

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

In the Matter of

Swisshome Enterprises Inc. /
Swisshome Village Public Water
System, PWS OR4100854

Respondents

Jean and Marc Grassauer
11445 E Mapleton Drive
Mapleton, OR 97453

CANCELLATION OF BILATERAL
COMPLIANCE AGREEMENT

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

Jean and Marc Grassauer, you have at all times mentioned herein owned and operated, and continue to own and operate the Swisshome Village public water system (hereinafter “Water System”), which serves residents at 11445 East Mapleton Drive in Mapleton, Oregon. The Water System is a community public water system serving approximately 25 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.

You (hereinafter “Water Supplier”) 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, have 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 both haloacetic acids (HAA5) and total trihalomethanes (TTHM). Also, Water Supplier did not report surface water treatment measurements and calculations as required by rule.

Water Supplier entered into a bilateral compliance agreement (BCA) with DWS on April 14, 2020. In the BCA, Water Supplier agreed, in part, to reconstruct or otherwise improve water treatment facilities such that concentrations of HAA5 and TTHM would be reduced below the respective maximum contaminant levels. Water Supplier has failed ensure concentrations of both HAA5 and TTHM in drinking water remain below the MCL and has not demonstrated continuing efforts to resolve these water quality violations.

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 construction or corrective actions at the Water System. 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 April 14, 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 HAA5 in drinking water is 0.060 mg/L. Sample results reported for the Water System, collected at the 12865 Village Road sample location and beginning with a sample collected on March 24, 2021 exceeded the MCL of 0.060 mg/L. The average concentration of HAA5 in drinking water at this location, calculated according to OAR 333-061-0036(4)(c)(D) and based on samples collected between March 24, 2021 and October 19, 2021 is 0.101 mg/L. This exceeds the MCL of 0.060 mg/L and constitutes a violation of OAR 333-061-0030(2).
3. OAR 333-061-0030(2)(b) specifies that the maximum contaminant level (MCL) for total trihalomethanes (TTHM) in drinking water is 0.080 mg/L. Sample results reported for the Water System, collected at the 12865 Village Road sample location and beginning with a sample collected on March 24, 2021 exceeded the MCL of 0.080 mg/L. The average concentration of TTHM in drinking water at this location, calculated according to OAR 333-061-0036(4)(c)(D) and based on samples collected between March 24, 2021 and October 19, 2021 is 0.093 mg/L. 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

4. OAR 333-061-0036(5)(b)(A) requires, in part, water suppliers to measure turbidity at least once every day in representative samples of filtered water at public water systems supplied by a surface water source and where filtration treatment is provided. Additionally, OAR 333-061-0040(1)(d) requires water suppliers to report the results of any test, measurement or analysis required by OAR 333-061-0036(5)(b) to DWS within 10 days after the end of the month. Water Supplier has not reported turbidity monitoring for the Water System since reporting monitoring for the month of March 2021. This constitutes a violation of OAR 333-061-0036(5)(b)(A), or a violation of OAR 333-061-0040(1)(d) if monitoring was conducted but not reported.
5. OAR 333-061-0036(5)(b)(B) requires, in part, water suppliers to measure water quality parameters every day and calculate disinfection effectiveness at public water systems supplied by a surface water source and where filtration treatment is provided. Additionally, OAR 333-061-0040(1)(d) requires water suppliers to report the results of any test, measurement or analysis required by OAR 333-061-0036(5)(b) to DWS

within 10 days after the end of the month. Water Supplier has not reported disinfection effectiveness calculations for the Water System since reporting calculations for the month of March 2021. This constitutes a violation of OAR 333-061-0036(5)(b)(B), or a violation of OAR 333-061-0040(1)(d) if monitoring was conducted but not reported.

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 engineered or as-built plans and schematics prepared by an Oregon registered professional engineer for all treatment facilities and other water system components to the satisfaction of DWS, for the purposes of determining appropriate water treatment processes and the reduction of HAA5 and TTHM concentrations in drinking water. The engineered or as-built plans and schematics must be submitted to DWS within 60 days of the date of service of this Order.
2. Water Supplier must submit a revised action plan to DWS no later than March 31, 2022 identifying how it will ensure ongoing compliance and provide drinking water with HAA5 and TTHM concentrations below the MCL. The action plan shall:
 - Identify all tasks and treatment modifications Water Supplier intends to perform to ensure treatment at the Water System achieves all required treatment standards while reducing concentrations of HAA5 and TTHM, 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. Begin repairs or maintenance of existing facilities;
 2. Submit complete, engineered construction plans and specifications to OHA for review and approval, if necessary;
 3. Begin construction, if necessary; and
 4. Complete all construction, repairs and maintenance.

- 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).

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 \$50 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 February 1, 2021 for failure to begin operating the corrosion control treatment system according to this Order, the proposed civil penalty could be as much as \$9,000.

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: 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.

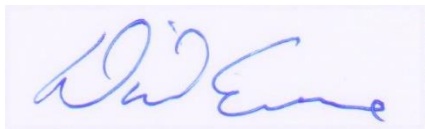
Notice to Active Duty Servicemembers

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 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 Daniels at 971-673-0407.

Dated this ___4th___ day of _____February_____, 2022.



David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Jay MacPherson, Oregon Health Authority, Drinking Water Services
James St. Clair, St. Clair Properties

DATE of Service: February 7, 2022



Signature

Brad K. Daniels
Printed Name

By certified mail and first-class mail