



PUBLIC HEALTH DIVISION
Center for Health Protection, Drinking Water Services

Tina Kotek, Governor



800 NE Oregon St.
Portland, Oregon 97232-2162
Voice (971) 673-0405
FAX (971) 673-0694
TTY (971) 673-0372

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

In the Matter of

Bear Mountain R.V. Park, PWS
OR4191544

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Anton and Tara Boogaard
27301 Highway 62
Trail, OR 97541-9743

Anton and Tara Boogaard, you have at all times mentioned herein owned and operated, and continue to own and operate, the Bear Mountain R.V. Park public water system (hereinafter "Water System") located at 27301 Highway 62, east of Trail, Oregon. The Water System is a community public water system serving approximately 25 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.

Anton and Tara Boogaard (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 *E. coli* bacteria were confirmed to be present in the groundwater well supplying the Water System, and that this groundwater well is not approved to supply drinking water to 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 333-061-0025 requires water suppliers to take all reasonable actions to assure that the water delivered to water users does not exceed maximum contaminant levels, that water system facilities are free of public health hazards and that water system operation and maintenance are performed as required by the rules. Water samples collected on December 2, 2022 from the groundwater well supplying the Water System and identified by well log JACK 215, confirmed the presence of *E. coli* bacteria. Water Supplier was officially notified on December 5, 2022 that it must take action to ensure *E. coli* bacteria are not present in drinking water delivered to consumers. Water Supplier failed to demonstrate it had removed sources of contamination from the Water System as required by DWS, or that well JACK 215 meets all applicable construction standards in OAR 333-061-0050(2), and therefore Water Supplier failed to demonstrate it took all reasonable actions to ensure water delivered to users does not exceed maximum contaminant levels or that water is free of public health hazards. This constitutes a violation of OAR 333-061-0025.
2. 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 the groundwater source. Corrective action must be completed within 120 days or according to a schedule approved by DWS. Samples collected from a well supplying the Water System on November 30, 2022 and December 2, 2022 indicated that water from the groundwater well supplying the system contains *E. coli* bacteria. Water Supplier failed

to complete corrective action within 120 days as designated by DWS. This constitutes a violation of OAR 333-061-0032(6).

E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. OAR 333-061-0097

3. OAR 333-061-0050(2)(a)(E) does not allow, in part, gravity sewer lines to be located within 50 feet of groundwater wells that supply public water systems. It was determined by Jackson County Environmental Public Health that a gravity sewer line exists 45 feet from well JACK 215. This constitutes a violation of OAR 333-061-0050(2)(a)(E).
4. OAR 333-061-0050(2)(a)(G) requires, in part, that wells be constructed in accordance with the standards for the construction and maintenance of water wells in Oregon as prescribed in OAR chapter 690, divisions 200 through 220 at public water systems. On December 27, 2022, DWS completed an evaluation of well JACK 215 and supplying the Water System and found that this groundwater well does not meet these construction standards. This constitutes a violation of OAR 333-061-0050(2)(a)(G).
5. OAR 333-061-0050(5)(b) states, in part, that wells not adequately constructed must be upgraded to meet current construction standards before disinfection for *E. coli* bacteria can be utilized; or the well may be disconnected from the public water system which it supplies. DWS finds that well JACK 215 must be upgraded to meet the construction standards prescribed by OAR 333-061-0050(2) or disconnected from the Water System, accordance with OAR 333-061-0050(5)(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 submit a corrective action plan to DWS no later 30 days after the date of service of this Order, that clearly identifies which of the two following actions Water Supplier will complete to reliably ensure *E. coli* bacteria are not present in well JACK 215 or any source added to supply the Water System.

- A. Water Supplier may propose installing a new drinking water source for the Water System. The source must meet all the applicable construction standards specified in OAR 333-061-0050 and the plan must include physically disconnecting well JACK 215 from the Water System (or permanently abandoning well JACK 215 according to all the applicable provisions in OAR 690-220-0030 and OAR 690-220-0040).
 - B. Water Supplier may propose reconstructing or repairing well JACK 215. This plan must include permanently decommissioning the existing gravity sewer lines that were determined to constitute a sanitary hazard as specified in OAR 333-061-0050(2)(a)(E).
2. Water Supplier must submit construction plans, or other information in writing if applicable, to DWS no later 60 days after the date of service of this Order, that clearly identifies how the corrective action specified in Compliance Action No. 1 will be implemented by Water Supplier and reliably ensure *E. coli* bacteria are not present in any source supplying the Water System.
 - Construction plans and information must meet all the applicable requirements of OAR 333-061-0060 if applicable and have sufficient detail to completely and clearly illustrate what will be constructed.
 - Plans and information must be sufficient for DWS to determine that any new water source meets all applicable construction standards specified in OAR 333-061-0050.
 3. Water Supplier must complete installation or reconstruction as specified in plans or information approved by DWS according to Compliance Action No. 2, no later than six months after DWS grants conditional plan approval for a new water source or otherwise approves in writing the corrective action proposed by Water Supplier.
 - Construction must comply with all applicable standards specified in OAR 333-061-0050.
 - Water Supplier must demonstrate well JACK 215 was abandoned according to the standards set forth in OAR 690-220-0030 and OAR 690-220-0040 if applicable or allow a physical inspection to demonstrate well JACK 215 or the existing gravity sewer lines were completely and physically disconnected from the Water System.

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 December 15, 2023 for failure to submit construction plans and information according to this Order, the proposed civil penalty could be as much as \$1,500.

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.

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.

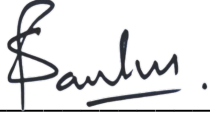
Notice to Active Duty Servicemembers

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 11/6/2023



Samina Panwhar, Manager
Drinking Water Services
Oregon Health Authority

cc: Tony George, Jackson County Environmental Public Health
Zach Golik, Oregon Health Authority, Drinking Water Services
Caroline Gross-Regan, Jackson County Environmental Public Health

DATE of Service: November 7, 2023



Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail