

800 NE Oregon St.
Portland, Oregon 97232-2162
Voice (971) 673-0405
FAX (971) 673-0694
TTY (971) 673-0372

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

In the Matter of

Troy Resort/Wenaha Bar and Grill,
PWS OR4193931

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Douglas P. Witherrite
Wenaha Bar and Grill, LLC
84570 Bartlett Road
Enterprise, OR 97828

You have at all times mentioned herein operated, and continue to operate, the Troy Resort/Wenaha Bar and Grill public water system (hereinafter "Water System") located at 84570 Bartlett Road in Troy, 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, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) has investigated the operation of the Water System.

DWS found, during its investigation, that Water Supplier did not maintain the required minimum disinfectant residual at the Water System. Additionally, Water Supplier did not report disinfectant residual monitoring or nitrate monitoring for the Water System. 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.

This Notice of Violation and Administrative Order (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 333-061-0036(11)(e) requires that water suppliers correct any disruption in treatment, within four hours of determining the disruption occurred, at a water system using groundwater where 4-log treatment of viruses is required. The Water System uses two groundwater wells as water sources and provides 4-log treatment for viruses, and on July 14, 2019 reported that the required disinfectant residual was below the minimum required concentration for a period of 24 hours. This constitutes a violation of OAR 333-061-0036(11).
2. OAR 333-061-0036(11)(b)(A) requires, in part, water suppliers to monitor and record the disinfectant residual every day water is served to the public from a groundwater source at a public water system when 4-log treatment for viruses is provided. Additionally, 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. The Water System uses two groundwater wells as water sources, provides 4-log treatment for viruses and is operated from March 1 through November 30 every year, but Water Supplier has not reported disinfectant residual monitoring for the Water System since July 14, 2019. This constitutes five violations of OAR 333-061-0036(11), or five violations of OAR 333-061-0040(1)(b)(A) if the most recent monitoring was conducted but not reported.

Additionally, Water Supplier reported disinfectant residual monitoring for the Water System for the months of January through June 2019 more than 10 days after the end

of the required monitoring period for each of the months. This constitutes six violations of OAR 333-061-0040(1)(b)(A).

3. OAR 333-061-0036(2)(c) requires, in part, water suppliers to monitor for nitrate at least once every year at public water systems, at every entry point to the water distribution system. Additionally, 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. Water Supplier has not reported nitrate monitoring for the Water System since reporting samples collected on January 2, 2018. This constitutes two violation of OAR 333-061-0036(2)(c), or two violations of OAR 333-061-0040(1)(b)(A) if monitoring was conducted but not reported.

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 serves water or is open for business during the 2020 calendar year.
 - o Water Supplier must report disinfectant residual monitoring to DWS within 10 days of the end of every month according to OAR 333-061-0040(1).

If the disinfectant residual is below the minimum required concentration for 4-log inactivation of viruses for more than four hours on any day, DWS may require Water Supplier to take further corrective action.

2. Water Supplier must monitor nitrate at the Water System according to OAR 333-061-0036(2)(c) and report the results to DWS no later than May 31, 2020.

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 April 11, 2020 for failure to report the disinfectant residual at the Water System for the month of March according to this Order, the proposed civil penalty could be as much as \$1,500.

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 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.

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 K. Daniels at 971-673-0407.

Dated this 3rd day of March, 2020.



David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Bill Goss, Oregon Health Authority, Drinking Water Services
Amy Word, Oregon Health Authority, Drinking Water Services

DATE of Service: March 4, 2020



Signature

Brad K. Daniels
Printed Name

By certified mail and first-class mail