



# Oregon

Theodore R. Kulongoski, Governor

**Department of Human Services**

**Public Health Division**

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BEFORE THE STATE OF OREGON  
DEPARTMENT OF HUMAN SERVICES  
OFFICE OF ENVIRONMENTAL PUBLIC HEALTH

In the Matter of

Northwest Hazelnut Company, PWS  
OR4105714

Respondent

NOTICE OF VIOLATION AND  
ADMINISTRATIVE ORDER

To: Jeff Kenagy, President  
Northwest Hazelnut Company  
19748 Hwy 99E  
Hubbard, OR 97032

Northwest Hazelnut Company is a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(211).

Northwest Hazelnut Company, as a water supplier, has specific responsibilities that are identified in OAR 333-061-0025.

Northwest Hazelnut Company has at all times mentioned herein operated and continues to operate a transient non-community public water system located at 19748 Hwy 99E. This water system serves between 25 and 100 people, and is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0290.



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Pursuant to its authority under ORS 448.150, the Oregon Department of Human Services, Public Health Division, Office of Environmental Public Health, Drinking Water Program (Agency) has investigated the operation of the water system owned by Northwest Hazelnut Company.

The Agency found, during its investigation, that Northwest Hazelnut Company violated the maximum contaminant level (MCL) for nitrate. Northwest Hazelnut Company 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 Northwest Hazelnut Company for specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.285) and rules found during the Agency's investigation.

### DESCRIPTION OF RULE VIOLATIONS

- Violation No. 1: Northwest Hazelnut Company is required to conduct monitoring for nitrate in accordance with OAR 333-061-0036(2)(d). Sampling results have exceeded the MCL for nitrate as specified in OAR 333-061-0030(1) in each of the following quarterly monitoring periods:
  - 1st quarter 2008
  - 4th quarter 2008
  - 1st quarter 2009
  - 4th quarter 2009
  - 1st quarter 2010

This constitutes five violations of OAR 333-061-0030(1).

- Violation No. 2: Northwest Hazelnut Company failed to conduct the nitrate monitoring required by OAR 333-061-0036(2)(d) in the second calendar quarter of 2009, which is a violation of the rule.

### ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

Northwest Hazelnut Company 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) allegedly violated (ORS 448.255(3)).

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- Compliance Action No. 1: Northwest Hazelnut Company must submit construction plans no later than September 30, 2010 that clearly indicate which of the following three options will be selected to comply with the MCL for nitrate. These three options are:
  - Option No. 1: Install an approved treatment system that meets the construction standards listed in OAR 333-061-0050(4);
  - Option No. 2: Develop a new water source that meets all applicable requirements in OAR 333-061-0050; or
  - Option No. 3: Connect to, and receive water from, another public water system.

All plans for additions and/or alterations to the system must be approved in advance, before installation, by the Agency. Plans shall have sufficient detail to completely and clearly illustrate what will be constructed and how the water system will meet construction standards (OAR 333-0061-0060(1)).

- Compliance Action No. 2: Northwest Hazelnut Company must complete construction of the project for which plans were submitted in accordance with Compliance Action No. 1 no later than December 31, 2010.
- Compliance Action No. 3: Northwest Hazelnut Company must demonstrate, no later than March 30, 2011, that it supplies water to all of its users that is below the MCL for nitrate.
- Compliance Action No. 4: Northwest Hazelnut Company must sample for nitrate every calendar quarter that the water system is in operation, in accordance with OAR 333-061-0036(2)(d), and submit the sampling results to the Agency in accordance with OAR 333-061-0040(1)(b).

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- Compliance Action No. 5: Northwest Hazelnut Company, pursuant to OAR 333-061-0042, must publish public notice, for exceeding the MCL for nitrate, which meets all the criteria specified in OAR 333-061-0042(4). The notice must be posted in conspicuous locations within the area served by the water system (OAR 333-061-0042(3)(a)(D)), and a copy of the notice and certification that the notice was distributed according to this Order must be submitted to the Agency no later than October 10, 2010. The notice must also be re-published every calendar quarter until all corrections are made, and all system users receive drinking water that meets all applicable state and federal drinking water laws and rules (OAR 333-061-025 and OAR 333-061-0042(3)(a)(D)).
  - The public notice must be submitted to: Brad Daniels, DHS – Drinking Water Program, PO Box 14450, Portland, OR 97293-0450.

### 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 448.285 and administrative rules OAR 333-061-0005 to 333-061-0295, which remain in full force and effect.

This Order does not relieve the Northwest Hazelnut Company 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 the Agency to forgo any civil actions authorized under the Oregon Drinking Water Quality Act.

Failure to comply with all requirements in this Order by the specified due dates may result in additional enforcement action, which may include assessment of civil penalties in the amount of \$50 per day per violation (OAR 333-061-0090).

NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedure Act (chapter 183, Oregon Revised Statutes). If you want a hearing you must file a written request for hearing with the Agency within 10 days from the date this notice was mailed. If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. The request for hearing must be sent to: David E. Leland, Manager; DHS - Drinking Water Program; PO Box 14450; Portland, OR 97293.

If you do not make a timely request for a hearing, the 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 the Agency subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

The Agency has designated the Agency's complete file on Northwest Hazelnut Company 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 letter in an alternate format, or if you have any questions about the requirements in this Order, please contact Brad Daniels at 971-673-0407.

Dated this 11 day of AUGUST, 2010.



Gail R. Shibley, JD, Administrator  
Office of Environmental Public Health

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cc: Gregg Baird, DHS-DWP  
Brian Hawkins, Oregon Department of Agriculture  
Matthew Moore, Northwest Hazelnut Company  
Shannon O'Fallon, Oregon Department of Justice  
Harold Rogers, USEPA

DATE of Service: August 11, 2010



Brad K. Daniels

By certified and first class mail