

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

In the Matter of

Cascade Gorge Properties, PWS
OR4191556

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Jimmy Su
Cascade Gorge Restaurant
PO Box 1518
Cave Junction, OR 97523

Jimmy Su, you have at all times mentioned herein owned and operated, and continue to own and operate, the Cascade Gorge Properties water system (hereinafter “Water System”) located at 2651 Mill Creek Drive in Prospect, 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.

Jimmy Su (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 drinking water provided by the Water System was not adequately disinfected from January through April 2022. 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(5)(a) requires, in part, that total treatment processes achieve at least 99.9 percent inactivation or removal of *Giardia lamblia* cysts and at least 99.99 percent inactivation of viruses at water systems where a surface water source is utilized with filtration. The disinfectant concentration at the Water System during the months of January through April 2022 was insufficient to ensure the disinfection treatment at the Water System achieved the required level of pathogen inactivation. This constitutes a violation of OAR 333-061-0032(5)(a).
2. OAR 333-061-0032(5)(b) requires, in part, that water suppliers ensure water entering the distribution system at water systems utilizing a surface water source have a residual disinfectant concentration of at least 0.2 mg/L. Water Supplier reported to DWS that during the months of January and February 2022, the residual disinfectant concentration in water entering the distribution system at the Water System was less than 0.2 mg/L. This constitutes a violation of OAR 333-061-0032(5)(b).

Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches. 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 operate disinfection treatment at the Water System such that a residual disinfectant concentration of at least 0.2 mg/L is achieved in water entering the distribution system, and that treatment processes achieve the inactivation requirements specified in OAR 333-061-0032(5)(a), every day the Water System is operated for at least six consecutive months, beginning with the month of July 2022.
 - o Water Supplier must report surface water treatment effectiveness every month, according to OAR 333-061-0036(5)(b) and OAR 333-061-0040(1), beginning no later than August 10, 2022 and continuing for at least six consecutive months.

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 August 11, 2022 for failure to report effective surface water treatment 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: 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 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 503-735-5438.

Dated this 15th day of June, 2022.



David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Zach Golik, Oregon Health Authority, Drinking Water Services

DATE of Service: June 15, 2022



Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail