

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

In the Matter of

Judy Bedsole, Owner
Fish Mill Lodges, PWS 4100943

Respondent

AMENDED NOTICE OF INTENT TO
IMPOSE CIVIL PENALTY

To: Judy Bedsole, Owner
Fish Mill Lodges
PO Box 95
Westlake, OR 97493

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 (Program) intends to impose a civil penalty of \$1,000 against you, for violations of OAR 333-061-0025(1) and OAR 333-061-0025(2).

You have at all times mentioned herein owned and operated Fish Mill Lodges, a transient non-community public water system serving between 25 and 100 people and subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0290.

The Program notified you of these violations in a letter delivered by certified and first-class mail on October 6, 2010. The letter is incorporated by reference.

The proposed civil penalty is based on the following violations:

1. OAR 333-061-0025(1) requires that water suppliers routinely collect and submit water samples for laboratory analyses at the frequencies prescribed by OAR 333-061-0036. On September 24, 2010 you were notified that four samples collected on September 21, 2010 at the Fish Mill Lodges water system were positive for coliform bacteria, including *E. coli*, and that one of the samples was a source water sample. You were therefore required by OAR 333-061-0036(6)(s) to collect five additional source water samples within 24 hours, but you did not collect the samples, which is a violation of both OAR 333-061-0036(6)(s) and OAR 333-061-0025(1).
2. OAR 333-061-0025(2) requires water systems to take immediate corrective action when analyses or measurements indicate that maximum contaminant levels (MCL) have been exceeded.

The four samples collected on September 21, 2010 each showed the presence of coliform bacteria (including *E. coli*) which constituted a violation of the MCL for coliform bacteria. You were notified of the sample analysis results on September 24, 2010. You published public notice as required, but otherwise failed to take any meaningful action to investigate the source of or to correct coliform presence.

A standard response to these sample results would have been to immediately collect the required confirmation samples (in order to determine if the water source is fecally contaminated), inspect the spring for construction deficiencies, correct any deficiencies that could cause bacterial contamination, clean the storage tank and possibly "shock" chlorinate the water system, and then to determine the appropriate follow-up action. There is no evidence you did any of these things immediately or even shortly after you were aware of the positive sample results.

It was suggested by staff of the Lane County Environmental Health Department on September 27, 2010 that you clean the area around the springbox and verify that construction of the box does not allow the entrance of contamination. There is no evidence that you did this.

Fish Mill Lodges

Page 3

You were notified on September 30, 2010 of the need to collect confirmation samples due to the source water sample showing the presence of *E. coli*. In addition, Lane County Environmental Health staff scheduled a visit for October 4, 2010 to inspect the Fish Mill Lodges water system and offered to collect the required confirmation samples as a courtesy. You replied that you would not collect the required confirmation samples, and that you were canceling the planned visit for October 4. You took no further action to directly address the contamination present in the Fish Mill Lodges water system until ordering the collection of samples on November 11, 2010 and "shock" chlorinating the water system on November 20, 2010.

Your refusal to allow a water system inspection on October 4, 2010 without providing an option to re-schedule for another date; your failure to collect five confirmation source water samples; and your failure to take any substantive action immediately following notification of the positive coliform samples constitutes a refusal to take immediate corrective action, and as such constitutes a violation of OAR 333-061-0025(2).

CIVIL PENALTY

Pursuant to OAR 333-061-0090, you will be assessed a civil penalty in the amount of \$50 for each distinct violation, for every day the violation occurred. The total proposed civil penalty of \$1,000 is based upon the violations listed above as specified below:

1. You will be assessed a civil penalty for the time period from October 7, 2010 to October 16, 2010, inclusive. Each day within this ten day period has two associated violations for a total penalty of \$1,000.

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

CIVIL PENALTY FACTORS CONSIDERED

In assessing the civil penalty, the Program 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:

- On September 30, 2010 you notified Katrinka Danielson of the Lane County Environmental Health Department, by email, that you would not collect the five additional source water samples required by OAR 333-061-0036(6)(s), and that you were canceling the water system inspection scheduled to take place on October 4, 2010.
 - (b) Prior violations:
 - You violated OAR 333-061-0030(4) four times between 2005 and 2008 by exceeding the MCL for coliform bacteria.
 - You violated OAR 333-061-0036(6)(b) two times between 2005 and 2007 by failing to submit routine coliform samples for coliform bacteria.
 - You violated OAR 333-061-0036(6)(c) two times between 2005 and 2007 by failing to submit repeat coliform samples for coliform bacteria.
 - (c) Economic and financial conditions of the person incurring the penalty:
 - The Program has no information about the economic or financial conditions of Fish Mill Lodges.

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). **You have already requested a hearing and do not need to submit an additional request for hearing.**

You have been notified of the time and place of the hearing and have been given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing. The hearing will be held by an administrative law judge from the Office of Administrative Hearings (ORS 183.635).


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 ordering you to pay a civil penalty. 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.

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 Program 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 \$1,000.

If you need to receive the information in this letter in an alternate format, or if you have any questions about this Notice, please contact Brad K. Daniels, at (971) 673-0405.

Dated this 2nd day of March, 2011.


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

cc: Katrinka Danielson, Lane Environmental Health Program
Karen Kelley, DHS-DWP
Casey Lyon, DHS-DWP
Harold Rogers, USEPA

DATE of Service: 3/2/2011


Shannon K O'Fallon

By certified and first class mail

