

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

In the Matter of

Midland Water Association, PWS
OR4101139

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Dave Burch
14716 Riverfront Road
Clatskanie, OR 97016

Midland Water Association 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 Beeson, Erickson Dike, Midland District, Point Adams and River Front Roads, northeast of Marshland, Oregon. The Water System is a community 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.

Midland Water Association (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 Supplier did not report sample results for disinfection byproducts, lead and copper or nitrate. 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 coliform bacteria, disinfection byproducts, lead and copper and nitrate 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)(c) requires water suppliers to monitor for nitrate at least once every year at public water systems. Water Supplier has not reported nitrate monitoring for the Water System since reporting a sample collected on December 8, 2020. This constitutes a violation of OAR 333-061-0036(2)(c).
3. 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 at community water systems. Water Supplier has not reported lead and copper monitoring for the Water System since reporting samples collected on August 21 and August 22, 2018. This constitutes a violation of OAR 333-061-0036(10).
4. OAR 333-061-0036(4)(c) requires, in part, water suppliers to monitor for disinfection byproducts at community water systems at least once every year. Water Supplier has not reported disinfection byproduct monitoring for the Water System since reporting samples collected on August 28, 2019. This constitutes a violation of OAR 333-061-0036(4)(c).

5. 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. It constitutes a violation of this rule if the monitoring described in Violations No. 2 through No. 5 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 immediately monitor for nitrate according to OAR 333-061-0036(2)(c) at the Water System and report the monitoring results to DWS no later than July 10, 2022.
2. Water Supplier must monitor for lead and copper according to OAR 333-061-0036(10)(a) through (d) at the Water System.
 - This monitoring must be conducted no later than July 31, 2022 and sample results reported to DWS no later than August 31, 2022.
3. Water Supplier must monitor for disinfection byproducts according to the applicable provisions in OAR 333-061-0036(4) and within the month of October 2022, at the 79490 Erickson Drive sample location. Water Supplier must report the monitoring results to DWS no later than November 30, 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 11, 2022 for failure to report monitoring for nitrate 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: 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 this 15th day of June, 2022.



David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Pete Farrelly, Oregon Health Authority, Drinking Water Services
Melanie Hudson, Midland Water Association
Micah Olson, Hiland Water Services

DATE of Service: June 15, 2022

A handwritten signature in blue ink, appearing to read "BK Daniels", is written on a light-colored rectangular background. The signature is cursive and somewhat stylized.

Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail