



# Oregon

Theodore R. Kulongoski, Governor

**Department of Human Services**

**Public Health Division**

800 NE Oregon Street

Portland, OR 97232-2162

**(503) 731-4030 - Emergency**

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(971) 673-0372 - TTY-Nonvoice

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

**SDWIS**

APR 18 2008

**B Daniels**

In the Matter of

City of Creswell, PWS OR4100246

Respondent

NOTICE OF VIOLATION AND  
ADMINISTRATIVE ORDER

To: Tim Demanett, Mayor  
City of Creswell  
PO Box 276  
Creswell, OR 97426

The City of Creswell is a water supplier that is defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(175).

The City of Creswell, as a *Water Supplier*, has specific responsibilities that are specified in OAR 333-061-0025.

The City of Creswell has at all times mentioned herein operated and continues to operate a community public water system, which serves between 1,501 and 10,000 people, and is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0295.

Pursuant to its authority under ORS 448.150, the Oregon Department of Human Services, Public Health Division, Office of Environmental Public Health, Drinking Water Program (Agency) has conducted an investigation into the operation of the water system operated by the City of Creswell.

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The Agency found, during its investigation, that the City of Creswell violated the maximum contaminant level (MCL) for Arsenic. The City of Creswell is therefore unable to assure its water users that the 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 the City of Creswell for specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.285) and rules found during the Agency's investigation.

### DESCRIPTION OF RULE VIOLATIONS

- Violation No. 1: The City of Creswell is required to conduct sampling of its water system to determine compliance with the MCL for Arsenic. The City of Creswell exceeded the MCL for Arsenic at Entry Point A, based upon the available samples and determined by running annual average (RAA) per OAR 333-061-0036(2)(j), in each of the following monitoring periods:
  - 2<sup>nd</sup> quarter 2007
  - 3<sup>rd</sup> quarter 2007
  - 4<sup>th</sup> quarter 2007
  - 1<sup>st</sup> quarter 2008
- This constitutes four separate violations of OAR 333-061-0030(1).

**Arsenic:** The adverse health effects language for a violation of the MCL for Arsenic (from OAR 333-061-0097) is: "Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer."

### ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

The City of Creswell is 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) allegedly violated (ORS 448.255(3)).

- Compliance Action No. 1: The City of Creswell must complete construction of the improvements to its water treatment plant, as specified in plan review #30-2008. Construction must be completed no later than December 31, 2009.
- Compliance Action No. 2: The City of Creswell shall demonstrate that the water treatment plant meets the treatment technique requirements in OAR 333-061-0050(4)(b), and that all system users receive drinking water that consistently meets all applicable state and federal drinking water laws and rules no later than June 30, 2010.
- Compliance Action No. 3: The City of Creswell, per OAR 333-061-0042(2)(b), must issue a Tier 2 public notice for exceeding the MCL for Arsenic. The City of Creswell must issue the public notice quarterly, until all corrections are made and all system 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)). A copy must be submitted to the Agency no later than 10 days after completing the public notification per OAR 333-061-0040(1)(i). The notice must be delivered in the manner most appropriate to reach all persons served by the system. For example, post the notice in conspicuous locations throughout the area served by the water system, hand deliver the notice to persons served by the water system, or use any other appropriate means of delivery.

Submit copies of the public notice to: Monitoring and Compliance, DHS - Drinking Water Program, PO Box 14350, Portland, OR 97293-0350. Send an additional copy of the public notice to Karen Kelley, DHS - Drinking Water Program, 444 A Street, Springfield, OR 97477.

#### 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 448.285 and administrative rules OAR 333-061-0050 to 333-061-0295, which remain in full force and effect.

This Order does not relieve the City of Creswell 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 the Agency to forgo any civil actions authorized under the Oregon Drinking Water Quality Act.

Failure to comply with all requirements in this Order, by the specified due dates, may result in additional enforcement action, which may include the assessment of civil penalties in the amount of \$500 per day per violation (OAR 333-061-0090).

NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedure Act (ORS Chapter 183). If you want a hearing you must file a written request for hearing with the Agency within 10 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 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 the Agency subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

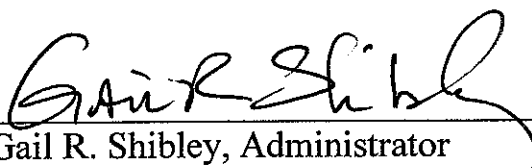
**City of Creswell**

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The Agency has designated the Agency's complete file on the City of Creswell 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, DHS-Drinking Water Program, (971) 673-0407.

Dated this 17<sup>th</sup> day of April, 2008.

  
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Gail R. Shibley, Administrator  
Office of Environmental Public Health

bkd

By certified mail

cc: Roy Sprout, City of Creswell  
Casey Lyon, DHS-DWP  
Harold Rogers, USEPA