

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

In the Matter of

Fang-Chung Lee, dba
Smith River Marina,
Public Water System OR4192133,
Respondent

FINAL ORDER IMPOSING
CIVIL PENALTY BY DEFAULT

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

The Oregon Health Authority (Authority), Public Health Division, Center for Health Protection, Drinking Water Services (DWS) issued a Notice of Intent to Impose Civil Penalty (Notice) to Fang-Chung Lee, dba Smith River Marina (Respondent) on June 27, 2022 for specific violations of the Oregon Drinking Water Quality Act and rules. The Notice is incorporated herein by reference. The Notice offered Respondent an opportunity for hearing if requested within 20 days of service of the Notice. The Notice designated the relevant portions of the Authority's file on this matter, as the record for purposes of default.

Respondent timely requested a hearing, the matter was referred to the Office of Administrative Hearings, and was set for hearing by telephone on November 15, 2022, at 9:00AM. Written notice was sent to Respondent stating the time and date of the hearing, including a phone number for Respondent to call into the hearing. Respondent did not

appear at the date and time set, and for approximately twenty minutes after the time set. No other communication from Respondent was received regarding the hearing.

DWS therefore issues this final order by default and designates its files on this matter as the record for the purpose of proving a *prima facie* case upon default.

FINDINGS OF FACT

Respondent has at all times mentioned herein owned and operated the Smith River Marina (Water System) public water system located at 8451 Lower Smith River Road, Reedsport, Oregon. The Water System is a public water system that serves approximately 30 people and is subject to regulation according to the Oregon Drinking Water Quality Act (ORS 448.115 to 448.290) and Oregon Administrative Rules 333-061-0005 to OAR 333-061-0272. The Authority has no information about the Respondent's economic or financial details, or the economic or financial conditions of the water system.

Respondent is a water supplier as defined in ORS 448.115(12) and OAR 333-061-0020 (151) and has 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 for water 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 imposes 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 imposes 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 imposes 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 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 not report disinfectant residuals to demonstrate 4-log inactivation of viruses by May 10, 2022 as required by the Order.

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

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:
 - 1. DWS issued letters to you on October 22, 2014, and 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.
 - 2. DWS issued administrative orders on November 26, 2019, March 16, 2020, December 1, 2020 and March 18, 2022, demanding compliance with each order's stated requirements. You failed to comply with each 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) (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.

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ORDER

Based on the foregoing, FANG-CHUNG LEE is hereby ordered to pay a civil penalty in the amount of \$3,000.00.

Date: 11/16/2022



André Ourso, JD, MPH, Administrator
Oregon Health Authority, Center for Health Protection

GENERAL PROVISIONS

Civil penalty amounts are established in Oregon Administrative Rule 333-061-0090. If unpaid, civil penalties may be recorded and filed with county clerks as liens against property 10 days after the expiration of the statutory appeals period. DWS may assign liquidated and delinquent civil penalties to the Department of Revenue, as provided in ORS 293.250.

If you have any questions about payment, or wish to make payment arrangements, please refer to the invoice attached to this final order. Make Checks payable to the Oregon Health Authority, Drinking Water Services. Refer to the attached invoice for where to send the payment and payment options.

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.

You are entitled to a judicial review of this Order in accordance with ORS 183.482. To appeal, you must file a petition for judicial review with the Court of Appeals within 60 days from the date of service of this Order.

If you need to receive the information in this letter in an alternate format, or if you have any questions regarding this Order, please contact Brad K. Daniels at (503) 735-5438.

cc: Ellen Mendoza, Oregon Department of Justice
Shawn Priddle, Douglas County Environmental Health
Mai Quach, Oregon Health Authority, Center for Health Protection
Rebecca Templin, Oregon Health Authority, Drinking Water Services

DATE of Service: November 16, 2022

Brad K Daniels

Brad K Daniels

By certified and first class mail