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

In the Matter of

Rakog LTD/McKee Bridge Mobile
Home Park, PWS OR4101165

Respondent

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

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

Pursuant to Oregon Revised Statute (ORS) 448.280, ORS 448.285, and Oregon Administrative Rule (OAR) 333-061-0090, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) intends to impose a civil penalty of \$1,500 against Rakog, LTD A California Limited Partnership, for violations of OAR 333-061-0090(3).

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 ORS 448.115(12) and OAR 333-061-0020 and has specific responsibilities as defined in OAR 333-061-0025 and OAR 333-061-0065(1)(a). These responsibilities include taking all reasonable actions to assure water delivered to users does not exceed maximum contaminant levels and that water system facilities are free of public health hazards. OAR 333-061-0025. Maximum containment level (MCL) is defined in OAR 333-061-0020 and means the maximum allowable level of a contaminant in the water delivered to users of a public water system, and the MCL for arsenic in drinking water is 0.010 mg/L as specified in OAR 333-061-0030(1). Arsenic occurs in drinking water from the erosion of natural deposits, runoff from orchards or runoff from glass and electronics production wastes. OAR 333-061-0043(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. 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.

Due to the failure to comply with the MCL for arsenic, DWS served a Notice of Violation and Administrative Order (Order) to Water Supplier regarding the Water System on March 16, 2022. The Order cited four violations of rules specified above. First, that Water supplier failed to take all reasonable actions to ensure that the water did not exceed the MCL for arsenic in violation of OAR 333-061-0025. Second, that the presence of arsenic at levels exceeding the MCL violated OAR 333-061-0030(1). Third, that Water supplier removed a pre-existing arsenic treatment system from service despite concentrations of arsenic confirmed to exceed to MCL within the groundwater well supplying the Water System. Fourth, that Water Supplier failed to properly maintain and operate the arsenic treatment system effectively, in violation of OAR 333-061-0065(1)(a). The Order required Water Supplier to restore the pre-existing treatment system to effective operation and monitor for arsenic at the Water System every month. The Order specified that it would be a violation if the average of any monthly sample and confirmation sample exceeded the MCL or if a confirmation sample was not collected following a monthly sample that exceeded the MCL.

Water Supplier did not appeal the Order and afterward attempted to comply with the Order, working to install a replacement arsenic treatment system and collecting samples every month from April through November 2022; however, Water Supplier only reported two monthly samples with concentrations of arsenic at or below the MCL. The most recent sample was reported on November 8, 2022 and determined to have arsenic at a concentration of 0.0249 mg/L. No confirmation sample was reported; however, a

confirmation sample with no detection of arsenic would still have exceeded the MCL for arsenic of 0.010 mg/L, in violation of the Order. The continued ineffective operation of arsenic treatment at the Water System and continued sample results exceeding the MCL are a violation of the Order. The Order is incorporated by reference.

Water Supplier's failure to comply with the Order issued by DWS is a violation for which a civil penalty may be assessed as prescribed by OAR 333-061-0090(3)(i).

CONCLUSIONS OF LAW

Violation No. 1: Water Supplier is in violation of OAR 333-061-0090(3)(i) for failing to comply with an order issued by DWS.

Violation No. 2: Water Supplier is in violation of OAR 333-061-0025 for failing to take all reasonable actions to assure water delivered to users does not exceed maximum contaminant levels and that water system facilities are free of public health hazards.

Violation No. 3: Water Supplier is in violation of OAR 333-061-0030(1) because drinking water at the Water System does not comply with the MCL for arsenic.

Violation No. 4: Water Supplier is in violation of OAR 333-061-0050(4)(a)(C) for utilizing a groundwater well for drinking water without treatment after the MCL for arsenic was found to be exceeded.

Violation No. 5: Water Supplier is in violation of OAR 333-061-0065(1)(a) for failing to properly maintain and operate the arsenic treatment system effectively in the manner for which it was designed.

CIVIL PENALTY

Pursuant to OAR 333-061-0090, DWS intends to impose a total civil penalty in the amount of \$1,500 based upon the population served by the public water system and each violation of OAR 333-061-0090(3). DWS considered mitigating and aggravating factors as described below in determining the total civil penalty amount.

Each violation is a separate and distinct offense according to OAR 333-061-0090. The per day civil penalty amount for a violation at a public water system serving fewer than 100 people is \$50 per day according to OAR 333-061-0090(4). DWS intends to impose a civil penalty of \$50 per day for the violation of OAR 333-061-0090(3) as set out in the civil penalty schedule.

For the violations, DWS intends to impose a civil penalty for each day of non-compliance, a total of 30 days. The number of days is based on the period from October 1, 2022 through October 30, 2022. 30 days is appropriate for the violation because Water Supplier failed to comply with an order issued by DWS because arsenic treatment was not operated effectively every day during this period, resulting in water delivered to consumers with concentrations of arsenic in excess of the MCL.

The total proposed civil penalty is \$1,500 (30 x 1 x \$50).

If the violations identified in this notice continue or if Water Supplier violates any other applicable law or rules, it may be subject to additional civil penalties per day per violation.

CIVIL PENALTY FACTORS CONSIDERED

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

- (a) The past history of the person incurring the penalty in taking all feasible steps or procedures necessary or appropriate to correct the violation:
 - There is a history of violating the MCL for arsenic at the Water System since as early as 2004. In addressing the arsenic exceedance, Water Supplier has failed and succeeded on occasion to take all feasible steps to correct the violation. For example, Water Supplier installed an arsenic treatment system in 2012 to reduce concentrations of arsenic in drinking water; however, 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 exceeded the MCL for arsenic as specified in OAR 333-061-0030(1). Water Supplier's deactivation of the arsenic treatment system supports imposing the maximum civil penalty in this matter.
 - DWS issued a notice of violation to Water Supplier on May 19, 2009 due to concentrations of arsenic exceeding the MCL in drinking water. Water Supplier was unable to comply with the deadlines specified in the notice and requested an extension to those deadlines. On March 12, 2010, DWS approved an amendment to the notice of violation issued on May 19, 2009. In the amendment, Water Supplier was allowed to complete construction and installation of an arsenic treatment system no later than

September 30, 2010. Water Supplier reportedly installed an arsenic treatment system but was unable to demonstrate the treatment reduced concentrations of arsenic according to the deadlines specified in the amended notice. Water Supplier's inability to meet the deadlines specified in the notice or amendment supports imposing the maximum civil penalty in this matter.

- DWS issued an administrative order on September 8, 2011 due to sample results indicating the presence of arsenic in drinking water at concentrations which could cause acute illness and reports that consumers were not notified of the presence of arsenic in drinking water. The order required Water Supplier to demonstrate how it would effectively operate the treatment system, and demonstrate that every consumer at the Water System was notified about the arsenic present in drinking water. Water Supplier's failure to effectively operate the arsenic treatment system and failure to notify consumers that arsenic was present in drinking water supports imposing the maximum civil penalty in this matter.
- Water Supplier reported a sample collected on February 21, 2012 indicating the concentration of arsenic was below the MCL in drinking water at the Water System. In samples reported between February 21, 2012 and December 14, 2021, inclusive, arsenic concentrations were below the MCL in 35 or 38 samples. Water Supplier's apparent ability to successfully operate arsenic treatment supports reducing the civil penalty in this matter.
- The Order issued March 16, 2022, in part, required Water Supplier to immediately restore arsenic treatment at the Water System to effective operation and to monitor for arsenic every month for at least 12 consecutive months. Water Supplier notified DWS it would install an entirely new treatment system because the pre-existing treatment no longer functioned and has since reported only two of out of eight samples with concentrations of arsenic below the MCL. Water Supplier's failure to comply with the Order's key requirements supports imposing the maximum civil penalty in this matter.
 - (b)Prior violations:
 - Over the last five years, Water Supplier has violated numerous drinking water regulations, some on numerous occasions. These prior violations include 28 violations of OAR 333-061-0025(1), one violation of OAR 333-061-0025(2), one violation of OAR 333-061-0025(5), one violation of OAR 333-061-0030(1), three violations of OAR 333-061-0032(6), three violations of OAR 333-061-0036(2)(a), two violations of OAR 333-061-0036(2)(c), one violation of OAR 333-061-0036(4), 11 violations of OAR 333-061-0036(6), 11 violations of OAR 333-061-

0036(11), one violation of OAR 333-061-0050(4), one violation of OAR 333-061-0064, and one violation of OAR 333-061-0065(4). DWS considered these prior violations to support imposing the maximum civil penalty in this matter.

- (c)Economic and financial conditions of the person incurring the penalty:
 - DWS has no information about your economic or financial details, or the economic or financial conditions at the Water System. DWS considered this factor neutral when determining the appropriate civil penalty in this matter.

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). To request a hearing, you must file a written request with DWS within 20 days from the date this notice was mailed. **The request for hearing must be sent to: Kari Salis, Manager; Oregon Health Authority, Drinking Water Services; and may be delivered by mail to PO Box 14450, Portland, OR 97293 or by email to karyl.l.salis@dhsaha.state.or.us.**

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 request a hearing within the 20 days, withdraw the request for hearing, notify DWS or the administrative law judge that you will not appear at a scheduled hearing, or fail to appear at a scheduled hearing, DWS may issue a final order by default imposing a civil penalty. If DWS issues a final order by default, DWS designates its files on this matter as the record for the purpose of proving a *prima facie* case upon default.

Notice to Active Duty Servicemembers

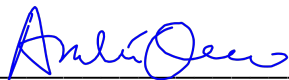
Active-duty service members have a right to stay proceedings under the federal Service members Civil Relief Act and may contact the Oregon State Bar at 1 (800) 452-8260 or the Oregon Military Department at 503-584-3571 for more information. The internet

address for the United States Armed Forces Legal Assistance Locator website is <http://legalassistance.law.af.mil>.

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 DWS 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 at bradley.k.daniels@dhsosha.state.or.us (503) 735-5438.

Date 11/23/2022



André Ourso, JD, MPH
Administrator
Oregon Health Authority
Center for Health Protection

cc: Susan Baker, Jackson County Environmental Health
Zach Golik, Oregon Health Authority, Drinking Water Services
Casey Lyon, Oregon Health Authority, Drinking Water Services

DATE of Service: November 28, 2022



Brad K Daniels

By certified and first class mail