



PUBLIC HEALTH DIVISION
Center for Health Protection, Drinking Water Services

Tina Kotek, Governor

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Authority

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

In the Matter of

City of Unity, PWS OR4101450

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Mark Bennett
City of Unity
PO Box 7
Unity, OR 97884

The City of Unity has at all times mentioned herein owned and operated, and continues to own and operate, the water system (hereinafter “Water System”) serving the residents and businesses of Unity, Oregon. The Water System is a community public water system serving approximately 70 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.

The City of Unity (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 drinking water provided by the Water System exceeds the action level (AL) for both lead and copper. Also, Water Supplier did not complete corrosion control steps according to the schedule designated by DWS. 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 water suppliers to take all reasonable actions to assure that the water delivered to water users does not exceed maximum contaminant levels, that water system facilities are free of public health hazards and that water system operation and maintenance are performed as required by the rules. Water Supplier did not submit construction plans to install corrosion control treatment by the deadlines specified in rule, such that lead and copper concentrations may continue to exceed the AL in tap water. The failure to submit constructions plans according to the schedule designated by DWS constitutes a violation of OAR 333-061-0025.
2. OAR 333-061-0030(1) specifies, in part, that the AL for lead in drinking water is 0.015 mg/L and that the AL is exceeded if the concentration of lead is greater than 0.015 mg/L in more than 10 percent of tap water samples collected during any monitoring period. The concentration of lead exceeded 0.015 mg/L in 1 of 5 samples collected on August 26, 2020. The concentration of lead also exceeded 0.015 mg/L in more than 10 percent of tap water samples collected between December 29 and December 30, 2006, between January 1 and November 10, 1999, and between January 1 and November 1, 1996. This exceeds the AL of 0.015 mg/L.
3. OAR 333-061-0030(1) specifies, in part, that the AL for copper in drinking water is 1.3 mg/L and that the AL is exceeded if the concentration of copper is greater than 1.3 mg/L in more than 10 percent of tap water samples collected during any monitoring period. The concentration of copper exceeded 1.3 mg/L in more than 10 percent of tap

water samples collected on December 16, 2003, on December 5, 2002, between January 1 and December 11, 2001, between January 1 and December 19, 2000, and between January 1 and August 8, 1995. This exceeds the AL of 1.3 mg/L.

Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure. OAR 333-061-0097

Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor. OAR 333-061-0097

4. OAR 333-061-0034(2) requires, in part, water suppliers to complete corrosion control steps when sample results exceed the AL for lead or copper. OAR 333-061-0034(2)(b)(F) requires, in part, water suppliers to install corrosion treatment within 24 months of DWS designating optimal corrosion control treatment. Optimal corrosion control treatment was designated on March 29, 2021, and Water Supplier was directed to submit construction plans for this treatment no later than September 30, 2022, so that treatment could be installed by the 24-month deadline. Water Supplier did not submit construction plans according to the schedule specified by DWS.

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 constitute compliance with the rule(s) violated (ORS 448.255(3)).

1. Water Supplier must submit construction plans according to all the applicable provisions of OAR 333-061-0034 and OAR 333-061-0060, for corrosion control treatment, within 60 days of the date of service of this Order.
 - Construction of any improvements or modifications at the Water System must be approved according to OAR 333-061-0060 prior to construction and plans must have sufficient detail to completely and clearly illustrate what will be constructed.

2. Water Supplier must complete construction of the corrosion control treatment as specified in Compliance Action No. 1, no later than six months after conditional plan approval was granted by DWS.
 - Water Supplier must notify DWS in writing within 5 calendar days of completing construction or installation of the corrosion control treatment.
 - Construction must be completed according to plans approved by DWS and construction of all improvements or modifications at the Water System must meet the applicable construction standards specified in OAR 333-061-0050.
3. Water Supplier must begin operating the corrosion control treatment system, constructed according to Compliance Action No. 2, no later than 60 days after notifying DWS of completing construction.
4. Water Supplier must measure water quality parameters at the Water System according to OAR 333-061-0036(10)(f)(G), from both the entry point and distribution system, and report those measurements according to OAR 333-061-0040(1)(h),
5. Water Supplier must monitor for lead and copper at the Water System according to OAR 333-061-0036(10)(a) through (e) and report the results to DWS according to OAR 333-061-0040(1)(b). A minimum of two rounds of monitoring must be conducted.
 - The first round of monitoring must be conducted no later than December 31, 2023, with the results of the monitoring reported to DWS no later than January 10, 2024.
 - The second round of monitoring shall be conducted six months after the first round and in no case later than June 30, 2024, with the results of the monitoring reported to DWS no later than July 10, 2024.
6. Water Supplier shall have satisfied the terms of this Order when:
 - Measurements demonstrate water quality parameters are maintained at or above minimum values designated by DWS for six consecutive months; and
 - Tap water monitoring demonstrates lead and copper are both below their respective action levels calculated according to OAR 333-061-0030(1) for two consecutive six-month monitoring periods.

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 15, 2023 for failure to submit construction plans according to this Order, the proposed civil penalty could be as much as \$1,500.

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 email to samina.t.panwhar@oha.oregon.gov or by mail to 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 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 2/6/2023



Samina Panwhar, Manager
Drinking Water Services
Oregon Health Authority

cc: Office of the Baker County Commission
Bill Goss, Oregon Health Authority, Drinking Water Services
Kenneth Taylor, City of Unity
Amy Word, Oregon Health Authority, Drinking Water Services

February 8, 2023

DATE of Service: _____



Signature

Brad K. Daniels

Printed Name

By certified mail and first-class mail