

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

In the Matter of

Robert Jack Bellinger
Bellinger Properties, LLC, PWS
OR4195236

Respondent

FINAL ORDER IMPOSING
CIVIL PENALTY BY DEFAULT

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

The Oregon Health Authority (Authority), Public Health Division, Center for Health Protection, Drinking Water Services (DWS) issued a Notice of Intent to Impose Civil Penalty (Notice) to Robert Jack Bellinger and Bellinger Properties, LLC (hereinafter “Water Supplier”) on October 17, 2022 for specific violations of the Oregon Drinking Water Quality Act and rules. The Notice is incorporated herein by reference. The Notice offered Water Supplier an opportunity for hearing if requested within 20 days of service of the Notice. No hearing was timely requested. The Notice designated the relevant portions of the Authority’s file on this matter, as the record for purposes of default.

DWS therefore issues this final order by default and designates its files on this matter as the record for the purpose of proving a prima facie case upon default.

FINDINGS OF FACT

Water Supplier has at all times mentioned herein owned and operated the Bellinger Produce public water system (hereinafter “Water System”), identified by public water system ID# OR4195236 and located at 1823 S Highway 395 in Hermiston, Oregon. The Water System is a transient non-community public water system that serves approximately 100 people and is subject to regulation according to the Oregon Drinking Water Quality Act (ORS 448.115 to 448.290) and Oregon Administrative Rules 333-061-0005 to OAR 333-061-0272. DWS has no information about the Respondent's economic or financial details, or the economic or financial conditions of the water system.

Water Supplier, as defined in ORS 448.115(12) and OAR 333-061-0020(211), has specific responsibilities as defined in OAR 333-061-0025 and 333-061-0065(1) and is required 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, and to operate all phases and components of the water system effectively in the manner for which they were designed. 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).

Due to the failure to assure that water delivered to users did not exceed the MCL for nitrate at the Water System, DWS served a Notice of Violation and Administrative Order (Order) to Water Supplier on February 7, 2022. The Order cited three violations of the rules specified below. 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 complied with the Order for seven months before failing to report nitrate monitoring or deliver water meeting the MCL according to the Order. The Order is incorporated herein 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

1. Water Supplier is in violation of OAR 333-061-0090(3)(i) for failing to comply with an order issued by DWS.
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.
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.
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 imposes 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 333-061-0090(3). 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 civil penalty amount for a violation by a public water system serving 100 people is \$50 per day according to OAR 333-061-0090(4). DWS imposes a civil penalty of \$50 per day for each violation as set out in the civil penalty schedule and 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 violation of the Order because the Order directed Water Supplier to 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, to conduct monitoring for nitrate twice every month, and to immediately restore nitrate treatment to effective operation if samples exceeded the MCL. Water Supplier violated the Order when it reported a monthly sample on September 23, 2022 determined to have a nitrate concentration of 36.4 mg/L, and a confirmation sample reported on September

29, 2022 and was determined to have nitrate concentration of 47.8 mg/L. Water Supplier therefore did not take all reasonable actions to prevent the nitrate MCL from being exceeded as required by the Order, until it reported a sample collected on October 19, 2022 with a concentration of nitrate below the MCL.

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

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:
 1. 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.
 2. 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.
 3. 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

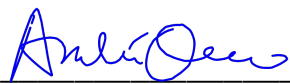
October 2019, that nitrate not exceed the MCL, supports imposing the maximum civil penalty in this matter.

4. 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.
 5. 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 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.

ORDER

Based on the foregoing, WATER SUPPLIER is hereby ordered to pay a civil penalty in the amount of \$1,000.

Date January 6, 2023



André Ourso, JD, MPH, Administrator
Oregon Health Authority, Center for Health Protection

GENERAL PROVISIONS

Civil penalty amounts are established in Oregon Administrative Rule 333-061-0090. If unpaid, civil penalties may be recorded and filed with county clerks as liens against property 10 days after the expiration of the statutory appeals period. DWS may assign liquidated and delinquent civil penalties to the Department of Revenue, as provided in ORS 293.250.

If you have any questions about payment, or wish to make payment arrangements, please contact the Oregon Department of Human Services and Oregon Health Authority Accounts Receivable office at 503-947-5126. You will receive an invoice with instructions for where to send the payment and payment options.

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.

You are entitled to a judicial review of this Order in accordance with ORS 183.482. To appeal, you must file a petition for judicial review with the Court of Appeals within 60 days from the date of service of this Order.

If you need to receive the information in this letter in an alternate format, or if you have any questions regarding this Order, please contact Brad K. Daniels at (503) 735-5438.

cc: Bill Goss, Oregon Health Authority, Drinking Water Services
Melissa Ney, Oregon Department of Agriculture
Mai Quach, Oregon Health Authority, Center for Health Protection
Sarah Schwab, Oregon Department of Agriculture
Erin Williams, Oregon Department of Justice
Amy Word, Oregon Health Authority, Drinking Water Services

DATE of Service: January 9, 2023



Brad K Daniels

By certified and first class mail