

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

In the Matter of

Wells Creek District Improvement
Co., PWS OR4105889

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Joe Sharp, President
Wells Creek District Improvement Co.
PO Box 566
Scottsburg, OR 97473

Wells Creek District Improvement Co. has at all times mentioned herein owned and operated, and continues to own and operate, the public water system (hereinafter “Water System”) serving residences and businesses near the intersection of Highway 38 and Spicer Street, northeast of Scottsburg, Oregon. The Water System is a transient non-community public water system serving approximately 100 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

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

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

Wells Creek District Improvement Co. (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 the International Paper Spring, the drinking water supply for the Water System, is contaminated with *E. coli* bacteria and that the water source is not constructed to prevent the intrusion of surface water. Also, Water Supplier did not consistently report sample results for coliform bacteria. 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 333-061-0032(6), in part, requires that water suppliers complete corrective action when a groundwater source is determined to have significant deficiencies or when sample results indicate the presence of *E. coli* bacteria in a groundwater source. Corrective action must be completed within 120 days or according to a schedule approved by DWS. The presence of *E. coli* bacteria was confirmed in the International Paper Spring on December 18, 2023.

The International Paper Spring was inspected by both Kimberly Tanner and Jacob Mauro of Douglas County Environmental Public Health, and Zach Golik and Shawn Stevenson of DWS, on February 8, 2024. The spring was determined not to meet the construction standards identified in OAR 333-061-0050(2)(b) and instead captured surface water. Water Supplier did not correct the construction deficiencies within 120 days of *E. coli* bacteria being confirmed in the International Paper Spring and has not provided a plan for correcting the source deficiencies, which constitutes a violation of OAR 333-061-0032(6).

2. OAR 333-061-0050(2)(b) requires, in part, that springs be constructed of concrete or another impervious, durable material, with a screened overflow, surrounded by a fence and provided with an intercepting ditch to effectively divert surface water. The inspection on February 8, 2024 identified that the International Paper Spring does not meet these construction standards and the Water System facilities are therefore not in compliance with OAR 333-061-0050(2)(b).
3. OAR 333-061-0032(1)(a), in part, requires that water systems supplied by a surface water source to provide at least 99.9 percent removal or inactivation of *Giardia lamblia* cysts, 99.99 percent removal or inactivation of viruses and 99 percent removal of *Cryptosporidium*. Because the International Paper Spring was determined to capture surface water, the Water System must provide treatment that achieves the levels of inactivation or removal specified above, but the required treatment is not provided. OAR 333-061-0032(1)(b) states, in part, water systems will comply with the rule if the requirements for avoiding filtration, disinfection or filtration are met; however, Water Supplier does not operate treatment at the Water System according to the rule. This constitutes one violation of OAR 333-061-0032(1)(a) and (b).
4. OAR 333-061-0036(6)(c) requires water suppliers to monitor for coliform bacteria at least once every month at public water systems supplied by a surface water source. Additionally, 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. Water Supplier has not reported routine coliform monitoring for the Water System since reporting a sample collected on December 15, 2023. This constitutes a violation of OAR 333-061-0036(6), or a violation of OAR 333-061-0040(1)(b)(A) 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 submit an action plan to DWS no later than 60 days after the date of service of this Order identifying whether it will either install appropriate surface water treatment at the Water System or improve or reconstruct the International Paper Springs source facility so that it meets all applicable standards for a groundwater spring. The action plan must:

Wells Creek District Improvement Co.

- Identify all repairs and modifications Water Supplier intends to perform to ensure compliance with all applicable rules at the Water System, and include sufficient detail to clearly identify the work to be completed such that DWS can approve the repairs or modifications, and include:
 - Both a construction schedule identifying dates or timeframes for distinct repairs or modifications to be completed by Water Supplier, and a date when Water Supplier will submit complete construction or installation plans to DWS for treatment to be installed at the Water System or reconstruction the International Paper Springs source facility so that it meets all applicable standards for a groundwater spring.
- 2. Water Supplier must perform and complete all tasks in the action plan described in Corrective Action No. 1 according to the schedule included in the plan and shall notify DWS in writing within 5 calendar days of completing all the tasks.
 - Any modification of the International Paper Spring source must be approved by staff from the Oregon Water Resources Department (OWRD) and completed according to plans approved by DWS and OWRD and that meet all applicable construction standards in OAR 333-061-0050(2). OWRD staff shall inspect or observe modification of the International Paper Spring at their discretion.
 - Construction plans must be approved by DWS prior to any construction or installation taking place.
 - For this corrective action to be met, any construction or installation that was performed must meet the applicable construction standards in OAR 333-061-0050, as approved by DWS.
- 3. Water Supplier must collect water samples according to and submit testing results to DWS within sixty (60) calendar days of notifying DWS that all the tasks of the action plan have been completed.
 - Testing must occur according to all the applicable provisions of OAR 333-061-0036(5) if surface water treatment was installed at the water system or according to OAR 333-061-0036(6)(k) if the International Paper Spring was reconstructed to meet the standards as a groundwater source.

4. Water Supplier must publish public notice at least once every 90 days that informs customers drinking water at the Water System is both contaminated with *E. coli* bacteria and derived from a surface water source without adequate treatment. The notice must meet all the applicable 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).
 - Water Supplier must comply with this action until DWS notifies it that it has fully complied with this Agreement and that drinking water produced by the Water system 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 January 2, 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 9/25/2024



Samina Panwhar, Manager
Drinking Water Services
Oregon Health Authority

cc: Zach Golik, Oregon Health Authority, Drinking Water Services
Barbara Ornduff, Wells Creek District Improvement Co.

DATE of Service: September 27, 2024



Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail