

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

In the Matter of

The City of Paisley
Public Water System OR4100611

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Dale Blair, Mayor
City of Paisley
PO Box 100
Paisley, OR 97636

The City of Paisley (City) has at all times mentioned herein owned and operated the water system serving the residents and businesses of Paisley, Oregon. The Paisley water system is a community public water system serving approximately 250 people and is subject to regulation according to 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(211), 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 (Authority) has investigated the operation of the Paisley water system.

The Authority found, during its investigation, that water produced by the Paisley water system exceeds the maximum contaminant level (MCL) for arsenic. The City 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 for the specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.290) and rules found during the Authority's investigation as described below.

DESCRIPTION OF RULE VIOLATIONS

- Violation No. 1: OAR 333-061-0025 requires water suppliers to take all reasonable actions to assure that the water delivered to water users does not exceed maximum contaminant levels, that water system facilities are free of public health hazards and that water system operation and maintenance are performed as required by these rules. Water samples collected at the Paisley water system indicate that water provided by the system exceeds the MCL for arsenic as specified in OAR 333-061-0030(1) despite the City's installation of an arsenic treatment system. The City's failure to operate the treatment system effectively combined with its failure to seek guidance from the Authority regarding effectively operating the treatment demonstrates the City has not taken all reasonable actions to ensure that water does not exceed the MCL for arsenic. This constitutes a violation of OAR 333-061-0025.
- Violation No. 2: OAR 333-061-0030(1) specifies that the maximum contaminant level (MCL) for arsenic in drinking water is 0.010 mg/L. Sample results reported for the Paisley water system since the installation of arsenic treatment and beginning with a sample collected on November 12, 2015 indicate the average concentration of arsenic in drinking water is 0.0123 mg/L. This exceeds the MCL for arsenic and 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.

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

The City must conduct the remedial actions described below which, if completed within the time specified in this order, will achieve compliance with the rule(s) violated (ORS 448.255(3)).

- Compliance Action No. 1: The City must submit an action plan clearly identifying how it will operate the treatment system to ensure drinking water produced by the Paisley water system has concentrations of arsenic below the MCL specified in OAR 333-061-0030(1) at all times.
 - The City must submit the action plan to the Authority within 45 days of the date of service of this administrative order.
- Compliance Action No. 2: The City must complete installation of the arsenic treatment system at the Paisley water system and all the activities required by Authority plan review # 65-2011.
 - The City must complete final plan review approval and treatment installation within 60 days of the date of service of this administrative order.
- Compliance Action No. 3: The City must notify the Authority within 24 hours any time the arsenic treatment system is not operational while water is sent to distribution and storage within the Paisley water system.
- Compliance Action No. 4: The City must conduct arsenic monitoring according to OAR 333-061-0036(2)(a) representative of all water entering distribution at the Paisley water system.
 - Monitoring must be conducted every month according to OAR 333-061-0036(1)(g) with results reported to the Authority no more than 10 days after the end of each month according to OAR 333-061-0040(1).
 - Monitoring must continue until results demonstrate water produced by the Paisley water system has concentrations of arsenic below the MCL as specified in OAR 333-061-0030(1) for four consecutive calendar quarters.

- Compliance Action No. 5: The City must publish public notice for exceeding the MCL for arsenic. The notice must meet all of the applicable requirements of OAR 333-061-0042(4) and be distributed so that every person served by the Paisley water system receives the notice.
 - The City must certify that public notice was delivered using at least one of the following methods: print media such as a local newspaper, broadcast media such as television or radio, or hand delivery to every water user served by the Paisley water system.
 - The City must certify that public notice was posted in conspicuous public locations throughout the community and identify each location where the notice was placed.
 - The City must reissue the notice every three months, 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)).
 - The City must submit to the Authority a copy of the notice and certification of the method of distribution and locations where the notice was posted no later than 10 days after completing the public notification per OAR 333-061-0040(1)(i).
- Compliance Action No. 6: The City must demonstrate that water produced by the Paisley water system has concentrations of arsenic below the MCL every month for 12 consecutive months no later than September 1, 2018.

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 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 the Authority 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). Civil penalties may be assessed beginning the day following the date of service of this order and accruing through the date when the Authority 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

The City is entitled to a hearing as provided by the Administrative Procedure Act (Oregon Revised Statutes, Chapter 183). To request a hearing, a written request must be filed with the Authority 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 the City requests a hearing, you will be notified of the time and place of the hearing. You will also be provided information about the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing.

If the City does 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, the City will have the right to appeal the order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal, the City must file a petition for judicial review with the Court of Appeals within 71 days from the day this order was mailed. If the City does not file a petition for judicial review within the 71-day time period, it will lose its right to appeal.

If the City does not request a hearing and the Authority subsequently issues a Notice Imposing a Civil Penalty, the City will have waived any right to contest the violations.

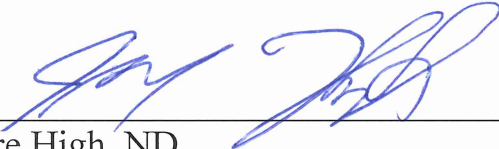
If the City withdraws a request for hearing, or notifies the Authority or the administrative law judge that a representative will not appear or fails to appear at a scheduled hearing, the Authority may issue a final order by default. If the order becomes final in this manner, the City will have the right to appeal the order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal the City must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was mailed. If the City does not file a petition for judicial review within the 60-day time period, it will lose its 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>.

The Authority has designated its complete file on the Paisley water system as the record in this case for purposes of proving a prima facie case upon default.

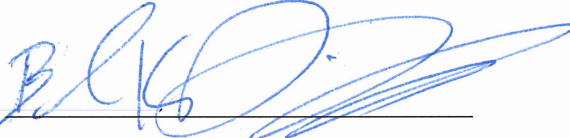
If you need to receive the information in this letter in an alternate format, or if you have any questions about the requirements in this order, please contact Brad K. Daniels at 971-673-0407.

Dated this 20th day of APRIL, 2017.



Jere High, ND
Administrator, Center for Health Protection
Oregon Health Authority

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

DATE of Service: 

April 20, 2017
Brad K. Daniels

By certified mail and first class mail