

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

In the Matter of

Cody William Ott, doing business
as Lakeview Grocery, PWS
OR4195160

Respondent

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

To: Cody William Ott
18554 Highway 36
Blachly, OR 97412

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 you, Cody William Ott, for violations of OAR 333-061-0025, 333-061-0036 or 333-061-0040, and 333-061-0090.¹

¹ This Notice relies on the definitions provided in ORS 448.115 and OAR 333-61-0020, unless the context indicates otherwise.

800 NE Oregon Street, Suite #640, Portland, OR 97232-2162

Voice: 971-673-0405 | Fax: 971-673-0458

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Findings of Facts and Conclusions of Law

Cody William Ott, you have at all times mentioned herein owned and operated, and continue to own and operate, the Lakeview Grocery public water system (hereinafter “Water System”), identified by public water system ID# OR4195160; which is a transient non-community water system serving approximately 50 people every day and located at 19385 Highway 36 in Blachly, Oregon. The Water System is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0272.

Cody William Ott (hereinafter “Water Supplier”), you 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, OAR 333-061-0036 and OAR 333-061-0090.

Water supplier responsibilities include taking all reasonable actions to ensure water delivered to users does not exceed maximum contaminant levels and to ensure that water system facilities are free of public health hazards. This includes: routinely collecting and submitting water samples for laboratory analysis at the frequencies prescribed by OAR 333-061-0036. OAR 333-061-0025(2)(a). Reporting as prescribed by OAR 333-061-0040, the results of analyses which indicate maximum contaminant levels have not been exceeded. OAR 333-061-0025(2)(c). Water suppliers must, in part, monitor for coliform bacteria at least once every month at public water systems. OAR 333-061-0036(6)(b)(C). Water suppliers must report monitoring required by OAR 333-061-0036 within 10 days of the end of the required monitoring period. OAR 333-061-0040(1)(b)A).

Procedural History

DWS served a Notice of Violation and Administrative Order (Order) to Water Supplier on June 21, 2024 for the following failures: (1) failure to monitor for coliform bacteria at least once every month in violation of OAR 333-061-0036(6)(b), (2) failure to monitor for nitrate at least once every year in violation of OAR 333-061-0036(2)(c), The Order also specified (3), failure to report monitoring required by OAR 333-061-0036 in violation of OAR 333-061-0040(1)(b) if the monitoring for coliform bacteria or nitrate was conducted but the results not reported to DWS. The Order required Water Supplier to take several actions, including but not limited to reporting coliform bacteria monitoring for at least six consecutive months.

Water Supplier did not appeal the Order, and did not comply with the Order by the deadlines specified therein, but partially complied with the Order by reporting a single month of monitoring for coliform bacteria and reporting nitrate monitoring. Water Supplier did not contact DWS regarding the Order and has not otherwise taken any

apparent action to ensure monitoring for coliform bacteria is conducted at a routine frequency. The Order is incorporated by reference.

DWS mailed a letter to Water Supplier on September 30, 2024 notifying Water Supplier it failed to comply with the Order and was at risk of being assessed civil penalties. Water Supplier did not contact DWS regarding this letter and has not taken any apparent action to ensure monitoring for coliform bacteria is conducted.

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).

Violations

DWS may impose civil penalties against any person who violates a rule of the Oregon Health Authority relating to the construction, operation, or maintenance of a water system. ORS 448.280(1). It is a violation of rule to fail to comply with an order issued by DWS. OAR 333-061-0090(3)(i).

Each failure of the Water Supplier to comply with the Order, as incorporated into a final order, is a separate violation of rule, subject to civil penalty up to \$500 per day per violation. ORS 448.280(1); OAR 333-061-0090(3)(i). Water Supplier's violations are identified below.

Violation 1: Failure to comply with the Order in violation of OAR 333-061-0090(3)(i)- Failure to report monitoring for coliform bacteria.

The Order required Water Supplier to report coliform monitoring for at least six consecutive months and report the results of that monitoring to DWS. The monitoring was required to begin during the month of June 2024. Water Supplier collected only one sample for coliform bacteria on June 25, 2024 and reported the result of that monitoring to DWS on June 26, 2024.

