

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

Respondents

FINAL ORDER IMPOSING
CIVIL PENALTY BY DEFAULT

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

The Oregon Health Authority (Authority), Public Health Division, Center for Health Protection, Drinking Water Services (DWS) issued a Notice of Intent to Impose Civil Penalty (Notice) to Rakog, LTD A California Limited Partnership (hereinafter “Water Supplier”) on November 28, 2022 for specific violations of the Oregon Drinking Water Quality Act and rules. The Notice is incorporated herein by reference. The Notice offered Water Supplier an opportunity for hearing if requested within 20 days of service of the Notice. No hearing was timely requested. The Notice designated the relevant portions of the Authority’s file on this matter, as the record for purposes of default.

DWS therefore issues this final order by default and designates its files on this matter as the record for the purpose of proving a prima facie case upon default.

FINDINGS OF FACT

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 public water system (hereinafter “Water System”), identified by public water system ID# OR4101165 and 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 according to the Oregon Drinking Water Quality Act (ORS 448.115 to 448.290) and Oregon Administrative Rules 333-061-0005 to OAR 333-061-0272. DWS has no information about the Respondent's economic or financial details, or the economic or financial conditions of the water system.

Water Supplier, as defined in ORS 448.115(12) and OAR 333-061-0020(211), has specific responsibilities as defined in OAR 333-061-0025 and OAR 333-061-0065(1)(a) and is required 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, and to operate all phases and components of the water system effectively in the manner for which they were designed. 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.

Due to the failure to assure that water delivered to users did not exceed 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 being 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. A 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

1. Water Supplier is in violation of OAR 333-061-0090(3)(i) for failing to comply with an order issued by DWS.
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.
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.
4. 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.
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 imposes 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 civil penalty amount for a violation by a public water system serving 40 people is \$50 per day according to OAR 333-061-0090(4). DWS imposes a civil penalty of \$50 per day for each violation as set out in the civil penalty schedule and for each day of non-compliance, a total of 30 days, 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 and 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 civil penalty is \$1,500 (30 x 1 x \$50).

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:
 1. 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.

2. 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.
3. 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.
4. 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.
5. 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.

ORDER

Based on the foregoing, WATER SUPPLIER is hereby ordered to pay a civil penalty in the amount of \$1,500.

Date 1/20/2023



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

GENERAL PROVISIONS

Civil penalty amounts are established in Oregon Administrative Rule 333-061-0090. If unpaid, civil penalties may be recorded and filed with county clerks as liens against property 10 days after the expiration of the statutory appeals period. DWS may assign liquidated and delinquent civil penalties to the Department of Revenue, as provided in ORS 293.250.

If you have any questions about payment, or wish to make payment arrangements, please contact the Oregon Department of Human Services and Oregon Health Authority Accounts Receivable office at 503-947-5126. You will receive an invoice with instructions for where to send the payment and payment options.

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.

You are entitled to a judicial review of this Order in accordance with ORS 183.482. To appeal, you must file a petition for judicial review with the Court of Appeals within 60 days from the date of service of this Order.

If you need to receive the information in this letter in an alternate format, or if you have any questions regarding this Order, please contact Brad K. Daniels at (503) 735-5438.

cc: Susan Baker, Jackson County Health Department
Zach Golik, Oregon Health Authority, Drinking Water Services
Mai Quach, Oregon Health Authority, Center for Health Protection
Erin Williams, Oregon Department of Justice

DATE of Service: January 23, 2023



Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail