

Public Health Division

Oregon State Public Health Laboratory
Regulatory Section – ORELAP



Tina Kotek, Governor

Pendleton Wastewater Treatment Plant ORELAP ID: OR100056

Settlement Agreement

This Stipulated Settlement Agreement (“Agreement”) is made and entered into by and between **Oregon Health Authority, Oregon Environmental Laboratory Accreditation Program, (“ORELAP”)** and City of Pendleton, **Pendleton Wastewater Treatment Plant (“Accreditee”)** (collectively, “the parties”). Parties wish to resolve violations relating to improper incubation of samples discovered during ORELAP’s investigation of Accreditee’s facility as described below. It is therefore agreed and stipulated by and between the parties as follows:

Background

1. Accreditee operates Pendleton Wastewater Treatment Plant #OR100056 including a laboratory located at 4300 SW Houtama Road Pendleton, OR 97801 (“premises”).
2. ORELAP renewed Accreditee’s accreditation on 07/16/2025. Accreditation is required to perform testing of drinking water for compliance reporting to Oregon Health Authority’s Drinking Water Services.
3. ORELAP conducted a routine biennial inspection at Accreditee’s premises on April 30th, 2026 (“inspection”). During the inspection, ORELAP discovered violations regarding Accreditee’s incubation equipment and methods as described in this Agreement.
4. Accreditee’s continued operation due to the incubation violations posed a serious and immediate risk to public health and safety as described in this Agreement and immediate suspension of Accreditee’s accreditation to perform testing for *Escherichia coli* (*E. coli*) and Total coliforms for drinking water effective immediately was necessary.
5. As an alternative to an emergency suspension order, Accreditee is voluntarily suspending its accreditation for testing for *E. coli* and Total coliforms for

7202 NE Evergreen Pkwy, Suite 100, Hillsboro, OR, 97124

Voice: 503-693-4122 | Fax: 503-693-5602 | All relay calls accepted | www.healthoregon.gov/orelap

drinking water. Accreditee is aware of its rights to a contested case hearing if it elects not to voluntarily suspend its accreditation and ORELAP proceeds with formal action to immediately suspend. Accreditee is aware of its rights to judicial review. Accreditee freely and voluntarily waives all rights to a contested case hearing and to all judicial review.

Incubation Requirements

6. To produce accurate results, laboratory equipment must maintain stable incubation temperatures inside the allowable range for the duration of the required sample incubation period. Testing of samples incubated outside of the allowable temperature range could result in false negative results because the temperature is too low or too high to allow for the growth and metabolic function of any bacteria present in the sample. Without the growth and metabolic activity of the bacteria, the test will not accurately detect bacteria. Presence of these pathogenic bacteria in drinking water samples could indicate the presence of pathogenic bacteria in the publicly consumed drinking water where the samples were obtained.
7. Pathogenic bacteria in publicly consumed drinking water could cause serious illness or death and is in violation of the national primary drinking water regulations. Accurate detection of pathogenic bacteria in public drinking water is essential to public health and safety and failure to do so may result in serious illness or death to water users. Detection triggers notice to be provided to water users so they can avoid the water if necessary. Detection allows water providers to take necessary measures to prevent harm to public health and safety including corrective actions to remove and prevent future contamination. (40 CFR Part 141.851-141.861.)

Accreditee's Technical Requirements

8. Under its accreditation for testing drinking water, Accreditee was subject to the following requirements:
 - a. Standard Methods (SM) 9223 B 20th Edition (hereinafter SM 9223 B) in a presence/absence (Colilert®) format, an analytical method allowed under federal rule to test for Total Coliforms and *E. coli*.
 - b. Per SM 9223 B, incubate samples at 35 +/- 0.5°C and also as specified in the manufacturer's instructions. SM 9223 B, Section 2.

7202 NE Evergreen Pkwy, Suite 100, Hillsboro, OR, 97124

Voice: 503-693-4122 | Fax: 503-693-5602 | All relay calls accepted | www.healthoregon.gov/orelap

- c. Per SM 9223 B, comply with manufacturer's instructions for the Colilert® test system which specifies incubation at 35 +/- 0.5°C.
- d. Per the TNI Standards, verify and record incubator temperature twice daily at least four hours apart. 2016 TNI Standard, V1M5 1.7.3.7.b.v.b.

