



# Oregon

Theodore R. Kulongoski, Governor

**Department of Human Services**  
**Public Health Division**  
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BEFORE THE STATE OF OREGON  
DEPARTMENT OF HUMAN SERVICES  
OFFICE OF ENVIRONMENTAL PUBLIC HEALTH

In the Matter of

Deer Island Heights WS, LLC, PWS  
OR4105114

Respondent

NOTICE OF VIOLATION AND  
ADMINISTRATIVE ORDER

To: Scott and Kathy McMullen  
Deer Island Heights WS, LLC  
PO Box 1471  
St Helens, OR 97051

**SDWIS**  
MAR 10 2008  
**B Daniels**

Deer Island Heights WS, LLC is a water supplier that is defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(175).

Deer Island Heights WS, LLC, as a *Water Supplier*, has specific responsibilities that are specified in OAR 333-061-0025.

Deer Island Heights WS, LLC has at all times mentioned herein operated and continues to operate a community public water system, 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 333-061-0295.



Pursuant to its authority under ORS 448.150, the Oregon Department of Human Services, Public Health Division, Office of Environmental Public Health, Drinking Water Program (Agency) has conducted an investigation into the operation of the water system operated by Deer Island Heights WS, LLC.

The Agency found, during its investigation, that Deer Island Heights WS, LLC did not consistently report sample results for microbiological contaminants, Arsenic, inorganic chemicals, Lead and Copper, Nitrate, Nitrite, synthetic organic chemicals, and volatile organic chemicals. Deer Island Heights WS, LLC also violated the microbiological maximum contaminant level (MCL) for total coliform bacteria. Deer Island Heights WS, LLC 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 Deer Island Heights WS, LLC for specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.285) and rules found during the Agency's investigation.

#### DESCRIPTION OF RULE VIOLATIONS

- Violation No. 1: Deer Island Heights WS, LLC is required by OAR 333-061-0036(5) to conduct monthly sampling to determine the presence or absence of microbiological contaminants in its water system. In each of the following monitoring periods, two or more sample results for the system were positive for total coliform bacteria:
  - October 2006
  - November 2006
- This constitutes two violations of the microbiological MCL for total coliform (OAR 333-061-0030 (4)).

**Total Coliforms:** The adverse health effects language for a violation of the microbiological (total coliform) MCL is (OAR 333-061-0097): "Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems."

- Violation No. 2: Deer Island Heights WS, LLC failed to report sample results for the presence or absence of microbiological contaminants in its water system in each of the following monthly sampling periods:

- January 2007
- February 2007
- March 2007
- April 2007
- May 2007
- June 2007
- July 2007
- September 2007
- October 2007
- December 2007

This constitutes ten violations of OAR 333-061-0036(5)(b).

- Violation No. 3: Deer Island Heights WS, LLC is required by OAR 333-061-0036(5)(c) to conduct repeat sampling for the purpose of determining compliance with the MCL for total coliform when a total coliform-positive sample result occurs. Deer Island Heights WS, LLC failed to report repeat samples within the September 2006 monitoring period.

This constitutes one violation of OAR 333-061-0036(5)(c).

- Violation No. 4: Deer Island Heights WS, LLC is required by OAR 333-061-0036(5)(i) to collect five routine samples during the month following a total coliform-positive sample result. Deer Island Heights WS, LLC failed to report any routine samples for the December 2006 monthly monitoring period.

This constitutes one violation of OAR 333-061-0036(5)(i).

- Violation No. 5: Deer Island Heights WS, LLC is required to conduct sampling of its water system for Arsenic. Deer Island Heights WS, LLC failed to report any Arsenic sample results for the 2005 to 2007 sampling period.

This constitutes one violation of OAR 333-061-0036(2)(a).

- Violation No. 6: Deer Island Heights WS, LLC is required to conduct sampling of its water system for inorganic chemicals. Deer Island Heights WS, LLC failed to report any inorganic chemical sample results for the 2005 to 2007 sampling period.

This constitutes one violation of OAR 333-061-0036(2)(a).

- Violation No. 7: Deer Island Heights WS, LLC is required to conduct sampling of its water system for Lead and Copper. Deer Island Heights WS, LLC failed to report any Lead and Copper sample results for the following annual sampling periods.

- 2003
- 2004
- 2005

This constitutes three violations of OAR 333-061-0036(2)(d).

- Violation No. 8: Deer Island Heights WS, LLC is required to conduct annual sampling of its water system for Nitrate. Deer Island Heights WS, LLC failed to report any Nitrate sample results for the 2007 sampling period.

This constitutes one violation of OAR 333-061-0036(2)(e).

- Violation No. 9: Deer Island Heights WS, LLC is required to conduct sampling of its water system for Nitrite. Deer Island Heights WS, LLC failed to report any Nitrite sample results for the 2005 to 2007 sampling period.

This constitutes one violation of OAR 333-061-0036(2)(f).

- Violation No. 10: Deer Island Heights WS, LLC is required to conduct sampling of its water system for synthetic organic chemicals. Deer Island Heights WS, LLC failed to report any synthetic organic chemical sample results for the 2005 to 2007 sampling period.

This constitutes one violation of OAR 333-061-0036(3)(a).

