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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 nitrate. 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 and OAR 333-061-0090(3)(c). Each day that the Water Supplier fails to operate the system effectively is a separate violation.
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 15, 2021 and confirmation sample collected on December 20, 2021 is 62.5 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 333-061-0065(1)(a) requires water suppliers to operate all phases and components of the water system effectively in the manner for which they were designed. The Water System has a nitrate treatment system that must have a nitrate removal resin regularly replaced before it is exhausted to operate effectively. Water Supplier failed to replace nitrate removal resin before its capacity was exhausted, resulting in the MCL for nitrate being exceeded. This failure to properly maintain and operate the nitrate treatment system constitutes a violation of OAR 333-061-0065(1)(a). Each day that the Water Supplier fails to replace the nitrate removal resin is a separate violation of OAR 333-061-0065(1)(a).

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

Water Supplier is required to conduct all 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 immediately restore the nitrate treatment at the Water System to effective operation such that concentrations of nitrate in drinking water are below the MCL specified in OAR 333-061-0030(1). Each day that the Water Supplier fails to restore the nitrate treatment at the Water System is a separate violation of this Order.
2. Water Supplier must submit a written plan to DWS for effectively operating the nitrate treatment at the Water System such that concentrations of nitrate will remain below the MCL specified in OAR 333-061-0030(1). The plan must include and identify a schedule for replacing the nitrate removal resin, criteria for determining the schedule and documentation from the manufacturer of the treatment confirming the frequency will be sufficient for effective operation of the treatment.
3. Water Supplier must monitor for nitrate at the Water System according to OAR 333-061-0036(2)(c), 333-061-0036(1)(g) and as follows:
 - Monitoring must begin immediately in February 2022 and be conducted twice every month, once in first week of the month and repeated in the third week of the month, according to OAR 333-061-0036(1)(g). Sample results must be reported to the Authority no more than 10 days after the end of each month according to OAR 333-061-0040(1).

- If any sample exceeds the MCL for nitrate specified in OAR 333-061-0030(1), Water Supplier must collect a confirmation sample within 24 hours according to OAR 333-061-0036(2)(f). Confirmation samples, regardless of the nitrate concentration, must be reported to DWS within two business days of when the sample was submitted to a laboratory for analysis.

It is a violation of this Order if:

- **Water Supplier fails to immediately begin monitoring according to OAR 333-061-0036(2)(c), 333-061-0036(1)(g) and Corrective Action No. 3. Each day that the Water Supplier fails to begin monitoring is a separate violation.**
 - **The average of any bi-weekly sample and confirmation sample exceeds the MCL. Each instance of a bi-weekly and confirmation sample average that exceeds the MCL is a separate violation.**
 - **A confirmation sample is not collected within 24 hours following a bi-weekly sample that exceeds the MCL. Each day a confirmation sample is not collected is a separate violation.**
4. If the average of any bi-weekly sample and confirmation sample exceeds the MCL for nitrate, Water Supplier must immediately restore the nitrate treatment at the Water System to effective operation such that concentrations of nitrate in drinking water are below the MCL specified in OAR 333-061-0030(1).
- Water Supplier must complete the corrective action within 72 hours of receiving notification that sample results exceeded the MCL. Water Supplier must thereafter submit verification to DWS in writing of the action taken within 24 hours of completing the action. Verification must also identify what action Water Supplier took to ensure nitrate does not exceed the MCL on an ongoing basis. Each day that the Water Supplier fails to timely complete corrective action or submit written verification to DWS is a separate violation of this Order.
5. Water Supplier will be in compliance with this Order and may return to monitoring nitrate according to OAR 333-061-0036(2)(c) if sample results reported for the Water System have concentrations of nitrate below the MCL specified in OAR 333-061-0030(1) every month for 12 consecutive months; or
- Water Supplier replaces the groundwater well identified by Well Log# UMAT 2130 with an alternative water source approved by DWS.

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 and continue to accrue until the Water Supplier comes into compliance with the requirements of the Order. Failure to comply with this Order or any additional violations of rule may result in civil penalties.

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.

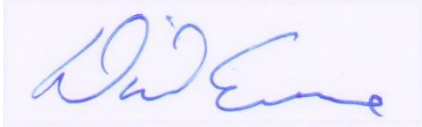
If you withdraw a request for hearing, or notify DWS or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, DWS may issue a final order by default. If the Order becomes final in this manner, you will have the right to appeal the Order to the Oregon Court of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

Notice to Active Duty Servicemembers

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 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>.

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 ____4th____ day of ____February_____, 2022.



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: February 7, 2022



Signature

Brad K. Daniels
Printed Name

By certified mail and first-class mail