Accreditee's Incubation Laboratory Equipment

- 9. Accreditee's laboratory equipment used to incubate drinking water samples for the Total Coliforms and *E. coli* was outside of the allowable temperature range of 35 +/- 0.5°C or failed to record temperatures twice daily while samples were in the incubator on at least 29 occasions between January 1st and April 30th, 2026, as specified in Attachment A, incorporated by reference herein.

Violations

- 10. Accreditee committed the following violations:
 - a. Accreditee failed to implement a quality system as required by TNI Standards on at least 29 occasions between January 1st and April 30th, 2026 in violation of OAR 333-064-0035(2)(b)(D). TNI Standards require Accreditee to carry out testing to satisfy the needs of the customer, the regulatory authorities or organizations providing recognition. TNI Standards, Volume 1, Module 2, 4.1.2 (incorporated by OAR 333-064-0015 and 333-064-0035(2)(b)(D)). In addition, TNI Standards require the laboratory to use appropriate methods and procedures for all tests in its scope. *Id.* Module 2, 5.4.1; 5.4.2 (incorporated by OAR 333-064-0015 and 333-064-0035(2)(b)(D)). Accreditee provides testing for the City of Pendelton's water supply, and therefore Accreditee's testing for regulatory compliance and customers must comply with OAR 603-061-0036 and 40 CFR Part 141. As water suppliers, Accreditee's customers needed testing that complies with OAR 603-061-0036 and 40 CFR Part 141. To comply with these state and federal rules, based on Accreditee's chosen testing methodology, Accreditee was required to incubate samples in a temperature range of 35 +/- 0.5°C. Accreditee was also required to record temperatures twice daily at least four hours apart when samples were in the incubator to comply with the TNI Standards (incorporated by OAR 333-064-0015 and 333-064-0035(2)(b)(D)). Accreditee failed to comply with these requirements on at least 29

7202 NE Evergreen Pkwy, Suite 100, Hillsboro, OR, 97124

Voice: 503-693-4122 | Fax: 503-693-5602 | All relay calls accepted | www.healthoregon.gov/orelap

occasions between January 1st and April 30th, 2026. In addition, as a general matter, Accreditee tests for Total Coliforms and *E. Coli*, but Accreditee's testing would not reliably detect those organisms due to the improper incubation. Accreditee's testing did not satisfy the needs of the customer or the regulatory body in violation of the TNI Standards and OAR 333-064-0035(2)(b)(D). Each occasion is a separate violation of these requirements and could be subject to civil penalties not to exceed \$500 per day per violation. In addition, Accreditee failed to use appropriate methods and procedures for tests within its scope of accreditation in violation of TNI Standards and OAR 333-064-0035(2)(b)(D).

- b. Accreditee also failed to have a quality system because TNI Standards require that the laboratory have personnel to identify departures from procedures for performing tests. TNI Standards, Volume 1, Module 2, 4.1.5(a) (incorporated by OAR 333-064-0015 and 333-064-0035(2)(b)(D)). Accreditee's staff recorded the departures of the incubator from the required temperature range but failed to identify this as a departure from procedures or to initiate actions to prevent or minimize the departure on at least 36 occasions between January 1st and April 30th, 2026. Each is a violation of OAR 333-064-0035(2)(b)(D). This is a violation of OAR 333-064-0035(2)(b)(D). In addition, Accreditee's staff failed to record temperatures twice daily when samples were in the incubator and failed to identify this as a departure from procedures or to initiate actions to prevent or minimize the departure on at least six occasions between January 1st and April 30th, 2026. This is also a violation of OAR 333-064-0035(2)(b)(D). Each occasion is a separate violation of these requirements and subject to civil penalties not to exceed \$500 per day per violation.

- 11. Accreditee's incubation of the samples may have resulted in temperatures that are too low or too high to allow for the growth and metabolic function of bacteria present in the sample. Accreditee's testing may have caused false negative results, reporting no pathogenic bacteria in drinking water consumed by the public where bacteria was actually present. As noted above, failing to identify and report pathogenic bacteria in drinking water can cause serious illness or death. Therefore, Accreditee's improper testing such that pathogenic

bacteria is not properly identified poses a serious danger to public health and safety.

12. Because of the above violations, Accreditee's continued accreditation to test drinking water constitutes a serious danger to public health or safety. ORS 183.430(2); OAR 137-003-0560(1). ORELAP has grounds to immediately suspend Accreditee's accreditation for testing of drinking water for Total Coliforms and *E. coli* bacteria. ORS 183.430(2); OAR 137-003-0560(1).
13. Accreditee's violations are subject to civil penalty in the amount of up to \$32,500 for 65 violations at a penalty of \$500 per violation.

General Terms

14. Accreditee admits to the violations described above, and the facts underlying those violations.
15. ORELAP agrees not to impose a civil penalty or other disciplinary action for the violations above as they pertain to Accreditee's accreditation to test drinking water. Consistent with applicable state laws and rules, ORELAP may rely on the violations to evaluate future applications or determining the extent or appropriateness of any future action or sanction. Accreditee waives the right to contest the violations and facts described in the Agreement now and in any future action by ORELAP regarding those violations.
16. Accreditee agrees to implement the obligations identified in this Agreement including regarding submission of a corrective action report as described below to lift the suspension of accreditation for testing drinking water for Total Coliforms and *E. coli* bacteria.
 - a. To lift the voluntary suspension, Accreditee shall complete items in paragraph 26 subsections (a) and (b) of this Agreement and ensure that Accreditee's incubation equipment complies with all applicable requirements and ensures that samples are maintained at the correct temperature. Accreditee shall notify ORELAP in writing of completing those items and requesting ORELAP lift the voluntary suspension. After confirming that Accreditee has completed the required items, OHA shall

7202 NE Evergreen Pkwy, Suite 100, Hillsboro, OR, 97124

Voice: 503-693-4122 | Fax: 503-693-5602 | All relay calls accepted | www.healthoregon.gov/orelap

lift the voluntary suspension and notify Accreditee in writing. Accreditee may resume operating under the Accreditation only after receiving OHA's written notification.

- b. If OHA denies Accreditee's request to lift the voluntary suspension, ORELAP shall notify Accreditee of the denial and provide the opportunity for a contested case hearing, but the only issue Accreditee may contest is whether it failed to satisfy the eligibility requirements in the Agreement.
- c. Accreditee submitted a timely renewal application for the Accreditation. OHA shall not process the renewal application until the suspension has been lifted. If the suspension is not lifted by August 14, 2026, OHA shall deny the renewal application. ORELAP shall notify Accreditee of the denial and provide the opportunity for a contested case hearing, but the only issue Accreditee may contest is whether the suspension was timely lifted.

17. If Accreditee does not perform any of its responsibilities in this Agreement, ORELAP may proceed with disciplinary, penalty, or other enforcement action against Accreditee's accreditation or any future accreditation. If Accreditee fails to comply with this Agreement, ORELAP shall notify Accreditee of the violation and provide the opportunity for a contested case hearing, but the only issue Accreditee may contest is whether it failed to comply with the Agreement.

18. If ORELAP discovers any additional violations or conduct beyond what is described in this Agreement, ORELAP may proceed with disciplinary, penalty, or other enforcement action. Accreditee would have notice and opportunity to contest any such action in a contested case proceeding.

19. Accreditee may re-apply for accreditation to test drinking water for Total Coliforms and *E. coli* in accordance with OAR Chapter 333, Division 64 at any time if in compliance with this agreement. ORELAP shall process the application in accordance with applicable statute and rules and may consider the violations in this Agreement when reviewing the application as permitted by state law and may deny the application if not in compliance with this agreement. If Accreditee fails to comply with this Agreement, ORELAP shall notify Accreditee of the violation and provide the opportunity for a contested case hearing, but the only issue Accreditee may contest is whether it failed to comply with the Agreement.

- 20.** Nothing in this Agreement precludes other state or federal agencies, including but not limited to other units of OHA, from asserting criminal, civil, or administrative claims against Accreditee based on the facts underlying the Agreement. Nothing in this Agreement prevents Accreditee from disputing such matters and presenting evidence to dispute such matters and asserting affirmative defenses.
- 21.** Accreditee releases and waives any and all claims of any kind, known or unknown, past or future, against the State of Oregon or its agencies, instrumentalities, employees, officers, or agents arising out of the matters set forth in the Agreement, including but not limited to any claim under federal or state law for damages, declaratory or equitable relief, under 42 USC § 1983 et seq, and for attorney's fees or costs.
- 22.** Accreditee is an incorporated city. Robb Corbett is the city manager for Accreditee. Accreditee represents and warrants that Robb Corbett has the authority to enter into this Agreement and bind Accreditee on its behalf. The Agreement is binding upon Accreditee, its agents, managers, employees, representatives, shareholders, directors, officers, successors, and any and all persons or entities acting in concert or participation with or for it.
- 23.** This Settlement Agreement and Final Order may be executed in one or more multiple counterparts, including facsimile, scanned, and electronically transmitted counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.
- 24.** Accreditee is aware of the right to a contested case hearing if this matter was not resolved with this Agreement and ORELAP proceeds with formal action. Accreditee is aware of the right to judicial review. Accreditee freely and voluntarily waives all rights to a contested case hearing and to all judicial review. Accreditee agrees to ORELAP's issuance of a final order incorporating this Agreement.
- 25.** The signed and initialed Agreement must be submitted electronically to steven.jetter@oha.oregon.gov and received by ORELAP by May 11, 2026 at 12:00 PM, or this settlement offer is deemed withdrawn. Accreditee may request an extension of time in writing.

Corrective Action Report

26. Accreditee agrees to implement a corrective action report as follows:
- a. Within 30 days of receipt of the Inspection Report, Accreditee shall submit a corrective action report(s) in accordance with applicable rules and TNI standards to ORELAP. Accreditee shall implement an ORELAP-approved corrective action report(s) to address the violations described in this Agreement within 30 days from ORELAP's approval of the corrective action report(s) unless extended by ORELAP in writing.
 - b. Accreditee shall demonstrate compliance with the 2016 TNI Standard V1M5 1.7.3.7.b.v.a for the existing or new incubating equipment used in the premises. Records showing compliance with these portions of the TNI Standard shall be emailed to orelap.info@oha.oregon.gov by 5:00 PM on May 29, 2026.
 - c. Accreditee shall send copies of the previous quarter's incubator temperature check logbook pages to orelap.info@oha.oregon.gov on the following schedule:
 - i. 2026 Quarter 3 sent by October 9, 2026.
 - ii. 2026 Quarter 4 sent by January 8, 2027.
 - iii. 2027 Quarter 1 sent by April 9, 2027.
 - iv. 2027 Quarter 2 sent by July 9, 2027.
 - d. Accreditee shall ensure incubator temperature check logbooks sent to ORELAP identify if samples of any matrix are present in the incubator when temperatures are out of the acceptable range. If samples are present in the incubator with unacceptable temperatures, Accreditee shall explain actions taken to address non-compliant testing in the logbook submitted to ORELAP.

IT IS SO STIPULATED.



Robb Corbett, on behalf of
City of Pendleton, Pendleton Wastewater Treatment Plant

Dated: 5-8-26



Steve Jetter, ORELAP Manager
Public Health Division, Oregon Health Authority

Dated: 5/11/2026


FINAL ORDER

NOW THEREFORE, ORELAP finds and concludes that Accreditee committed 65 violations of OAR 333-064-0035(2)(b)(D) as described in the above Settlement Agreement. ORELAP hereby suspends Accreditee's accreditation for testing for *E. coli* and Total Coliform in drinking water effective immediately. Accreditee shall immediately stop all testing for *E. coli* and Total Coliforms in drinking water.

FURTHER, ORELAP adopts all of the terms of the Settlement Agreement.

IT IS SO ORDERED.

DATED this 11th day of May, 2026.



Samina Panwhar, Center Administrator,
Center for Public Health Practice,
Public Health Division, Oregon Health Authority

