



Oregon

Theodore R. Kulongoski, Governor

Department of Human Services

Public Health Division

800 NE Oregon Street

Portland, OR 97232-2162

(971) 673-0405

(971) 673-0694 - FAX

(971) 673-0372 - TTY-Nonvoice

BEFORE THE STATE OF OREGON
DEPARTMENT OF HUMAN SERVICES
OFFICE OF ENVIRONMENTAL PUBLIC HEALTH

In the Matter of

Michael Brown
Saginaw Park water system, PWS
4100996

Respondent

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

Pursuant to Oregon Revised Statutes (ORS) 448.280, 448.285, and Oregon Administrative Rule (OAR) 333-061-0090, the Department of Human Services, Public Health Division, Office of Environmental Public Health, Drinking Water Program (Agency) intends to impose a civil penalty of \$1,000 against you for violations of OAR 333-061-0025(2) and OAR 333-061-0090(4)(i).

You have at all times mentioned herein owned and operated, and continue to own and operate Saginaw Park, which is a community public water system serving between 10 and 100 people, and subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0290.

The Agency issued a Notice of Violation and Administrative Order (Order) on July 15, 2010. The Agency also issued a Notice of Violation (Notice) on December 9, 2010, and both the Order and Notice are incorporated by reference. The Order identified actions to be completed in order to comply with the rules allegedly violated. You did not appeal the Order, and did not comply with the deadlines specified in the Order.

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VIOLATIONS

The proposed civil penalty is based on the following violations:

1. You failed to take immediate corrective action, as required by OAR 333-061-0025(2), after sampling results indicated that water produced by the Saginaw Park water system exceeds the maximum contaminant level (MCL) for arsenic. Specifically, you have not submitted any documentation to the Agency showing that you are taking action to correct the exceedance of the MCL for arsenic; and
2. You failed to comply with an order issued by the Administrator of the Agency as prescribed by OAR 333-061-0090(4)(i). Specifically, you did not submit construction plans to the Agency for the Saginaw Park water system by August 31, 2010 as specified in the Order issued on July 15, 2010.

CIVIL PENALTY

Pursuant to OAR 333-061-0090, you will be assessed a civil penalty in the amount of \$50 for each distinct violation, and for every day the violation occurred. The total civil penalty of \$1,000 is based upon the violations listed above as specified below:

- You will be assessed a penalty for each of the violations, for the time period from December 14, 2010 through December 23, 2010, inclusive. Each day within this ten day period has two associated violations for a total penalty of \$1,000.

If the violations identified in this notice, or other violations incorporated by reference, continue, you may be subject to additional civil penalties of \$50 per day per violation.

CIVIL PENALTY FACTORS CONSIDERED

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

- The past history of the person incurring the penalty in taking all feasible steps or procedures necessary or appropriate to correct the violation:
 - The Agency conducted a water system survey (also called a sanitary survey) of the Saginaw Park water system on February 27, 2008 which identified the need to conduct routine water quality sampling. You were notified of the survey results on April 21, 2008 in a letter which directed you to collect the required water samples, as well as making other improvements, but you failed to respond to the letter.

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- You submitted arsenic sampling results for the Saginaw Park water system, and by October 2009 the results clearly indicated that the concentration of arsenic in drinking water provided by the water system exceeded the MCL for arsenic as specified in OAR 333-061-0030(1).
- You received assistance and consultation from Brad Carr at HBH Consulting Engineers on February 18, 2010, but have failed to take corrective action to resolve the exceedance of the MCL for arsenic following the consultation.
- You have not complied with the deadlines specified in the Order issued on July 15, 2010, and you have not formally requested an extension to those deadlines.
- Prior violations:
 - You violated OAR 333-061-0036(2)(a) four times between April 1, 2008 and March 31, 2009 by failing to sample quarterly for arsenic as required by the rule.
 - You violated OAR 333-061-0036(2)(c) three times between January 1, 2008 and September 30, 2010 by failing to sample annually for lead and copper as required by the rule.
 - You violated OAR 333-061-0036(2)(d) one time in 2008 by failing to sample for nitrate as required by the rule.
 - You violated OAR 333-061-0036(6)(b) seventeen times between May 1, 2008 and July 31, 2010 by failing to sample monthly for coliform bacteria as required by the rule.
 - You violated OAR 333-061-0036(7)(a) ten times between April 1, 2008 and September 30, 2010 by failing to sample quarterly for radionuclides as required by the rule.
- Economic and financial conditions of the person incurring the penalty:
 - The Agency has no information about the economic or financial conditions of Michael Brown or the Saginaw Park Trust water system.

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 the Agency within 20 days from the date this Notice was mailed. The request for hearing must be sent to: David E. Leland, Manager; DHS - Drinking Water Program; 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, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. Any hearing will be held by an administrative law judge from the Office of Administrative Hearings (ORS 183.635).

If you do not request a hearing within 20 days, or if you withdraw a request for hearing, notify the Agency or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Agency may issue a final order by default ordering you to pay a civil penalty. If the Agency issues a final order by default, the Agency designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purposes of proving a prima facie case upon default.

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 Agency 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 \$1,000.

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, DHS-DWP at (971) 673-0407.

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Dated this 23 day of December, 2010.



Gail R. Shibley, JD, Administrator
Office of Environmental Public Health

cc:

Katrinka Danielson, Lane County Environmental Health
Casey Lyon, DHS-DWP
Harold Rogers, USEPA

DATE of Service:



December 28, 2010
Brad K Daniels

By certified and first class mail

