

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

In the Matter of

City of Monroe Public Water System,  
PWS OR4100540

Respondents

Dan Sheets, Mayor  
City of Monroe  
PO Box 486  
Monroe, OR 97456

CANCELLATION OF BILATERAL  
COMPLIANCE AGREEMENT

NOTICE OF VIOLATION AND  
ADMINISTRATIVE ORDER

The City of Monroe has at all times mentioned herein owned and operated, and continues to own and operate the public water system (hereinafter “Water System”) serving the residents and businesses of Monroe, Oregon. The Water System is a community public water system serving approximately 600 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.

The City of Monroe (hereinafter “Water Supplier”) is 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) has investigated the operation of the Water System.

DWS found, during its investigation, that water provided by the Water System exceeds the maximum contaminant level (MCL) for total trihalomethanes (TTHM). Also, Water Supplier did not report public notice to water users as required by rule.

Water Supplier entered into a bilateral compliance agreement (BCA) with DWS on June 17, 2020. In the BCA, Water Supplier agreed, in part, to complete corrective action such that concentrations of haloacetic acids (HAA5) and TTHM would be reduced below the respective maximum contaminant levels. Water Supplier completed some corrective action; however, failed to ensure concentrations of HAA5 and TTHM are below the respective maximum contaminant levels.

Water Supplier did not request an extension to the agreed upon deadlines in the BCA and has not independently provided information regarding the status of corrective actions at the Water System. It also failed to demonstrate continuing efforts to resolve these water quality violations. 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 17, 2020 because Water Supplier failed to satisfy the terms agreed upon therein. This 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 333-061-0025 requires water suppliers, in part, to take all reasonable actions to assure that water system facilities are free of public health hazards and to assure that water system operation and maintenance are performed as required by the Oregon administrative rules in chapter 333, division 61. Water Supplier has not demonstrated continuing action to provide drinking water with concentrations of HAA5 and TTHM below the MCL. This constitutes a violation of OAR 333-061-0025.
2. OAR 333-061-0030(2)(b) specifies that the MCL for TTHM in drinking water is 0.080 mg/L. Sample results reported for the Water System, collected at the 575 South

5<sup>th</sup> Street and 575 North 8<sup>th</sup> Street sample locations and beginning with samples collected on March 25, 2021, exceeded the MCL of 0.080 mg/L. The average concentration of TTHM in drinking water at these locations, calculated according to OAR 333-061-0036(4)(c)(D) and based on samples collected between March 25, 2021 and December 23, 2021 is 0.101 mg/L and 0.098 mg/L respectively. This exceeds the MCL of 0.080 mg/L and constitutes a violation of OAR 333-061-0030(2).

Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer. Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer. OAR 333-061-0097

3. OAR 333-061-0042 requires, in part, water suppliers to provide public notice to people served by public water systems when the MCL for a regulated contaminant is exceeded. Water suppliers must distribute the public notice as soon as practical but no later than 30 days after learning of the violation, in this case that the MCL for TTHM was exceeded. Additionally, OAR 333-061-0040(1)(i) requires, in part, water suppliers to submit a representative copy of any public notification as prescribed by OAR 333-061-0042 to DWS within 10 days after completing the notification. Water Supplier failed to submit a copy of the public notice to DWS following violations of the MCL at the Water System in the second and fourth calendar quarters of 2021. This constitutes a violation of OAR 333-061-0042, or a violation of OAR 333-061-0040(1)(i) if a public notice was distributed but a copy was not submitted to DWS.

### 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 effect compliance with the rule(s) violated (ORS 448.255(3)).

1. Water Supplier must submit to DWS, a copy of the feasibility study report, resulting from the Sustainable Infrastructure Planning Projects application and subsequent project number S22012 awarded on December 16, 2021. The report must be submitted within 30 days of completion.

2. Water Supplier must submit a revised action plan to DWS within 90 days of completing the feasibility study described in Compliance Action No. 1, identifying how it will ensure ongoing compliance and provide drinking water with HAA5 and TTHM concentrations below the MCL. The action plan must:
  - Identify all tasks and treatment modifications Water Supplier intends to perform to reduce concentrations of HAA5 and TTHM below the respective maximum contaminant levels and set reasonable deadlines for completing all the identified tasks. Upon approval by DWS, the submitted deadlines for the following tasks shall become enforceable by incorporation:
    1. Identify a contractor or engineer to design and construction of any improvements at the Water System;
    2. Submit a copy of the contract or describe in writing the scope of the contract and work to be performed by the contractor or engineer;
    3. Submit complete, engineered construction plans and specifications to OHA for review and approval;
    4. Begin construction; and
    5. Complete all construction.
  - Construction or installation plans must meet the requirements in OAR 333-061-0060 for the construction or modification of any facilities at the Water System and be approved by DWS prior to any construction or installation taking place.
  - Water Supplier shall perform and complete all tasks in the action plan by the deadlines in the action plan and shall notify DWS in writing within 5 calendar days of completing all the tasks. For this corrective action to be met, any construction or installation performed must be approved by DWS and meet the applicable construction standards in OAR 333-061-0050.
3. Following completion of all tasks specified in the action plan, Water Supplier must demonstrate the following:
  - HAA5 and TTHM concentrations do not exceed the MCL specified in OAR 333-061-0030(2)(b) for at least four consecutive calendar quarters. For this corrective action to be met, Water Supplier must monitor for HAA5 and TTHM according to OAR 333-061-0036(4)(e).

4. Water Supplier must publish a public notice within 30 days of the date of service of this Order that informs customers that drinking water at the Water System exceeds the MCL for TTHM. The notice must meet all the requirements in OAR 333-061-0042.
  - 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).
  - Water Supplier must provide public notice to customers in the same manner as is described in this compliance action every three months and must include any changes or additional information regarding TTHM exceeding the MCL at the Water System. This action must be complied with until DWS notifies Water Supplier that its drinking water is below the MCL for TTHM, and that the drinking water otherwise meets all applicable state and federal drinking water laws and rules.

#### 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 \$250 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. For example, if DWS issues a Notice of Intent to Impose Civil Penalty on August 1, 2022 for failure to submit a copy of the feasibility study according to this Order, the proposed civil penalty could be as much as \$7,500.

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: David Emme, Manager; Oregon Health Authority, Drinking Water Services; PO Box 14450; Portland, OR 97293.**

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 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.



**Notice to Active Duty Servicemembers**

Active duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information, contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll-free telephone number.

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 Daniels at 971-673-0407.

Dated this 8th day of April, 2022.



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David Emme, Manager  
Drinking Water Services  
Oregon Health Authority

cc: Steve Martinenko, City of Monroe  
Shawn Stevenson, Oregon Health Authority, Drinking Water Services

DATE of Service: April 11, 2022



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Signature

Brad K. Daniels  
Printed Name

By certified mail and first-class mail