



Oregon

Theodore R. Kulongoski, Governor

Department of Human Services
Public Health Division
800 NE Oregon Street
Portland, OR 97232-2162

SDWIS
NOV 19 2008
B Daniels

(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 \$3,500 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.



On March 10, 2008, the Agency issued a Notice of Violation and Administrative Order (Order), which included alleged violations of OAR 333-061-0036(2)(a), OAR 333-061-0036(2)(d), 333-061-0036(3)(a), and OAR 333-061-0036(3)(c). The 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 the required compliance actions by October 10, 2008. The Order is incorporated by reference .

CIVIL PENALTY

Pursuant to OAR 333-061-0090, Deer Island Heights will be assessed a civil penalty for the time period beginning on October 11, 2008 through October 24, 2008, inclusive. Each day within this fourteen day period takes into account five separate violations in the amount of \$50 per violation, for a total fine of \$3,500. The proposed civil penalty is based on the following violations:

1. OAR 333-061-0036(2)(a) requires water systems to analyze samples to determine compliance with the Maximum Contaminant Level (MCL) for inorganic chemicals. Deer Island Heights failed to report inorganic chemical sampling results for the 2005 to 2007 sampling period.
2. OAR 333-061-0036(2)(d) requires water systems to analyze samples to determine compliance with the action levels for lead and copper. Deer Island Heights failed to report lead and copper sampling results for each of the following annual sampling periods:
 - 2003
 - 2004
 - 2005
 - 2006
 - 2007
3. OAR 333-061-0036(3)(a) requires water systems to analyze samples to determine compliance with the Maximum Contaminant Level (MCL) for organic chemicals. Deer Island Heights failed to report organic chemical sampling results for the 2005 to 2007 sampling period.
4. OAR 333-061-0036(3)(c) requires water systems to analyze samples to determine compliance with the Maximum Contaminant Level (MCL) for volatile organic chemicals. Deer Island Heights failed to report volatile organic chemical 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).

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

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 for Columbia County, met with one of the owners, Mrs. Kathy McMullen, on or about September 25, 2007. Kathy McMullen was 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 also that the system also experienced a break in a distribution line, but 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 sampling for coliform bacteria, arsenic, nitrate, and nitrite. Sample results were required to be reported no later than April 10, 2008, but Deer Island Heights did not comply with this deadline.

- The Agency assessed civil penalties in the amount \$1,750 on April 23, 2008. Deer Island Heights did not appeal the assessment of penalties.
- Deer Island Heights submitted sample results for arsenic, nitrate, and nitrite on May 20, 2008 after the deadline specified in the Order and after receiving the Notice of Intent to Impose Civil Penalties issued on April 23, 2008.
- Mark Edington, Environmental Health Specialist for Columbia County telephoned Kathy McMullen on September 23, 2008 and spoke with her regarding the October 10, 2008 deadline in the Order. Kathy McMullen stated that she would collect the required chemical samples, and submit the samples to a laboratory for analysis. The Agency did not receive the required chemical analysis results from Deer Island Heights before October 10, 2008 and has not received them as of this date.
 - Prior violations:
 - The Order issued to Deer Island Heights on March 10, 2008 required sampling for coliform, arsenic, inorganic chemicals, lead and copper, nitrate, nitrite, synthetic organic chemicals and volatile organic chemicals. Deer Island Heights did not submit the required chemical sampling results by the deadlines specified in the Order.
 - Deer Island Heights incurred fifteen violations of the coliform sampling requirements from September 2006 through October 2008.
 - Deer Island Heights incurred two violations of the MCL for coliform bacteria in October and November 2006.
 - Deer Island Heights incurred five separate violations of the chemical sampling requirements for arsenic, inorganic chemicals, nitrite, synthetic organic chemicals, and volatile organic chemicals, each for the 2005 to 2007 sampling period.
 - Deer Island Heights incurred five violations of the lead and copper sampling requirements for the 2003 through 2007 sampling periods.
 - Deer Island Heights incurred one violation of the nitrate sampling requirement for the 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.

NOTICE OF RIGHT TO REQUEST A HEARING

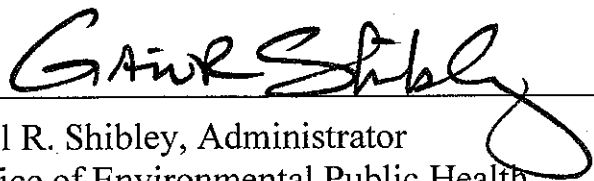
You are entitled to a hearing as provided by the Administrative Procedure Act (chapter 183, Oregon Revised Statutes). If you want a hearing you must file a written request for hearing with the Agency within 20 days from the date this Notice was mailed. If you request a hearing, you will be notified of 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 17th day of November 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

DATE of Service: November 19, 2008


Brad K Daniels