

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

In the Matter of

Bellinger Produce, LLC, PWS  
OR4195236

Respondent

FINAL ORDER IMPOSING  
CIVIL PENALTY BY DEFAULT

To: Robert Jack Bellinger  
Bellinger Produce, LLC  
29088 Bridge Road  
Hermiston, OR 97838

The Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) issued a Notice of Intent to Impose Civil Penalty (Notice) to Bellinger Produce, LLC on October 17, 2019 for specific violations of the Oregon Drinking Water Quality Act and rules. The Notice is incorporated herein by reference. The Notice offered Bellinger Produce, LLC 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 DWS's file on this matter, as the record for purposes of default.

FINDINGS OF FACT

Bellinger Produce, LLC has at all times mentioned herein owned and operated the Bellinger Produce water system public water system (hereinafter "Water System") located at 1823 S Highway 395 in Hermiston, Oregon. The Water System is a transient non-community public water system serving 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 Bellinger Produce, LLC's economic or financial details, or the economic or financial conditions at the Water System.

Bellinger Produce, LLC, (hereinafter "Water Supplier") is a water supplier as defined in ORS 448.115(12) and OAR 333-061-0020. Water Supplier has specific responsibilities as defined in OAR 333-061-0025. 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).

DWS served a Notice of Violation and Administrative Order (Order) to Water Supplier regarding the Water System on December 7, 2018. The Order cited two violations of rules OAR 333-061-0025 and OAR 333-061-0030(1). 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). The Order required Water Supplier to monitor for nitrate at the Water System every month and immediately collect a confirmation sample if any monthly 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 monthly 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 monthly samples every month from February through September 2019. Water Supplier reported a monthly sample on October 2, 2019, which was determined to have a nitrate concentration of 57.2 mg/L. Two confirmation samples were reported on October 3, 2019 and determined to have nitrate concentrations of 59.6 and 60.8 mg/L respectively. The average of the monthly sample and either confirmation exceeded the MCL for nitrate of 10 mg/L, in violation of the Order. The Order is incorporated herein by reference.

Over the last five years, Water Supplier has violated numerous drinking water regulations, some on numerous occasions. These prior violations include one violation of OAR 333-061-0025(1), three violations of OAR 333-061-0025(2), five violations of OAR 333-061-0025(5), eight violations of OAR 333-061-0030(1), two violations of

OAR 333-061-0036(6), two violation of OAR 333-061-0050(2), one violation of OAR 333-061-0064, one violation of OAR 333-061-0065(4), and two violations of OAR 333-061-0070(12). DWS considered these prior violations to support imposing the maximum civil penalty in this matter.

Water Supplier collected samples that continued to exceed the nitrate MCL on October 16 and October 22, 2019. On October 28, 2019 water supplier collected a sample that demonstrated nitrate in the drinking water was below the MCL.

### CONCLUSIONS OF LAW

Between October 3, 2019 and October 15, 2019, Water Supplier violated OAR 333-061-0025 by serving water with concentrations of nitrate exceeding the MCL.

#### Civil Penalty

Pursuant to OAR 333-061-0090(4), the penalty amount for a violation by a public water system serving 100 people is \$50 per day. In determining the appropriate penalty amount, DWS considered all the mitigating and aggravating factors as described in the Notice. DWS considered that although Water Supplier had installed a nitrate treatment system in 2007 and thereafter reported nitrate results for the Water System below the MCL more than 40 times, which supported reducing the civil penalty, Water Supplier also failed to take action to prevent nitrate from exceeding the MCL and failed to operate the Water System so that nitrate was consistently below the MCL, which weighed against reducing the civil penalty. Water Supplier's prior violations also weighed against reducing the civil penalty. DWS has no information about the Water Supplier's economic or financial condition and thus this factor is neutral. Based on DWS's consideration of these factors, DWS determined the civil penalty of \$50 per day is warranted in this matter.

Each day of violation is a separate and distinct violation. ORS 448.280(1)(a); OAR 333-061-0090(2).

The Order directed the Water Supplier to report monitoring for nitrate that demonstrated the average concentration of nitrate in a monthly sample and confirmation sample did not exceed the MCL. Therefore, Water Supplier violated OAR 333-061-0025 each day between October 3, 2019 and October 15, 2019, for a total of 13 days. The total civil penalty is therefore \$650 (13 x \$50).

ORDER

Based on the foregoing, WATER SUPPLIER IS HEREBY ORDERED to pay a civil penalty in the amount of \$650.

Dated this 25<sup>th</sup> day of November, 2019.



Dave Emme, Manager  
Drinking Water Services  
Oregon Health Authority

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 call the Drinking Water Services at 971-673-0405. Make Checks payable to the Oregon Health Authority, Drinking Water Services. Mail checks to the Oregon Health Authority, Drinking Water Services, PO Box 14450, Portland, Oregon 97293-0450.

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 Notice, please contact Brad K. Daniels at (971) 673-0405.

Bellinger Produce, LLC

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cc: Jeff Carlson, Oregon Health Authority, Center for Health Protection  
Bill Goss, Oregon Health Authority, Drinking Water Services  
Melissa Ney, Oregon Department of Agriculture  
Amy Word, Oregon Health Authority, Drinking Water Services  
Shannon O'Fallon, Oregon Department of Justice

DATE of Service: November 26, 2019

  
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Brad K Daniels

By certified and first class mail