

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

In the Matter of

Whaleshead Beach RV Resort, PWS
OR4194489

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Andrew Cramer
19921 Whaleshead Road
Brookings, OR 97415

Whaleshead Beach RV Resort Limited Partnership has at all times mentioned herein owned and operated, and continues to own and operate, the Whaleshead Beach RV Resort water system (hereinafter "Water System") located at 19921 Whaleshead Road, approximately 8 miles north of Brookings, Oregon. The Water System is a community public water system serving approximately 200 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.

Whaleshead Beach RV Resort Limited Partnership (hereinafter "Water Supplier") is 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, has 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 shallow wells at the Water System are not constructed adequately to prevent surface contaminants from entering the drinking water supply. Additionally, Water Supplier cannot demonstrate that water treatment effectively removes or inactivates such contaminants before the drinking water is delivered to customers. 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 requires water suppliers to take all reasonable actions to assure that the water delivered to water users does not exceed maximum contaminant levels, that water system facilities are free of public health hazards and that water system operation and maintenance are performed as required by the rules.

The Water System is supplied by a series of four water wells and one spring but none of these water sources are currently constructed to effectively prevent contamination from the area surrounding them. The wells may also be under the influence of a nearby creek and the Water System; therefore, effectively derives its drinking water from surface water sources.

Water Supplier committed to installing adequate surface water treatment for the Water System as if these water wells and spring supplied surface water before April 1, 2018 but this deadline was not met.

Water Supplier has installed surface water treatment at the Water System but plans for this treatment have not been submitted to DWS for review and approval as required by OAR 333-061-0060. Additionally, Water Supplier has not demonstrated surface water treatment processes achieve the applicable requirements in OAR 333-061-0032. This constitutes a violation of OAR 333-061-0025.

2. OAR 333-061-0032(5)(a) requires that disinfection treatment must be sufficient to ensure total treatment processes achieve at least 99.9 percent inactivation or removal of *Giardia lamblia* cysts and at least 99.99 percent inactivation or removal of viruses at water systems using a surface water source with filtration treatment.

Water Supplier has not demonstrated that the treatment facilities at the Water System provide the required levels of protection against these pathogens. This constitutes a violation of OAR 333-061-0032(5)(a).

Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches. OAR 333-061-0097.

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 submit complete plans to DWS within 90 days of the date of service of this Order for all water treatment facilities currently in use at the Water System. The plans must:
 - Meet the requirements in OAR 333-061-0060 for the construction or modification of facilities and have sufficient detail to completely and clearly illustrate what is present at the Water System.
2. If DWS requires modifications or additional construction at the Water System, Water Supplier must complete the construction or modifications within 60 days of notification of the requirements by DWS.
 - Water Supplier must notify DWS within 5 calendar days of when construction is completed.
 - For this corrective action to be met, any construction or installation that was performed must meet the applicable construction standards in OAR 333-061-0050, as approved by DWS.
3. Water Supplier must ensure a tracer study is conducted to confirm disinfectant contact time at the Water System as soon as possible and in no case later than 30 days after

DWS approves the construction plans submitted according to Compliance Action No. 1 in this Order.

- The tracer study plan must be approved by DWS prior to the tracer study taking place.
 - Water Supplier must notify DWS when the tracer study is completed.
4. Water Supplier must issue public notice within 30 days of the date of service of this Order. The notice must inform customers that treatment of drinking water at the Water System has not been verified to be adequate for water declared under the direct influence of surface water. The notice must meet the requirements in OAR 333-061-0042.
- Within 10 calendar days of distributing the public notice to customers, Water Supplier must send a copy of the notice to DWS along with a written statement that it has fully complied with the distribution and public notification requirements in OAR 333-061-0040(1)(i).
5. Water Supplier must provide public notice to customers in the same manner as is described in Correction Action No. 4 every three months, that includes any changes or additional information regarding the drinking water or water treatment at the Water System. Water Supplier must comply with this action until DWS notifies it that its drinking water meets all applicable treatment requirements and that the drinking water otherwise meets all applicable state and federal drinking water laws and rules.

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 \$100 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 October 17, 2019 for failure to failure to submit construction plans according to this Order, the proposed civil penalty could be as much as \$9,000.

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: 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 Service members. 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 1 (800) 452-7500 for more information. The internet address for the United States Armed Forces Legal Assistance Locator website is <http://legalassistance.law.af.mil/content/locator.php>.

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 Daniels at 971-673-0407.

Dated this 16th day of July, 2019.



David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Charles A. Kovas, Whaleshead Beach RV Resort Limited Partnership
Betsy Parry, Oregon Health Authority, Drinking Water Services

DATE of Service: July 16, 2019



Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail