



Oregon

Theodore R. Kulongoski, Governor

Department of Human Services

Public Health Division

800 NE Oregon Street

Portland, OR 97232-2162

(503) 731-4030 - Emergency

(971) 673-0405

(971) 673-0457 - FAX

(971) 673-0372 - TTY-Nonvoice

BEFORE THE STATE OF OREGON
DEPARTMENT OF HUMAN SERVICES
OFFICE OF ENVIRONMENTAL PUBLIC HEALTH

In the Matter of

Deer Island Heights, PWS OR4105114
Respondent

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

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

Pursuant to Oregon Revised Statutes (ORS) 448.280, 448.285, and Oregon Administrative Rule (OAR) 333-061-0090, the Department of Human Services, Office of Environmental Public Health, Drinking Water Program (Agency) intends to impose a civil penalty of \$1,750 against Deer Island Heights, for violations of OAR 333-061-0090(4)(i), OAR 333-061-0036(5)(b), OAR 333-061-0036(2)(a), OAR 333-061-0036(2)(e), and OAR 333-061-0036(2)(f).

Deer Island Heights 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.

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On March 10, 2008, the Agency issued a Notice of Violation and Administrative Order (Order), which included an alleged violations of OAR 333-061-0036(5)(b), OAR 333-061-0036(2)(a), OAR 333-061-0036(2)(e), and OAR 333-061-0036(2)(f). That Order identified compliance actions to be completed by Deer Island Heights in order to comply with the rules allegedly violated. Deer Island Heights did not appeal the Order, nor did Deer Island Heights complete required compliance actions by April 10, 2008. The Order is incorporated by reference .

CIVIL PENALTY

The proposed civil penalty is based on the following violations:

1. OAR 333-061-0036(5)(b) requires water systems to sample and analyze its water system for the purpose of determining compliance with the Maximum Contaminant Level (MCL) for coliform bacteria. Deer Island Heights failed to report coliform sampling results for the March 2008 sampling period.
2. Deer Island Heights is required by OAR 333-061-0036(2)(a) to sample and analyze its water system for Arsenic. Deer Island Heights failed to report Arsenic sampling results for the 2005 to 2007 sampling period.
3. Deer Island Heights is required by OAR 333-061-0036(2)(e) to sample and analyze its water system for Nitrate. Deer Island Heights failed to report Nitrate sampling results for the 2007 sampling period.
4. Deer Island Heights is required by OAR 333-061-0036(2)(f) to sample and analyze its water system for Nitrite. Deer Island Heights failed to report Nitrite sampling results for the 2005 to 2007 sampling period.
5. Deer Island Heights failed to comply with the March 10, 2008 Order, which is a violation of OAR 333-061-0090(4)(i).

CIVIL PENALTY FACTORS CONSIDERED

In assessing the civil penalty the Agency considered the factors set out in ORS 448.285(2).

- The past history of the person incurring the penalty in taking all feasible steps or procedures necessary or appropriate to correct the violation:
 - An Agency representative and Mark Edington, Environmental Health Specialist from Columbia County, met with one of the owners, Mrs. Kathy McMullen, on or about September 25, 2007. Kathy McMullen is also the operator in direct responsible charge for Deer Island Heights. There was discussion of the system's coliform sampling history, and Mark Edington explained the system's coliform sampling requirements. At the meeting, Kathy McMullen indicated that the system ran out of water during the summer of 2007, and that the system also experienced a break in a distribution line. Mark Edington was not notified of either of these incidents.
 - On November 15, 2007, an Agency representative mailed a letter to the current owners, Scott and Kathy McMullen. The letter identified the violations attributed to the system and the necessary steps to return to compliance.
 - The Agency issued an Order March 10, 2008 requiring coliform, Arsenic, Nitrate, and Nitrite, sampling to be reported no later than April 10, 2008. Deer Island Heights did not comply with this deadline.
- Prior violations:
 - The Agency issued an Order March 10, 2008 for coliform, Arsenic, inorganic chemical, Lead and Copper, Nitrate, Nitrite, synthetic organic chemical and volatile organic chemical sampling violations. Deer Island Heights did not comply with this Order, which included notice of intent to assess civil penalties.
 - Deer Island Heights incurred twelve violations of the coliform sampling requirements from September 2006 through December 2007.
 - Deer Island Heights incurred two violations of the MCL for coliform bacteria in October and November 2006.

- Deer Island Heights incurred one violation of the Arsenic sampling requirement for the 2005 to 2007 sampling period.
- Deer Island Heights incurred one violation of the inorganic chemical sampling requirement for the 2005 to 2007 sampling period.
- Deer Island Heights incurred three violations of the lead and copper sampling requirements for the 2005, 2006, and 2007 sampling periods.
- Deer Island Heights incurred one violation of the Nitrate sampling requirement for the 2007 sampling period.
- Deer Island Heights incurred one violation of the Nitrite sampling requirement for the 2005 to 2007 sampling period.
- Deer Island Heights incurred one violation of the synthetic organic chemical sampling requirement for the 2005 to 2007 sampling period.
- Deer Island Heights incurred one violation of the volatile organic chemical sampling requirement for the 2005 to 2007 sampling period.
 - Economic and financial conditions of the person incurring the penalty:
- The Agency has no information about the economic or financial conditions of Deer Island Heights.

Under OAR 333-061-0090, Deer Island Heights will be assessed a civil penalty in the amount of \$1,750 for the violations listed below, for the time period April 11, 2008 through April 17, 2008. Per OAR 333-061-0090(2) each day is a separate violation in the amount of \$50 per day, per violation. The total penalty amount is based on:

- Coliform sampling violations from April 11, 2008 through April 17, 2008.
- Arsenic sampling violations from April 11, 2008 through April 17, 2008.
- Nitrate sampling violations from April 11, 2008 through April 17, 2008.

- Nitrite sampling violations from April 11, 2008 through April 17, 2008.
- Failure to comply with an Order issued by the Agency from April 11, 2008 through April 17, 2008.

The civil penalty shall become due and payable 10 days after the Notice of Intent to Impose Civil Penalty (Notice) imposing the civil penalty becomes final (ORS 183.745).

If the violations incorporated by reference in this Notice continue, you may be subject to subsequent civil penalties of \$50 per day per violation.

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 20 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 Notice will become a final order and effective 21 days after the date this Notice was mailed. If the Notice becomes a final order in this manner, you will have the right to appeal the Notice 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 81 days from the day this order was mailed. If you do not file a petition for judicial review within the 81-day time period, you will lose your right to appeal.

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

Dated this 23rd day of April 2008.



Gail R. Shibley, Administrator
Office of Environmental Public Health

bkd

By certified mail

cc: Scott and Kathy McMullen, Deer Island Heights WS, LLC
Shannon O'Fallon, Oregon Department of Justice
Mark Edington, Columbia County Department of Health
Evan Hofeld, DHS-DWP
Chris Hughes, DHS-DWP
Harold Rogers, USEPA