- Violation No. 11: Deer Island Heights WS, LLC is required to conduct sampling of its water system for volatile organic chemicals. Deer Island Heights WS, LLC failed to report any volatile organic chemical sample results for the 2005 to 2007 sampling period.

This constitutes one violation of OAR 333-061-0036(3)(c).

#### ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

Deer Island Heights WS, LLC 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: Deer Island Heights WS, LLC shall comply with a monthly sampling schedule for determining compliance with the maximum contaminant levels for coliform bacteria (OAR 333-061-0036(5)(b)). Per OAR 333-061-0040(1)(b) the sample results must be reported by the *Water Supplier* within 10 days of the end of the monitoring period. Deer Island Heights WS, LLC must observe the following monthly monitoring schedule:
  - March sample results must be reported no later than April 10, 2008.
  - April sample results must be reported no later than May 10, 2008.
  - May sample results must be reported no later than June 10, 2008.
  - June sample results must be reported no later than July 10, 2008.
  - July sample results must be reported no later than August 10, 2008.
  - August sample results must be reported no later than September 10, 2008
- Deer Island Heights WS, LLC, upon completion of 6 months of timely monitoring and reporting, will be considered to have achieved compliance with OAR 333-061-0036(5)(b). Late reporting or non-reporting of the required monthly sample will cause the above compliance schedule to be extended and Deer Island Heights WS, LLC may be referred for possible civil penalties.
- Late reporting or non-reporting of the required number of repeat coliform samples and routine samples due to a positive coliform sample result, while not subject to the above compliance schedule, is considered a violation. Such violations will cause the above compliance schedule to be extended and Deer Island Heights WS, LLC may be referred for possible civil penalties.

- Compliance Action No. 2: Deer Island Heights WS, LLC is required to immediately sample for Arsenic, Nitrate, and for Nitrite per OAR 333-061-0036(2)(a), OAR 333-061-0036(2)(e) and OAR 333-061-0036(2)(f). These sample results must be submitted to the Agency no later than April 10, 2008.

The Agency is authorized pursuant to ORS 480.280, 448.285, 448.290, and OAR 333-061-0090 to impose civil penalties. Should Deer Island Heights WS, LLC fail to meet any of the deadlines specified in Compliance Action No. 1 or Compliance Action No. 2, beginning the day after the compliance deadline the Agency may impose civil penalties in the amount of \$50 per violation per day.

- Compliance Action No. 3: Deer Island Heights WS, LLC is required to sample for Lead and Copper per OAR 333-061-0036(2)(d). These samples must be collected between June 1 and September 30, and the results must be submitted to the Agency no later than October 10, 2008.
- Compliance Action No. 4: Deer Island Heights WS, LLC is required to sample for inorganic chemicals, synthetic organic chemicals, and volatile organic chemicals per OAR 333-061-0036(2)(a), OAR 333-061-0036(3)(a) and OAR 333-061-0036(3)(c). These sample results must be submitted to the Agency no later than October 10, 2008.
- Compliance Action No. 5: Deer Island Heights WS, LLC must issue a Tier 2 public notice for failure to sample for coliform bacteria, and failure to sample for Arsenic, inorganic chemicals, Lead and Copper, Nitrate, Nitrite, synthetic organic chemicals, and volatile organic chemicals (OAR 333-061-0042(2)(b)). Deer Island Heights WS, LLC must distribute the notice to all system users no later than March 31, 2008, and a copy must be submitted to the Agency no later than 10 days after completing the public notification (OAR 333-061-0040(1)(i)). The notice must be delivered in the manner most appropriate to reach all persons served by the system. For example, post the notice in conspicuous locations throughout the area served by the water system, hand deliver the notice to persons served by the water system, or use any other appropriate means of delivery (OAR 333-061-0042(3)(b)).

Please submit sample results and the public notice to: DHS - Drinking Water Program, PO Box 14450, Portland, OR 97293-0450. Provide copies of the public notice to Mark Edington, Columbia County Public Health, P.O. Box 995, St. Helens, OR 97051.

### 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 333-061-0050 to 333-061-0295, which remain in full force and effect.

This Order does not relieve the Deer Island Heights WS, LLC 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 Agency 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).

### NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedure Act (chapter 183, Oregon Revised Statutes). If you want a hearing you must file a written request for hearing with the Agency within 10 days from the date this notice was mailed. 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. The request for hearing must be sent to: David E. Leland, Manager; DHS - Drinking Water Program; PO Box 14450; Portland, OR 97293.

If you do not make a timely request for a hearing, the 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 the Agency subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

Deer Island Heights WS, LLC

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The Agency has designated the Agency's complete file on Deer Island Heights WS, LLC 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 K Daniels, DHS-DWP at (971) 673-0407.

Dated this 10<sup>th</sup> day of March, 2008. *GRS*

  
Gail R. Shibley, Administrator  
Office of Environmental Public Health

bkd

By certified mail

c Scott and Kathy McMullen, Deer Island Heights WS, LLC  
Evan Hofeld, DHS-DWP  
Chris Hughes, DHS-DWP  
Mark Edington, Columbia County Dept. of Health  
Harold Rogers, USEPA