated (ORS 448.255(3)).

1. Water Supplier must publish public notice within 24 hours of receipt of this Order that informs customers drinking water at the Water System exceeds the MCL for *E. coli* bacteria and advises customers to boil their water before consumption. The notice must meet all the applicable requirements specified in OAR 333-061-0042.

- 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), within 10 calendar days of the date of service of this Order.
2. Water Supplier must immediately allow Clatsop County Environmental Health to conduct a level 2 coliform investigation at the Water System according to all the applicable provisions of OAR 333-061-0078.
- The investigation must be completed within 30 days of the date of service of this Order.
 - Water Supplier must correct any sanitary defects identified during the investigation within 30 days of when the investigation is conducted, unless an alternate schedule is approved by DWS.
3. Water Supplier must monitor for coliform bacteria in source water at the Water System as directed by DWS and according to all the applicable provisions of OAR 333-061-0036(6)(k).
- Monitoring must be conducted at least once every month for 12 consecutive months and the results reported to DWS within 10 days of the end of the month according to OAR 333-061-0040(1)(b)(A).

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 \$50 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 April 11, 2023 for both failure to allow a coliform investigation to be conducted and for failure to publish public notice 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: Samina Panwhar, Manager; Oregon Health Authority, Drinking Water Services; and may be delivered by mail to PO Box 14450, Portland, OR 97293 or by email to samina.t.panwhar@oha.oregon.gov.**

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 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 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@oha.oregon.gov or 503-735-5438.

Date 2/27/23



Samina Panwhar, Manager
Drinking Water Services
Oregon Health Authority

cc: Pete Farrelly, Oregon Health Authority, Drinking Water Services
Meredith Reiley, Clatsop County Environmental Health

DATE of Service: February 28, 2023



Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail