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

In the Matter of

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

Respondent

NOTICE OF VIOLATION AND  
ADMINISTRATIVE ORDER

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

West Coast Real Estate Holdings, LLC has at all times mentioned herein owned and operated, and continues to own and operate, the Dunn Court Duplexes water system (hereinafter "Water System"), serving the 11 properties located at 1034-1035, 1040-1044, 1041-1045, 1050-1054, 1051-1055, 1060-1064, 1061-1065, 1070-1074, 1071-1075, 1080-1084 and 1081-1085 Dunn Court in Woodburn, Oregon. The Water System is a community public water system serving approximately 90 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.

West Coast Real Estate Holdings, LLC (hereinafter "Water Supplier") is 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, 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 (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 arsenic. 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.

This Notice of Violation and Administrative Order (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, in part, water suppliers to take all reasonable actions to assure that the water delivered to users does not exceed maximum contaminant levels and that water system facilities are free of public health hazards. Water samples collected at the Water System indicate that water delivered to customers by the system exceeds the MCL for arsenic as specified in OAR 333-061-0030(1) despite Water Supplier's installation of an arsenic treatment system. Water Supplier's failure to operate the treatment system effectively demonstrates Water Supplier 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.
2. OAR 333-061-0030(1) specifies that the MCL for arsenic in drinking water is 0.010 mg/L. Sample results reported for the Water System on February 1, 2019 and March 12, 2019 exceeded the MCL and the average concentration of arsenic in drinking water at the Water System, calculated according to OAR 333-061-0036(2)(h) and based on samples collected between April 26, 2018 and March 7, 2019 is 0.011 mg/L. This exceeds the MCL of 0.010 mg/L 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(3)(b).

### 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)).

- Compliance Action No. 1: Water Supplier must complete construction and installation of a chlorination system to oxidize arsenic and increase the effectiveness of arsenic treatment at the Water System. Water Supplier must also complete any other requirements necessary for DWS to grant final approval of the project to install arsenic treatment at the Water System, identified by DWS plan review #128-2014.
  - Water Supplier must demonstrate it completed all actions required by DWS within 30 days of the date of service of this Order.
- Compliance Action No. 2: The Company must monitor for arsenic at the Water System according to OAR 333-061-0036(2)(a) and report the sample results according to OAR 333-061-0040(1)(b)(A).
  - Monitoring must be conducted every month according to OAR 333-061-0036(1)(g), for at least six months or until DWS notifies Water Supplier it has fulfilled this monitoring requirement.
  - All monitoring must be conducted at the sampling location identified in OAR 333-061-0036(2)(a)(A)(ii).
  - Monitoring must begin in April 2019.
  - Water Supplier may return to monitoring arsenic according to OAR 333-061-0036(2)(a) if every sample collected according to this compliance action has a concentration of arsenic at or below the MCL for at least six consecutive months.
  - Water Supplier will be in compliance with this Order when the running annual average for arsenic in sample results reported for the Water System is below the MCL specified in OAR 333-061-0030(1) and samples reported for the Water

System have a concentration of arsenic at or below the MCL for at least four consecutive calendar quarters.

#### 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 May 6, 2019 for failure to complete construction and installation of arsenic treatment as approved by DWS according to this Order, the proposed civil penalty could be as much as \$1,500.

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**

Active duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information, contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll-free telephone number.

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.

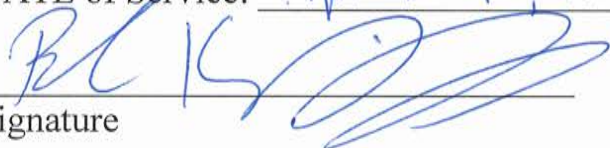
Dated this 4<sup>th</sup> day of April, 2019.



David Emme, Manager  
Drinking Water Services  
Oregon Health Authority

cc: Tia Skerbeck, Oregon Health Authority, Drinking Water Services  
Greg DeBlase, Marion County Environmental Health

DATE of Service: April 4, 2019



Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail