



PUBLIC HEALTH DIVISION  
Center for Health Protection, Drinking Water Services

Tina Kotek, Governor

Oregon  
**Health**  
Authority

800 NE Oregon St.  
Portland, Oregon 97232-2162  
Voice (971) 673-0405  
FAX (971) 673-0694  
TTY (971) 673-0372

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

In the Matter of

Evergreen Acres Water Service, PWS  
ID# OR4100805

Respondent

NOTICE OF INTENT TO IMPOSE  
CIVIL PENALTY

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

Pursuant to Oregon Revised Statute (ORS) 448.280, ORS 448.285, and Oregon Administrative Rule (OAR) 333-061-0090, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) intends to impose a civil penalty of \$3,000 against Evergreen Acres Water Service for violations of OAR 333-061-0036 and 333-061-0090.<sup>1</sup>

<sup>1</sup> This Notice relies on the definitions provided in ORS 448.115 and OAR 333-61-0020, unless the context indicates otherwise.

### Findings of Facts and Conclusions of Law

Evergreen Acres Water Service has at all times mentioned herein operated the Evergreen Acres Water Service water system (hereinafter “Water System”) located in Clatsop County identified as water system OR4100805. The Water System is a community public water system serving approximately 100 people and subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0272.

Evergreen Acres Water Service (hereinafter “Water Supplier”) is therefore a water supplier and has specific responsibilities. ORS 448.115(12); OAR 333-061-0020; OAR 333-061-0025, 333-061-0036 and OAR 333-061-0042.

Water supplier responsibilities include taking all reasonable actions to assure water delivered to users does not exceed maximum contaminant levels and that water system facilities are free of public health hazards. OAR 333-061-0025. Maximum contaminant level (MCL) means the maximum allowable level of a contaminant in the water delivered to users of a public water system. OAR 333-061-0020(83). Water suppliers must conduct assessment monitoring at groundwater systems where chlorine is used for disinfection but 4-log inactivation is not achieved. OAR 333-061-0036(6)(k). Water suppliers must provide public notice to people served by water systems when required by rule. OAR 333-061-0042. The required notices must include specific content related to the situations or violations.

### **Procedural History**

DWS served a Notice of Violation and Administrative Order (Order) to Water Supplier on February 28, 2023 for the following failures: (1) failure to take all reasonable actions to assure water delivered to users does not exceed maximum contaminant levels and ensure that water system facilities are free of public health hazards; (2) failure to comply with the MCL for *E. coli* bacteria; (3) failure to report monitoring for coliform bacteria; and (4) failure to notify all customers at the Water System when maximum contaminant levels were exceeded. The Order required Water Supplier to take several actions, including but not limited to: monitor for coliform bacteria in source water as permitted by OAR 333-061-0036(6)(k) every month for 12 consecutive months and report the sampling results to DWS, and to publish public notice according to all the applicable requirements specified in OAR 333-061-0042. The Order is incorporated by reference. Water Supplier did not appeal the Order.

## **Violations**

Water Supplier did not comply with the Order by the deadlines specified therein.

### **Violation 1: Failure to comply with the Order- failure to monitor for coliform bacteria**

The Order required Water Supplier to monitor for coliform bacteria in source water at least once every month for 12 consecutive months and results reported to DWS within 10 days of the end of the month in accordance with OAR 333-061-0040(1)(b)(A).

Water Supplier did not report monitoring for coliform bacteria in source water according to OAR 333-061-0036(6)(k) or for 12 consecutive months in accordance with the Order. Water Supplier failed to timely report monitoring for the months of June to December 2023. This constitutes a failure to comply with an order and authorizes DWS to impose a civil penalty. OAR 333-061-0090(3)(i).

### **Violation 2: Failure to comply with the Order- failure to publish notice**

The Order required Water Supplier to publish public notice within 24 hours of receipt of the Order notifying customers that the drinking water exceeded the MCL for *E. coli* and advising customers to boil water before consumption. The Order required that the notice meet all requirements in OAR 333-061-0042 and that Water Supplier submit a copy of the notice to DWS within 10 days of service of the Order.

