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BEFORE THE STATE OF OREGON
OREGON HEALTH AUTHORITY
OFFICE OF ENVIRONMENTAL PUBLIC HEALTH

In the Matter of

Brewster Community Homeowners
Association, PWS OR4100762

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Albert Depenbrock, Registered Agent
PO Box 18162
Salem, OR 97305

Frank Rupp, President
4752 Niles Ave. NE
Salem, OR 97305

Brewster Community Homeowners Association (Brewster CHA) is a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(211), and as a water supplier, has specific responsibilities that are identified in OAR 333-061-0025.

Brewster CHA has at all times mentioned herein owned and operated and continues to own and operate a community public water system along Niles Avenue in Northeast Salem, which serves between 25 and 100 people, and is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0290.

Pursuant to its authority under ORS 448.150, the Oregon Health Authority, Public Health Division, Office of Environmental Public Health, Drinking Water Program (Program) has investigated the operation of the Brewster CHA water system.

The Program found, during its investigation, that Brewster CHA has failed to submit sampling results for inorganic chemicals, lead and copper, nitrate, synthetic organic chemicals, volatile organic chemicals, and radionuclides. Also, Brewster CHA has not published public notice as required and does not utilize a certified operator to be in direct responsible charge of the water system. Brewster CHA 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 Brewster CHA for specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.285) and rules found during the Program's investigation.

DESCRIPTION OF RULE VIOLATIONS

- Violation No. 1: Brewster CHA is required by OAR 333-061-0025(1) to routinely collect and submit water samples for laboratory analysis at the frequencies prescribed by OAR 333-061-0036, but has failed to comply with multiple requirements of OAR 333-061-0036 as specified below, which constitutes thirty-five distinct violations of OAR 333-061-0025(1).
- Violation No. 2: Brewster CHA is required by OAR 333-061-0025(5) to notify all customers served by the water system when reporting requirements are not being met, but has failed to publish and provide notification to the customers of the Brewster CHA water system identifying the violations of the sampling and reporting requirements specified in this order, which constitutes five violations of OAR 333-061-0025(5)
- Violation No. 3: Brewster CHA is required by is required by OAR 333-061-0036(2)(a) to conduct sampling for inorganic chemicals at points representative of each water source after treatment for the Brewster CHA water system, but failed to report any inorganic chemical sampling results for the 2002 to 2004, 2005 to 2007, and the 2008 to 2010 three-year monitoring periods, which constitutes three violations of OAR 333-061-0036(2)(a).

- Violation No. 4: Brewster CHA is required by OAR 333-061-0036(2)(c) to conduct sampling for lead and copper in tap water at the Brewster CHA water system, but failed to report lead and copper sampling results for any of the required 6-month monitoring periods since July 1, 2006 to the current date, which constitutes nine violations of OAR 333-061-0036(2)(c).
- Violation No. 5: Brewster CHA is required by OAR 333-061-0036(2)(d) to conduct sampling for nitrate at points representative of each water source after treatment for the Brewster CHA water system, but failed to report any nitrate sampling results for the 2010 annual monitoring period, which constitutes one violation of OAR 333-061-0036(2)(d).
- Violation No. 6: Brewster CHA is required by OAR 333-061-0036(3)(a) to conduct sampling for synthetic organic chemicals at points representative of each water source after treatment, but failed to report any sampling results for synthetic organic chemicals for the 2002 to 2004, 2005 to 2007, and the 2008 to 2010 three-year monitoring periods, which constitutes three violations of OAR 333-061-0036(3)(a).
- Violation No. 7: Brewster CHA is required by OAR 333-061-0036(3)(b) to conduct sampling for volatile organic chemicals at points representative of each water source after treatment, but failed to report any sampling results for volatile organic chemical sampling results for the 2002 to 2004, 2005 to 2007, and the 2008 to 2010 three-year monitoring periods, which constitutes three violations of OAR 333-061-0036(3)(b).
- Violation No. 8: Brewster CHA is required by OAR 333-061-0036(7) to conduct sampling for radionuclide chemicals at each entry point to the distribution system, but failed to report any of the initial quarterly sampling results by December 31, 2007, or at any point thereafter, which constitutes sixteen violations of OAR 333-061-0036(7).
- Violation No. 9: Brewster CHA is required by OAR 333-061-0042(1)(c) to provide public notice to the people served by Brewster CHA water system for the violations of the sampling requirements specified in this order. Brewster CHA was required by OAR 333-061-0042(3)(c) to publish the public notice within one year of learning of the violations and was required to continue the notice every year that the violations persisted. Brewster CHA was first notified of the initial violations in 2005, and has continued in violation of the rules specified in this order to the present date, which constitutes five violations of OAR 333-061-0042.

- Violation No. 10: Brewster CHA is required by OAR 333-061-0225 to employ, contract with, or otherwise utilize a certified operator to supervise and to be in direct responsible charge of the water system, but does not employ or otherwise utilize a certified operator in this capacity, which constitutes one violation of OAR 333-061-0225.

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

Brewster CHA 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) allegedly violated (ORS 448.255(3)).

- Compliance Action No. 1: Brewster CHA must immediately publish public notice for the violations identified in this order (OAR 333-061-025). The notice must meet all of the applicable requirements of OAR 333-061-0042(4) and must be distributed to every customer served by the Brewster CHA water system in accordance with OAR 333-061-0042(3)(c)(C) within ten days of the date of service for this Order. A copy of the notice must be submitted to the Agency no later than 10 days after completing the public notification per OAR 333-061-0040(1)(j). Brewster CHA must continue to issue the public notice every three months, until all corrections are made, and all system users receive drinking water that meets all applicable state and federal drinking water laws and rules (OAR 333-061-025 and OAR 333-061-0042(3)(b)(C)).
 - Submit copies of the public notice to: Brad Daniels, OHA - Drinking Water Program, PO Box 14450, Portland, OR 97293-0450.
- Compliance Action No. 2: Brewster CHA must collect a sample for inorganic chemicals in accordance with OAR 333-061-0036(2)(a), and submit the sampling results to the Program no later than July 10, 2011.
- Compliance Action No. 3: Brewster CHA must immediately collect samples for lead and copper in accordance with OAR 333-061-0036(2)(c), and submit the sampling results to the Program no later than July 10, 2011.
 - Compliance Action No. 3.1: Brewster CHA must collect a second round of samples for lead and copper in accordance with OAR 333-061-0036(2)(c), and submit those sampling results to the Program no later than January 10, 2012.

- Compliance Action No. 4: Brewster CHA must collect a sample for nitrate in accordance with OAR 333-061-0036(2)(d), and submit the sampling results to the Program no later than June 10, 2011.
- Compliance Action No. 5: Brewster CHA must collect a sample for synthetic organic chemicals in accordance with OAR 333-061-0036(3)(a), and submit the sampling results to the Program no later than January 10, 2012.
- Compliance Action No. 6: Brewster CHA must collect a sample for volatile organic chemicals in accordance with OAR 333-061-0036(3)(b), and submit the sampling results to the Program no later than January 10, 2012.
- Compliance Action No. 7: Brewster CHA must collect samples for radionuclides in accordance with OAR 333-061-0036(7)(a)(A) every calendar quarter beginning on April 1, 2011, and submit the sampling results to the Program within 10 days of the end of each calendar quarter as prescribed by OAR333-061-0040(1)(b)(A). The first and second rounds of sampling results must be submitted no later than July 10, 2011 and October 10, 2011 respectively.
- Compliance Action No. 8: Brewster CHA must designate a certified operator to be in direct responsible charge of the water system. The operator must be certified at the appropriate level, and meet all the other applicable requirements of OAR 333-061-0225. The designation of the operator must be submitted to the Program, in writing, no later than December 31, 2011.

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 448.285 and administrative rules OAR 333-061-0005 to 333-061-0290, which remain in full force and effect.

This Order does not relieve the Brewster CHA 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 the Program to forgo any civil actions authorized under the Oregon Drinking Water Quality Act.

Failure to comply with all requirements in this Order by the specified due dates may result in additional enforcement action, which may 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 the Program issues a Notice of Intent to Impose Civil Penalty.

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 the Program within 10 days from the date this Order was mailed. The request for hearing must be sent to: David E. Leland, Manager; DHS - Drinking Water Program; PO Box 14450; Portland, OR 97293.

If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing.

If you do not make a timely request for a hearing, or if you withdraw a request for hearing, notify the Program or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Program may issue a final order by default. If the Program issues a final order by default, the Program designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purposes of proving a prima facie case upon 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 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 the Program subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

The Program has designated the Program's complete file on Brewster CHA 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 letter 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 April, 2011.



Gail R. Shibley, JD, Administrator
Office of Environmental Public Health

cc: Gregg Baird, OHA-DWP
Greg DeBlase, Marion County Environmental Health
Regina Harrison, Brewster Community Homeowners Association

DATE of Service: April 12, 2011


Brad K. Daniels

By certified mail and first class mail

