

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: John 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. Additionally, Water Supplier has not demonstrated issuing notification to water users informing them of the contaminated drinking water. 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 333-061-0030(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 collected on February 18, 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 July 12, 2022 and June 16, 2023 is 0.011 mg/L.

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

DWS acknowledges that an arsenic treatment system was installed at the Water System and that recent sample results demonstrate concentrations of arsenic are below the MCL specified in OAR 333-061-0030(1); however, the average concentration of arsenic in drinking water samples continues to exceed the MCL of 0.010 mg/L, which constitutes a violation of OAR 333-061-0030(1).

2. OAR 333-061-0025(4) requires water suppliers to notify all customers of the water system, as well as the general public in the service area, when maximum contaminant levels have been exceeded. Water samples collected between July 12, 2022 and November 4, 2022 indicate that water provided by the Water System exceeds the

MCL for arsenic, but Water Supplier did not demonstrate publishing public notice as prescribed by OAR 333-061-0042. This constitutes a violation of OAR 333-061-0025(4).

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 arsenic is exceeded. Water suppliers must distribute the public notice as soon as practical but no later than 30 days after learning of the violation or situation. Water Suppliers must continue to publish notice if the situation persists and drinking water violations continue. 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 last demonstrated publishing a public notice to DWS, for the contamination at the Water System, on September 9, 2022; but the average concentration of arsenic in drinking water continues to exceed the MCL as specified in OAR 333-061-0030(1), and public notice should have been published again in December 2022, February 2022 and May 2022. 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.
4. OAR 333-061-0060(1) requires, in part, water suppliers to submit construction and installation plans for approval before construction begins on major additions to existing public water systems. Water Supplier installed a treatment system to reduce concentrations of arsenic in drinking water at the Water System, but this treatment system was not approved for use prior to construction and installation, and the treatment system has not been given final plan approval as of the date of this Order. This constitutes a violation of the OAR 333-061-0060(1).

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 take all necessary actions to complete the conditions required for final approval for the arsenic treatment system in use at the Water System.
 - Water Supplier must submit verification to DWS that all plan approval conditions have been satisfied no later than 60 days from the date of service of this Order.

2. Water Supplier must publish a public notice no later than 30 days after the date of service of this Order that informs customers that the average annual concentration of arsenic in drinking water at the Water System exceeds the MCL. The notice must meet all the 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).
3. Water Supplier must continue monitoring arsenic at the Water System according to OAR 333-061-0036(2)(a) and 333-061-0036(1)(g) as follows:
 - Monitoring must 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).
4. If any monthly sample exceeds the MCL for arsenic, Water Supplier must immediately investigate the cause of the treatment failure and submit a report to DWS within 48 hours, identifying the cause for the failure and how Water Supplier will return the treatment to effective operation such that concentrations of arsenic in drinking water are below the MCL specified in OAR 333-061-0030(1).
 - Each day Water Supplier fails to timely submit written verification to DWS is a separate violation of this Order.

It is a violation of this Order if:

- **At least one sample for arsenic is not reported during any calendar quarter; or**
 - **The average of samples within any calendar quarter exceeds the MCL. Each instance of the average of monthly samples that exceeds the MCL within a calendar quarter is a separate violation.**
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), after 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 October 1, 2023 for failure to publish public notice and to complete plan approval for the arsenic treatment system 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 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 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 bradley.k.daniels@oha.oregon.gov or 503-735-5438.

Date 7/21/2023



Samina Panwhar, Manager
Drinking Water Services
Oregon Health Authority

cc: Tony George, Jackson County Environmental Health
Zach Golik, Oregon Health Authority, Drinking Water Services
Emma Gross-Regan, Jackson County Environmental Health
Dan Staver, Rakog, LTD

DATE of Service: July 24, 2023



Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail