

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

In the Matter of

Strawberry, LLC / Lakeshore RV Park,
PWS OR4190475

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

Respondent

To: Brian Stevens
Strawberry, LLC
197 Outlook Vista Drive
Bend, OR 97703-5472

Strawberry, LLC has at all times mentioned herein owned and operated and continues to own and operate the Lakeshore RV Park water system (hereinafter “Water System”) located at 12333 NE Ochoco Highway in Prineville, Oregon. The Water System is a transient non-community public water system that serves approximately 130 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.

Strawberry, LLC is therefore a water supplier (hereinafter “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 nitrate. 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 VIOLATION

1. OAR 333-061-0030(1) specifies that the MCL for nitrate in drinking water is 10 mg/L. The average concentration of nitrate in drinking water, calculated according to OAR 333-061-0036(2)(h) at the Water System and based on a sample collected on July 20, 2020 is 14.1 mg/L. This exceeds the MCL of 10 mg/L and constitutes a violation of OAR 333-061-0030(1).

Infants below the age of 6 months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome. OAR 333-061-0097

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 effect compliance with the rule(s) violated (ORS 448.255(3)).

1. Water Supplier must complete construction of the treatment system to remove nitrate, conditionally approved by DWS on September 10, 2020, such that DWS can issue final approval for the treatment system to be operated at the Water System.
 - Water Supplier must submit the information necessary for DWS to issue final approval of the construction within 30 days of the date of service of this Order.

2. Water Supplier must monitor for nitrate at the Water System at the sampling location prescribed by OAR 333-061-0036(2)(c) and report the sample results according to OAR 333-061-0040(1)(b)(A).
 - Monitoring must be conducted every month according to OAR 333-061-0036(1)(g), for at least six months.
 - Water Supplier may return to monitoring nitrate once every calendar quarter, according to OAR 333-061-0036(2)(c), if every sample collected according to this compliance action has a concentration of nitrate at or below the MCL for at least six consecutive months.
 - Water Supplier will comply with this Order if monitoring at the Water System demonstrates concentrations of nitrate are below the MCL specified in OAR 333-61-0030(1) for four consecutive calendar quarters.

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 October 29, 2018 for failure to submit construction plans according to this Order, the proposed civil penalty could be as much as \$1,650.

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: David Emme, Manager; Oregon Health Authority, Drinking Water Services; PO Box 14450; Portland, OR 97293.**

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 time 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.

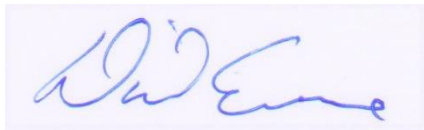
If you withdraw a request for hearing, or notify DWS or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, DWS may issue a final order by default. If the Order becomes final in this manner, you will have the right to appeal the Order to the Oregon Court of 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 time period, you will lose your right to appeal.

Notice to Active Duty Service members. 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 1 (800) 452-7500 for more information. The internet address for the United States Armed Forces Legal Assistance Locator website is <http://legalassistance.law.af.mil/content/locator.php>.

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 (971) 673-0405.

Dated this ____23rd____ day of _____December_____, 2020.



David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Michelle Byrd, Oregon Health Authority, Drinking Water Services
Max Hamblin, Crook County Environmental Health

DATE of Service: December 28, 2020



Signature

Brad K. Daniels
Printed Name

By certified and first-class mail