

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 December 1, 2020.

Fang-Chung Lee, 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 Water Supplier failed to maintain the minimum disinfectant residual determined by DWS to ensure safe drinking water 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 administrative orders to Water Supplier on November 26, 2019 and December 1, 2020 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 provided drinking water to the public on August 15, 2020 without completing the required start-up protocol, in violation of the administrative order issued on November 26, 2019. Water Supplier has subsequently operated the Water System without complying with the previous administrative orders or ensuring safe drinking water according to the rules cited in this Notice of Violation and Administrative Order (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 333-061-0025 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 Supplier did not operate disinfection treatment so that viruses are adequately inactivated in drinking water, nor has Water Supplier analyzed the water to determine if there is direct influence by surface water. This constitutes a violation of OAR 333-061-0025.

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 February 11, 2022 that the minimum chlorine residual was not achieved and that 4-log treatment was not being provided every day water was served to the public. This constitutes a violation of OAR 333-061-0036(11)(d).
3. 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).

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 monitor the disinfectant residual at the Water System according to OAR 333-061-0036(11)(b) every day the Water System delivers drinking water to users. 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).
 - Disinfectant residual monitoring for the Water System, beginning in April 2022, must be reported every month and the results of the first month's monitoring must be reported to DWS no later than May 10, 2022.
 - Water Supplier will have satisfied this compliance action after the minimum chlorine residual is achieved every day and disinfectant residual monitoring is reported on time for at least six consecutive months.

2. Water Supplier must monitor for coliform bacteria according to all the applicable provisions of OAR 333-061-0036(6) at the Water System.
 - Routine monitoring for coliform bacteria must be conducted every month, beginning in April 2022 and the results of the first month's monitoring must be reported to DWS no later than May 10, 2022.
 - Additionally, all routine, repeat and source water monitoring for coliform bacteria must be conducted according to the applicable provisions of OAR 333-061-0036(6).
 - All monitoring must be reported to DWS within 10 days of the end of the month or the applicable monitoring period according to OAR 333-061-0040(1)(b)(A).
 - Water Supplier will have satisfied this compliance action after all coliform bacteria monitoring required by the applicable provisions of OAR 333-061-0036(6) is reported on time for at least six consecutive months.

3. Water Supplier must collect at least two samples for microscopic particulate analysis when weather conditions are appropriate within the 2022 calendar year. 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, 2022, 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, 2022 and September 30, 2022.

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 11, 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.

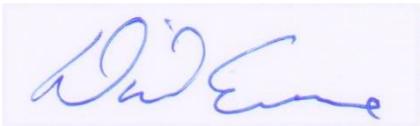
Notice to Active Duty Servicemembers

Active-duty 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 Daniels at 971-673-0407.

Dated this 16th day of March 2022.



David Emme, Manager
Drinking Water Services
Oregon Health Authority

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

DATE of Service: March 18, 2022.



Signature

Brad K. Daniels
Printed Name

By certified mail and first-class mail