As of the date of this Notice, Water Supplier has not reported any further monitoring for coliform bacteria. Each day Water Supplier failed to report monitoring for coliform bacteria after August 10, 2024 is a separate failure to comply with the Order and separate violation of OAR 333-061-0025(2) and OAR 333-061-0036(6)(b) or OAR 333-061-0040(1)(b), authorizing DWS to impose a civil penalty. OAR 333-061-0090(3)(i).

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. 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 50 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.

For each of the violations, 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 of time from December 1, 2024 through December 30, 2024. 30 days is appropriate for violation 1 because the Order directed Water Supplier to conduct monitoring for at least six consecutive months and Water Supplier was provided a reminder of this requirement in September 2024.

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

If the violation identified in this notice continues or if Water Supplier violates any other applicable law or rules, it 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:
 - Jeff Green of the Oregon Department of Agriculture notified Water Supplier it had not met the monitoring requirements for the Water System on June 6, 2024 and directed it to conduct the required coliform monitoring every month and to report the results to DWS.
 - DWS served the Order to Water Supplier on June 21, 2024. The Order required Water Supplier to report monitoring for coliform bacteria and nitrate. Water Supplier collected one sample each for coliform bacteria and nitrate and the results of that

monitoring was reported to DWS. Water Supplier failed to continue monitoring for coliform bacteria every month and report that monitoring as required by the Order.

- DWS mailed a letter with the subject line “Failure to comply with administrative order and possible civil penalties” to Water Supplier on September 20, 2024. The letter notified Water Supplier it was at risk of civil penalties in the amount of \$50 for every rule violation and for every day, and that to avoid being assessed civil penalties Water Supplier must report coliform bacteria monitoring every month. Water Supplier has not responded to this letter as of the date of this notice.

- (b) Prior violations:

- Over the last five years, numerous violations of drinking water regulations occurred at the Water System, some on a repeat basis. These prior violations include:

- Multiple violations of OAR 333-061-0025(2)(a), which requires monitoring according to OAR 333-061-0036. These violations include but are not limited to:
 - Fifty-four violations of OAR 333-061-0036(6)(b) for failing to report routine monitoring for coliform bacteria for the following periods:
 1. The months of January through April, June through October, and December 2020 (violations No. 900641766, 900641767, 900641768, 900641769, 900641770, 900641771, 900641772, 900641773, 900641774, and 900641775);
 2. The months of February through December 2021 (violations No. 900641776, 900641777, 900641778, 900641779, 900641780, 900641781, 900641782, 900641783, 900641784, 900641785, and 900641786);
 3. The months of January through April, June, July, and September through December 2022 (violations No. 900641787, 900641788, 900641789, 900641790, 900641791, 900641792, 900641793, 900641794, 900641795, and 900641796);
 4. The months of February through October, and December 2023 (violations No. 900641798, 900641799, 900641768, 900641800, 900641801, 900641802, 900641803, 900641804, 900641805, 900641806, and 900641807); and
 5. The months of January through May, and July through December 2024 (violations No. 900641809, 900641810, 900641811, 900641812, 900641813, 900641814, 900641815, 900641816, 900641817, 900641818, and 900641819).
 - Two violations of OAR 333-061-0036(2)(c) for failing to report nitrate monitoring for the following periods:

1. The 2022 calendar year (violation No. 900641797), and
2. The 2023 calendar year (violation No. 900641808).

DWS considered these prior violations as an aggravating factor to support imposing the maximum civil penalty in this matter. DWS need not prove every prior violation to support a finding that this factor is aggravating.

- (c) Economic and financial conditions of the person incurring the penalty:
 - DWS has no information about the 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: 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.**

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@oha.oregon.gov or (503) 735-5438.

Date 1/22/2025



Samina Panwhar

Samina Panwhar, Manager
Drinking Water Services
Oregon Health Authority

cc: Nicholas Alviani, Oregon Health Authority, Drinking Water Services
Jeff Green, Oregon Department of Agriculture
Sarah Schwab, Oregon Department of Agriculture

Lakeview Grocery

DATE of Service: January 24, 2025

Brad K Daniels

Brad K Daniels

By certified and first class mail

