

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

In the Matter of

Karin Denman and Kathy Trudel/Drift
Creek Landing, PWS OR4192038

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Karin Denman
Kathy Trudel
Drift Creek Landing
61535 S Hwy 97
Bend, OR 97702

You¹ are a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(211), and as a water supplier, have specific responsibilities that are identified in OAR 333-061-0025.

You have at all times mentioned herein owned and operated, and continue to own and operate the Drift Creek Landing (Drift Creek) public water system at 3851 Alsea Hwy. in Waldport, Oregon. The Drift Creek water system is classified as a transient non-community public water system serving between 25 and 100 people and subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0290.

Pursuant to its authority under ORS 448.150, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) has investigated the operation of the Drift Creek water system.

¹ For the purposes of this order, "you" refers to Karin Denman and Kathy Trudel

DWS found, during its investigation, that the Drift Creek water system is using an unapproved surface water source without adequate water treatment or an inadequately constructed groundwater spring. Furthermore, you are not taking all reasonable precautions to assure that water system facilities are free of public health hazards and you did not adequately notify water users when health hazards were found to be present in the water system. You are therefore unable to assure water users at the Drift Creek water system 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 you 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

- Violation No. 1: OAR 333-061-0025 requires, in part, water suppliers to take all reasonable precautions to assure that water system facilities are free of public health hazards. The Drift Creek water system is known to utilize two different water sources: a groundwater spring that is not adequately constructed as prescribed by OAR 333-061-0050(2); and an unapproved surface water source without adequate treatment as required by OAR 333-061-0032. Neither the groundwater spring nor surface water source are approved to be used at the Drift Creek water system in their current state of construction and with the existing water treatment utilized at the Drift Creek water system.

On November 2, 2011 an inspection revealed that the Drift Creek water system was using the unapproved surface water source because the groundwater spring, normally used as the water source, was unavailable. You were notified that the use of the surface water source constituted a risk to public health unless appropriate treatment was installed and utilized. You indicated that you would cease using the unapproved surface water source and only use the groundwater spring as a water source for the Drift Creek water system in the future.

On October 19, 2012, you admitted to a Lincoln County Environmental Health inspector that you had re-connected the unapproved surface water source without notifying anyone of the action and without taking any precautions to protect the water users from the risks associated with consuming inadequately treated surface water.

By using a water source that is not adequately constructed and by using a water source without adequate water treatment, you failed to demonstrate that you have taken all the reasonable precautions to assure that water system facilities are free of public health hazards, which constitutes a violation of OAR 333-061-0025.

Inadequately treated surface water has the significant potential to have serious adverse effects on human health as a result of short term exposure (OAR 333-061-0042(2)(a)). 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(5)(c)).

- Violation No. 2: OAR 333-061-0025(5) requires, in part, water suppliers to notify all customers served by the water system when public health hazards are found to exist in the water system. When the Drift Creek water system was discovered using the unauthorized surface water source on October 19, 2012, you had not notified the customers served by the water system of the public health hazard, which constitutes a violation of OAR 333-061-0025(5).
- Violation No. 3: OAR 333-061-0032(1)(a) requires water suppliers using a surface water source to install and operate water treatment that reliably removes or inactivates 99.9 percent of *Giardia lamblia* cysts, 99.99 percent of viruses, and 99 percent of *Cryptosporidium*. The Drift Creek water system is not currently operating water treatment that meets these requirements, but was found to be using a surface water source, most recently on October 19, 2012, which constitutes a violation of OAR 333-061-0032(1)(a).
- Violation No. 4: OAR 333-061-0042 requires water suppliers to provide public notice to persons served by public water systems when specific violations or situations exist. OAR 333-061-0042(2)(a) requires, in part, public notice to be issued due to failures or interruptions in key water treatment processes. Providing inadequately treated surface water constitutes such a failure, but you did not provide public notice as required, which constitutes a violation of OAR 333-061-0042.
- Violation No. 5: OAR 333-061-0076(6) requires that significant deficiencies be corrected after being identified during a sanitary survey. OAR 333-061-0076(8) prescribes that significant deficiencies must be corrected according to the schedule approved by DWS. Lincoln County Environmental Health conducted a sanitary survey at the Drift Creek water system on December 29, 2010. Several significant

deficiencies identified during the survey were listed in a letter dated January 20, 2011 and required to be corrected by April 30, 2011. Three of the deficiencies, specifically the failure to measure and record the water system's disinfectant residual, the failure to have an operations manual available, and the failure to have an emergency response plan have not been corrected as of the date of this order, which constitutes a violation of OAR 333-061-0076.

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

You are 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)).

- Compliance Action No. 1: You must submit a corrective action plan to DWS within thirty (30) days from the date of service for this order. The plan must:
 - Identify a permanent water source with the capacity to reliably serve the Drift Creek water system;
 - Describe **how** that water source will be constructed or improved to meet all the applicable construction standards specified in OAR 33-061-0050 and produce water that meets all the water quality standards specified in OAR 333-061-0030; and
 - Identify **when** the water source will be constructed or improved to meet all the applicable construction standards specified in OAR 33-061-0050 and produce water that meets all the water quality standards specified in OAR 333-061-0030.
- Compliance Action No. 2: You must submit construction plans to DWS within sixty (60) days from the date of service for this order. The construction plans must clearly identify how a permanent water source will be constructed or improved at the Drift Creek water system in accordance with the action plan specified in Compliance Action No. 1. The plans shall meet all the applicable requirements of OAR 333-061-0060, and have sufficient detail to completely and clearly illustrate what will be constructed.
 - Plan review materials must be submitted to: Marsha Fox, Oregon Health Authority, Drinking Water Services, PO Box 14450, Portland, OR 97293-0450.
- Compliance Action No. 3: You must immediately publish public notice for delivering inadequately treated surface water to water users. The notice must meet all the

applicable requirements of OAR 333-061-0042(4), and direct all water users to boil the water before drinking the water or using it for cooking, food preparation, or any other activity that might result in consumption of the water. The notice must be delivered by hand to every resident and customer served by the Drift Creek water system and posted in conspicuous locations throughout the water system.

The notice must be updated and re-published every three months to include changes or additional information regarding the Drift Creek water system and must continue to include the directive to boil water. This requirement remains in effect 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)(b)(C)). A copy of the notice and certification of the method of distribution must be submitted to the Agency no later than 10 days after completing the public notification per OAR 333-061-0040(1)(j).

- Submit copies of the public notice to: Brad Daniels, OHA - 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 448.290 and administrative rules OAR 333-061-0005 to 333-061-0290, which remain in full force and effect.

This Order does not relieve you 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.

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 E. Leland, Manager; OHA - Drinking Water Program; PO Box 14450; Portland, OR 97293.**

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.

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.

DWS has designated DWS's complete file on the Drift Creek 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 letter in an alternate format, or if you have any questions about the requirements in this Order, please contact Brad Daniels at 971-673-0405.

Dated this 16th day of November, 2012.



Gail R. Shibley, JD, Administrator
Center for Health Protection

cc: Amy Chapman, Lincoln County Environmental Health
Daniel Hough, OHA-DWS
Neil Jensen, Lincoln County Environmental Health
Shannon O'Fallon, Oregon Department of Justice

DATE of Service: November 20, 2012



Brad K. Daniels

By certified mail and first class mail