

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

In the Matter of

Marshland Water Association,
PWS OR41-01449

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Alexander Yinger
Marshland Water Association
13643 Hanhi Drive
Clatskanie, OR 97016

Marshland 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 residences along and near Colvin Road, Hanhi Drive and Schroeder Road, west of Clatskanie, Oregon. The Water System is a community water system serving approximately 70 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 of Violation and Administrative Order relies on the definitions in ORS 448.115 and OAR 333-061-0020

800 NE Oregon Street, Suite #640, Portland, OR 97232-2162

Voice: 971-673-0405 | Fax: 971-673-0458

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

Marshland 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 provided by the Water System exceeds the maximum contaminant level (MCL) for haloacetic acids. Also, Water Supplier did not publish public notification as required. 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(4) requires water suppliers to notify all customers of the water system, as well as the general public in the service area, when maximum contaminant levels have been exceeded. Water samples collected on November 8, 2023 and November 20, 2024, and averaged with water samples collected throughout the 2024 calendar year indicate the annual average concentration of haloacetic acids (HAA5) in drinking water provided by the Water System exceeded the MCL, but Water Supplier did not publish public notice as prescribed by OAR 333-061-0042 and as described below. This constitutes a violation of OAR 333-061-0025(4).
2. OAR 333-061-0030(2)(b) specifies that the MCL for HAA5 in drinking water is 0.060 mg/L. Sample results reported for the Water System, collected at the 13622 Hanhi Drive sample location and beginning with a sample collected on November 8, 2023 exceeded the MCL of 0.60 mg/L. The average concentration of HAA5 in drinking water at this location, calculated according to OAR 333-061-0036(4)(c)(D) and based on samples collected between February 21, 2024 and November 20, 2024 is 0.061 mg/L. This exceeds the MCL of 0.060 mg/L and constitutes a violation of OAR 333-061-0030(2).

Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer. OAR 333-061-0097

3. OAR 333-061-0042 requires, in part, water suppliers to provide public notice to people served by public water systems when the MCL for HAA5 is exceeded. Water suppliers must distribute the public notice as soon as practical but no later than 30 days after learning of the violation or situation. Additionally, OAR 333-061-0040(1)(i) requires, in part, water suppliers to submit a representative copy of any public notification as prescribed by OAR 333-061-0042 to DWS within 10 days after completing the notification. Water Supplier failed to submit a copy of the public notice required within 30 days after DWS was notified that the annual average concentration of HAA5 exceeded the MCL in drinking water samples at the Water System in the second and third calendar quarters of 2024. This constitutes a violation of OAR 333-061-0042, or a violation of OAR 333-061-0040(1)(i) if a public notice was distributed but a copy was not submitted.

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 submit an action plan to DWS no later than 90 days after the date of service of Order, identifying how it will ensure ongoing compliance and deliver drinking water at the Water System, with concentrations of HAA5 consistently below the MCL. The action plan shall:
 - Identify all tasks Water Supplier intends to perform to ensure drinking water produced by the Water System has concentrations of HAA5 below the MCL and set reasonable deadlines for completing all the identified tasks; and
 - Include a date for submitting complete construction or installation plans to DWS if additions or modifications are intended to facilities at the Water System. Construction plans must meet the requirements in OAR 333-061-0060 for the construction or modification of any facilities at the Water System and must be approved by DWS prior to any construction or installation taking place.

2. Water Supplier must 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. In order for this corrective action to be met, any construction or installation performed must be approved by DWS and meet the applicable construction standards in OAR 333-061-0050.
3. Water Supplier must publish a public notice no later than 30 days after the date of service of this Order that informs customers drinking water at the Water System exceeds the MCL for HAA5. The notice must meet all the requirements in OAR 333-061-0042.
 - Within 10 calendar days of distributing the public notice to customers, Water Supplier must submit a copy of the notice to DWS along with a written statement that it has fully complied with the distribution and public notification requirements according to OAR 333-061-0040(1)(i).
4. Water Supplier must provide public notice to customers in the same manner as is described in Correction Action No. 3 if applicable. Repeat public notices must be published every three months and include any changes or additional information regarding concentrations of HAA5 at the Water System in excess of the MCL. This action must be complied with until DWS notifies Water Supplier that its drinking water is below the MCL for HAA5 and that the drinking water otherwise meets all applicable state and federal drinking water laws and rules.

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). For example, if DWS issues a Notice of Intent to Impose Civil Penalty on March 15, 2025 for failure to submit an action plan according to this Order, the proposed civil penalty could be as much as \$4,500.

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 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 12/9/2024



Samina Panwhar, Manager
Drinking Water Services
Oregon Health Authority

cc: Pete Farrelly, Oregon Health Authority, Drinking Water Services

DATE of Service: December 12, 2024



Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail