

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

In the Matter of

Maple Terrace Mobile Home Park,
PWS OR4100983

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Martin Fleck
Fernhill Portland, LLC
8910 SE Fuller Rd.
Portland, OR 97086-3610

Fernhill Portland, LLC has at all times mentioned herein owned and operated, and continues to own and operate, the Maple Terrace Mobile Home Park water system (hereinafter "Water System") located at 34492 Berg Road in Warren, Oregon. The Water System is a community public water system serving approximately 50 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.

Fernhill Portland, 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 action level (AL) for lead. Also, Water Supplier did not complete corrosion control treatment requirements or publish public education as specified by rule. 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 333-061-0030(1) specifies, in part, that the AL for lead in drinking water is 0.015 mg/L and that the AL is exceeded if the concentration of lead is greater than 0.015 mg/L in more than 10 percent of tap water samples collected during any monitoring period. The concentration of lead exceeded 0.015 mg/L in two of five samples collected on June 23, 2021. This exceeds the AL of 0.015 mg/L.

Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure."

2. OAR 333-061-0034 requires, in part, water suppliers to comply with the corrosion control treatment requirements and publish public education as specified in the rule when the AL for lead is exceeded. The AL for lead was exceeded at the Water System as of July 16, 2021 when the samples collected on June 23, 2021 were reported to DWS. Additionally, DWS issued a letter to Water Supplier on August 6, 2021 identifying the applicable treatment steps and public education requirements, and provided deadlines for completing all of the requirements. As of the date of this Order, Water Supplier has not completed any of the requirements specified in rule or in the letter. This constitutes a violation of OAR 333-061-0034.

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 immediately monitor water quality parameters according to OAR 333-061-0036(10)(f)(E) and (F) and report the results to DWS no later than July 10, 2022.
2. Water Supplier must immediately monitor for lead and copper in source water according to OAR 333-061-0036(10)(g) and report the results to DWS no later than July 10, 2022
3. Water Supplier must immediately publish public education according to OAR 333-061-0034(5) and submit a copy of the public education brochure to DWS, along with certification it was delivered to all of the Water System's residents, no later than July 10, 2022.
4. Water Supplier must submit a written recommendation for corrosion control treatment to DWS according to OAR 333-061-0034(3) no later than July 31, 2022.
5. Water Supplier must thereafter:
 - Demonstrate it has complied with the AL for lead according to OAR 333-061-0034(2)(c) no later than December 31, 2022, or
 - Submit construction plans for the corrosion control treatment identified in Corrective Action No. 4 no later than September 30, 2023.

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 July 11, 2022 for failure to report water quality parameter monitoring and failure to demonstrate public education was published according to this Order, the proposed civil penalty could be as much as \$3,000.

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

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 K. Daniels at 503-735-5438.

Date June 2, 2022



David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Pete Farrelly, Oregon Health Authority, Drinking Water Services
Daniel Osborn, Columbia County Environmental Health
John Parsons, Fernhill Portland, LLC

DATE of Service: June 3, 2022

A handwritten signature in black ink, appearing to read "BK Daniels", is written on a light-colored rectangular background. The signature is cursive and slanted to the right.

Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail