



PUBLIC HEALTH DIVISION
Center for Health Protection, Drinking Water Services

Tina Kotek, Governor

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Health
Authority

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

In the Matter of

Silverton Enterprises, LLC / Scofield
Mobile Home Park Public Water
System, PWS OR4101025

Respondents

CANCELLATION OF BILATERAL
COMPLIANCE AGREEMENT

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

Jesus Santuario
Silverton Enterprises, LLC
PO Box 349
Newport, OR 97365

Silverton Enterprises, LLC has at all times mentioned herein owned and operated, and continues to own and operate, the Scofield Mobile Home Park public water system (hereinafter "Water System") located at 5990 Silverton Road NE in Salem, Oregon. The Water System is a community public water system serving approximately 40 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.

Silverton Enterprises, 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 drinking water provided by the water system exceeds the maximum contaminant level (MCL) for arsenic as specified in OAR 333-061-0030(1).

Water Supplier entered into a bilateral compliance agreement (BCA) with DWS on March 14, 2024. In the BCA, Water Supplier agreed, in part, to submit an action plan that included complete construction plans within 60 days of signing the agreement, identifying how Water supplier would ensure compliance with the MCL for arsenic. Water Supplier did not submit the action plan or complete construction plans as required.

Water Supplier did not request an extension to the agreed upon deadline in the BCA and has not demonstrated it satisfied the terms of the BCA. 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.

DWS hereby cancels the BCA fully executed on March 19, 2024 because Water Supplier failed to satisfy the terms agreed upon therein. 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 reported for the Water System on November 14, 2022, May 30, 2023 and August 7, 2023 indicated drinking water provided by the Water System exceeds the MCL for arsenic as specified in OAR 333-061-0030(1). Water Supplier's failure to submit an action plan as agreed in the BCA signed by Water Supplier on March 14, 2024, or to communicate with DWS or its designees, 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, beginning with a sample reported on November 14, 2022 exceeded the MCL and the average concentration of arsenic in drinking water, calculated according to OAR 333-061-0036(2)(h) and based on samples collected between January 2, 2023 and November 1, 2023 is 0.015 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. OAR 333-061-0042 requires, in part, water suppliers to provide public notice to people served by public water systems when the MCL for a regulated contaminant is exceeded. Water suppliers must distribute the public notice as soon as practical but no later than 30 days after learning of the violation, in this case that the MCL for arsenic was exceeded. Additionally, OAR 333-061-0040(1)(i) requires, in part, water suppliers to submit a representative copy of any public notification as prescribed by OAR 333-061-0042 to DWS within 10 days after completing the notification. Water Supplier failed to submit a copy of the public notice to DWS following the violations of the arsenic MCL at the Water System for the period from January 1 through March 31, 2024. This constitutes a violation of OAR 333-061-0042, or a violation of OAR 333-061-0040(1)(i) if a public notice was distributed but a copy was not submitted to DWS.

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 constitute compliance with the rule(s) violated (ORS 448.255(3)).

1. Water Supplier must submit complete, engineered construction plans for treatment, or an alternative water system modification that will eliminate arsenic from the drinking water or reduce concentrations of arsenic to below the MCL specified in OAR 333-061-0030(1).

- The construction plans must meet all the applicable requirements of OAR 333-061-0060 and have sufficient detail to completely and clearly illustrate what will be constructed.
 - The plans and any additional information required by this compliance action must be submitted to DWS no later than 60 days after the date of service of this Order.
2. Water Supplier must complete construction of the arsenic treatment or other water system modifications as specified in Compliance Action No. 1, no later than six months after conditional plan approval was granted by DWS.
- Water Supplier must notify DWS in writing within 5 calendar days of completing construction or installation of the arsenic treatment system.
 - Construction must be completed according to plans approved by DWS and construction of all improvements or modifications at the Water System must meet the applicable construction standards specified in OAR 333-061-0050.
3. Water Supplier must publish a public notice no later than 30 days after the date of service of this Order that informs customers that drinking water at the Water System contains arsenic exceeding the MCL. The notice must meet all the applicable requirements in OAR 333-061-0042.
- Within 10 calendar days of distributing the public notice to customers, Water Supplier must submit a copy of the notice to DWS along with a written statement that it has fully complied with the distribution and public notification requirements according to OAR 333-061-0040(1)(i).
4. Water Supplier must begin operating the arsenic treatment system or implement the water system modifications, constructed or installed according to Compliance Action No. 2, no later than 60 days after notifying DWS of completing construction.
- For this compliance action to be met, Water Supplier must report arsenic monitoring to DWS, conducted according to OAR 333-061-0036(2)(a), within 5 calendar days of receipt of sample result analysis from a laboratory that demonstrates the treatment system effectively removes arsenic.
5. Water Supplier must monitor arsenic at the Water System according to OAR 333-061-0036(2)(a) and 333-061-0036(1)(g) every month after completing Compliance Action

No. 3 if Water Supplier installed a treatment system to reduce concentrations of arsenic to below the MCL. Water Supplier must monitor arsenic at a frequency determined by DWS if Water Supplier completed other modifications at the Water System according to Corrective Action No. 2.

- Sample results must be reported to the Authority no more than 10 days after the end of each month according to OAR 333-061-0040(1).

6. Water Supplier will comply with this Order and may return to monitoring arsenic once every calendar quarter according to OAR 333-061-0036(2)(a) upon notification from DWS, after sample results reported for the Water System at the frequency specified in Corrective Action No. 4 have concentrations of arsenic below the MCL specified in OAR 333-061-0030(1) 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 October 1, 2024 for failure to submit construction plans 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: Samina Panwhar, Manager; Oregon Health Authority, Drinking Water Services; and may be delivered by mail to PO Box 14450, Portland, OR 97293 or by email to samina.t.panwhar@oha.oregon.gov.**

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 bradley.k.daniels@oha.oregon.gov or 503-735-5438.

Date 7/16/2024



Samina Panwhar, Manager
Drinking Water Services
Oregon Health Authority

cc: Greg DeBlase, Marion County Environmental Health
Chantal Wikstrom, Oregon Health Authority, Drinking Water Services

DATE of Service: July 17, 2024



Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail