

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

In the Matter of

Paradise/Rogue Meadows Water
System, PWS OR4100268

Respondent

CANCELLATION OF BILATERAL
COMPLIANCE AGREEMENT

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Thomas Jarmer
PMT Properties, LLC
Paradise/Rogue Meadows Water System
PO Box 778
Clackamas, OR 97015

Thomas Jarmer, you have at all times mentioned herein owned and operated, and continue to own and operate, the Paradise/Rogue Meadows water system (hereinafter “Water System”) serving the manufactured dwelling parks accessed from Brophy Way, west of Highway 62 in Shady Cove, Oregon. The Water System is a community public water system serving approximately 160 people and is subject to regulation under Oregon Revised Statutes 448.115 to 448.290 and Oregon Administrative Rules 333-061-0005 to 333-061-0272.¹

¹ This Notice of Violation and Administrative Order relies on the definitions in ORS 448.115 and OAR 333-061-0020

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Thomas Jarmer (hereinafter “Water Supplier”), you are therefore a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020, and as a water supplier, has specific responsibilities that are identified in OAR 333-061-0025.

Pursuant to its authority established in ORS 431A.010 and ORS 448.255, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) investigated the operation of the Water System.

DWS found, during its investigation, that Water Supplier failed to submit construction and installation plans for approval before constructing a treatment system to reduce concentrations of arsenic in drinking water, a major modification of the Water system.

Water Supplier entered into a bilateral compliance agreement (BCA) with DWS on June 3, 2024. In the BCA, Water Supplier agreed, in part, to take all necessary actions to complete the plan review process and receive final approval for the arsenic treatment system in use at the Water System. Water Supplier did not complete the plan review process within 90 days as specified in the BCA and has not been granted final plan approval as of the date of service of this Order.

Water Supplier did not request an extension to the agreed upon deadline in the BCA and has not demonstrated it satisfied the terms of the BCA. Water Supplier 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.

DWS hereby cancels the BCA executed on June 3, 2024 because Water Supplier failed to satisfy the terms agreed upon therein. This Notice of Violation and Administrative Order (Order) is being issued to Water Supplier 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

1. OAR 333-061-0060(1) requires, in part, water suppliers to submit construction and installation plans for approval before construction begins on major additions to existing public water systems. Water Supplier installed a treatment system to reduce concentrations of arsenic in drinking water at the Water System, but this treatment system was not approved for use prior to construction and installation, and the

treatment system has not been given final plan approval as of the date of this Order. This constitutes a violation of the OAR 333-061-0060(1).

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

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

1. Water Supplier must take all necessary actions to complete plan review and final approval for the arsenic treatment system in use at the Water System, according to the applicable provisions of OAR 333-061-0060.
 - Water Supplier must complete all actions such that DWS may grant final plan approval no later than 30 days after the date of service of this Order.
2. Water Supplier must monitor for arsenic at the Water System according to OAR 333-61-0036(2)(a) and 333-061-0036(1)(g) as follows:
 - 62 – Monitoring must begin immediately after DWS grants final plan approval according to Compliance Action No. 1 above and be conducted every month according to OAR 333-061-0036(1)(g).
 - 63 – Sample results must be reported to DWS no more than 10 days after the end of each month according to OAR 333-061-0040(1).
3. If any monthly sample exceeds the MCL for arsenic, Water Supplier must investigate the cause of the treatment failure and submit a report to DWS within five business days of receiving notification that the monthly sample result exceeded the MCL, identifying the cause for the failure and how Water Supplier will return the treatment to effective operation such that concentrations of arsenic in drinking water are below the MCL specified in OAR 333-061-0030(1).
 - Water Supplier must complete corrective action to restore the arsenic treatment at the Water System to effective operation, and report sample results demonstrating the concentration of arsenic in drinking water is below the MCL specified in OAR 333-061-0030(1) within 30 calendar days of receiving notification that the monthly sample result exceeded the MCL.

4. Water Supplier must publish a public notice according to all applicable provisions of OAR 333-061-0042 at least every ninety days, if necessary, that informs customers that the average annual concentration of arsenic in drinking water at the Water System exceeds the MCL.
 - Within 10 calendar days of distributing the public notice to customers, Water Supplier must submit a copy of the notice to DWS along with a written statement that it has fully complied with the distribution and public notification requirements according to OAR 333-061-0040(1)(i).
5. Water Supplier shall comply with this Agreement and may return to monitoring arsenic once every calendar quarter according to OAR 333-061-0036(2)(a), if sample results reported for the Water System have concentrations of arsenic below the MCL specified in OAR 333-061-0030(1) every month for 9 consecutive months.
6. Water Supplier shall violate this Agreement if sample results reported for the Water System have concentrations of arsenic at or above the MCL specified in OAR 333-061-0030(1) during three or more months within the first six months after DWS issues final plan approval for the arsenic treatment system according to Compliance Action No. 1.

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 Oregon Administrative Rules OAR 333-061-0005 to 333-061-0272, which remain in full force and effect.

This Order does not relieve Water Supplier 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 \$100 per day per violation (OAR 333-061-0090). For example, if DWS issues a Notice of Intent to Impose Civil Penalty on January 15, 2025 for failure

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to complete plan review and approval according to this Order, the proposed civil penalty could be as much as \$3,000.

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: Samina Panwhar, Manager; Oregon Health Authority, Drinking Water Services; and may be delivered by mail to PO Box 14450, Portland, OR 97293 or by email to samina.t.panwhar@oha.oregon.gov.**

If you request a hearing, DWS will notify you of the time and place at which the hearing will be held. You may enlist representation by legal counsel. Per ORS 413.041, a party that is not a natural person may be represented by an attorney or by any officer or authorized agent or employee of the party. Parties are ordinarily represented by counsel. DWS will be represented by an Assistant Attorney General. Prior to the hearing date, DWS will provide you with information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing. An administrative law judge from the Office of Administrative Hearings will be assigned to preside over the hearing, as required by ORS 183.635.

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 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 identified in this Order.

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

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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 period, you will lose your right to appeal.

Notice to Active Duty Servicemembers

Active-duty service members have a right to stay proceedings under the federal Service members Civil Relief Act and may contact the Oregon State Bar at 1 (800) 452-8260 or the Oregon Military Department at 503-584-3571 for more information. The internet address for the United States Armed Forces Legal Assistance Locator website is <http://legalassistance.law.af.mil>.

DWS has designated its complete file on the 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 Order in an alternate format, or if you have any questions about the requirements in this Order, please contact Brad K. Daniels at bradley.k.daniels@oha.oregon.gov or 503-735-5438.

Date 12/4/2024



Samina Panwhar, Manager
Drinking Water Services
Oregon Health Authority

cc: Tony George, Jackson County Environmental Public Health Division
Zach Golik, Oregon Health Authority, Drinking Water Services
Rebecca Templin, Oregon Health Authority, Drinking Water Services

Date of Service: December 6, 2024



Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail