

BEFORE THE STATE OF OREGON
OREGON HEALTH AUTHORITY
OFFICE OF ENVIRONMENTAL PUBLIC HEALTH

In the Matter of

RAKOG, LTD/McKee Bridge Mobile
Home Park, PWS OR4101165

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Ralph L. Staver
3247 NW Vaughn St.
Portland, OR 97210

RAKOG, LTD (RAKOG) is a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(211), and as a water supplier, has specific responsibilities that are identified in OAR 333-061-0025.

RAKOG has at all times mentioned herein owned and operated, and continues to own and operate, the McKee Bridge Mobile Home Park (McKee Bridge) water system. McKee Bridge is a community public water system at 9181 Upper Applegate River Rd. in Jacksonville, Oregon serving between 25 and 100 people and subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0290.

Pursuant to its authority under ORS 448.150, the Oregon Health Authority, Public Health Division, Office of Environmental Public Health, Drinking Water Program (Program) has investigated the operation of the McKee Bridge water system.

The Program found, during its investigation, that water provided by the McKee Bridge water system exceeds the maximum contaminant level (MCL) for arsenic. RAKOG 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 RAKOG for the specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.290) and rules found during the Program's investigation as described below.

DESCRIPTION OF RULE VIOLATIONS

- Violation No. 1: OAR 333-061-0025 requires water suppliers to take all reasonable precautions to ensure that the water delivered to water users does not exceed maximum contaminant levels. A water sample collected at the McKee Bridge water system on June 30, 2011 indicates that water provided by the system exceeds the MCL for arsenic as specified in OAR 333-061-0030(1).

RAKOG installed an arsenic treatment system at the McKee Bridge water system in 2010 because samples collected between 2008 and 2010 indicated that arsenic levels in drinking water exceeded the MCL. Two water samples collected after the installation of the arsenic treatment system indicated that arsenic levels were below the MCL. However, the sample collected on June 30, 2011 demonstrates that the arsenic treatment system being utilized at McKee Bridge is ineffective and/or not being operated properly.

The inability of RAKOG to operate the arsenic treatment system so that treated water has levels of arsenic below the MCL demonstrates that RAKOG has failed to take all the reasonable precautions to ensure that water does not exceed the MCL. This constitutes a violation of OAR 333-061-0025.

- Violation No. 2: OAR 333-061-0040(1)(d) requires water suppliers to report to the Program within twenty-four (24) hours when a substance or pathogenic organism is found in the water that has caused or is likely to cause physical suffering or illness. The water sample collected on June 30, 2011 indicated that the arsenic concentration was 0.0766 mg/L (76.6 ppb) in water produced by the McKee Bridge water system.

Water with arsenic in excess of the MCL has the potential to have serious adverse effects on human health (OAR 333-061-0042(2)(b)). 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)). Additionally, short-term exposure to arsenic concentrations above 0.050 mg/L (50 ppb) is considered acutely hazardous to small children.

RAKOG failed to contact the Program after being notified on July 8, 2011 that the water sample collected on June 30, 2011 had an arsenic concentration of 0.0766 mg/L, which constitutes a violation of OAR 333-061-0040(1)(d).

- Violation No. 3: OAR 333-061-0042 requires water suppliers to provide public notice to persons served by public water systems for violations and situations established by the rules in OAR Chapter 333, Division 061. OAR 333-061-0042(2)(a)(H) requires notice for violations or situations with significant potential to have serious adverse effects on human health as a result of short term exposure. The water sample collected on June 30, 2011 with an arsenic concentration was 0.0766 mg/L (76.6 ppb) constitutes such a situation requiring public notice. The Program received a public notice reportedly distributed to residents at the McKee Bridge water system on July 18, 2011, but the Program has received information indicating that the public notice was not delivered to residents as reported. This constitutes a violation of OAR 333-061-0042.

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

RAKOG 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: RAKOG must sample for arsenic every month in treated drinking water at the McKee Bridge water system per OAR 333-061-0036(1)(g). Sample results must be submitted to the Program within ten days of the end of the month as prescribed by OAR 333-061-0040(1)(b)(A).
- Compliance Action No. 2: RAKOG must demonstrate that all water users at the McKee Bridge water system receive water with concentrations of arsenic below the MCL no later than December 31, 2011.

