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

In the Matter of

Oasis Café public water system, PWS
OR4193644

Respondent

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

To: Tammy Lyons
Thomas Ryder
James and Rowena Lang
PO Box 186
Juntura, OR 97911

Pursuant to Oregon Revised Statute (ORS) 448.280, ORS 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 \$1,500 against Tammy Lyons, Thomas Ryder, and James and Rowena Lang, for violations of OAR 333-061-0090(3).

Tammy Lyons, Thomas Ryder, and James and Rowena Lang have at all times mentioned herein owned and continue to own, and Tammy Lyons operates, the Oasis Café water system (hereinafter "Water System") located at 5838 US Highway 20 in Juntura, Oregon. The Water System is a transient non-community public water system serving approximately 50 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.

Tammy Lyons, Thomas Ryder, and James and Rowena Lang (hereinafter “Water Supplier”) 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 OAR 333-061-0036(6). 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. OAR 333-061-0025. OAR 333-061-0025(1) requires water suppliers to routinely collect and submit water samples for laboratory analyses at the frequencies prescribed by OAR 333-061-0036. OAR 333-061-0025(3) requires water suppliers to report as prescribed by OAR 333-061-0040, the results of analyses or measurements which indicate that maximum contaminant levels have not been exceeded. OAR 333-061-0036(6)(b)(C) requires, in part, water suppliers to monitor for coliform bacteria at least once every month at transient non-community public water systems. 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.

Due to the failure, in part, to report monitoring for coliform bacteria for the Water System, DWS served a Notice of Violation and Administrative Order (Order) to Water Supplier on February 16, 2022. The Order cited four violations of rules, including those specified above. First, that Water supplier failed to routinely collect and submit water samples for laboratory analysis as prescribed by OAR 333-061-0036, in violation of OAR 333-061-0025. Second, that Water Supplier did not report monitoring for nitrate in violation of OAR 333-061-0036(2)(c), or OAR 333-061-0040(1) if monitoring was conducted but not reported. Third, that Water Supplier did not report monitoring for coliform bacteria in violation of OAR 333-061-0036(6)(b)(C), or OAR 333-061-0040(1) if monitoring was conducted but not reported. Fourth, that Water Supplier failed to submit a coliform investigation report for review and approval, in violation of OAR 333-061-0078(2). The Order required Water Supplier to conduct monitoring for nitrate once and to conduct monitoring for coliform bacteria for six consecutive months, and to report the results of that monitoring to DWS.

Water Supplier did not appeal the Order and afterward attempted to comply with the Order, reporting monitoring for nitrate as required, and reporting monitoring for coliform bacteria for two consecutive months; however, Water Supplier did not report coliform bacteria monitoring for six consecutive months as specified in the Order. The previous and continued failure to report the results of coliform monitoring is a violation of the Order. The Order is incorporated by reference.

Water Supplier's 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

Violation No. 1: Water Supplier is in violation of OAR 333-061-0090(3)(i) for failing to comply with an order issued by DWS.

Violation No. 2: Water Supplier is in violation of OAR 333-061-0025(1) for failing to routinely collect and submit water samples for laboratory analysis as prescribed by OAR 333-061-0036.

Violation No. 3: Water Supplier is in violation of OAR 333-061-0036(6)(b)(C) for failing to report monitoring for coliform bacteria, if monitoring was not conducted.

Violation No. 4: Water Supplier is in violation of OAR 333-061-0040(1) for failing to report monitoring for coliform bacteria, if monitoring was conducted according to OAR 333-061-0036(6)(b)(C) but not reported.

CIVIL PENALTY

Pursuant to OAR 333-061-0090, DWS intends to impose a total civil penalty in the amount of \$1,500 based upon the population served by the public water system and each violation of 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 fewer than 100 people is \$50 per day according to OAR 333-061-0090(4). DWS intends to impose a civil penalty of \$50 per day for the violation of OAR 333-061-0090(3) as set out in the civil penalty schedule.

For the violation, 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 from October 1, 2022 through October 30, 2022. 30 days is appropriate for the violation because Water Supplier failed to comply with an order issued by DWS by not reporting monitoring for coliform bacteria conducted during this period.

The total proposed civil penalty is \$1,500 (30 x 1 x \$50).

If the violation identified in this notice continues or if Water Supplier violates any other applicable law or rules, Water Supplier 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:
 - There is a history of violations for failing to report monitoring at the Water System. The number of monitoring violations and frequency with which violations occur at the Water System supports imposing the maximum civil penalty in this matter.
 - DWS issued an administrative order on June 18, 2018 due to violations for failure to report nitrate monitoring for the Water System. Water Supplier complied with the monitoring requirement specified in the administrative order by the deadline in the order. Water Supplier's compliance with the 2018 administrative order supports reducing the civil penalty in this matter.
 - The Order issued February 16, 2022 required Water Supplier to report monitoring for both nitrate and coliform bacteria for the Water System. Water Supplier complied with the requirement to report monitoring for nitrate but did not comply with the requirement to report coliform bacteria monitoring every month for at least six consecutive months. Water Supplier's failure to comply with the Order's requirement to report coliform monitoring supports imposing the maximum civil penalty in this matter.
 - DWS issued a warning letter to Water Supplier on August 24, 2022, notifying it of the violation of the Order and allowing an opportunity to report six consecutive months of coliform monitoring to comply with intent of the Order. A sample for coliform bacteria was collected on August 30, 2022 and reported to DWS on September 9, 2022 but no monitoring was reported for the month of September or October 2022. Water Supplier's failure to again comply with the Order's requirement to report coliform monitoring supports imposing the maximum civil penalty in this matter.

- (b) Prior violations:
 - Over the last five years, Water Supplier has violated numerous drinking water regulations, some on numerous occasions. These prior violations include 47 violations of OAR 333-061-0025(1), five violations of OAR 333-061-0036(2)(c), 43 violations of OAR 333-061-0036(6), one violation of OAR 333-061-0042, one violation of OAR 333-061-0064, and one violation of OAR 333-061-0065(4) and one violation of OAR 333-061-0078. 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 Water Supplier's 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: Kari Salis, Manager; Oregon Health Authority, Drinking Water Services; and may be delivered by mail to PO Box 14450, Portland, OR 97293 or by email to karyl.l.salis@dhsaha.state.or.us.**

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 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>.

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 \$1,500.

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 bradley.k.daniels@dhsoha.state.or.us (503) 735-5438.

Date 11/23/2022



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

cc: Eric Evans, Malheur County Environmental Health
Bill Goss, Oregon Health Authority, Drinking Water Services
Amy Word, Oregon Health Authority, Drinking Water Services

DATE of Service: November 28, 2022

A handwritten signature in blue ink, appearing to read "BK Daniels", is written over a light gray rectangular background.

Brad K Daniels

By certified and first class mail