



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

In the Matter of

Tooley Water District Public Water  
System

BILATERAL COMPLIANCE AGREEMENT

The Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) and Tooley Water District agree to the following:

1. Tooley Water District is a water supplier (hereinafter “Water Supplier”) as defined in Oregon Revised Statute (ORS) 448.115 and Oregon Administrative Rule (OAR) 333-061-0020. The responsibilities of water suppliers are identified in OAR 333-061-0025.
2. Water Supplier owns and operates the public water system (hereinafter “Water System”), identified by public water system ID# OR4100911 and serving homes south and west of Interstate Highway 84, and near Adeline Way and Simonelli Road, north of The Dalles, Oregon. The Water System is a community 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.
3. DWS has reviewed the operation of the Water System pursuant to its authority in ORS 431A.010, 448.150 and 448.255. DWS has determined that water provided by the water system exceeds the maximum contaminant level (MCL) as specified in OAR 333-061-0030 for nitrate. Water with nitrate above the MCL represents a potential public health hazard.

Infants below the age of 6 months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome. OAR 333-061-0097.

4. This Bilateral Compliance Agreement (“Agreement”) is entered into between DWS and Water Supplier to address the contamination of the drinking water provided by the Water System. This Agreement establishes the corrective action(s) that Water Supplier must take and the deadlines for completing those actions with the purpose of reducing the contamination of nitrate in the drinking water below the MCL. The corrective actions and respective deadlines are described in detail below.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Water Supplier is required to meet all the responsibilities for water suppliers described in OAR 333-061-0025.
2. 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.
3. The MCL for nitrate is 10 mg/L. OAR 333-061-0030(1).
4. Sample results for the Water System demonstrate that the drinking water produced by Well #2, identified by well tag L94687 and one of two wells supplying the Water System, has been above the MCL for nitrate in violation of OAR 333-061-0030(1). The average concentration of nitrate in a confirmation sample collected from Well #2 on October 20, 2020 and routine sample collected on October 16, 2020 was 19.3 mg/L.
5. The concentration of nitrate in samples reported to DWS and collected from Well #2 since October 16, 2020, exceeded the MCL in 20 out of 39 samples.
6. The most recent sample result to exceed the MCL for nitrate was reported to DWS on May 2, 2024.
7. DWS understands based on reports by Water Supplier that Water Supplier has deactivated Well #2 annually from approximately October through June in an effort to mitigate risk.

8. Water Supplier has continued to monitor nitrate in Well #2 approximately every two weeks beginning in January 2024, even while the well is deactivated, and report the monitoring to DWS.
9. In most but not all cases, when samples collected from Well #2 exceeded the MCL, the well was not supplying drinking water to the Water System.
10. Water Supplier is not in compliance with OAR 333-061-0030(1).
11. The presence of nitrate in water produced by Well #2 demonstrates that without intervention, Water Supplier cannot assure water users that drinking water will not exceed the MCL for nitrate or that water system facilities will be free from public health hazards.

### CORRECTIVE ACTIONS

Water Supplier agrees to take the following corrective actions and meet the deadlines set out below:

1. Water Supplier shall submit an action plan to DWS no later than 90 days after this agreement is executed, identifying how it will ensure compliance with the MCL for nitrate at the Water System. The action plan may be based on a previously approved work plan if it otherwise consistent with the requirements for the action plan in this Agreement. The action plan shall:
  - Memorialize all tasks within the previously approved work plan that have been completed by the Water Supplier.
  - Identify a solution selected as most viable by Water Supplier's board of directors to ensure compliance with the nitrate MCL at the Water System.
  - Identify all tasks Water Supplier intends to perform to ensure drinking water produced by the Water System has concentrations below the MCL for nitrate and set reasonable deadlines for completing all the identified tasks. Reasonable deadlines may account for the necessary processes to complete each task and foreseeable administrative delays.
  - Identify a plan for the provision of potable water to customers for the period prior to compliance with the nitrate MCL at the Water System.