- Water samples must be collected both prior to and after treatment to verify that the arsenic treatment system is operating effectively.
- Demonstration of water quality and compliance with the MCL for arsenic is subject to verification by the Program or the Jackson County Health Department.
- RAKOG must submit an operation and maintenance manual to the Program no later than December 31, 2011 indicating how it will continue to operate and maintain the arsenic treatment system at McKee Bridge so that water users consistently receive water with concentrations of arsenic below the MCL. The manual must include monitoring procedures, maintenance procedures, the frequency with which media in the arsenic treatment system is expected to be replaced, and a diagnosis and repair plan capable of ensuring that the arsenic MCL is not exceeded in water intended for potable use.
- Compliance Action No. 3: RAKOG must immediately publish public notice for exceeding the MCL for arsenic (OAR 333-061-0042(2)(a)(H)). The notice must meet all of the applicable requirements of OAR 333-061-0042(4) and must be delivered by hand to every person served by the McKee Bridge water system in accordance with OAR 333-061-0042(3)(a)(D)(iii). A copy of the notice must be submitted to the Program no later than ten (10) days after this Order is issued.
 - RAKOG must also submit a list of every person served by the McKee Bridge water system, and when the public notice specified in this compliance action was delivered to that person. The customer list and certification of delivery must be submitted to the Program no later than ten (10) days after this Order is issued.
- Compliance Action No. 4: RAKOG must continue to publish public notice for exceeding the MCL for arsenic. The notice must be published every three months, until all corrections are made, and all system users receive drinking water that meets all applicable state and federal drinking water laws and rules (OAR 333-061-025 and OAR 333-061-0042(3)(b)(C)). The notice must meet all of the applicable requirements of OAR 333-061-0042(4) and must be distributed to every customer served by the McKee Bridge water system in accordance with OAR 333-061-0042(3)(c)(C). A copy of the notice must be submitted to the Program no later than 10 days after completing the public notification per OAR 333-061-0040(1)(j).

- Submit copies of the public notice to: Brad Daniels, OHA - Drinking Water Program, PO Box 14450, Portland, OR 97293-0450.

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 administrative rules OAR 333-061-0005 to 333-061-0290, which remain in full force and effect.

This Order does not relieve the RAKOG 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 the Program 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 dates 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 the Program issues a Notice of Intent to Impose Civil Penalty.

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 the Program within 10 days from the date this Order was mailed. The request for hearing must be sent to: David E. Leland, Manager; OHA - Drinking Water Program; PO Box 14450; Portland, OR 97293.

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.

If you do not make a timely request for a hearing, or if you withdraw a request for hearing, notify the Program or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Program may issue a final order by default. If

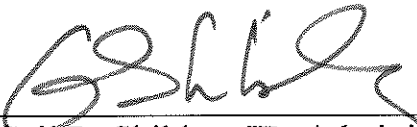
the Program issues a final order by default, the Program designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purposes of proving a prima facie case upon default. If the Order becomes final in this manner, 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 the Program subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

The Program has designated the Program's complete file on the McKee Bridge 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 letter in an alternate format, or if you have any questions about the requirements in this Order, please contact Brad Daniels at 971-673-0405.

Dated this 7th day of September, 2011.



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

cc: Scott Curry, OHA-DWP
Daniel Hough, OHA-DWP
Mike Obereigner, Jackson County Environmental Health
Shannon O'Fallon, Oregon Department of Justice
John Staver, McKee Bridge Mobile Home Park
Marian Staver, RAKOG, LTD., A California Limited Partnership

CERTIFICATE OF MAILING

On the 8TH day of September, 2011, I mailed the foregoing
ADMINISTRATIVE ORDER

BY CERTIFIED AND FIRST CLASS MAIL:

Ralph L. Staver
McKee Bridge Mobile Home Park
3247 NW Vaughn St.
Portland, OR 97210

Marian Staver
RAKOG, LTD., A California Limited Partnership
110 Stratford Court
Del Mar, CA 92014

BY FIRST CLASS MAIL:

John Staver
McKee Bridge Mobile Home Park
3030 Upper Applegate Rd.
Jacksonville, OR 97530

RAKOG, LTD.
171 Saxony Rd., Suite 109
Encinitas, CA 92024

BY ELECTRONIC MAIL:

Shannon O'Fallon, AAG
Oregon Department of Justice
1515 SW 5th Avenue #410
Portland, OR 97201



Brad K. Daniels
Enforcement Coordinator
Oregon Health Authority, Drinking Water Program