

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

In the Matter of

McKee Bridge Mobile Home Park,  
PWS OR4101165

Respondent

NOTICE OF VIOLATION AND  
ADMINISTRATIVE ORDER

To: Dan Staver  
Rakog, LTD A California Limited Partnership  
171 Saxony Road, Suite 109  
Encinitas, CA 92024

Rakog, LTD A California Limited Partnership has at all times mentioned herein owned and operated, and continues to own and operate, the McKee Bridge Mobile Home Park water system (hereinafter “Water System”) located at 9181 Upper Applegate Rd., southwest of Medford, 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.

Rakog, LTD A California Limited Partnership (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 maximum contaminant level (MCL) for arsenic. Also, Water Supplier deactivated the arsenic treatment DWS ordered to be operated at the Water System. 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 333-061-0025 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. An inspection at the Water System on November 22, 2021 determined that Water Supplier deactivated the treatment required to reduce concentrations of arsenic to safe levels. A water sample collected at the Water System on February 18, 2022 demonstrated that water provided by the system exceeds the MCL for arsenic as specified in OAR 333-061-0030(1). Water Supplier's failure to operate the treatment system 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 and OAR 333-061-0090(3)(c). Each day that the Water Supplier fails to operate the system effectively is a separate violation.
2. OAR 333-061-0030(1) specifies that the maximum contaminant level (MCL) for arsenic in drinking water is 0.010 mg/L. Sample results reported for the Water System and collected on February 18, 2022 contained arsenic of 0.0139 mg/L, exceeding the MCL. This 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 333-061-0050(4)(a)(C) allows groundwater wells to be used for drinking water at public water systems if those wells are constructed in conformance with the rules and maximum contaminant levels are not exceeded. The groundwater wells supplying the Water System were found to be contaminated by arsenic and DWS ordered that treatment be installed to prevent arsenic from exceeding the MCL. Water Supplier removed this treatment from service and a water sample verified arsenic exceeds the MCL. This constitutes a violation of OAR 333-061-0050(4)(a)(C).
4. OAR 333-061-0065(1)(a) requires water suppliers to operate all phases and components of the water system effectively in the manner for which they were designed. The Water System has an arsenic treatment system but this treatment was deactivated or removed from service without approval or alternative measures taken to ensure arsenic did not exceed the MCL. The failure to operate the arsenic treatment system constitutes a violation of OAR 333-061-0065(1)(a). Each day that the Water Supplier fails to operate the arsenic treatment system is a separate violation of OAR 333-061-0065(1)(a).

#### 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 restore the arsenic treatment at the Water System to effective operation such that concentrations of arsenic in drinking water are below the MCL specified in OAR 333-061-0030(1). Each day that the Water Supplier fails to operate the arsenic treatment at the Water System is a separate violation of this Order.
2. Water Supplier must submit a written plan to DWS no later than April 15, 2022, for effectively operating the treatment at the Water System such that concentrations of arsenic will remain below the MCL specified in OAR 333-061-0030(1) in the future. The plan must include and identify a schedule for replacing any required treatment components or chemicals, criteria for determining the schedule and documentation from the manufacturer of the treatment confirming the frequency will be sufficient for effective operation of the treatment.
3. Water Supplier must monitor for arsenic at the Water System according to OAR 333-061-0036(2)(a) and 333-061-0036(1)(g) as follows:

- Monitoring must begin immediately in March 2022 and be conducted every month according to OAR 333-061-0036(1)(g). 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).
- If any sample exceeds the MCL for arsenic specified in OAR 333-061-0030(1), Water Supplier must collect a confirmation sample within 24 hours according to OAR 333-061-0036(2)(f). Confirmation samples, regardless of the arsenic concentration, must be reported to DWS within two business days of when the sample was submitted to a laboratory for analysis.

**It is a violation of this Order if:**

- **Water Supplier fails to immediately begin monitoring according to OAR 333-061-0036(2)(a), 333-061-0036(1)(g) and Corrective Action No. 3. Each day that the Water Supplier fails to begin monitoring is a separate violation.**
  - **The average of any monthly sample and confirmation sample exceeds the MCL. Each instance of a monthly and confirmation sample average that exceeds the MCL is a separate violation.**
  - **A confirmation sample is not collected within 24 hours following a monthly sample that exceeds the MCL. Each day a confirmation sample is not collected is a separate violation.**
4. If the average of any monthly sample and confirmation sample exceeds the MCL for arsenic, Water Supplier must immediately restore the arsenic treatment at the Water System to effective operation such that concentrations of arsenic in drinking water are below the MCL specified in OAR 333-061-0030(1).
- Water Supplier must complete the corrective action within 72 hours of receiving notification that sample results exceeded the MCL. Water Supplier must thereafter submit verification to DWS in writing of the action taken within 24 hours of completing the action. Verification must also identify what action Water Supplier took to ensure arsenic does not exceed the MCL on an ongoing basis. Each day that the Water Supplier fails to timely complete corrective action or submit written verification to DWS is a separate violation of this Order.

5. 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), if sample results reported for the Water System have concentrations of arsenic below the MCL specified in OAR 333-061-0030(1) every month for 12 consecutive months.

#### 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 May 1, 2022 for failure to restore the arsenic treatment to effective operation and failure to report arsenic sample results according to this Order, the proposed civil penalty could be as much as \$6,000.

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**

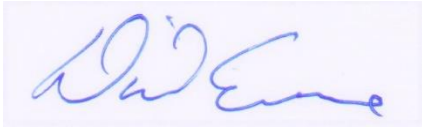
Active-duty service members have a right to stay proceedings under the federal Service members Civil Relief Act and may contact the Oregon State Bar at 1 (800) 452-8260 or the Oregon Military Department at 503-584-3571 for more information. The internet address for the United States Armed Forces Legal 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 or [bradley.k.daniels@dhsaha.state.or.us](mailto:bradley.k.daniels@dhsaha.state.or.us).

Dated this 15th day of March, 2022.



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David Emme, Manager  
Drinking Water Services  
Oregon Health Authority

cc: Susan Baker, Jackson County Environmental Health  
Zach Golik, Oregon Health Authority, Drinking Water Services  
John Staver, Rakog, LTD

DATE of Service: March 16, 2022



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Signature

Brad K. Daniels  
Printed Name

By certified mail and first-class mail