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3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MALHEUR

6 STATE OF OREGON, by and through its
7 OREGON HEALTH AUTHORITY,

8 Plaintiff,

9 v.

10 ROBERT M. COOK,

11 Defendant.
12

Case No. 1307377L

COMPLAINT FOR MANDATORY
INJUNCTION
ORS 448.123 and ORS 448.250

NOT SUBJECT TO MANDATORY
ARBITRATION

Plaintiff is not required to pay filing fee in
advance—ORS 20.140

13 The State of Oregon, by and through the Oregon Health Authority (OHA), alleges:

14 1.

15 This is a case for permanent injunctive relief against a water supplier, Robert M. Cook, to
16 protect the public health, safety and welfare pursuant to ORS 448.250. The State must ensure
17 that “all Oregonians have safe drinking water.” ORS 448.123(1)(a). Defendant Robert M. Cook
18 owns and operates a small community water system at a mobile home park in Malheur County,
19 Oregon. Defendant’s operation of this water system presents or threatens to present a public
20 health hazard requiring immediate action. Defendant draws water from an aquifer containing
21 arsenic and nitrate at unsafe levels and has failed to install treatment to reduce arsenic and nitrate
22 levels. Ingestion of arsenic and nitrate can cause acute health problems, especially for infants and
23 children, and increases a person’s risk of developing cancer. In addition, Defendant has not
24 issued notice to customers informing them of the high arsenic and nitrate levels and historically
25 has failed to comply with state rules and administrative orders requiring the sampling of the
26

1 water for lead, copper, Synthetic Organic Chemicals (SOCs), Volatile Organic Chemicals
2 (VOCs), and radionuclides.

3
4 2.

5 Despite the State's efforts to bring the water system into compliance, Defendant has
6 refused to comply with the standards and requirements for safe drinking water. Cases filed under
7 ORS 448.250 shall be given preference on the docket over all other civil cases except those
8 given an equal preference by statute. ORS 448.250(3).

9 3.

10 The OHA is the state agency charged with implementation of the Oregon Drinking Water
11 Quality Act, ORS 448.115 to 448.285. Accordingly, OHA has the statutory authority and the
12 duty to ensure that public water suppliers provide water that meets minimum state standards.
13 ORS 448.131. Included in this authority is the power to institute actions for a mandatory
14 injunction to remove the public health hazard or threat of public health hazard. ORS 448.250.
15 OHA also has the authority to enforce compliance with public health laws and seek the Attorney
16 General's assistance to enforce such laws. ORS 431.262(1)(j),(L).OHA has adopted coinciding
17 Oregon Administrative Rules to implement the Oregon Drinking Water Quality Act. OAR 333-
18 061-0005 to 333-061-0290.

19 4.

20 Defendant Robert M. Cook is an individual who owns and operates a water system (PSW
21 OR4100588) for the provision of water for human consumption at Golf Mobile City, a mobile
22 home or manufactured dwelling park located at 3375 SW 18th Avenue, Ontario, Oregon. As
23 such, Defendant Robert M. Cook is a "water supplier" pursuant to ORS 448.115(12) and OAR
24 333-061-0020(211).

25 5.

26 It is the policy of the State of Oregon that each of its citizens be provided with safe
drinking water. ORS 448.123(1)(a). To that end, the Legislature passed the Oregon Drinking

1 Water Quality Act of 1981 which establishes that water suppliers must meet standards designed
2 specifically to provide for and protect the public health and safety. ORS 448.119. Further, water
3 suppliers are directly responsible for taking all reasonable precautions to assure that the water
4 delivered to Oregonians does not exceed maximum contaminant levels, to assure that public
5 water systems are free of public health hazards, and to assure that public water systems are
6 operated and maintained pursuant to OHA regulations. OAR 333-061-0025. Failure to so
7 maintain a public water system represents a potential public health hazard.

8 6.

9 ORS 448.131 provides that OHA shall adopt water quality standards necessary to protect
10 the public health through ensuring safe drinking water within a water system and setting
11 standards necessary for the proper operation and maintenance of such water systems.

12 7.

13 Defendant's water system is classified as a community public water system that serves
14 between 25 and 100 people, and is subject to regulation under ORS 448.115 to 448.290 and
15 OAR 333-061-005 to 333-061-290. Defendant's water system provides water from a
16 groundwater source. As a water supplier, Defendant is required to take all reasonable precautions
17 to assure that the water delivered to water users does not exceed the maximum contaminant
18 levels (MCLs), to assure that water system facilities are free of public health hazards, and to
19 assure that water system operation and maintenance are performed as required by the drinking
20 water program rules. OAR 333-061-025.

21 8.

22 Pursuant to its authority under ORS 448.150, OHA, Public Health Division, Center for
23 Health Protection¹, Drinking Water Services conducted sanitary survey at the water system on
24 May 19, 2010. OHA mailed a follow-up letter to Defendant on July 9, 2010, which identified
25 the need for Defendant to conduct routine water quality sampling, correct construction

26 _____
¹ Formerly the Office of Environmental Public Health.

1 deficiencies, and develop administrative documents. In the July 9, 2010 letter, OHA also
2 identified: (1) exceeding the maximum contaminant level (MCL) for nitrate; and (2) exceeding
3 the MCL for arsenic as significant deficiencies.

4 9.

5 On May 27, 2011, OHA issued a Notice of Violation and Administrative Order
6 (NOV/AO) notifying Defendant that all the samples for arsenic and nitrates for the entire
7 sampling history for the Golf Mobile City water system exceeded the MCL for arsenic and
8 nitrates. OAR 333-061-0030(1) (Table 1, MCL for arsenic is 0.010 mg/L and for nitrate is 10
9 mg/L). Therefore, Defendant failed to assure that the water was sufficiently free from
10 contaminants and that the people drinking the water would not be exposed to disease or harmful
11 physiological effects as required by ORS 448.115(8). The NOV/AO also notified Defendant of
12 violations related to failure to routinely collect and submit water samples for laboratory analysis
13 at the frequencies prescribed by OAR 333-061-0036. Defendant failed to report any inorganic
14 chemical and nitrite sampling results within the three-year monitoring period from 2008 through
15 2010; SOC and VOC sampling results for the 2010 monitoring period; lead and copper sampling
16 results for the six-month monitoring period from July through December 2010; radionuclide
17 sampling results within each of the calendar quarters from July 2010 through March 2011; and
18 failure to provide proper public notice to every customer served by the system.

19 10.

20 The May 27, 2011 NOV/AO required Defendant, by December 31, 2011, to submit a
21 construction plan that clearly indicates which of the following options would be selected to meet
22 the MCL for arsenic and nitrate: (1) Install an approved treatment system; (2) Develop a new
23 water source; (3) Connect to and receive water from another public water system. Construction
24 was to be completed by June 30, 2012. The NOV/AO also required continued sampling for
25 arsenic, nitrate, lead and copper.

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11.

On April 13, 2012, OHA served Defendant with a notice of violation of the May 27, 2011 administrative order (NOV/AO) and possible civil penalties. Specifically, Defendant had failed to submit construction plans and failed to report sampling results for inorganic chemicals, nitrite, SOCs, VOCs, and radionuclides.

12.

On November 7, 2012, OHA served on Defendant a Notice of Intent to Impose Civil Penalties in the amount of \$3500.00 for failing to demonstrate that every person served by the Golf Mobile City water system receives drinking water that meets all state and federal drinking water laws no later than September 30, 2012; failing to demonstrate that all reasonable actions had been taken to meet the MCL for arsenic and nitrate; and failing to ensure that sampling had been conducted for inorganic chemicals, nitrite, SOCs, VOCs, and radionuclides as required by the May 27, 2011 NOV/AO. The Order became final on December 6, 2012 when Defendant failed to submit a timely request for hearing. To date, Defendant has not complied with this civil penalty Order.

13.

