



PUBLIC HEALTH DIVISION  
Center for Health Protection, Drinking Water Services

Tina Kotek, Governor



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

Wenaha Bar and Grill, PWS  
OR4193931

Respondent

NOTICE OF VIOLATION AND  
ADMINISTRATIVE ORDER

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

Douglas P. Witherrite, you have at all times mentioned herein operated, and continue to operate, the water system serving the Wenaha Bar and Grill (hereinafter “Water System”) located at 84570 Bartlett Rd in Enterprise, 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.

Douglas P. Witherrite (hereinafter “Water Supplier”), you 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 consistently report sample results for coliform bacteria, nitrate, and measurements of residual disinfectant concentrations. 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 333-061-0025(1) requires water suppliers to routinely collect and submit water samples for laboratory analyses at the frequencies prescribed by OAR 333-061-0036. OAR 333-061-0036(2)(c), OAR 333-061-0036(6) and OAR 333-061-0036(11) require monitoring for nitrate, coliform bacteria and residual disinfectant concentrations respectively, at public water systems. Water Supplier did not report sample results to DWS according to OAR 333-061-0036 as described below, which constitutes a violation of OAR 333-061-0025(1) if samples were in fact not collected.
2. OAR 333-061-0036(2)(c) requires, in part, water suppliers to monitor for nitrate at least once every year at public water systems. 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 water supplied by well #1 at the Water System since reporting a sample collected on November 9, 2021. This constitutes a violation of OAR 333-061-0036(2)(c), or a violation of OAR 333-061-0040(1)(b)(A) if monitoring was conducted but not reported.

3. OAR 333-061-0036(6)(b) requires water suppliers to monitor for coliform bacteria at least once every month at non-community public water systems operated on a seasonal basis. 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 coliform monitoring for the Water System since reporting a sample collected on April 26, 2022. This constitutes a violation of OAR 333-061-0036(6), or a violation of OAR 333-061-0040(1)(b)(A) if monitoring was conducted but not reported.
4. OAR 333-061-0036(11)(b)(B) requires, in part, water suppliers responsible for groundwater systems serving 3,300 or fewer people where 4-log treatment for viruses is provided to monitor the residual disinfectant concentration, and that the minimum residual disinfectant concentration determined by the Authority be maintained each day water from the groundwater source is served to the public. 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 the residual disinfectant concentration for the Water System since reporting concentrations measured during the month of May 2022. This constitutes a violation of OAR 333-061-0036(11), or a violation 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 constitute compliance with the rule(s) violated (ORS 448.255(3)).

1. Water Supplier must monitor for coliform bacteria at the Water System every month, and according to all the applicable provisions of OAR 333-061-0036(6).
  - All routine, repeat and source water monitoring must be conducted for the entirety of the 2023 operating season.
  - All monitoring must be reported to DWS within 10 days of the end of the month according to OAR 333-061-0040(1)(b)(A).
2. Water Supplier must monitor for nitrate at the Water System according to OAR 333-061-0036(2)(c) and report the results to DWS no later than 60 days after the date of service of this Order.

3. Water Supplier must measure the residual disinfectant concentration at the Water System every month, and according to OAR 333-061-0036(11)(b)(B), for the entirety of the 2023 operating season.
  - Monitoring must be reported to DWS within 10 days of the end of the month according to OAR 333-061-0040(1)(b)(A).

#### 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 10, 2023 for failure to report routine monitoring for coliform bacteria and residual disinfectant concentration monitoring according to this Order, the proposed civil penalty could be as much as \$3,000.

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: Samina Panwhar, Manager; Oregon Health Authority, Drinking Water Services; and may be delivered by mail to PO Box 14450, Portland, OR 97293 or by email to [samina.t.panwhar@oha.oregon.gov](mailto:samina.t.panwhar@oha.oregon.gov).**

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 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 period, you will lose your right to appeal.


**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>.

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 [bradley.k.daniels@oha.oregon.gov](mailto:bradley.k.daniels@oha.oregon.gov) or 503-735-5438.

Date 2/27/23



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Samina Panwhar, Manager  
Drinking Water Services  
Oregon Health Authority

cc: Bill Goss, Oregon Health Authority, Drinking Water Services  
Mark Hemstreet, Troy Lodge, LLC

DATE of Service: February 28, 2023



\_\_\_\_\_  
Signature

\_\_\_\_\_  
Brad K. Daniels

\_\_\_\_\_  
Printed Name

By certified mail and first-class mail