



# Oregon

Theodore R. Kulongoski, Governor

**Department of Human Services**  
**Public Health Division**  
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Portland, OR 97232-2162  
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(971) 673-0694 - FAX  
(971) 673-0372 - TTY-Nonvoice

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

In the Matter of

Weiss Estates Water System, PWS  
OR4105581

Respondent

NOTICE OF INTENT TO IMPOSE  
CIVIL PENALTY

To: Bobbie Bolden, Secretary  
Weiss Estates Water System  
88567 Weiss Estates Ln.  
Bandon, OR 97411

To: Corrine Clifton, President  
Weiss Estates Water System  
57259 Dodger Rd.  
Bandon, OR 97411

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 \$1,000 against Weiss Estates Water System, for violations of OAR 333-061-0036(5)(b)(A), OAR 333-061-0050(4)(c)(B), OAR 333-061-0050(6)(a)(S), and OAR 333-061-00225(1) and (2).

Weiss Estates Water System has at all times mentioned herein operated and continues to operate as 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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The Agency issued a Notice of Violation (Notice) on August 11, 2009, to the Weiss Estates Water System, which included alleged violations of OAR 333-061-0036(5)(b)(A), OAR 333-061-0050(4)(c), 333-061-0050(6)(a)(S), and OAR 333-061-0225. The Notice identified compliance actions to be completed by Weiss Estates Water System in order to comply with the rules allegedly violated. Weiss Estates Water System did not complete the required compliance actions by the deadline of December 31, 2009 as specified in the Notice. The Notice is incorporated by reference.

### CIVIL PENALTY

Pursuant to OAR 333-061-0090, Weiss Estates Water System will be assessed a civil penalty for the time period beginning on February 1, 2010 through February 5, 2010, inclusive. Each day within this five day period takes into account four separate violations in the amount of \$50 per violation, for a total penalty of \$1,000. The proposed civil penalty is based on the following violations:

1. OAR 333-061-0036(5)(b)(A) requires water systems utilizing a surface water source and providing filtration to measure the turbidity of filtered water prior to any water storage. Weiss Estates Water System measures turbidity after water is stored in a series of storage tanks, which is a violation of this requirement.
2. OAR 333-061-0050(4)(c)(B) requires water systems utilizing a surface water source and providing filtration to demonstrate the effectiveness of any filtration method other than conventional filtration. Weiss Estates Water System is utilizing cartridge filters that have not been approved for use at public water systems within Oregon, and for which filtration effectiveness has not been verified.
3. OAR 333-061-0050(6)(a)(S) requires water systems that possess a reservoir which is used for disinfection contact time to have a means to effectively measure flow rate on the effluent from that reservoir. Weiss Estates Water System has a flow meter installed prior to its storage tanks, but has not installed a flow meter on the effluent line from its last storage tank.

4. OAR 333-061-0225(1) requires that community water systems employ or contract with a certified operator to supervise and to be in direct responsible charge of the water system. OAR 333-061-0225(2) requires that the certified operator in direct responsible charge of a water system be certified at a level commensurate to the size of complexity of the water system for which they are responsible. Weiss Estates Water System has not designated an operator to be in direct responsible charge of the water system who is certified at a level equal to the classification of the water system.

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

If the violations specified in this notice continue, Weiss Estates Water System 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:
  - A sanitary survey of Weiss Estates Water System was conducted on February 22, 2006. This survey identified that Weiss Estates lacked a certified operator to be in direct responsible charge of the water system, and also that there was no flow meter on the effluent line from the system's storage tanks. The water system was notified of these deficiencies on July 6, 2006.
  - The Agency issued an administrative order to Weiss Estates Water System on March 27, 2006. The order identified monitoring violations for multiple chemical sampling requirements as well as the lack of a certified operator to be in direct responsible charge of the water system.
  - The Agency issued a letter on April 16, 2008 notifying Weiss Estates Water System that a certified operator was required to be in direct responsible charge of the water system.

- The Agency issued a letter on October 2, 2008 notifying Weiss Estates Water System that a certified operator was required to be in direct responsible charge of the water system.
- The Agency issued a letter on January 15, 2009 notifying Weiss Estates Water System that a certified operator was required to be in direct responsible charge of the water system.
- A sanitary survey of Weiss Estates Water System was conducted on April 3, 2009. This survey listed as significant deficiencies each of the rule violations identified for a civil penalty in this document. The water system was notified of these deficiencies on June 12, 2009.
- The Agency issued a Notice of Violation to Weiss Estates Water System on August 11, 2009. The Notice required that the construction deficiencies identified in the April 3 sanitary survey be corrected no later than December 31, 2009. The Notice also required Weiss Estates Water System designate a certified operator to be in direct responsible charge of the water system no later than December 31, 2009. Weiss Estates Water System did not complete any of the Compliance Actions by the December 31, 2009 deadline.
  - Prior violations:
    - Weiss Estates Water System incurred four violations for failure to sample annually for inorganic chemicals as required by OAR 333-061-0036(2)(a) from 2002 to 2005.
    - Weiss Estates Water System incurred four violations for failure to sample annually for volatile organic chemicals as required by OAR 333-061-0036(3)(b) from 2002 to 2005.
    - Weiss Estates Water System incurred one violation for failure to sample for synthetic organic chemicals as required by OAR 333-061-0036(3)(b) from 2002 to 2004.
  - Economic and financial conditions of the person incurring the penalty:

- The Agency has no information about the economic or financial conditions of Weiss Estates Water System.

### 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.

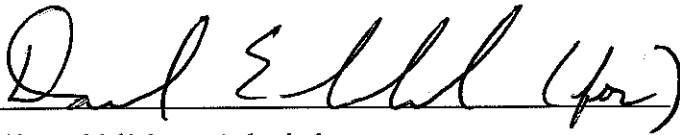
If you do not make a timely request for a hearing, the Notice will become a final order and effective 21 days after the date this Notice was mailed. If the Notice becomes a final order in this manner, you will have the right to appeal the Notice to the Oregon Court of Appeals pursuant to ORS 183.482. 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.

For purposes of ORS 293.229 through 293.233 and ORS 293.250, the civil penalty specified herein will become a liquidated debt if this notice becomes final by default. 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 Notice becomes final. 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.

The Agency has designated the Agency's complete file on Weiss Estates Water System 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 of this notice, please contact Brad K. Daniels, DHS-DWP at (971) 673-0405.

Dated this 24 day of FEBRUARY 2010.



Gail R. Shibley, Administrator  
Office of Environmental Public Health

cc: Jay MacPherson, DHS-DWP  
Shannon O'Fallon, Oregon Department of Justice  
Harold Rogers, USEPA

DATE of Service: February 24, 2010



Brad K Daniels

By certified mail