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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

AMENDED NOTICE OF VIOLATION  
OF SETTLEMENT AGREEMENT/  
INTENT TO ORDER PAYMENT OF  
REMAINING CIVIL PENALTY /  
TERMINATION OF SETTLEMENT  
AGREEMENT

To: West Coast Real Estate Holdings, LLC  
C/O Alex Labunsky, Authorized Representative  
25030 SW Parkway Avenue, Suite 110  
Wilsonville, OR 97070

1. The Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) is authorized under ORS 448.115 to 448.290 to regulate water suppliers.
2. West Coast Real Estate Holdings, LLC (the Company) owns and operates the Dunn Court Duplexes public water system (Dunn Court) and is a water supplier.
3. The Authority issued a Notice of Intent to Impose Civil Penalty (Notice) dated December 27, 2017 to the Company in compliance with ORS 183.745. The Notice, incorporated herein by reference and attached, proposed to impose a civil penalty of \$4,500.

4. To resolve the Notice, the Company entered into a Settlement Agreement dated January 18, 2018, incorporated herein by reference and attached. In the Settlement Agreement the Company agreed, in pertinent part, to:

- Conduct monthly arsenic monitoring at Dunn Court and report the results to the Authority within 10 calendar days of the end of the month. (Agreement Article No. 3).
- Maintain and operate the arsenic treatment system at Dunn Court such that drinking water produced and delivered to water users at all times contains concentrations of arsenic below the maximum contaminant level (MCL) of 0.010 mg/L as specified in OAR 333-061-0030(1). (Agreement Article No. 4).
- To immediately collect a confirmation sample if the arsenic levels exceed the MCL and report the results of the confirmation sample to OHA (Agreement Article No. 5).
- To pay the remaining civil penalty of \$4,050.00 if the Company is found to be in violation of the Settlement Agreement. (Agreement Article No. 9).

5. Agreement Article No. 7 specifies that any failure to comply with the terms of the Settlement Agreement is a violation of the Settlement Agreement.

6. The Company failed to timely report arsenic monitoring results for the month of June 2018. None of the circumstances that would permit the Company to stop reporting apply. The Company therefore is in violation of Agreement Article No. 3 of the Settlement Agreement.

7. The Company collected a water sample on July 26, 2018 that had an arsenic concentration of 0.0140 mg/L, which exceeds the MCL. The Company therefore failed to maintain and operate the arsenic treatment at Dunn Court such that drinking water at all times does not exceed the MCL for arsenic, in violation of Agreement Article No. 4 of the Settlement Agreement.

8. The Company collected a water sample on September 27, 2018 that had an arsenic concentration of 0.0130 mg/L, which exceeds the MCL. The Company therefore failed to maintain and operate the arsenic treatment at Dunn Court such that drinking water at all times does not exceed the MCL for arsenic, in violation of Agreement Article No. 4 of the Settlement Agreement.

9. If any sample collected and tested for arsenic by the Company exceeds the MCL the Company is required to immediately collect a confirmation sample, have a

confirmation sample tested and report that result to DWS. The company did not collect a confirmation sample after the July 2018 test result showed an exceedance of the MCL. The Company therefore is in violation of Agreement Article No. 5 of the Settlement Agreement.

10. Each of the above violations by itself provides grounds for the Authority to issue a final order of violation of the settlement agreement and order payment of the remaining civil penalty of \$4,050 in accordance with Agreement Article No. 9.

11. The Authority intends to issue a final order of violation of the settlement agreement, order the Company to pay the remaining civil penalty of \$4,050, and terminate the settlement agreement.

#### NOTICE OF RIGHT TO REQUEST A HEARING

You have already requested a hearing and **a hearing is scheduled for November 14, 2018, beginning at 9 a.m.** You do not need to submit another request for hearing.

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.

**Please note that the only issue before the administrative law judge will be whether the Company violated the Settlement Agreement. There is no right to contest the underlying violations or the amount of the civil penalty.** (Agreement Article No. 9).

If you 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 and terminating the settlement agreement. 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.

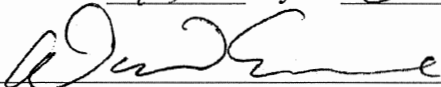
**Notice to Active Duty Service members.** Active duty service members have a right to stay proceedings under the federal Service members Civil Relief Act and may contact the

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 \$4,050.

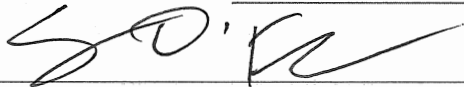
If you need to receive the information in this letter in an alternate format, or if you have any questions about the requirements in this notice, please contact Brad K. Daniels at (971) 673-0405.

Dated this 15<sup>th</sup> day of October, 2018.

  
\_\_\_\_\_  
David Emme, Manager  
Drinking Water Services  
Oregon Health Authority

cc: Jeff Carlson, Oregon Health Authority, Center for Health Protection  
Gregg Baird, Oregon Health Authority, Drinking Water Services  
Greg DeBlase, County Environmental Health

DATE of Service: 10/15/18

  
\_\_\_\_\_  
Signature

Shannon O'Fallon  
\_\_\_\_\_  
Printed Name

By certified and first class mail

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE OREGON HEALTH AUTHORITY,  
PUBLIC HEALTH DIVISION**

In the Matter of	)	
	)	
West Coast Real Estate Holdings, LLC	)	<b>Notice of Contested</b>
	)	<b>Case Rights and</b>
_____	)	<b>Procedures</b>

Pursuant to ORS 183.413(2), you are entitled to be informed of the following:

1. **Time and place of hearing.** The hearing is scheduled for November 14, 2018 at 9 a.m. The Administrative Law Judge provided a letter with additional information about the hearing.
2. **Issues to be considered at hearing.** The issues to be considered at hearing are set forth in the amended notice issued by the agency entitled Amended Notice of Violation of Settlement Agreement/ Intent to Order Payment of Remaining Civil Penalty Termination of Settlement Agreement dated October 15, 2018, and those issues related to the notice that are properly before the presiding officer to this proceeding. You have the right to respond to all issues properly before the presiding officer and to present evidence and witnesses on those issues.
3. **Authority and Jurisdiction for Hearing.** The matter set for hearing is a contested case. The hearing will be conducted as provided in Chapter 183 of the Oregon Revised Statutes; the Attorney General’s Office of Administrative Hearing Rules, OAR 137-003-0501 to 137-003-0700.
4. **Right to attorney.** You may be represented by an attorney at the hearing. You are not required to be represented by counsel. If you are not represented at the hearing and during the hearing you determine that representation by an attorney is necessary, you may request a recess to allow you an opportunity to secure the services of an attorney. The Administrative Law Judge (ALJ) will decide whether to grant such a request. The Oregon Health Authority (OHA) will be represented by an attorney. Legal aid organizations may be able to assist a party with limited financial resources.
5. **Administrative Law Judge.** The person presiding at the hearing is known as the ALJ. The ALJ will rule on all matters that arise at the hearing, subject to agency consideration of matters transmitted for agency decision under OAR 137-003-0635 or matters subject to agency review under OAR 137-003-0640 or OAR 137-003-0570. The ALJ will be assigned by the Chief ALJ from the Office of Administrative Hearings (OAH). The OAH consists of employees of, and independent contractors with, the Chief ALJ. The ALJ does not have the authority to make the final decision in the case. The final determination will be made by the OHA Director or his or her designee.

6. **Discovery.** Discovery is permitted in this proceeding as provided in OAR 137-003-0570, OAR 137-003-0572 and OAR 137-003-0573. You must first ask the agency to provide you with copies of documents or other information relevant to this proceeding. If you are not satisfied with the response of the agency, you may ask the ALJ to order production of the information you seek in accordance with applicable rules.

7. **Witnesses.** A witness must testify under oath or affirmation to tell the truth. The agency or ALJ will issue subpoenas for witnesses on your behalf upon a showing that their testimony is relevant to the case and is reasonably needed by you to establish your position. If you are represented by an attorney, your attorney may issue subpoenas for attendance of witnesses at hearing. Payment of witness fees and mileage to the person subpoenaed is your responsibility.

8. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to determine the facts and whether OHA's proposed action is appropriate. The order of presentation of evidence is normally as follows:

- a. Testimony of witnesses and other evidence of OHA in support of its proposed action.
- b. Testimony of your witnesses and your other evidence.
- c. Rebuttal evidence by OHA and by you.

9. **Burden of presenting evidence.** The burden of presenting evidence to support an allegation or position rests upon the proponent of the allegation or position. If you have the burden of proof on an issue, or if you intend to present evidence on an issue in which the agency has the burden of proof, you should approach the hearing prepared to present the testimony of witnesses, including yourself, and other evidence that will support your position. All witnesses are subject to cross-examination and also to questioning by the ALJ.

10. **Admissible evidence.** Relevant evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is admissible and will be received. Evidence that is irrelevant, immaterial, or unduly repetitious is excluded. Hearsay evidence is often admissible. The fact that it is hearsay generally affects how much reliance the agency or ALJ will place on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of the agency or ALJ. The agency or ALJ may take "official notice" of facts based on the agency's or ALJ's knowledge in a specialized field. This includes notice of general, technical or scientific facts. The agency or ALJ may also take "judicial notice" of a fact that is not subject to reasonable dispute in that it is generally known or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. You will be informed if the agency or ALJ takes "official notice" or "judicial notice" of any fact and you will be given an opportunity to contest any facts so noticed.

- b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of the facts may be received in evidence.
- c. Writings. Written documents including letters, maps, diagrams and other written material may be received in evidence.
- d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence.

11. **Objections to evidence.** Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:

- a. The evidence is unreliable;
- b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
- c. The evidence is unduly repetitious and duplicates evidence already received.

12. **Continuances.** There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. However, if you can show that the record should remain open for additional evidence, the ALJ may grant you additional time to submit such evidence.

13. **Record.** A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This may be done by use of a tape or digital recorder or court reporter. The record is generally not transcribed, unless there is an appeal to the Court of Appeals. However, you may obtain a copy of the tape recording upon payment of the costs of making a copy of the tape. If a court reporter is used, you may obtain a transcript or a copy of the court reporter's transcript upon payment of a transcription fee or other fee that the parties may agree upon.

14. **Proposed Order and Exceptions.** The ALJ will issue a proposed order in the form of findings of fact, conclusions of law and recommended agency action. You will be provided with a copy and you will be given an opportunity to make written objections, called "exceptions," to the ALJ's recommendations. You will be notified when exceptions to the proposed order must be filed.

15. **Final Order.** The agency will render the final order in this case. The agency may modify the proposed order issued by the ALJ. If the agency modifies the proposed order in any substantial manner, the agency in its order will identify the modification and explain why the agency made the modification. The agency may modify a proposed finding of "historical" fact only if the proposed finding is not supported by a preponderance of the evidence in the record.

16. **Appeal.** If you wish to appeal the final order, you must file a petition for judicial review with the Oregon Court of Appeals within 60 days after the final order is served upon you. See Oregon Revised Statutes 183.482.