- Include projected dates for submission of complete construction or installation plans to DWS. These plans must meet the requirements in OAR 333-061-0060 for the construction or modification of any facilities at the Water System. Construction plans must be approved by DWS prior to any construction or installation taking place.
2. Water Supplier shall perform and complete all tasks in the action plan described in Corrective Action No. 1 by the deadlines in the action plan and shall notify DWS in writing within 5 calendar days of completing all the tasks. For this corrective action to be met, any construction or installation that was performed must meet the applicable construction standards in OAR 333-061-0050, as approved by DWS.
    - Water Supplier may request a written extension of the deadlines in the action plan due to circumstances outside of the Water Supplier's control. OHA may grant the extension in writing if it determines the Water Supplier's inability to meet the deadline is due to circumstances outside of the Water Supplier's control.
  3. Water Supplier shall collect water samples according to OAR 333-061-0036(2)(c) and submit testing results to DWS within sixty (60) calendar days of notifying DWS that all the tasks of the action plan have been completed that show the drinking water produced by the Water System is not above the MCL in OAR 333-061-0030(1) for each of the contaminants.
  4. Water Supplier shall continue to publish a public notice according to all the applicable provisions of OAR 333-061-0042 whenever drinking water at the Water System exceeds the MCL for nitrate. The notice must meet the requirements in OAR 333-061-0042.
    - Within 10 calendar days of distributing public notice to customers, Water Supplier shall send a copy of the notice to DWS along with a written statement that it has fully complied with the distribution and public notification requirements in OAR 333-061-0040(1)(i).

### DWS RESPONSIBILITIES

- DWS shall review and approve any corrective action plan or construction plans submitted by Water Supplier within thirty (30) days of receipt. DWS shall approve or require changes to the submitted plans immediately upon completing the review.

GENERAL PROVISIONS

1. Water Supplier satisfies the terms of this Agreement by completing the corrective actions listed above according to the deadlines specified herein or in accordance with a written extension granted by DWS.
2. This Agreement does not constitute a waiver, suspension or modification of the requirements of the Oregon Drinking Water Quality Act; ORS 448.115 to 448.285 and administrative rules OAR 333-061-0005 to 333-061-0272, which remain in full force and effect.
3. This Agreement does not relieve Water Supplier of any responsibilities or liabilities established by any applicable federal, state, or local law or regulation.
4. If Water Supplier fails to complete any of the corrective actions listed above or fails to meet any of the listed deadlines, DWS may pursue any enforcement action, which may include assessment of civil penalties or other legal remedies pursuant to ORS 431A.010, 431.155, 448.255 and 448.280. If DWS proceeds with such an enforcement action, Water Supplier will have the right to a hearing.
5. DWS may consider the findings of fact and violations cited in the conclusions of law of this Agreement for purposes of any future enforcement action or sanction involving Water Supplier.
6. Water Supplier is aware of its rights to contest the violations listed in this Agreement in a contested case hearing under the Administrative Procedure Act (Oregon Revised Statutes, Chapter 183) and its rights to judicial review of a final order issued in the contested case. Water Supplier freely and voluntarily waives all rights to a contested case hearing and to all judicial review of the findings of fact or conclusions of law contained in this Agreement in a proceeding brought by DWS to enforce this Agreement.
7. This Agreement may be executed in one or more multiple counterparts, including facsimile, scanned, and electronically transmitted counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

Date 2024-06-19

*Carol Mauser*

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Carol Mauser

Board Chairperson, and authorized signer by Tooley Water District Board  
Tooley Water District

Date 6/20/2024



A handwritten signature in black ink, appearing to read "Samina".

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Samina Panwhar, Manager  
Drinking Water Services  
Oregon Health Authority

cc: Paula Grendel, North Central Public Health District  
Chantal Wikstrom, Oregon Health Authority, Drinking Water Services