

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
CENTER FOR HEALTH PROTECTION

In the Matter of

Robert Jack Bellinger
Bellinger Properties, LLC, PWS
OR4195236

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

To: Robert Jack Bellinger
Bellinger Properties, LLC
28927 Bridge Road
Hermiston, OR 97838

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 \$1,000 against Bellinger Properties, LLC for violations of OAR 333-061-0025.

Bellinger Properties, LLC has at all times mentioned herein owned and operated, and continues to own and operate, the Bellinger Produce water system (hereinafter "Water System"), which is a transient non-community public water system serving approximately 100 people and is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0272.

Bellinger Properties, LLC (hereinafter “Water Supplier”) is therefore a water supplier as defined in ORS 448.115(12) and OAR 333-061-0020 and has specific responsibilities as defined in OAR 333-061-0025 and OAR 333-061-0065(1)(a). These responsibilities include taking all reasonable actions to assure water delivered to users does not exceed maximum contaminant levels and that water system facilities are free of public health hazards. OAR 333-061-0025. Maximum containment level (MCL) is defined in OAR 333-061-0020 and means the maximum allowable level of contaminant in the water delivered to users of a public water system, and the MCL for nitrate in drinking water is 10 mg/L as specified in OAR 333-061-0030(1). Nitrate occurs in drinking water as runoff from fertilizer use, leaching from septic tanks or sewage, or the erosion of natural deposits. 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.

Due to the failure to comply with the MCL for nitrate, DWS served a Notice of Violation and Administrative Order (Order) to Water Supplier regarding the Water System on February 7, 2022. The Order cited three violations of rules specified above. First, that Water supplier failed to take all reasonable actions to ensure that the water did not exceed the MCL for nitrate in violation of OAR 333-061-0025. Second, that the presence of nitrate at levels exceeding the MCL violated OAR 333-061-0030(1). Third, that Water supplier failed to properly maintain and operate the nitrate treatment system effectively in violation of OAR 333-061-0065(1)(a). The Order required Water Supplier to monitor for nitrate at the Water System twice every month and immediately collect a confirmation sample if any bi-weekly sample exceeded the MCL for nitrate as specified in OAR 333-061-0030(1). The Order specified that it would be a violation if the average of any bi-weekly sample and confirmation sample exceeded the MCL or if a confirmation sample was not collected following a monthly sample that exceeded the MCL.

Water Supplier did not appeal the Order and afterward complied with the Order, collecting bi-weekly samples every month from February through June 2022 and in August 2022; however, Water Supplier reported a monthly sample on September 23, 2022, which was determined to have a nitrate concentration of 36.4 mg/L. A confirmation sample was reported on September 29, 2022 and determined to have nitrate concentration of 47.8 mg/L. The average of the bi-weekly sample and a confirmation sample with no detection of nitrate would have exceeded the MCL for nitrate of 10 mg/L, in violation of the Order. Additionally, the average of the bi-weekly sample and confirmation exceeded the MCL for nitrate of 10 mg/L, in violation of the Order. The Order is incorporated by reference.

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).

CONCLUSIONS OF LAW

Violation No. 1: Water Supplier is in violation of OAR 333-061-0090(3)(i) for failing to comply with an order issued by DWS.

Violation No. 2: Water Supplier is in violation of OAR 333-061-0025 for failing to take all reasonable actions to assure water delivered to users does not exceed maximum contaminant levels and that water system facilities are free of public health hazards.

Violation No. 3: Water Supplier is in violation of OAR 333-061-0030(1) because drinking water at the Water System does not comply with the MCL for nitrate.

Violation No. 4: Water Supplier is in violation of OAR 333-061-0065(1)(a) for failing to properly maintain and operate the nitrate treatment system effectively in the manner for which it was designed.

CIVIL PENALTY

Pursuant to OAR 333-061-0090, DWS intends to impose a total civil penalty in the amount of \$1,000 based upon the population served by the public water system and each violation of OAR 333-061-0025. 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 100 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 of OAR 333-061-0025 as set out in the civil penalty schedule.

