

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

In the Matter of

The City of Nyssa, PWS OR4100579

Respondent

NOTICE OF VIOLATION AND  
ADMINISTRATIVE ORDER

To: Jim Maret  
The City of Nyssa  
301 Main Street  
Nyssa, OR 97913

The City of Nyssa (the City) has at all times mentioned herein owned and operated, and continues to own and operate the public water system serving the residents and businesses of Nyssa, Oregon. The Nyssa water system is a community water system which serves approximately 3,300 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 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.

The City entered into a bilateral compliance agreement (BCA) with the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) on May 29, 2013. The BCA specified actions the City would complete so that drinking water produced by the Nyssa water system contains concentrations of arsenic below the maximum contaminant level (MCL). The City and DWS subsequently agreed to two extensions to the deadlines in the BCA, the first on April 8, 2015 and the second on August 29, 2016. In the second extension, the City agreed to complete construction and installation of an arsenic treatment system no later than February 28, 2018. The City; however, requested a third extension to the deadlines agreed upon in the previous BCA and extensions on February 16, 2018.

After consideration of the matter, DWS has determined an additional extension to the BCA executed on May 29, 2013 is not an effective means to ensure compliance with the MCL for arsenic at the Nyssa water system. The BCA and extensions are hereby canceled.

Because water produced by Nyssa water system continues to exceed the MCL for arsenic, the City is 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.

Pursuant to its authority established in ORS 431A.010 and ORS 448.255, DWS hereby issues this Notice of Violation and Administrative Order (Order) to the City for the specific violation of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.290) and rules described below.

#### DESCRIPTION OF RULE VIOLATIONS

- Violation No. 1: MCL is defined in OAR 333-061-0020(82) and means, in part, the maximum allowable level of a contaminant in water delivered to the users of a public water system. OAR 333-061-0030(1) specifies that the MCL for arsenic in drinking water is 0.010 mg/L. Sample results reported for the Nyssa water system, since the 2011 calendar year, have consistently exceeded the MCL for arsenic. The current running annual average for arsenic in drinking water at the Nyssa water system, based upon sample results reported between August 8, 2017 and April 18, 2018, is 0.0134 mg/L. This constitutes a violation of OAR 333-061-0030(1).

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. OAR 333-061-0097(3)(b).

### ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

The City 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)).

- Compliance Action No. 1: The City must complete construction and installation of the arsenic treatment conditionally approved by DWS and identified by plan review number 93-2015.
  - Construction must be completed no later than October 31, 2018.
  - Construction must be completed according to the plans approved by DWS.
  - Construction of the improvements or modifications at the Nyssa water system must meet the applicable construction standards specified in OAR 333-061-0050.
- Compliance Action No. 2: The City must report arsenic monitoring conducted according to OAR 333-061-0036(2)(a) that demonstrates drinking water produced by the Nyssa water system contains concentrations of arsenic below the MCL.
  - This monitoring must begin within two months of completing construction of the treatment system as specified in Compliance Action No. 1 and continue until arsenic concentrations are below the MCL for at least four consecutive calendar quarters.
  - The City must demonstrate, no later than January 10, 2020, that the concentration of arsenic in drinking water calculated as a running annual average is below the MCL.
- Compliance Action No. 3: The City must continue to publish public notice according to OAR 333-061-0025 and OAR 333-061-0042 every three months for arsenic exceeding the MCL. The notice must meet the applicable requirements of OAR 333-061-0042(4) and be distributed to every person served by Nyssa water system.

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 the City 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 \$500 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: 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. The Authority 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.

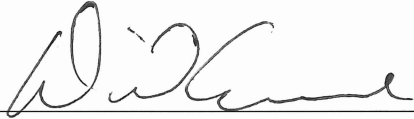
If you withdraw a request for hearing, or notify DWS or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, DWS may issue a final order by default. If the Order becomes final in this manner, you will have the right to appeal the Order to the Oregon Court of 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 Service members. 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 1 (800) 452-7500 for more information. The internet address for the United States Armed Forces Legal Assistance Locator website is <http://legalassistance.law.af.mil/content/locator.php>.

DWS has designated its complete file on the Nyssa 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 K. Daniels at 971-673-0407.

Dated this 8<sup>th</sup> day of May, 2018.



David Emme, Manager  
Drinking Water Services  
Oregon Health Authority

cc: Bill Goss, Oregon Health Authority, Drinking Water Services  
Shannon O'Fallon, Oregon Department of Justice

DATE of Service: May 9, 2018



Brad K. Daniels

By certified mail and first class mail