



PUBLIC HEALTH DIVISION
Center for Health Protection, Drinking Water Services

Tina Kotek, Governor

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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

Midland Water Association, PWS
OR4101139

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: David Burch, President
PO Box 922
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 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.

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 does not employ or otherwise utilize a certified water system operator for the Water System's surface water treatment plant. Additionally, Water Supplier has not consistently reported water quality measurements to demonstrate effective treatment of surface water. 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(12) requires water suppliers to assure that water systems are in compliance with OAR 333-061-0210 through 333-061-0272 relating to the certification of water system operators. Water Supplier does not employ, contract with or otherwise utilize a water system operator for the Water System as prescribed by OAR 333-061-0220 through OAR 333-061-0230. This constitutes a violation of OAR 333-061-0025(12).
2. OAR 333-061-0225(1) requires, in part, water suppliers to at all times employ, contract with, or otherwise utilize an operator to be in direct responsible charge of every community public water system. Additionally, the operator must be certified at a level equal to or greater than the classification of the water system for which they are responsible. DWS records indicate that a water system operator certified at distribution level 1 and treatment level 2 must be in direct responsible charge of the Water System; however, Water Supplier has not designated an operator to be in direct responsible charge of the Water System as required. This constitutes a violation of OAR 333-061-0225.
3. OAR 333-061-0036(5)(b) requires, in part, water suppliers to both measure turbidity at least once every four hours in representative samples of filtered water, and measure water quality parameters and calculate disinfection effectiveness every day, at public water systems supplied by a surface water source where filtration treatment is

provided. Additionally, OAR 333-061-0040(1)(d) requires water suppliers to report the results of any test, measurement or analysis required by OAR 333-061-0036(5)(b) to DWS within 10 days after the end of the month. Water Supplier has not reported turbidity monitoring or calculations of disinfection effectiveness for the Water System since reporting the required measurements and calculations for the month of June 2023. This constitutes a violation of OAR 333-061-0036(5)(b)(A), or a violation of OAR 333-061-0040(1)(d) 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 constitute compliance with the rule(s) violated (ORS 448.255(3)).

1. Water Supplier must immediately employ, contract with, or otherwise utilize an operator to be in direct responsible charge of the Water System, according to all the applicable provisions of OAR 333-061-0210 through OAR 333-061-0230. Water Supplier must report the name of the operator to DWS no later than 60 days of the date of service of this Order.
2. Water Supplier must immediately measure turbidity and water quality parameters according to all the applicable provisions of OAR 333-061-0036(5)(b) at the Water System.
 - Monitoring must be conducted every day and reported to DWS within 10 days of the end of the month according to the applicable provisions of OAR 333-061-0040(1)(d).
 - Water supplier will have complied with this corrective action after turbidity measurements and disinfection effectiveness calculations conducted according to OAR 333-061-0036(5)(b) are reported to DWS for six consecutive months according to all the applicable provisions of OAR 333-061-0040(1).

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 April 10, 2023 for failure to designate a certified operator in direct responsible charge of the Water System and failure to report water quality measurements and calculations according to this Order, the proposed civil penalty could be as much as \$12,000.

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 1/31/2024



Samina Panwhar, Manager
Drinking Water Services
Oregon Health Authority

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

DATE of Service: January 31, 2024



Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail