

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

In the Matter of

Sunset Lake Mobile Home Park, LLC
Public Water System OR4100933

Respondent

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

To: Cheri D. Cooley, Registered Agent
Sunset Lake Mobile Home Park, LLC
1117 SE 122nd Avenue, Suite #1
Portland, OR 97233

Pursuant to Oregon Revised Statutes (ORS) 448.255, 448.280, and 448.285 and Oregon Administrative Rule (OAR) 333-061-0090, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (Authority) intends to impose a civil penalty of \$3,000.00 against the Sunset Lake Mobile Home Park, LLC (Company) for violation of OAR 333-061-0036(2)(c).

The Company has at all times mentioned herein owned and operated the Sunset Lake Mobile Home Park (Sunset Lake) public water system located at 33242 Sunset Beach Lane in Warrenton, Oregon. The Sunset Lake water system is a community public water system that serves approximately 120 people and is subject to regulation according to the Oregon Drinking Water Quality Act (ORS 448.115 to 448.290) and Oregon Administrative Rules 333-061-0005 to OAR 333-061-0272. The Company is a water supplier as defined in ORS 448.115(12) and OAR 333-061-0020(211) and has specific responsibilities as defined in OAR 333-061-0025. These responsibilities include routinely

collecting and submitting water samples as described in OAR 333-061-0036. OAR 333-061-0025.

The Company is required to monitor for lead and copper in tap water at the Sunset Lake water system at least once every three years and to report results to the Authority. OAR 333-061-0025(1); 333-061-0036(2)(c)(D)(iv)(III); 333-061-0040(1)(b)(A). The Company last reported valid monitoring of lead and copper in tap water for the Sunset Lake water system in 2012.

Due to this violation, the Authority issued a Notice of Non-Compliance on February 10, 2017 citing the failure to comply with OAR 333-061-0036(2)(c). The Notice of Non-Compliance required the Company to report completed lead and copper monitoring of the Sunset Lake water system to the Authority by August 10, 2017. The Company did not contact the Authority regarding the Notice of Non-Compliance, did not report the required monitoring, and has not otherwise taken any apparent action to correct the violation. The Notice of Non-Compliance is incorporated by reference.

CONCLUSIONS OF LAW

The Company is in violation of OAR 333-061-0036(2)(c)(D)(iv)(III) for failing to monitor and report test results for lead and copper in tap water, at least once every three years.

CIVIL PENALTY

Pursuant to ORS 448.280 and OAR 333-061-0090, the Authority intends to impose a total civil penalty of \$3,000.00 for the violation of OAR 333-061-0036(2)(c)(D)(iv)(III) occurred, based on the population served by the public water system. The Authority considered mitigating and aggravating factors as described below in determining the total civil penalty amount.

The Authority imposes a civil penalty of \$100 per day as set out in the civil penalty schedule for a violation at a public water system serving 120 people. OAR 333-061-0090(4).

The Notice of Non-Compliance directed the Company to report monitoring by August 10, 2017. Therefore, the total civil penalty is based on the period of time from August 11, 2017 through September 10, 2017, for a total of 30 days. Therefore, the total proposed civil penalty is \$3,000 (30 x \$100).

If the violations identified in this notice continue or if the Company violates any other applicable laws or rules, the Company may be subject to additional civil penalties per day per violation.

CIVIL PENALTY FACTORS CONSIDERED

In assessing the civil penalty, the Authority considered the factors set out in ORS 448.285(2).

- (a) The past history of the person incurring the penalty in taking all feasible steps or procedures necessary or appropriate to correct the violation:
 - The Company did previously attempt to report monitoring for lead and copper for the Sunset Lake water system on or about December 8, 2015. However, the monitoring was conducted outside of the required seasonal period and was therefore insufficient to demonstrate compliance with OAR 333-061-0036(2)(c)(D)(iv)(III). The Authority considered this attempt to comply with the rule to support reducing civil penalty in this matter.
 - The Company was formally notified of the violation of OAR 333-061-0036(2)(c) on at least two separate occasions as described below but has taken no action to correct the violation. The Authority considered these failures to comply with the rule or respond to its communications to support increasing the civil penalty in this matter.
 1. The Authority mailed a letter dated June 6, 2016, to the water system operator for the Sunset Lake water system, notifying the operator that monitoring for lead and copper must be reported to the Authority no later than October 10, 2016.
 2. The Authority issued a Notice of Non-Compliance dated February 10, 2017, notifying the Company of its violation of OAR 333-061-0036(2)(c) and requiring the Company to report lead and copper monitoring no later than August 10, 2017. To date, there has been no response to this letter.
- (b) Prior violations:
 - Over the last five years, the Company has violated numerous drinking water regulations, some on numerous occasions. These prior violations include three violations of OAR 333-061-0025(1), one violation of OAR 333-061-0025(5), one

violation of OAR 333-061-0036(2)(c), two violations of OAR 333-061-0036(6), five violations of OAR 333-061-0043 five times, and two violations of OAR 333-061-0076(6)(b). The Authority considered the Company's prior violations to support increasing the civil penalty in this matter.

- (c) Economic and financial conditions of the person incurring the penalty:
 - The Authority has no information about the Company's economic or financial details, or the economic or financial conditions at the Sunset Lake water system. The Authority considered this factor neutral when determining the appropriate civil penalty in this matter.

The Authority considered all of these factors and determined the civil penalty of \$100/day is warranted in this matter because although one consideration supported reducing the civil penalty, the Company failed to respond or take any apparent action after being notified of the violations on multiple occasions.

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). To request a hearing, you must file a written request with the Authority within 20 days from the date this notice was mailed. **The request for hearing must be sent to: David Emme, Manager; Oregon Health Authority, Drinking Water Services; PO Box 14450; Portland, OR 97293-0450. If a request for hearing is not received with the 20-day period, you will have waived your right to a hearing.**

If you request a hearing, the Authority 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, the Authority 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 request a hearing within the 20 days, withdraw the request for hearing, notify the Authority or the administrative law judge that you will not appear at a

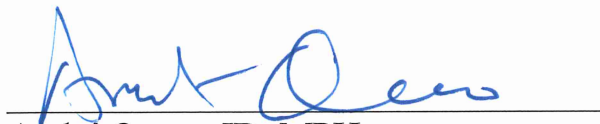
scheduled hearing, or fail to appear at a scheduled hearing, the Authority may issue a final order by default imposing a civil penalty. If the Authority issues a final order by default, the Authority designates its files on this matter as the record for the purpose of proving a *prima facie* case upon default.

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>.

For purposes of ORS 293.229 through 293.233 and ORS 293.250, the civil penalty specified herein will become a liquidated debt if a final order is issued. Pursuant to ORS 293.231, the Authority is required to assign liquidated and delinquent civil penalties to the Department of Revenue, as provided in ORS 293.250, not later than 90 days after the final order is issued. Reasonable administrative costs, collection costs, attorney's fees, and all other costs and charges necessary for the collection of any amount not paid when due, including but not limited to collection charges assessed by the Department of Revenue may be added to the amount due of \$3,000.

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 notice, please contact Brad K. Daniels at (971) 673-0405.

Dated this 3rd day of October, 2017.



André Ourso, JD, MPH
Administrator
Oregon Health Authority
Public Health Division
Center for Health Protection

Sunset Lake Mobile Home Park, LLC

Page 6

cc: Evan Hofeld, Oregon Health Authority, Drinking Water Services
Nancy Mendoza, Clatsop Environmental Health Program
Shannon O'Fallon, Oregon Department of Justice

DATE of Service: October 4, 2017


Brad K Daniels

By certified and first class mail