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

In the Matter of

West Coast Real Estate Holdings, LLC  
Dunn Court Duplexes  
Public Water System OR4100962

Respondent

NOTICE OF INTENT TO IMPOSE  
CIVIL PENALTY

To: Eugene Labunsky  
West Coast Real Estate Holdings, LLC  
25030 SW Parkway Ave., Suite. 110  
Wilsonville, OR 97070

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 \$4,500.00 against West Coast Real Estate Holdings, LLC (the Company) for violations of OAR 333-061-0025, OAR 333-061-0030(1) and OAR 333-061-0090(3)(i).

The Company has at all times mentioned herein owned and operated the Dunn Court Duplexes (Dunn Court) public water system serving residents living in the 11 properties located at Dunn Court in Woodburn, Oregon. The Dunn Court water system is a

community public water system that serves approximately 90 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 therefore 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 and OAR 333-061-0030. These responsibilities include taking all reasonable actions to assure water delivered to users does not exceed maximum contaminant levels and that water system facilities are free of public health hazards. OAR 333-061-0025. Maximum containment level (MCL) means the maximum allowable level of a contaminant in the water delivered to users of a public water system. OAR 333-061-0020(118). The MCL for arsenic in drinking water is 0.010 mg/L as specified in OAR 333-061-0030(1). Compliance with the arsenic MCL is determined by a running annual average. OAR 333-61-0036(2)(i)(A). Arsenic is a naturally occurring element found in rock formations. As water flows through certain rock formations, arsenic can dissolve and be carried into water systems.

Testing at the Dunn Court water system indicated that the concentration of arsenic in the water exceeded the MCL on July 7, 2016, November 14, 2016, April 27, 2017, and October 16, 2017. Testing for arsenic was not conducted in the second quarter of 2016 or the first quarter of 2017. As of March 31, 2017, the running annual average concentration for arsenic in the water exceeded the MCL.

Due to the failure to comply with the MCL for arsenic, the Authority served an administrative order on Dunn Court on September 13, 2017 (Order) citing two violations. First, that the Company had failed to take all reasonable actions to ensure that the water did not exceed the MCL for arsenic in violation of OAR 333-061-0025. Second, that the presence of arsenic at levels exceeding the MCL violated OAR 333-061-0030(1). The Order required the Company to submit an action plan within 45 days of the date of service of the Order and to complete maintenance or repairs to the arsenic treatment at the Dunn Court water system within 60 days of the date of service of the Order. The Company did not appeal the Order and did not comply with the Order by the deadlines specified therein. The Company also did not contact the Authority regarding the Order and has not otherwise taken any apparent action to correct the violations. The Order is incorporated by reference.

The Company's failure to comply with the Order issued by the Authority is a violation for which a civil penalty may be assessed as prescribed by OAR 333-061-0090(3)(i).

In addition, the Company did not take any actions to correct the exceedance of the arsenic MCL before or after the issuance of the Order as required by OAR 333-061-0025. The Company did not contact the Authority regarding the Order and has not otherwise taken any apparent action to correct the violations.

Finally, as noted above, the Dunn Court water system violated the MCL for arsenic beginning on March 31, 2017 when the running annual average of sample results exceeded 0.010 mg/L, in violation of OAR 333-061-0030(1). The Dunn Court water system continues to violate the MCL for arsenic as evidenced by later testing revealing that every sample reported for the water system from July 7, 2016 to October 2017 has exceeded the maximum allowable level of arsenic.

### CONCLUSIONS OF LAW

Violation No. 1: The Company is in violation of OAR 333-061-0090(3)(i) for failing to comply with an order issued by the Authority.

Violation No. 2: The Company is in violation of OAR 333-061-0025 for failing to take all reasonable actions to assure water delivered to users does not exceed maximum contaminant levels and that water system facilities are free of public health hazards.

Violation No. 3: The Company is in violation of OAR 333-061-0030(1) because the Dunn Court water system violated the MCL level for arsenic.

### CIVIL PENALTY

Pursuant to ORS 448.280 and OAR 333-061-0090, the Authority intends to impose a total civil penalty of \$4,500.00 based on the population served by the public water system and each day a violation of OAR 333-061-0025, OAR 333-061-0030(1) and OAR 333-061-0090(3)(i) occurred. The Authority considered mitigating and aggravating factors as described below in determining the total civil penalty amount.

Each violation is a separate and distinct offense. OAR 333-061-0090. The per day civil penalty amount for a violation at a public water system serving 90 people is \$50 per day. OAR 333-061-0090(4). The Authority intends to impose a civil penalty of \$50 per day for each of the three violations as set out in the civil penalty schedule.

For each of the violations, the Authority intends to impose a civil penalty for each day of non-compliance, a total of 30 days. The number of days is based on the period of time

from October 29, 2017 through November 28, 2017. Thirty days is appropriate for violation 1 because the Order directed the Company to submit an action plan no later than October 28, 2017. The Company failed to comply with the Order by October 29, 2017 so the Authority may impose a civil penalty beginning on that date for violation 1. For violation 2, the Company did not take reasonable action to assure the water met the arsenic MCL at any time between October 29, 2017 and November 28, 2017. For violation 3, the Dunn Court water system violated the MCL for arsenic beginning no later than March 31, 2017. The water system continues to violate the MCL as shown by results of testing from water sampled on July 27, 2017 and October 6, 2017. The water system therefore violated the MCL from no less than October 29, 2017 to November 28, 2017. Thus, the Authority may impose a civil penalty for each of the violations for each day between October 29, 2017 and November 28, 2017.

The total proposed civil penalty is \$4,500 (30 x 3 x \$50).

If the violations identified in this notice continue or if the Company violates any other applicable law 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).

- Prior violations:
  - Over the last five years, the Company has violated numerous drinking water regulations, some on numerous occasions. These prior violations include twelve violations of OAR 333-061-0025(1), two violations of OAR 333-061-0025(2), nine violations of OAR 333-061-0025(5), twelve violations of OAR 333-061-0030(1), two violations of OAR 333-061-0030(4), five violations of OAR 333-061-0020(a), one violation of OAR 333-061-0036(2)(c), six violations of OAR 333-061-0036(6), three violations of OAR 333-061-0043, and five violations of OAR 333-061-0070(9)(c). The Authority considered the Company's prior violations to support imposing the maximum civil penalty in this matter.
- The past history of the person incurring the penalty in taking all feasible steps or procedures necessary or appropriate to correct the violation:

- The Dunn Court water system has a history of violating the MCL for arsenic since at least 2013. In addressing the arsenic exceedance, the Company has failed and succeeded on a number of occasions to take all feasible steps to correct the violation. For example, the Company failed to comply with the Authority's Notice of Non-compliance dated October 30, 2014 requiring the Company to submit an action plan. The Company's failure supports imposing the maximum the civil penalty in this matter. In contrast, after the Authority issued a Notice of Violation and Administrative Order on March 10, 2015, the Company completed the required actions, although not in compliance with the specified deadlines. The Company's attempt to comply with the rules supports reducing the civil penalty in this matter. After the level for arsenic again exceeded the MCL in July 2016, the Company reported that it would follow up on the treatment failure. The Authority considered this attempt to comply with the rules to support reducing the civil penalty in this matter. The Company reported in May 2017 that the arsenic treatment at Dunn Court had been optimized but later testing revealed that arsenic treatment continued to be ineffective. The Authority considered this failure to comply to support imposing the maximum the civil penalty in this matter.
- The Order issued September 13, 2017 in part required the Company to submit an action plan and to repair the arsenic treatment system at the Dunn Court water system within 60 days. The Company did not appeal the Order and did not timely complete the required action. The Order also required the Company to monthly monitor for arsenic and issue public notice, both of which were completed approximately one month after the Order's deadline. The Authority considered this failure to comply with the key requirements in the Order to support imposing the maximum civil penalty in this matter.
  - 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 Dunn Court 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 \$50/day for each violation is warranted in this matter.

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 within 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 \$4,500.

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 22<sup>nd</sup> day of December, 2017.



André Ourso, JD, MPH

Administrator

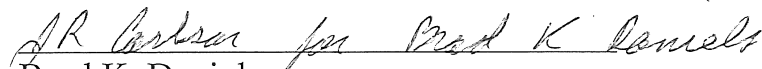
Oregon Health Authority

Public Health Division

Center for Health Protection

cc: Gregg Baird, Oregon Health Authority, Drinking Water Services  
Greg DeBlase, Marion County Environmental Health  
Shannon O'Fallon, Oregon Department of Justice

DATE of Service: 12-27-2017

  
Brad K. Daniels

By certified mail and first class mail