

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

In the Matter of

Smith River Marina public water  
system, PWS OR4192133

Respondent

NOTICE OF VIOLATION AND  
ADMINISTRATIVE ORDER

To: Fang-Chung Lee  
8451 Lower Smith River Rd.  
Reedsport, OR 97467

This Notice of Violation and Administrative Order (Order) supersedes and replaces the Order issued by the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) on November 26, 2019.

You have at all times mentioned herein owned and operated, and continue to own and operate, the Smith River Marina water system (hereinafter “Water System”) located at 8451 Lower Smith River Road, northeast of Reedsport, Oregon. The Water System is a transient non-community public water system serving approximately 30 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.

You (hereinafter “Water Supplier”) 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, DWS has investigated the operation of the Water System.

DWS found, during its investigation, that the maximum contaminant level (MCL) for *E. coli* was exceeded at the water system and that Water Supplier failed to maintain the minimum disinfectant residual determined by DWS to ensure safe drinking water. Additionally, Water Supplier did not report disinfectant residual monitoring or evaluate the groundwater well supplying the Water System for direct influence by surface water. 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.

DWS issued the Order to Water Supplier on November 26, 2019 due to some of the same violations at the Water System. Water Supplier notified DWS on March 16, 2020 that the Water System would not be opened for business during the 2020 operating season and would not provide drinking water to the public; stating that Water Supplier would therefore not need to comply with the Order issued by DWS. Water Supplier subsequently notified DWS that the Water System had been opened for business on August 15, 2020 without completing the required start-up protocol, in violation of the Order.

This 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 333-061-0030(4) specifies that the MCL for *E. coli* applies to all public water systems and, in part, is exceeded or violated when an *E. coli*-positive repeat sample follows a total coliform-positive routine sample. Coliform monitoring reported for the Water System indicates that on August 21, 2020, an *E. coli*-positive repeat sample was reported following a total coliform-positive routine sample reported on August 20, 2020. This exceeds the MCL for *E. coli* and constitutes a violation of OAR 333-061-0030(4).

2. OAR 333-061-0036(11)(b)(B) requires, in part, water suppliers to maintain the disinfectant residual determined by DWS to ensure 4-log inactivation of viruses, every day water is served to the public from a groundwater source when 4-log treatment for viruses is provided at a public water system. Water Supplier reported on August 21, 2020 that the chlorination treatment for the Water System failed and 4-log treatment was not being provided every day water was served to the public. This violation persisted until treatment equipment was repaired and returned to service on an unspecified date in September 2020. This constitutes a violation of OAR 333-061-0036(11)(d).
3. OAR 333-061-0036(11)(b)(A) requires, in part, water suppliers to monitor and record the disinfectant residual every day water is served to the public from a groundwater source when 4-log treatment for viruses is provided at a public water system. The Water System uses a groundwater well as a water source, provides 4-log treatment for viruses and is operated from April through October every year. 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 reported disinfectant residual monitoring on October 22, 2020 for part of an unspecified calendar month but the report was incomplete. This constitutes a violation of OAR 333-061-0036(11)(d).
4. OAR 333-061-0032(7) requires, in part, water suppliers to evaluate groundwater sources supplying public water systems for the potential of surface water influence when a source is in proximity to surface water body. The Water System's groundwater well is near the Smith River and DWS notified Water Supplier in writing to evaluate the groundwater well for surface water influence on October 22, 2014 and February 20, 2019 but the evaluation was not conducted as required. This constitutes a violation of OAR 333-061-0032(7).

#### 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 notify DWS in writing, within 10 days of when it begins operating the Water System for the 2021 season. This notification must include a seasonal start-up checklist for the Water System, completed according to OAR 333-061-0065(8) and reported to DWS according to OAR 333-061-0040(1)(n).

- DWS records indicate the Water System is operated from April 1 to October 31 every year. If Water Supplier will not begin operations at the Water System by April 15, 2021, it must notify DWS of the delay on or before April 1, 2021 and provide an estimated date when operations are expected to begin.
2. Water Supplier must monitor the disinfectant residual at the Water System according to OAR 333-061-0036(11)(b) every day the Water System serves water or is open for business during the 2021 calendar year. The disinfectant residual monitoring must be reported to DWS within 10 days of the end of every month according to OAR 333-061-0040(1).
    - Water Supplier will have satisfied this compliance action after disinfectant residual monitoring is reported on time for at least three consecutive months.
  3. Water Supplier must monitor for coliform bacteria at the Water System according to OAR 333-061-0036(6)(b) every month the Water System serves water or is open for business during the 2021 calendar year and report the sample results to DWS within 10 days of the end of every month according to OAR 333-061-0040(1).
    - Water Supplier will have satisfied this compliance action after coliform bacteria monitoring is reported on time for at least three consecutive months.
  4. Water Supplier must collect at least two samples for microscopic particulate analysis after it begins operating the Water System for the 2021 season, when weather conditions are appropriate. The samples must be collected according to the following schedule:
    - The first sample must be collected as soon as possible and no later than May 30, 2021, after a period of heavy rainfall or snowmelt.
    - The second sample must be collected during an extended period of low rainfall and between August 1, 2021 and September 30, 2021.

#### 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 May 10, 2021 for failure to report disinfectant residual monitoring and coliform bacteria monitoring according to this Order, the proposed civil penalty could be as much as \$3,000.

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 Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information, contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll-free telephone number.

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 Daniels at 971-673-0407.



Dated this 30<sup>th</sup> day of November 2020.



David Emme, Manager  
Drinking Water Services  
Oregon Health Authority

cc: Angela Scott, Douglas County Environmental Health  
Shawn Stevenson, Oregon Health Authority, Drinking Water Services  
Rebecca Templin, Oregon Health Authority, Drinking Water Services

DATE of Service: December 1, 2020



Signature

Brad K. Daniels  
Printed Name

By certified mail and first-class mail