

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

In the Matter of

Deer Island Water Works, PWS
OR4101233

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Justin McMullen
Deer Island Water Works
2034 Columbia Blvd., PMB 288
St. Helens, OR 97051

Justin McMullen, you have at all times mentioned herein owned and operated, and continue to own and operate, the Deer Island Water Works public water system (hereinafter “Water System”) serving homes and businesses near 64475 Old Columbia River Hwy. in the community of Deer Island, Oregon. The Water System is a community water system serving approximately 90 people and is subject to regulation under Oregon Revised Statutes 448.115 to 448.290 and Oregon Administrative Rules 333-061-0005 to 333-061-0272.¹

¹ This Notice and Order relies on the definitions in ORS 448.115 and OAR 333-061-0020

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All relay calls accepted | <http://healthoregon.org/dwp>

Justin McMullen (hereinafter “Water Supplier”), you are 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, have 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 operate optimal corrosion control treatment so minimum water quality parameters were met. Also, Water Supplier did not report water quality parameter measurements for optimal corrosion control treatment and did not correct significant deficiencies identified during consecutive sanitary surveys conducted at 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 333-061-0034(3)(1) requires, in part, water suppliers to operate and maintain optimal corrosion control treatment such that water quality parameters are maintained at or above the minimum values designated by DWS. Water Suppliers are out of compliance with this rule if water quality parameters are below the minimum values designated by DWS on more than nine days during any six-month compliance period. Measurements reported for the Water System demonstrated that water quality parameters were below the designated minimums for 44 days cumulatively between July 1 and December 31, 2023, and for 43 days between January 1 and March 31, 2024. This constitutes more than 365 days in violation of OAR 333-061-0034(3)(1) because Water Supplier has not demonstrated compliance with the rule since September 8, 2023.
2. OAR 333-061-0036(10)(f)(G) requires, in part, water suppliers to monitor water quality parameters at least once every two weeks at water systems where optimal corrosion control treatment is installed. Additionally, 333-061-0040(1)(b)(A) and

0040(1)(h) require, in part, water suppliers to report water quality parameter monitoring conducted according to OAR 333–061-0036(10)(f) to DWS within 10 days of the end of the month. Water Supplier has not reported water quality parameter monitoring for the Water System since reporting measurements for the month of March 2024. This constitutes more than 150 days in violation of OAR 333-061-0036(10)(f), or 150 days in violation of OAR 333–061-0040(1) if monitoring was conducted but not reported.

3. OAR 333-061-0076(6)(b) requires, in part, water suppliers responsible for water systems using only groundwater sources to correct any significant deficiencies identified during a sanitary survey, or to comply with an approved corrective action plan, within 120 days of written notice of the deficiency. Sanitary surveys were conducted on October 25, 2019 and on August 18, 2022 at the Water System and a letter was most recently mailed to Water Supplier on October 27, 2022 identifying significant deficiencies discovered during the most recent survey. Significant deficiencies were to be corrected by March 2, 2023 according to an approved plan but this date has passed without the correction of the deficiencies. This constitutes more than 520 days in violation of OAR 333-061-0076(6)(b).

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 monitor water quality parameters at the Water System according to all the applicable provisions in OAR 333–061-0036(10)(f), at both the entry point and within the distribution system.
 - Water Supplier must report the monitoring to DWS no later than 10 days after the end of every month, for six consecutive months.
2. Water Supplier must monitor lead and copper at the Water System according to OAR 333-061-0036(10)(a) through (e) and report the results to DWS according to OAR 333-061-0040(1)(b).
3. Water Supplier will have satisfied Compliance Actions No. 1 and No. 2 in this Order when:

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- Water quality parameters are measured according to all the applicable provisions of OAR 333-061-0036(10)(f) for six consecutive months and all measurements are reported according to OAR 333-061-0040(1);
 - Measurements demonstrate water quality parameters are maintained at or above minimum values designated by DWS, according to OAR 333-061-0034(3)(1), for a six-month monitoring period; and
 - Tap water monitoring demonstrates lead and copper are both below their respective action levels calculated according to OAR 333-061-0030(1) for two consecutive six-month monitoring periods.
4. Water Supplier must correct every significant deficiency identified in the letter dated October 27, 2022 regarding the sanitary survey conducted on August 18, 2022 at the Water System. Each significant deficiency must be corrected to the satisfaction of Columbia County Public Health no later than 30 days after the date of service of this Order, except for the water quality parameter monitoring specified in this Order, for which monitoring can be reported according to the deadlines specified herein.

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 November 10, 2024 for failure to report water quality parameter monitoring and failure to correct

significant deficiencies 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 identified in this Order.

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

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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 9/25/2024



Samina Panwhar, Manager
Drinking Water Services
Oregon Health Authority

cc: Jaime Aanensen, Columbia County Public Health
Pete Farrelly, Oregon Health Authority, Drinking Water Services
Daniel Osborn, Columbia County Public Health
Scott Shearer, Oregon Public Utility Commission

Deer Island Water Works

DATE of Service: September 27, 2024

Brad K Daniels

Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail

