



Oregon

Theodore R. Kulongoski, Governor

Department of Human Services

Public Health Division

800 NE Oregon Street

Portland, OR 97232-2162

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(971) 673-0372 - TTY-Nonvoice

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

In the Matter of

Lawrence and Jan Durette
Echo Mountain Park Water System,
PWS 4100605

Respondent

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

To: Lawrence and Jan Durette
PO Box 246
Otis OR 97368

Pursuant to Oregon Revised Statutes (ORS) 448.280, 448.285, and Oregon Administrative Rules (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 \$4,500 against you for violations of OAR 333-061-0025(5), OAR 333-061-0036(2)(c), OAR 333-061-0036(2)(d), OAR 333-061-0036(3)(a), OAR 333-061-0036(3)(b), and 333-061-0036(6)(b).

You have at all times mentioned herein owned and operated, and continue to own and operate, the Echo Mountain Park Water System (Echo Mountain Park) which is a community public water system serving between 301 and 1,500 people and subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0290.

"Assisting People to Become Independent, Healthy and Safe"
An Equal Opportunity Employer



The Agency mailed a Notice of Violation (Notice) to you on November 12, 2010 citing your violation of each of the rules specified above. You did not contact the Agency regarding these violations, have not submitted any of the required sampling results, and have not otherwise taken any apparent action to correct the violations. The Notice is incorporated by reference.

The proposed civil penalty is based on the following violations:

1. OAR 333-061-0025(5) requires water suppliers to notify customers served by a water system when reporting requirements are not being met, but you failed to publish a public notice as specified in OAR 333-061-0042 or a consumer confidence report as specified in OAR 333-061-0043, following your failure to report nitrate sampling results by January 10, 2010, which is a violation of the rule.
2. OAR 333-061-0036(2)(c) requires sampling for lead and copper once every three years, but lead and copper sampling results have not been submitted since 2002, which is a violation of the rule.
3. OAR 333-061-0036(2)(d) requires sampling for nitrate every year, but nitrate sampling results were not submitted for the 2009 or 2010 monitoring periods, which is a violation of the rule.
4. OAR 333-061-0036(3)(a) requires sampling for synthetic organic chemicals once every three years, but samples have not been collected since 2002, which is a violation of the rule.
5. OAR 333-061-0036(3)(b) requires sampling for volatile organic chemicals once every three years, but samples have not been collected since 2002, which is a violation of the rule.
6. OAR 333-061-0036(6)(b) requires sampling for coliform bacteria once every month, but samples have not been collected since February 2010, which is a violation of the rule.

CIVIL PENALTY

Pursuant to OAR 333-061-0090, you will be assessed a civil penalty in the amount of \$250 based upon the population served by the public water system, for each distinct violation, and for every day the violation occurred. The total civil penalty of \$4,500 is based upon the violations listed above:

- You will be assessed a penalty for each of the violations, for the time period from January 11, 2011 through January 13, 2011, inclusive. Each day within this three day period has six associated violations, equaling eighteen total violations for a total penalty of \$4,500.

If the violations identified in this notice, or other violations incorporated by reference, continue, you may be subject to additional civil penalties of \$250 per day per violation.

CIVIL PENALTY FACTORS CONSIDERED

In assessing the civil penalty, the Agency 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:
 - You have been formally notified of the violations specified in this notice on at least four separate occasions, as described below, but have taken little or no action to correct the violations.
 1. The Lincoln County Health and Human Services Department (Lincoln County) conducted a water system survey (also called a sanitary survey) of the Echo Mountain Park water system on November 13, 2007. This water system survey identified the lack of water quality sampling as a significant deficiency. You were notified of the survey results on February 13, 2008 in a letter which directed you to collect the required water samples, as well as making other improvements. This survey specifically cited the lack of sampling for lead and copper since 2001 and lack of sampling for organic chemicals since 2003 as significant compliance failures.
 2. The Agency issued an Administrative Order on February 20, 2008 ordering you to collect samples for nitrate and for coliform bacteria, and to submit the sampling results to the Agency by specific deadlines. The order also required you to publish public notice. You completed all of the required compliance actions, but did not do so by the specified deadlines included in the order. Furthermore, the year following the submission of nitrate sampling results as required by the order, you failed to submit nitrate sampling results as required by OAR 333-061-0036(2)(d).

3. The Agency issued a Notice of Violation on November 12, 2010 identifying your responsibilities as a water supplier and the specifically citing the rules violated by your failure to conduct chemical sampling. The letter also notified you that immediate action was required to fulfill your responsibilities as a water supplier. To date, there has been no response to this letter.
4. Lincoln County conducted a water system survey of the Echo Mountain Park water system on November 19, 2010 which again identified the lack of water quality sampling as a significant deficiency. You were notified of the survey results on December 10, 2010 in a letter which directed you to collect the required water samples, as well as making other improvements.

- (b) Prior violations:

- You violated OAR 333-061-0025(1), which requires water suppliers to collect and submit samples for laboratory analyses at the frequencies prescribed in OAR 333-061-0036, more than thirty times since January 1, 2007 by failing to complete the sampling requirements specified below.
- You violated OAR 333-061-0025(5) two times since January 1, 2007 by failing to notify the customers of the Echo Mountain Park water system that reporting requirements were not being met.
- You violated OAR 333-061-0036(2)(c) three times between January 1, 2002 and December 31, 2010 by failing to sample for lead and copper as required by the rule.
- You violated OAR 333-061-0036(2)(d) four times between January 1, 2006 and December 31, 2010 by failing to sample for nitrate required by the rule.
- You violated OAR 333-061-0036(6)(a) two times between January 1, 2005 and December 31, 2010 by failing to sample for synthetic organic chemicals as required by the rule.
- You violated OAR 333-061-0036(3)(b) two times between January 1, 2005 and December 31, 2010 by failing to sample for volatile organic chemicals as required by the rule.

- You violated OAR 333-061-0036(6)(b) thirty times between January 1, 2007 and December 31, 2010 by failing to sample for coliform bacteria as required by the rule.
 - (c)Economic and financial conditions of the person incurring the penalty:
- The Agency has no information about your economic or financial details, or the economic or financial conditions at the Echo Mountain Park water system.

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 Agency within 20 days from the date this Notice was mailed. The request for hearing must be sent to: David E. Leland, Manager; DHS - Drinking Water Program; PO Box 14450; Portland, OR 97293-0450. If a request for hearing is not received with the 20-day period, you will have waived your right to a hearing.

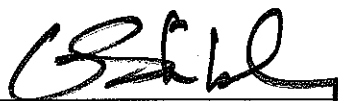
If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. Any hearing will be held by an administrative law judge from the Office of Administrative Hearings (ORS 183.635).

If you do not request a hearing within 20 days, or if you withdraw a request for hearing, notify the Agency or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Agency may issue a final order by default ordering you to pay a civil penalty. If the Agency issues a final order by default, the Agency 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.

For purposes of ORS 293.229 through 293.233 and ORS 293.250, the civil penalty specified herein will become a liquidated debt if a final order is issued. Pursuant to ORS 293.231 the Agency is required to assign liquidated and delinquent civil penalties to the Department of Revenue, as provided in ORS 293.250, not later than 90 days after the final order is issued. 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 of \$4,500.

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 18 day of January, 2011.



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

cc: Amy Chapman, Lincoln County Environmental Health
Neil Jensen, Lincoln County Environmental Health
Fred Kalish, DHS-DWP
Karen Kelley, DHS-DWP
Harold Rogers, USEPA

DATE of Service: January 18, 2011



Brad K Daniels

By certified and first class mail