

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

In the Matter of

Oasis Café public water system, PWS
OR4193644

Respondents

FINAL ORDER IMPOSING
CIVIL PENALTY BY DEFAULT

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

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 Tammy Lyons, Thomas Ryder and James and Rowena Lang (hereinafter “Water Supplier”) on November 28, 2022 for specific violations of the Oregon Drinking Water Quality Act and rules. The Notice is incorporated herein by reference. The Notice offered Water Supplier an opportunity for hearing if requested within 20 days of service of the Notice. No hearing was timely requested. The Notice designated the relevant portions of the Authority’s file on this matter, as the record for purposes of default.

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

Water Supplier has at all times mentioned herein owned and operated the Oasis Café public water system (hereinafter “Water System”), identified by public water system ID# OR4193644 and 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 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. DWS has no information about the Respondent's economic or financial details, or the economic or financial conditions of the water system.

Water Supplier, as defined in ORS 448.115(12) and OAR 333-061-0020(211), has specific responsibilities as defined in OAR 333-061-0025 and 333-061-0036(6) and is required 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, and to monitor for coliform bacteria. 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 to report monitoring for coliform bacteria, 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 fully 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. Water Supplier is in violation of OAR 333-061-0090(3)(i) for failing to comply with an order issued by DWS.
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.
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.
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 imposes 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 civil penalty amount for a violation by a public water system serving 50 people is \$50 per day according to OAR 333-061-0090(4). DWS imposes a civil penalty of \$50 per day for each violation as set out in the civil penalty schedule and for each day of non-compliance, a total of 30 days, 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 civil penalty is \$1,500 (30 x 1 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. 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.
 2. 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.
 3. DWS issued the Order on February 16, 2022 due to violations for failure to report coliform bacteria and nitrate monitoring for the Water System. Water Supplier has not fully complied with the monitoring requirements specified in the Order. Water Supplier's failure to comply Order supports imposing the maximum civil penalty in this matter.
 4. DWS sent a warning letter on August 24, 2022, notifying Water Supplier it failed to comply with the Order and allowing an opportunity to report belated coliform monitoring according to the intent of the Order. A sample for coliform bacteria was collected on August 30, 2022 but no monitoring was reported for the month of September or October 2022. Water Supplier's failure again to comply with the Order's requirement to conduct coliform monitoring for six consecutive months 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 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.

ORDER

Based on the foregoing, WATER SUPPLIER is hereby ordered to pay a civil penalty in the amount of \$1,500.

Date January 6, 2023



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 contact the Oregon Department of Human Services and Oregon Health Authority Accounts Receivable office at 503-947-5126. You will receive an invoice with instructions 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: Eric Evans, Malheur County Health Department
Bill Goss, Oregon Health Authority, Drinking Water Services
Mai Quach, Oregon Health Authority, Center for Health Protection
Erin Williams, Oregon Department of Justice
Amy Word, Oregon Health Authority, Drinking Water Services

DATE of Service: January 9, 2023



Brad K Daniels

By certified and first class mail