

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

In the Matter of

Karin Denman and Kathy Trudel/Drift
Creek Landing RV Park, PWS
OR4192038

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Karin Denman
Kathy Trudel
Drift Creek Landing RV Park
61535 S Hwy 97, Suite 9502
Bend, OR 97702

You ¹ are a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(211), and as a water supplier, have specific responsibilities that are identified in OAR 333-061-0025.

You have at all times mentioned herein owned and operated, and continue to own and operate the Drift Creek Landing RV Park (Drift Creek) public water system at 3851 Alsea Hwy in Waldport, Oregon. The Drift Creek water system is classified as a transient non-community public water system serving between 25 and 100 people and is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0290.

Pursuant to its authority under ORS 448.150, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) has investigated the operation of the Drift Creek water system.

¹ For the purposes of this order, "you" refers to Karin Denman and Kathy Trudel

DWS found, during its investigation, that the Drift Creek water system is using an unapproved surface water source without adequate water treatment. Furthermore, you have not taken all reasonable actions to assure that water system facilities are free of public health hazards. You are therefore unable to assure water users at the Drift Creek water system that drinking water is sufficiently free from contaminants such that individuals will not be exposed to disease or harmful physiological effects (ORS 448.115(8)). This represents a potential public health hazard.

This Notice of Violation and Administrative Order (Order) is being issued to you for the specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.290) and rules found during DWS' investigation as described below.

DESCRIPTION OF RULE VIOLATIONS

- Violation No. 1: OAR 333-061-0025 requires, in part, water suppliers to take all reasonable precautions to assure that water system facilities are free of public health hazards. The Drift Creek water system is currently utilizing an unapproved surface water source without adequate treatment as required by OAR 333-061-0032. Your failure to complete construction of treatment facilities for the surface water source serving the Drift Creek water system, following conditional approval of the submitted plans for the project, constitutes a violation of OAR 333-061-0025.

Inadequately treated surface water has the significant potential to have serious adverse effects on human health as a result of short term exposure (OAR 333-061-0042(2)(a)). Inadequately treated water may contain disease causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches (OAR 333-061-0097(5)(c)).

- Violation No. 2: OAR 333-061-0032(1)(a) requires water suppliers using a surface water source to install and operate water treatment that reliably removes or inactivates 99.9 percent of *Giardia lamblia* cysts, 99.99 percent of viruses, and 99 percent of *Cryptosporidium*. The Drift Creek water system is not currently operating water treatment that meets these requirements, but was found to be using a surface water source, most recently on October 19, 2012, which constitutes a violation of OAR 333-061-0032(1)(a).

- Violation No. 3: OAR 333-061-0076(6) requires that significant deficiencies be corrected after being identified during a sanitary survey. OAR 333-061-0076(8) prescribes that significant deficiencies must be corrected according to the schedule approved by DWS. Lincoln County Environmental Health conducted a sanitary survey at the Drift Creek water system on December 29, 2010. Several significant deficiencies identified during the survey were listed in a letter dated January 20, 2011 and required to be corrected by April 30, 2011. Three of the deficiencies, specifically, failure to measure and record disinfectant residual, failure to have an operations manual, and failure to have an emergency response plan have not been corrected as of the date of this order, which constitutes a violation of OAR 333-061-0076.

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

You are required to conduct the remedial actions described below which, if taken within the time specified in this Order, will effect compliance with the rule(s) violated (ORS 448.255(3)).

- Compliance Action No. 1: You must respond to the letter from James “Jay” MacPherson dated March 1, 2013 by submitting an appropriate response, as applicable, for each of the seventeen conditions identified in the letter. Your response must be submitted to DWS within thirty (30) days from the date of service for this Order.
- Compliance Action No. 2: You must complete construction and installation of all filtration and surface water treatment at the Drift Creek water system no later than August 31, 2013.
 - Construction will be completed in accordance with plans approved by DWS.
 - Construction of filtration treatment, including any other necessary improvements, will proceed in accordance with the construction standards specified in OAR 333-061-0050.
- Compliance Action No. 3: You must submit to DWS a statement by a professional engineer registered in Oregon certifying that the project has been constructed in accordance with the approved plans and specifications as required by OAR 333-061-0060(2)(b) within thirty (30) days of completing construction of surface water treatment at the Drift Creek water system or no later than September 30, 2013, whichever comes first.

- Compliance Action No. 4: You must begin operation of a surface water treatment system at the Drift Creek water system within thirty (30) days of completing construction or no later than September 30, 2013, whichever comes first.

- Compliance Action No. 5: You must submit water quality monitoring results to DWS and thereby demonstrate that the Drift Creek water system produces drinking water that consistently meets all applicable state and federal drinking water laws and rules within ten (10) days of the end of the first full calendar month of operating the surface water treatment at the Drift Creek water system, or no later than November 10, 2013, whichever comes first.
- Compliance Action No. 6: You must allow for an inspection of the surface water treatment facility at the Drift Creek water system within thirty (30) days of completing construction or no later than September 30, 2013, whichever comes first.
- Compliance Action No. 7: You must continue to publish public notice for delivering inadequately treated surface water to water users. The notice must be updated and republished every three months to include changes or additional information regarding the Drift Creek water system and must continue to include the directive to boil water. This requirement remains in effect until all corrections are made, and all water users receive drinking water that meets all applicable state and federal drinking water laws and rules (OAR 333-061-025 and OAR 333-061-0042(3)(b)(C)). The notice must be delivered by hand to every resident and customer served by the Drift Creek water system and posted in conspicuous locations throughout the water system. The notice must meet all the applicable requirements of OAR 333-061-0042(4), and direct all water users to boil the water before drinking the water or using it for cooking, food preparation, or any other activity that might result in consumption of the water.
 - A copy of the notice and certification of the method of distribution must be submitted to the Agency no later than 10 days after completing the public notification per OAR 333-061-0040(1)(j).
 - Submit copies of the public notice to Brad Daniels, OHA - Drinking Water Program at bradley.k.daniels@state.or.us, fax number 971-673-0694, or PO Box 14450, Portland, OR 97293-0450.

GENERAL PROVISIONS AND CIVIL PENALTIES

This Order does not constitute a waiver, suspension or modification of the requirements of the Oregon Drinking Water Quality Act; ORS 448.115 to 448.290 and administrative rules OAR 333-061-0005 to 333-061-0290, which remain in full force and effect.

This Order does not relieve you of any responsibilities or liabilities established pursuant to any applicable federal, state, or local law or regulation.

Issuance of this Order is not an election by DWS to forgo any civil actions authorized under the Oregon Drinking Water Quality Act.

Failure to comply with any of the requirements in this Order by the specified due date may result in additional enforcement action, which could include assessment of civil penalties in the amount of \$50 per day per violation (OAR 333-061-0090). Civil penalties may be assessed beginning the day following the date of service of this Order and accruing through the date when DWS issues a Notice of Intent to Impose Civil Penalty.

Pursuant to ORS 448.990(2), violations of a rule of the Oregon Health Authority may be a crime in Oregon and punishable as a Class A misdemeanor.

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 DWS within 10 days from the date this Order was mailed. **The request for hearing must be sent to: Kari Salis, Interim Manager; OHA - Drinking Water Services; PO Box 14450; Portland, OR 97293.**

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.

If you do not make a timely request for a hearing, the Notice of Violation and Administrative Order will become final and effective 11 days after the date this Order was mailed. If the Order becomes final in this manner, you will have the right to appeal the order 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 71 days from the day this order was mailed. If you do not file a petition for judicial review within the 71-day time period, you will lose your right to appeal.

If you do not request a hearing and DWS subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

If you withdraw a request for hearing, or notify DWS or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, DWS may issue a final order by default. If the Order becomes final in this manner, you will have the right to appeal the Order 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 60 days from the day this Order was mailed. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

DWS has designated DWS's complete file on the Drift Creek 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 in this Order, please contact Brad Daniels at 971-673-0405.

Dated this 3 day of JUNE, 2013.



David E. Leland
Interim Administrator - Center for Health Protection
Public Health Division
Oregon Health Authority

cc: Amy Chapman, Lincoln County Environmental Health
Dennis Boeger, P.E, Boeger and Associates
Daniel Hough, OHA-DWS
Neil Jensen, Lincoln County Environmental Health
Shannon O'Fallon, Oregon Department of Justice

DATE of Service: June 4, 2013



Brad K. Daniels

By certified mail and first class mail