Water Supplier failed to publish public notice that included required content as specified in OAR 333-061-0042(4) and did not distribute that notice to every customer as required. Water Supplier submitted a copy of a public notice to DWS on March 15, 2023 but that notice did not include content that met all the applicable requirements in OAR 333-061-0042, the notice was not timely submitted to DWS and the notice was not distributed according to the requirements of OAR 333-061-0042. This constitutes a failure to comply with an order and authorizes DWS to impose a civil penalty. OAR 333-061-0090(3)(i).

## **CIVIL PENALTY**

Pursuant to OAR 333-061-0090, DWS intends to impose a total civil penalty in the amount of \$3,000 based upon the population served by the public water system and the violations identified above. DWS considered mitigating and aggravating factors as described below in determining the total civil penalty amount.

Each violation noted above is a separate and distinct offense and each day a violation continues is a separate and distinct violation. OAR 333-061-0090(2). The per day civil

penalty amount for a violation at a public water system serving 100 people is \$50 per day according to OAR 333-061-0090(4). DWS intends to impose a civil penalty of \$50 for each day of non-compliance and for each of the two violations for a total of 30 days. The number of days is based on the period of time from October 15, 2023 through November 14, 2023.

The total proposed civil penalty is \$3,000 (30 x 2 x \$50).

If the violations identified in this Notice continue or if Water Supplier violates any other applicable law or rules, it may be subject to additional civil penalties per day per violation.

#### CIVIL PENALTY FACTORS CONSIDERED

In assessing the civil penalty, DWS 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:
  - In response to the Order, Water Supplier allowed Clatsop County Environmental Health (CCEH) to conduct a level 2 coliform investigation at the Water System on March 10, 2023. Water Supplier reported monitoring for coliform bacteria in source water on March 10, 2023 and April 17, 2023 but both samples indicated a chlorine residual present and therefore did not meet the applicable provisions of OAR 333-061-0036(6)(k). Water Supplier has since not reported any monitoring for coliform bacteria and failed to report the required monitoring for seven consecutive months.
  - Although Water Supplier engaged in some mitigation by completing initial actions and reporting some monitoring for coliform bacteria in early 2023, Water Supplier's failure to continue monitoring for coliform bacteria, publish public notice according to all applicable requirements in OAR 333-061-0042 or to conduct monitoring for coliform bacteria according to all provisions of OAR 333-061-0036(6)(k) for seven months supports a finding that this is an aggravating factor and support imposing the maximum civil penalty in this matter.

- (b) Prior violations:
  - Over the last five years, numerous violations of drinking water regulations occurred at the Water System, some on a repeat basis. These prior violations include:
    - Multiple violations of OAR 333-061-0025(1), which requires monitoring according to OAR 333-061-0036. These violations include but are not limited to:
      - Two violations of OAR 333-061-0036(2)(c) for failing to report nitrate monitoring for the:
        1. 2020 calendar year (violation No. 903415460), and
        2. 2022 calendar year (violation No. 903415523).
      - One violation of OAR 333-061-0036(3)(a) for failing to report synthetic organic chemical monitoring for the period from January 1, 2020 through December 31, 2022 (violation No. 903415522).
      - One violation of OAR 333-061-0036(3)(b) for failing to report volatile organic chemical monitoring for the period from January 1, 2020 through December 31, 2022 (violation No. 903415493).
      - One violation of OAR 333-061-0036(4)(d) for failing to report disinfection byproducts monitoring for the period from January 1, 2017 through December 31, 2019 (violation No. 903415454).
      - Numerous violations of OAR 333-061-0036(6)(c) for failing to report routine monitoring for coliform bacteria between April 2021 and November 2023, including but not limited violations during the months of:
        1. April 2021 (violation No. 903415461),
        2. August 2021 (violation No. 903415463),
        3. January 2022 (violation No. 903415465),
        4. May 2023 (violation No. 903415529),
        5. June 2023 (violation No. 903415532),
        6. July 2023 (violation No. 903415533),
        7. August 2023 (violation No. 903415535),
        8. September 2023 (violation No. 903415538),
        9. October 2023 (violation No. 903415540), and
        10. November 2023 (violation No. 903415543).
      - Numerous violations of OAR 333-061-0036(6)(i) for failing to report groundwater source sampling, including but not limited to, violations for the periods from:
        1. October 9, 2019 through October 20, 2019 (violation No. 903415452),
        2. April 8, 2020 through April 19, 2020 (violation No. 903415456),