For the violation, DWS intends to impose a civil penalty for each day of non-compliance, a total of 20 days. The number of days is based on the period from September 24, 2022 through October 14, 2022. 20 days is appropriate for the violation because Water Supplier did not take all reasonable actions to maintain and operate the water treatment at the Water System to assure that water delivered to consumers did not contain concentrations of nitrate in excess of the MCL. Water Supplier demonstrated from October 2019 through August 2022, that the nitrate MCL is not exceeded when the nitrate treatment system is maintained and operated correctly. Water Supplier therefore did not take all reasonable actions to prevent the nitrate MCL from being exceeded from no less than September 24 2022 through October 14, 2022.

The total proposed civil penalty is \$1,000 (20 x 1 x \$50).

If the violations identified in this notice continue or if you violate any other applicable law or rules, you 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:
 - There is a history of violating the MCL for nitrate at the Water System since as early as 2004. In addressing the nitrate exceedance, Water Supplier has failed and succeeded on a number of occasions to take all feasible steps to correct the violation. For example, nitrate has exceeded the MCL in sample results collected at the Water System more than 30 times since 2004. Water Supplier's failure to operate the Water System so that nitrate is consistently below the MCL supports imposing the maximum the civil penalty in this matter. In contrast, Water Supplier installed a nitrate treatment system in 2007 and thereafter reported nitrate results for the Water System below the MCL more than 40 times between 2008 and 2018. Water Supplier's attempt to comply with the rules supports reducing the civil penalty in this matter.
 - On January 27, 2015, Water Supplier mailed a letter to DWS requesting a period of four years to connect the Water System to the City of Hermiston's water system. Connecting to and receiving drinking water from the City of Hermiston would have resolved the situation and corrected the violation. Water Supplier's failure to achieve its proposal supports imposing the maximum the civil penalty in this matter.
 - DWS issued an administrative order on December 7, 2018, in part, requiring Water Supplier to monitor for nitrate every month for 12 consecutive months. This requirement was completed for nine consecutive months and DWS considered that attempt to comply with the order to support reducing the civil penalty in this matter, but Water Supplier's subsequent violation of the order's key requirement in October 2019, that nitrate not exceed the MCL, supports imposing the maximum civil penalty in this matter.

- DWS issued an administrative order on December 28, 2020, in part, requiring Water Supplier to monitor for nitrate every month for at least six consecutive months. This requirement was completed for five consecutive months and DWS considered that attempt to comply with the order to support reducing the civil penalty in this matter, but Water Supplier's subsequent violation of the order's key requirement in June 2021, that nitrate not exceed the MCL, supports imposing the maximum civil penalty in this matter.
- The Order issued February 7, 2022, in part, required Water Supplier to monitor for nitrate twice every month for at least 12 consecutive months. This requirement was completed for four consecutive months and DWS considered this attempt to comply with the Order to support reducing the civil penalty in this matter. Water Supplier's violation of the Order's key requirement in September 2022, that nitrate not exceed the MCL, supports imposing the maximum civil penalty in this matter.
 - (b)Prior violations:
 - Over the last five years, Water Supplier has violated numerous drinking water regulations, some on numerous occasions. These prior violations include six violations of OAR 333-061-0025(1), two violations of OAR 333-061-0025(2), four violations of OAR 333-061-0025(5), eight violations of OAR 333-061-0030(1), three violations of OAR 333-061-0036(6), one violation of OAR 333-061-0050(2), one violation of OAR 333-061-0064, one violation of OAR 333-061-0065(4), and one violation of OAR 333-061-0070(12). DWS considered these prior violations to support imposing the maximum civil penalty in this matter.
 - (c)Economic and financial conditions of the person incurring the penalty:
 - DWS has no information about your 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: Kari Salis, Manager; Oregon Health Authority, Drinking Water**

Services; and may be delivered by mail to PO Box 14450, Portland, OR 97293 or by email to karyl.l.salis@dhsoha.state.or.us.

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.

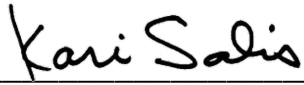
Notice to Active Duty Servicemembers

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 \$1,000.

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@dhsoha.state.or.us (503) 735-5438.

Date 10/17/22



Kari Salis, PE
Interim Manager
Drinking Water Services
Oregon Health Authority
Center for Health Protection

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: October 17, 2022



Brad K Daniels

By certified and first class mail