Since at least January, 2008, Defendant has regularly violated and continues to regularly violate Oregon's drinking water statutes and regulations in operating the Golf Mobile City water system. Defendant has operated and continues to operate a community public water system without taking action to comply with MCLs and without completing monitoring requirements in violation of ORS chapter 448 and OAR 33-061-0025 and 333-061-0036. Defendant's actions are a refusal to comply with the standards and requirements of OHA.

14.

The MCL established by the U.S. Environmental Protection Agency (EPA) for arsenic in public drinking water systems is 0.010 milligrams per Liter (mg/L) . This federal standard is based on the increased risk of developing cancer from drinking arsenic-contaminated water over

1 the course of many years. At the time EPA promulgated this MCL of 10 ppb,(0.010 milligrams
2 per Liter (mg/L)) the probability of an individual developing a cancer over a lifetime from
3 drinking water with arsenic concentrations equal to the MCL was around 1 in 10,000.
4 Subsequent toxicological reviews by the EPA have suggested that the risk may be higher than 1
5 in 10,000 for people whose drinking water is 0.010 mg/L or higher over a lifetime.

6 15.

7 Arsenic dissolved in water is easily absorbed into the bloodstream through the intestines
8 when swallowed. Exposure to arsenic, in addition to increasing an individual's risk of cancer,
9 can cause acute health problems such as nausea, vomiting, diarrhea, swelling of the hands and
10 face, and nasal congestion. Arsenic in a concentration of 0.050 mg/L or higher would cause acute
11 health effects in a child weighing 22 pounds drinking 1 liter of water per day.

12 16.

13 Arsenic causes other chronic health problems other than cancer when people are exposed
14 to low levels over a long period of time. These health problems include but are not limited to
15 skin hardening and warts, heart problems, diabetes, tingling of hands and feet, neurobehavioral
16 problems in children. The MCL of 0.010 mg/L is protective against most of these non-cancer
17 health effects. Children are more susceptible to arsenic toxicity from drinking water because they
18 drink more water per bodyweight than adults do and because they are passing through important
19 developmental stages, especially for brain development. Therefore, it is critically important for
20 children that arsenic concentrations in drinking water remain consistently below the current
21 MCL of 0.010 mg/L over time.

22 17.

23 Defendant's water system at Golf Mobile City has had arsenic levels of as high as 0.030
24 mg/L and has exceeded the MCL since 2010.

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26 ///

18.

1 The MCL established by EPA for nitrate in public drinking water systems is 10 mg/L.
2 This federal standard is based on the risk of methemoglobinemia, or “blue baby” disease in
3 infants from drinking nitrate-contaminated water. Although the general population starts to be
4 affected by nitrate levels of 100 to 200 mg/L in drinking water, short term exposure at the level
5 of 10 mg/L or just above by infants below the age of 6 months is a serious health issue, and if
6 untreated, the infant may die. Symptoms include shortness of breath and blue baby syndrome.
7 Infants are more susceptible to nitrate toxicity from drinking water because they drink more
8 water per bodyweight than adults, and their immature digestive tracts are more likely to allow the
9 reduction of nitrate to nitrite, which can lead to the disease of methemoglobinemia and possible
10 digestive and respiratory problems. Therefore it is critical for infants that nitrate concentrations
11 in drinking water remain consistently below the current MCL of 10 mg/L.
12

19.

13 Defendant’s water system at Golf Mobile City has had nitrate levels of as high as
14 25.60 mg/L and has exceeded the MCL since 2010.
15

20.

16 ORS 448.250 provides OHA the authority, whenever a water system presents or threatens
17 to present a health hazard, to petition for a mandatory injunction compelling the water supplier to
18 cease and desist operation or to make such improvements and corrections as are necessary to
19 remove the public health hazard or threat thereof. If the water supplier refuses to comply with the
20 drinking water quality standards and requirements, the court may require sale of a water system
21 under a special master to a responsible party. ORS 448.250(2)(b).
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1 **FIRST CLAIM FOR RELIEF**

2 **Operation of a Public Water Supply System That Exceeds the MCL for Arsenic and**
3 **Nitrate in Violation of OAR 333-061-0030(1)**

4 21.

5 Plaintiff re-alleges paragraphs 1 through 20.

6 22.

7 Defendant continues to operate a community public water supply system that exceeds the
8 MCL for arsenic and nitrate. This constitutes a violation of OAR 333-061-0030(1).

9 23.

10 The State of Oregon is entitled to the relief set forth in the prayer below.

11 **SECOND CLAIM FOR RELIEF**

12 **Operation of Public Water System Without Taking All Reasonable Precautions to Assure**
13 **that the Water Delivered Does Not Exceed MCLs or is Free of Public Health Hazards in**
14 **Violation of OAR 333-061-0025**

14 24.

15 Plaintiff re-alleges paragraphs 1 through 20.

16 25.

17 Defendant continues to operate a community public water supply system and Defendant
18 does not take all reasonable precautions to assure that the water delivered does not exceed
19 MCLs, that the water is free from public health hazards, and that the water system and
20 maintenance are performed in accordance with OAR 333, Division 61. Defendant's actions or
21 failures to act constitute violations of his general duties set forth in OAR 333-061-0025 and
22 specifically:

23 a. Defendant has failed to routinely collect and submit samples for laboratory
24 analysis in violation of OAR 333-061-0025(1);

25 b. Defendant has not taken immediate action to correct the MCL violation for
26 arsenic and nitrate in violation of OAR 33-061-0025(2);

1 c. Defendant has not notified customers that the MCL for arsenic and nitrate has
2 been exceeded or when reporting requirements were not met or when public health hazards are
3 found to exist in the system in violation of OAR 333-061-0025(4) and (5); and

4 d. Defendant has not submitted plans prepared by a professional engineer for review
5 and approval to construct or make major modification to the existing water system in violation of
6 OAR 333-061-0025(10).

7 26.

8 The State of Oregon is entitled to the relief set forth in the prayer below.

9 **THIRD CLAIM FOR RELIEF**
10 **Failure to comply with civil penalty order.**

11 27.

12 Plaintiff re-alleges paragraphs 1 through 20.

13 28.

14 Defendant has failed to comply with the Civil Penalty Order in the amount of \$3500.00
15 which became final on December 6, 2012.

16 29.

17 The State of Oregon is entitled to the relief set forth in the prayer below.

18 WHEREFORE, the State of Oregon is entitled to the following relief:

19 A. A permanent injunction requiring Defendant to make such improvements and
20 corrections as are necessary to remove the public health hazard or threat thereof by a date
21 certain as soon as feasible in consideration of the public health risks, including
22 submission of plans prepared by a professional engineer for review and approval to
23 construct or make major modification to the existing water system;

24 B. In the alternative, a permanent injunction ordering the sale of Defendant's water
25 system under a special master to a responsible party if the Defendant does not comply
26 with the orders of this Court;

1 C. A permanent injunction to notify customers immediately that the MCL for arsenic
2 and nitrate has been exceeded and when reporting requirements were not met and when
3 public health hazards are otherwise found to exist in the system in accordance with OAR
4 333-061-0025 (4) and (5);

5 D. A permanent injunction to collect and submit samples for laboratory analysis in
6 accordance with OAR 333-061-0025;

7 E. A permanent injunction requiring Defendant take any other reasonable measures
8 that OHA asserts are necessary to prevent future violations and to protect public health,
9 safety and welfare;

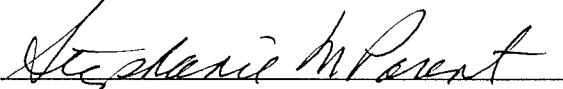
10 F. An order requiring compliance with the Civil Penalty Order by paying OHA the
11 amount of \$3500.00;

12 G. The State of Oregon's costs and attorney fees for pursuing the interest of the
13 public good in this matter; and

14 H. Such further relief as the Court deems appropriate.

15 DATED this 19th day of July, 2013.

16 ELLEN F. ROSENBLUM
17 Attorney General

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