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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF LANE

6 STATE OF OREGON, by and through its  
7 OREGON HEALTH AUTHORITY,

8 Plaintiff,

9 v.

10 MICHAEL D. BROWN,

11 Defendant.

Case No. 16-12-14583

COMPLAINT

**ORS 20.140 - State fees deferred at filing**

12 The State of Oregon, by and through the Oregon Health Authority (OHA),<sup>1</sup> alleges:

13 1.

14 This is a case for permanent injunctive relief against a water supplier, Michael D. Brown,  
15 to protect the public health, safety and welfare pursuant to ORS 448.250. The State must ensure  
16 that “all Oregonians have safe drinking water.” ORS 448.123(1)(a). Defendant Michael D.  
17 Brown owns and operates a small community water system at a mobile home park in Lane  
18 County. Defendant’s operation of this water system presents or threatens to present a public  
19 health hazard requiring immediate action. Defendant draws water from an aquifer containing  
20 arsenic at unsafe levels and has failed to install treatment to reduce arsenic levels. Ingestion of  
21 arsenic can cause acute health problems, especially for children, and increases a person’s risk of  
22 developing cancer. In addition, Defendant has not issued notice to customers informing them of  
23 the high arsenic levels and historically has failed to comply with state rules and administrative

24 \_\_\_\_\_  
25 <sup>1</sup> During the 2009 Legislative Session the Legislature passed 2009 Or. Laws Chapter 595  
26 (House Bill 2009) that created the Oregon Health Authority (OHA). Certain programs that were  
under the authority of the Department of Human Services (DHS) were transferred to OHA,  
including all programs within the Oregon Public Health Division. Thus, some of the underlying  
administrative orders issued in this case were issued by DHS and not OHA.

1 orders requiring the sampling of the water for lead, copper, Synthetic Organic Chemicals  
2 (SOCs), Volatile Organic Chemicals (VOCs), and radionuclides.

3 2.

4 Despite the State's efforts to bring the water system into compliance, Defendant has  
5 refused to comply with the standards and requirements for safe drinking water. Cases filed under  
6 ORS 448.250 shall be given preference on the docket over all other civil cases except those  
7 given an equal preference by statute. ORS 448.250(3).

8 3.

9 The OHA is the state agency charged with implementation of the Oregon Drinking Water  
10 Quality Act, ORS 448.115 to 448.285. Accordingly, OHA has the statutory authority and the  
11 duty to ensure that public water suppliers provide water that meets minimum state standards.  
12 ORS 448.131. Included in this authority is the power to institute actions for a mandatory  
13 injunction to remove the public health hazard or threat of public health hazard. ORS 448.250.  
14 OHA has adopted coinciding Oregon Administrative Rules to implement the Oregon Drinking  
15 Water Quality Act. OAR 333-061-0005 to 333-061-0290.

16 4.

17 Defendant Michael D. Brown is an individual who owns and operates a water system  
18 (PWS OR4100996) for the provision of water for human consumption at Saginaw Park, a mobile  
19 home or manufactured dwelling park located at 80116 Highway 99 North, Cottage Grove,  
20 Oregon. As such, Defendant Michael D. Brown is a "water supplier" pursuant to ORS  
21 448.115(12) and OAR 333-061-0020(211).

22 5.

23 It is the policy of the State of Oregon that each of its citizens be provided with safe  
24 drinking water. ORS 448.123(1)(a). To that end, the Legislature passed the Oregon Drinking  
25 Water Quality Act of 1981 which establishes that water suppliers must meet standards designed  
26 specifically to provide for and protect the public health and safety, ORS 448.119. Further, water

1 suppliers are directly responsible for taking all reasonable precautions to assure that the water  
2 delivered to Oregonians does not exceed acceptable contamination levels, to assure that public  
3 water systems are free of public health hazards, and to assure that public water systems are  
4 operated and maintained pursuant to OHA regulations. OAR 333-061-0025. Failure to so  
5 maintain a public water system represents a potential public health hazard.

6 6.

7 ORS 448.131 provides that OHA shall adopt water quality standards necessary to protect  
8 the public health through ensuring safe drinking water within a water system and setting  
9 standards necessary for the proper operation and maintenance of such water systems.

10 7.

11 Defendant's water system is classified as a small community public water system that  
12 serves between 25 and 100 people, and is subject to regulation under ORS 448.115 to 448.290  
13 and OAR 333-061-005 to 333-061-290. Defendant's water system provides water from a  
14 groundwater source. As a water supplier, Defendant is required to take all reasonable  
15 precautions to assure that the water delivered to water users does not exceed maximum  
16 contaminant levels (MCLs), to assure that water system facilities are free of public health  
17 hazards, and to assure that water system operation and maintenance are performed as required by  
18 the drinking water program rules. OAR 333-061-025.

19 8.

20 Pursuant to its authority under ORS 448.150, OHA, Public Health Division, Center for  
21 Health Protection<sup>2</sup>, Drinking Water Program, investigated the operation of Defendant's water  
22 system. OHA conducted a sanitary survey at the water system on February 27, 2008, which  
23 identified the need for Defendant to conduct routine water quality sampling.

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<sup>2</sup> Formerly the Office of Environmental Public Health.

1 9.

2 On February 23, 2009, OHA issued a Notice of Violation (NOV) to Defendant for failing  
3 to collect quarterly samples of water to determine compliance with the Maximum Contaminant  
4 Level (MCL) for arsenic in violation of OAR 333-061-0036(2)(a). In addition, Defendant had  
5 failed to sample the water for total coliform bacteria in violation of OAR 333-061-0036(5)(b),  
6 nitrate in violation of OAR 333-061-0036(2)(e), and lead and copper in violation of OAR 333-  
7 061-0036(2)(d). Defendant had not issued public notices to alert customers that required water  
8 samples were not being taken or that the water exceeded the MCL for arsenic. The NOV set out  
9 actions for Defendant to take to come into compliance, including sampling for arsenic, coliform  
10 bacteria, nitrate and lead and copper, and issuing public notice.

11 10.

12 On July 15, 2010, OHA served a Notice of Violation and Administrative Order  
13 (NOV/AO) notifying Defendant that all the samples for arsenic submitted in 2009 and 2010  
14 exceeded the MCL for arsenic. OAR 333-061-0030(1) (Table 1, MCL for arsenic is 0.010 mg/l).  
15 Therefore, Defendant failed to assure that that the water was sufficiently free from contaminants  
16 and that the people drinking the water would not be exposed to disease or harmful physiological  
17 effects as required by ORS 448.115(8). The NOV/AO also notified Defendant of violations  
18 related to failures to submit lead and copper sampling results for both the 2008 and 2009 annual  
19 monitoring periods by September 10, 2010, and failure to provide proper public notice to every  
20 customer served by the water system.

21 11.

22 The July 15, 2010, NOV/AO required Defendant, by August 31, 2010, to submit  
23 construction plans that clearly indicated which of the following options would be selected to  
24 meet the MCL for arsenic: (1) Install an approved treatment system; (2) Develop a new water  
25 source; or (3) Connect to and receive water from another public water system. Construction was  
26

1 to be completed by December 31, 2010. The NOV/AO also required continued sampling for  
2 arsenic, lead, and copper.

3 12.

4 On September 30, 2010, OHA served on Defendant a Notice of Intent to Impose Civil  
5 Penalties in the amount of \$250 for failing to submit lead and copper sampling results as required  
6 by the July 15, 2010, NOV/AO. The Order became final on November 2, 2010, when Defendant  
7 failed to request a contested case hearing.

8 13.

9 On December 9, 2010, OHA issued another NOV to Defendant for failure to take  
10 immediate corrective action to reduce the concentration of arsenic in the finished drinking water  
11 to below the MCL specified. The NOV required Defendant to notify OHA of the corrective  
12 action to be taken and to comply with all applicable statutory requirements.

13 14.

14 On December 28, 2010, OHA issued a Notice of Intent to Impose Civil Penalty in the  
15 amount of \$1,000 for Defendant's failure to take immediate corrective action to address the high  
16 arsenic levels and for failure to submit the construction plans to meet the MCL for arsenic as  
17 required by the NOV/AO served on July 15, 2010.

18 15.

19 OHA and the Defendant agreed to resolve the civil penalty matter through a Settlement  
20 Order signed by Defendant and OHA on April 4, 2011. OHA agreed to hold a portion of the  
21 civil penalty in abeyance if Defendant complied with certain actions delineated in the Settlement  
22 Order. The Settlement Order required Defendant to provide public notice of exceeding the MCL  
23 for arsenic every three months until Defendant made all corrections to the water system and all  
24 customers receive drinking water that meets all applicable drinking water requirements. The  
25 Settlement Order required Defendant to submit complete construction plans to the Drinking

26

1 Water Program indicating how the water system will comply with the MCL for arsenic no later  
2 than June 30, 2012.

3 16.

4 In addition to the provisions concerning arsenic, the Settlement Order required that  
5 Defendant designate a certified operator to be in direct responsible charge of the water system by  
6 December 31, 2011 and to submit a compliance progress report to OHA by March 31, 2012.

7 17.

8 To date, Defendant did not and has not provided public notice of exceeding the MCL for  
9 arsenic, and Defendant did not and has not submitted construction plans as required by the  
10 Settlement Order. In addition, Defendant did not submit sampling results by July 10, 2011, did  
11 not designate a certified operator for the water system, and did not submit the compliance  
12 progress report by March 31, 2012. Defendant remains in violation of the Safe Drinking Water  
13 Act and implementing rules by providing water to customers that exceeds the MCL for arsenic,  
14 by failing to have a certified operator for the water system, and for failing to comply with all  
15 water sampling requirements.

16 18.

17 On January 24, 2012, OHA served a Notice of Violation of Settlement Agreement and  
18 Final Order Imposing Civil Penalty requiring Defendant to pay the \$900 civil penalty that had  
19 been held in abeyance. Defendant has not paid the remaining \$900 civil penalty. Defendant  
20 continues to violate the terms of the Order issued on July 15, 2010 and the Settlement Order  
21 signed on April 4, 2011.

22 19.

23 Since at least February, 2008, Defendant has regularly violated and continues to regularly  
24 violate Oregon's drinking water statutes and regulations in operating the Saginaw Park water  
25 system. Defendant has operated and continues to operate a community public drinking water  
26 facility without implementing the required monitoring and treatment standards in violation of

1 ORS chapter 448 and OAR 333-061-032 and 333-061-034. Defendants' actions are a refusal to  
2 comply with the standards and requirements of the OHA.

3 20.

4 Defendant's violations of Oregon drinking water statutes and regulations and  
5 administrative orders have created a potential threat to public health and safety. Defendant has  
6 created this public health hazard through provision of water to the public that does not meet  
7 drinking water quality standards.

8 21.

9 The MCL established by the U.S. Environmental Protection Agency (EPA) for arsenic in  
10 public drinking water systems is 10 parts per billion (ppb). This federal standard is based on the  
11 increased risk of developing cancer from drinking arsenic-contaminated water over the course of  
12 many years. At the time EPA promulgated this MCL of 10 ppb, the probability of an individual  
13 developing a cancer over a lifetime from drinking water with arsenic concentrations equal to the  
14 MCL was around 1 in 10,000. Subsequent toxicological reviews by the EPA have suggested that  
15 the risk may be higher than 1 in 10,000 for people whose drinking water is 10 ppb or higher over  
16 a lifetime.

17 22.

18 Arsenic dissolved in water is easily absorbed into the bloodstream through the intestines  
19 when swallowed. Exposure to arsenic can cause acute health problems in addition to increased  
20 cancer risk such as nausea, vomiting, diarrhea, swelling of the hands and face, and nasal  
21 congestion. Arsenic in a concentration of 50 ppb or higher would cause acute health effects in a  
22 child weighing 22 pounds drinking 1 liter of water per day.

23 23.

24 Arsenic causes many other health problems other than cancer when people are exposed to  
25 low levels over a long period of time. These health problems include skin hardening and warts,  
26 heart problems, diabetes, tingling of hands and feet, neurobehavioral problems in children, as

1 well as many other health problems. The MCL of 10 ppb is protective against most of these non-  
2 cancer health effects. Children are more susceptible to arsenic toxicity from drinking water  
3 because they drink more water per bodyweight than adults do and because they are passing  
4 through important developmental stages, especially for brain development. Therefore, it is  
5 critically important for children that arsenic concentrations in drinking water remain consistently  
6 below the current MCL of 10 ppb over time.

7 24.

8 Defendant's water system at Saginaw Park has had arsenic levels of as high as 42 ppb  
9 and has exceeded the MCL since 2009.

10 25.

11 ORS 448.250 provides OHA the authority, whenever a water system presents or threatens  
12 to present a public health hazard, to petition for a mandatory injunction compelling the water  
13 supplier to cease and desist operation or to make such improvements and corrections as are  
14 necessary to remove the public health hazard or threat thereof. If the water supplier refuses to  
15 comply with the drinking water quality standards and requirements, the court may require sale of  
16 a water system under a special master to a responsible party. ORS 448.250(2)(b).

17 **FIRST CLAIM FOR RELIEF**

18 **Operation of a Public Water Supply System That Exceeds the MCL for Arsenic in**  
19 **Violation of OAR 333-061-0030(1)**

20 26.

21 Plaintiff realleges paragraphs 1 through 25.

22 27.

23 Defendant continues to operate a community public water supply system that exceeds  
24 the MCL for arsenic. This constitutes a violation of OAR 333-061-0030(1).

25 28.

26 The State of Oregon is entitled to the relief set forth in the prayer below.



1 **SECOND CLAIM FOR RELIEF**

2 **Operation of Public Water System Without Taking All Reasonable Precautions to Assure**  
3 **that the Water Delivered Does Not Exceed MCLs or is Free of Public Health Hazards in**  
4 **Violation of OAR 333-061-0025**

5 29.

6 Plaintiff realleges paragraphs 1 through 25.

7 30.

8 Defendant continues to operate a community public water supply system that does not  
9 take all reasonable precautions to assure that the water delivered does not exceed MCLs, is free  
10 from public health hazards, and that the water system and maintenance are performed in  
11 accordance with OAR 333, Division 61. Defendant's actions or failures to act constitute  
12 violations of his general duties set forth in OAR 333-061-0025 and specifically:

13 a. Defendant has failed to routinely collect and submit samples for laboratory  
14 analysis in violation of OAR 333-061-0025(1);

15 b. Defendant has not taken immediate action to correct the MCL violation for  
16 arsenic in violation of OAR 333-061-0025(2);

17 c. Defendant has not notified customers that the MCL for arsenic has been exceeded  
18 or when reporting requirements were not met or when public health hazards are found to exist in  
19 the system in violation of OAR 333-061-0025(4) and (5);

20 d. Defendant has not conducted an active program for systematically identifying and  
21 controlling cross-connections in violation of OAR 333-061-0025(9);

22 e. Defendant has not submitted plans prepared by a professional engineer for review  
23 and approval to construct or make major modifications to the existing water system in violation  
24 of OAR 333-061-0025(10); and

25 f. Defendant does not have a certified water operator in violation of OAR 333-061-  
26 0025(11).


The State of Oregon is entitled to the relief set forth in the prayer below.

WHEREFORE, the State of Oregon is entitled to the following relief:

- A. A permanent injunction requiring Defendant to make such improvements and corrections as are necessary to remove the public health hazard or threat thereof by a date certain as soon as feasible in consideration of the public health risks;
- B. In the alternative, a permanent injunction ordering the sale of Defendant's water system under a special master to a responsible party if the Defendant does not comply with the orders of this Court;
- C. A permanent injunction requiring Defendant take any other reasonable measure that OHA asserts are necessary to prevent future violations and to protect public health, safety and welfare;
- D. The State of Oregon's costs and attorney fees for pursuing the interest of the public good in this matter; and
- E. Such further relief as the Court deems appropriate.

DATED this 6<sup>th</sup> day of July, 2012.

Respectfully submitted,  
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