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

In the Matter of

Fang-Chung Lee
Smith River Marina, PWS OR4192133

Respondent

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

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

Pursuant to Oregon Revised Statutes (ORS) 448.280, 448.285, and Oregon Administrative Rule (OAR) 333-061-0090, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) intends to impose a civil penalty of \$3,000 against you for violations of OAR 333-061-0036(11) and OAR 333-061-0090(3).

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"), which is a transient non-community public water system serving approximately 30 people and subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0272.

You are therefore a water supplier as defined in ORS 448.115(12) and OAR 333-061-0020 and have specific responsibilities as defined in OAR 333-061-0025 and 333-061-

0036(11). These responsibilities include taking all reasonable actions to assure water delivered to users does not exceed maximum contaminant levels and that water system facilities are free of public health hazards, and routinely collecting and submitting water samples for laboratory analyses. OAR 333-061-0025. Additionally, OAR 333-061-0032(11) requires, in part, water suppliers to monitor the disinfectant residual at water systems where 4-log inactivation of viruses is required; and OAR 333-061-0032(7) requires, in part, water suppliers to evaluate groundwater sources for direct influence by surface water when such sources are in proximity to surface water.

Due to the failure to report measurements of the disinfectant residual at the Water System or to evaluate the groundwater source supplying the Water System for influence by surface water, DWS served a Notice of Violation and Administrative Order (Order) to you on March 18, 2022. The Order cited three violations of the rules specified above. First, that you failed to take all reasonable actions to ensure that water system facilities do not exceed maximum contaminant levels and are free of public health hazards, by failing to operate disinfection treatment so viruses are adequately inactivated and by failing to evaluate the Water System's groundwater source for influence by surface water, in violation of OAR 333-061-0025. Second, that you failed to demonstrate that the disinfectant residual determined by DWS to ensure 4-log inactivation of viruses is provided every day water in served to the public from a groundwater source confirmed to be contaminated by *E. coli* bacteria, in violation of OAR 333-061-0036(11). Third, that you failed to evaluate the groundwater source supplying the Water System for potential influence by surface water, in violation of OAR 333-061-0032(7).

You did not appeal the Order and did not comply with the Order by the deadlines specified therein. You also did not contact DWS regarding the Order and have not otherwise taken any apparent action to ensure water system facilities are free from public health hazards or demonstrated action to ensure disinfection treatment is operated to inactivate viruses, or demonstrated that the groundwater source supplying the Water System was evaluated for influence by surface water. The Order is incorporated by reference.

Your failure to comply with the Order issued by DWS is a violation for which a civil penalty may be assessed as prescribed by OAR 333-061-0090(3)(i).

CONCLUSIONS OF LAW

1. You are in violation of OAR 333-061-0090(3)(i) for failing to comply with an order issued by DWS.

2. You are in violation of OAR 333-061-0025 for failing to take all reasonable actions to assure water delivered to users does not exceed maximum contaminant levels and that water system facilities are free of public health hazards.
3. You are in violation of OAR 333-061-0036(11) for failing to report that disinfectant residuals are adequate to ensure 4-log inactivation of viruses every day water is provided to the public.

CIVIL PENALTY

Pursuant to OAR 333-061-0090, DWS intends to impose a total civil penalty in the amount of \$3,000 based upon the population served by the public water system and each violation of OAR 333-061-0036(11) and OAR 333-061-0090(3). DWS considered mitigating and aggravating factors as described below in determining the total civil penalty amount.

Each violation is a separate and distinct offense according to OAR 333-061-0090. The per day civil penalty amount for a violation at a public water system serving 30 people is \$50 per day according to OAR 333-061-0090(4). DWS intends to impose a civil penalty of \$50 per day for each of the two violations as set out in the civil penalty schedule.

For each of the violations, DWS intends to impose a civil penalty for each day of non-compliance, a total of 30 days. The number of days is based on the period of time from May 11, 2022 through June 10, 2022. 30 days is appropriate for violation 1 because the Order directed you to report monitoring for coliform bacteria and disinfectant residuals no later than May 10, 2022. You failed to comply with the Order by May 10, 2022 so DWS may impose a civil penalty beginning on that date for Violation 1. For Violation 2, you did report disinfectant residuals to demonstrate 4-log inactivation of viruses by May 10, 2022 as required by the Order.

The total proposed civil penalty is \$3,000 (30 x 2 x \$50).

If the violations identified in this notice continue or if you violate any other applicable law or rules, you may be subject to additional civil penalties per day per violation.

CIVIL PENALTY FACTORS CONSIDERED

In assessing the civil penalty, DWS considered the factors set out in ORS 448.285(2).

- (a) The past history of the person incurring the penalty in taking all feasible steps or procedures necessary or appropriate to correct the violation:
 - DWS issued a letter to you on October 22, 2014 requiring you to evaluate the groundwater source serving the Water System for influence by surface water. You did not comply with the requirements in the letter despite repeated attempts by DWS to assist you with the actions required, including in-person assistance and guidance by email and telephone to operators at the Water System.
 - DWS issued a letter to you on February 20, 2019 requiring you to evaluate the groundwater source serving the Water System for influence by surface water. You did not comply with the requirements in the letter despite frequent attempts by DWS to assist operators at the Water System to complete the actions required.
 - DWS issued an administrative order to you on November 26, 2019 requiring you to complete a procedure for opening a seasonally operated water system, reporting samples for coliform bacteria, operating disinfection treatment to demonstrate 4-log inactivation of viruses and evaluating the groundwater source serving the Water System for influence by surface water. You did complete the required compliance actions.
 - On March 16, 2020 you reported that the Water System would be closed to the public and not opened for camping throughout the 2020 operating season and until further notice. You cited a lack of business at the park and your desire to retire from managing the business as reasons for the Water System's closure.
 - On August 21, 2020 sample results were reported to DWS indicating the presence of *E. coli* bacteria in drinking water at the Water System. You reported on the telephone that you had opened the business and provided drinking water to customers despite your previous assertion that the Water System would not be operated. You also reported during this conversation, that disinfection equipment at the Water System had malfunctioned such that drinking water was not disinfected according to Oregon Administrative Rules.

- DWS issued a second administrative order to you on December 1, 2020 requiring you to complete a procedure for opening a seasonally operated water system, reporting samples for coliform bacteria, operating disinfection treatment to demonstrate 4-log inactivation of viruses and evaluating the groundwater source serving the Water System for influence by surface water. You did complete the required compliance actions and did not otherwise respond to this order.
 - (b)Prior violations:
 - Over the last five years, numerous violations of drinking water regulations occurred at the Water System, some on numerous occasions. These prior violations include 46 violations of OAR 333-061-0025(1), one violation of OAR 333-061-0025(2), one violation of OAR 333-061-0025(4), one violation of OAR 333-061-0025(5), one violation of OAR 333-061-0030(4), two violations of OAR 333-061-0032(6)(f), one violation of OAR 333-061-0032(7), one violation of OAR 333-061-0036(2)(c), 19 violations of OAR 333-061-0036(6), 26 violations of OAR 333-061-0036(11) and two violations of OAR 333-061-0042. DWS considered these prior violations to support imposing the maximum civil penalty in this matter.
 - (c)Economic and financial conditions of the person incurring the penalty:
 - DWS has no information about your economic or financial details, or the economic or financial conditions at the Water System. DWS considered this factor neutral when determining the appropriate civil penalty in this matter.

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). To request a hearing, you must file a written request with DWS within 20 days from the date this notice was mailed. **The request for hearing must be sent to: David Emme, Manager; Oregon Health Authority, Drinking Water Services; PO Box 14450; Portland, OR 97293-0450. If a request for hearing is not received within the 20-day period, you will have waived your right to a hearing.**

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 request a hearing within the 20 days, withdraw the request for hearing, notify DWS or the administrative law judge that you will not appear at a scheduled hearing, or fail to appear at a scheduled hearing, DWS may issue a final order by default imposing a civil penalty. If DWS issues a final order by default, DWS designates its files on this matter as the record for the purpose of proving a *prima facie* case upon default.

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.

For purposes of ORS 293.229 through 293.233 and ORS 293.250, the civil penalty specified herein will become a liquidated debt if a final order is issued. Pursuant to ORS 293.231 DWS is required to assign liquidated and delinquent civil penalties to the Department of Revenue, as provided in ORS 293.250, not later than 90 days after the final order is issued. Reasonable administrative costs, collection costs, attorney's fees, and all other costs and charges necessary for the collection of any amount not paid when due, including but not limited to collection charges assessed by the Department of Revenue may be added to the amount due of \$3,000.

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 notice, please contact Brad K. Daniels at 503-735-5438.

Date June 27, 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: June 28, 2022



Brad K Daniels

By certified and first class mail