3. May 13, 2020 through May 24, 2020 (violation No. 903415457),
  4. September 15, 2020 through September 26, 2020 (violation No. 903415458),
  5. July 29, 2021 through August 9, 2021 (violation No. 903415462),
  6. April 13, 2022 through April 24, 2022 (violation No. 903415466),
  7. October 12, 2022 through October 23, 2022 (violation No. 903415468),
  8. December 14, 2022 through December 25, 2022 (violation No. 903415470),  
and
  9. January 11, 2023 through January 22, 2023 (violation No. 903415472).
- Numerous violations of OAR 333-061-0036(6)(k) for failing to report source assessment monitoring, including but not limited to the following periods:
    1. January 1, 2021 through December 31, 2021 (violation No. 903415464),
    2. January 1, 2022 through December 31, 2022 (violation No. 903415471),
    3. May 1, 2023 through May 31, 2023 (violation No. 903415528),
    4. June 1, 2023 through June 30, 2023 (violation No. 903415531),
    5. July 1, 2023 through July 31, 2023 (violation No. 903415534),
    6. August 1, 2023 through August 31, 2023 (violation No. 903415536),
    7. September 1, 2023 through September 30, 2023 (violation No. 903415537),
    8. October 1, 2023 through October 31, 2023 (violation No. 903415541), and
    9. November 1, 2023 through November 30, 2023 (violation No. 903415542).
  - Two violations of OAR 333-061-0025(4), which requires notification to water users according to OAR 333-061-0042. These violations stem from:
    - Two violations of OAR 333-061-0042(3)(b) for failing to notify the public about:
      1. Violating the MCL for *E. coli* bacteria in October 2022 (violation No. 903415525), and
      2. Violating the MCL for *E. coli* bacteria in December 2022 (violation No. 903415524).
  - Two violations of OAR 333-061-0030(4) for:
    1. Violating the MCL for *E. coli* bacteria in October 2022 (violation No. 903415467), and
    2. Violating the MCL for *E. coli* bacteria in December 2022 (violation No. 903415469).
  - Two violations of OAR 333-061-0043(6)(c) for:
    1. Failing to submit to DWS a copy of the annual consumer confidence report for the 2022 calendar year (violation No. 903415530), and
    2. Failing to submit to DWS a copy of delivery certification for the annual consumer confidence report for the 2022 calendar year (violation No. 903415539).

- One violation of OAR 333-061-0040(1)(l) for failing to report a complete coliform investigation timely for the period ending November 11, 2018 (violation No. 903415451).
- Numerous violations of OAR 333-061-0078(3) for failing to complete a coliform investigation or allow CCEH to complete a coliform investigation for the periods ending:
  1. November 23, 2019 (violation No. 903415455).
  2. May 23, 2020 (violation No. 903415545).
  3. June 27, 2020 (violation No. 903415548).
  4. August 22, 2020 (violation No. 903415459).
  5. September 12, 2021 (violation No. 903415547).
  6. December 1, 2022 (violation No. 903415546).
  7. January 26, 2023 (violation No. 903415526).
  8. February 25, 2023 (violation No. 903415527).

DWS considered these prior violations as an aggravating factor to support imposing the maximum civil penalty in this matter. DWS need not prove every prior violation to support a finding that this factor is aggravating.

- (c) Economic and financial conditions of the person incurring the penalty:
  - DWS has no information about your economic or financial details, or the economic or financial conditions at the Water System. DWS considered this factor neutral when determining the appropriate civil penalty in this matter.

#### 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). To request a hearing, you must file a written request with DWS within 20 days from the date this notice 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](mailto: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 request a hearing within the 20 days, withdraw the request for hearing, notify DWS or the administrative law judge that you will not appear at a scheduled hearing, or fail to appear at a scheduled hearing, DWS may issue a final order by default imposing a civil penalty. If DWS issues a final order by default, DWS designates its files on this matter as the record for the purpose of proving a *prima facie* case upon default.

**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>.

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 DWS 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 \$3,000.

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 at [bradley.k.daniels@oha.oregon.gov](mailto:bradley.k.daniels@oha.oregon.gov) or (503) 735-5438.



Date 1/9/2024



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Samina Panwhar, Manager  
Drinking Water Services  
Oregon Health Authority

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

DATE of Service: January 9, 2024



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Brad K Daniels

By certified and first-class mail