

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

In the Matter of

Bellinger Produce, LLC, PWS
OR4195236

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Robert Jack Bellinger
Bellinger Produce, LLC
29088 Bridge Road
Hermiston, OR 97838

You have at all times mentioned herein owned and operated, and continue to own and operate, the Bellinger Produce water system (hereinafter “Water System”) located at 1823 S Highway 395 in Hermiston, Oregon. The Water System is a transient non-community public water system serving approximately 100 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 provided by the Water System exceeds the maximum contaminant level (MCL) for both nitrate and *E. coli* bacteria. 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, in part, water suppliers to take all reasonable actions to assure that the water delivered to users does not exceed maximum contaminant levels and that water system facilities are free of public health hazards. Water samples collected at the Water System indicate that water provided by the system exceeds the MCL for nitrate as specified in OAR 333-061-0030(1), despite Water Supplier's installation of a nitrate treatment system. Water Supplier's failure to operate the treatment system effectively demonstrates Water Supplier has not taken all reasonable actions to ensure that water does not exceed the MCL for nitrate. This constitutes a violation of OAR 333-061-0025.
2. OAR 333-061-0030(1) specifies that the maximum contaminant level (MCL) for nitrate in drinking water is 10 mg/L. The average concentration of nitrate in drinking water, calculated according to OAR 333-061-0036(2)(h) at the Water System and based on a sample collected on December 7, 2020 and confirmation sample collected on December 9, 2020 is 24.1 mg/L. This exceeds the MCL of 10 mg/L and constitutes a violation of OAR 333-061-0030(1).

Infants below the age of 6 months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome. OAR 333-061-0097

3. OAR 333-061-0030(4) specifies, in part, that the maximum contaminant level (MCL) for *E. coli* applies to all public water systems and is exceeded or violated when a total coliform-positive repeat sample follows an *E. coli*-positive routine sample. Coliform monitoring reported for the Water System indicates that on June 12, 2020, a total coliform-positive repeat sample was reported following an *E. coli*-positive routine sample reported on June 10, 2020. This exceeds the MCL for *E. coli* and constitutes a violation of OAR 333-061-0030(4).

E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. 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 monitor for nitrate at the Water System according to OAR 333-061-0036(2)(c) and 333-061-0036(1)(g).
 - Monitoring must begin immediately and be conducted every month according to OAR 333-061-0036(1)(g) with results reported to the Authority no more than 10 days after the end of each month according to OAR 333-061-0040(1).
 - If any monthly sample exceeds the MCL for nitrate specified in OAR 333-061-0030(1), Water Supplier must immediately collect a confirmation sample according to OAR 333-061-0036(2)(f).
 - Water Supplier will be in compliance with this Order and may return to monitoring nitrate according to OAR 333-061-0036(2)(c) if the sample results at Water System have concentrations of nitrate below the MCL specified in OAR 333-061-0030(1) every month for 6 consecutive months.

- Water Supplier will be in compliance with this Order and may return to monitoring nitrate according to OAR 333-061-0036(2)(c) if Water Supplier replaces the groundwater well identified by Well Log# UMAT 2130 with an alternative water source approved by DWS.

It will be a violation of this Order if the average of any monthly sample and confirmation sample exceeds the MCL, or if a confirmation sample is not collected following a monthly sample that exceeds the MCL.

It will be a violation of this Order if two monthly samples during the six -month period exceed the MCL for nitrate specified in OAR 333-061-0030(1).

2. Water supplier must take immediate corrective action if any sample exceeds the MCL for nitrate specified in OAR 333-061-0030(1).
 - Water Supplier must complete the corrective action within 10 days of receiving notification that sample results exceeded the MCL. Water Supplier must thereafter submit verification to DWS in writing of the action taken within five days of completing the action. Verification must also identify how Water Supplier will ensure nitrate does not exceed the MCL on an ongoing basis.
3. Water Supplier must replace the groundwater well identified by Well Log# UMAT 2130 with an alternative water source approved by DWS, install ultraviolet light treatment for water produced by Well UMAT 2130 or install a system for maintaining a disinfectant residual throughout the Water System. DWS strongly recommends connecting the Water System to the City of Hermiston as an alternative to treatment or drilling a new well.
 - The new water source or treatment system must be placed into service at the Water System no later than May 15, 2021.
 - Water Supplier will be in compliance with this Order after Water Supplier has completed corrective action as prescribed in this compliance action and after coliform bacteria are absent in monitoring conducted according to OAR 333-061-0036(7) for two consecutive months.

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 January 11, 2019 for failure to report nitrate 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: 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.

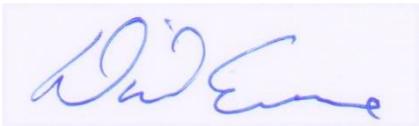
If you withdraw a request for hearing, or notify DWS or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, DWS may issue a final order by default. If the Order becomes final in this manner, you will have the right to appeal the Order to the Oregon Court of 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 971-673-0405.

Dated this 23rd day of December, 2020.



David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Bill Goss, Oregon Health Authority, Drinking Water Services
Melissa Ney, Oregon Department of Agriculture
Sarah Schwab, Oregon Department of Agriculture
Amy Word, Oregon Health Authority, Drinking Water Services

DATE of Service: December 28, 2020



Signature

Brad K. Daniels
Printed Name

By certified mail and first-class mail