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

In the Matter of

Craig Bennett
Mt. Terrace Mobile Home Park,
Public Water System OR4105364

Respondent

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

To: Craig Bennett
2940 Kuehner Drive
Simi Valley, CA 93063-5401

Pursuant to Oregon Revised Statutes (ORS) 448.255, 448.280, and 448.285 and Oregon Administrative Rule (OAR) 333-061-0090, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (Authority) intends to impose a civil penalty of \$7,500 against you for violations of OAR 333-061-0025(2), OAR 333-061-0025, OAR 333-061-0030(1), OAR 333-061-0076(6)(b), and OAR 333-061-0090(3)(i).

FACTS AND LEGAL CONCLUSIONS

You have owned the Mt. Terrace Mobile Home Park (Mt. Terrace) public water system located at 59779 Roderick Road in Coos Bay, Oregon since at least on or about June 29, 2016. The Mt. Terrace water system is a community public water system that serves approximately 60 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.

You are therefore a water supplier as defined in ORS 448.115(12) and OAR 333-061-0020(211) and have specific responsibilities as defined in OAR 333-061-0025, OAR 333-061-0030 and OAR 333-061-0076. Per ORS 448.280, the Authority may impose a civil penalty for the violation of its drinking water rules and intends to impose civil penalties against you for the following violations:

Violation 1. Violation of OAR 333-061-0030(1) for exceeding the MCL for arsenic.

Water delivered to users of a public water system may not exceed maximum allowable levels of contaminant (MCL). OAR 333-061-0030(1); OAR 333-061-0020(118). The MCL for arsenic in drinking water is 0.010 mg/L as specified in OAR 333-061-0030(1). Arsenic is a naturally occurring element found in rock formations. As water flows through certain rock formations, arsenic can dissolve and be carried into water systems.

Testing at the Mt. Terrace water system indicated that the concentration of arsenic in the water exceeded the MCL on March 28, 2017, April, 19, 2017 and September 25, 2017. Testing for arsenic was not conducted in the first quarter of 2017 or the last quarter of 2016. Therefore, as of September 30, 2017, the running annual average concentration for arsenic in the water exceeded and continues to exceed 0.010 mg/L. You are in violation of OAR 333-061-0030(1) because the Mt. Terrace water system violated the MCL level for arsenic.

Violation 2. Violation of OAR 333-061-0025(2) for failing to take all reasonable actions to assure water delivered to users does not exceed maximum contaminant levels.

Water suppliers are 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. OAR 333-061-0025. Water suppliers must take immediate corrective action when testing indicates that the MCL has been exceeded. OAR 333-061-0025(2).

As noted above, the Mt. Terrace water system violated the MCL as of September 30, 2017 and continues to exceed the MCL. You have not taken any apparent action to correct the exceedance of the arsenic MCL. Therefore, you are in violation of OAR 333-

061-0025(2) 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 3. Violation of OAR 333-061-0076(6)(b) for failing to correct significant deficiencies identified during a sanitary survey.

The Authority is required to conduct sanitary surveys of public water systems. ORS 448.150; OAR 333-061-0076(2). A sanitary survey is an on-site inspection of the water source(s), facilities, equipment, operation, maintenance and monitoring compliance of a public water system to evaluate the adequacy of the water system, its sources and operations in the distribution of safe drinking water. ORS 448.115(9); OAR 333-061-0020(167). Water suppliers must correct or have an approved plan to correct significant deficiencies identified during these surveys according to OAR 333-061-0076(6).

The Authority conducted a sanitary survey of the Mt. Terrace water system on May 1, 2017 (May Survey). The Authority discovered a number of significant deficiencies at the water system, including that a groundwater well was improperly added as a source of water at the Mt. Terrace water system. The addition of a groundwater well as a source of water to the system is a major modification to the existing system. However, no construction or installation plans were submitted to or approved by the Authority prior to construction of the groundwater well as required by OAR 333-061-0025(10). The significant deficiencies also included that the emergency plan was not completed, major modifications were not approved, the annual consumer confidence report was not submitted, and not all monitoring was current. You were required to take corrective action to resolve the significant deficiencies identified at the May Survey by no later than November 9, 2017.

You failed to timely take corrective action to remedy the deficiencies and are not in compliance with an Authority-approved corrective action plan. All of the deficiencies remain uncorrected as of the date of this notice. The failure to timely correct any one significant deficiency or rule violation is a violation of OAR 333-061-0076(6)(b).

Violation 4. Violation of OAR 333-061-0025 for failing to take all reasonable actions to assure that water system facilities are free from public health hazards.

Water suppliers must take all reasonable actions to ensure water systems are free of public health hazards. OAR 333-061-0025. The Authority has recognized that this

obligation requires, among other things, submission of construction plans prepared by a professional engineer to the Authority for major modifications to existing public water systems. OAR 333-061-0025(10).

As noted above, no construction plans were submitted to the Authority prior to the addition of a groundwater well, which was a major modification to the Mt. Terrace water system. In addition, even after requiring that the construction plans be submitted to the Authority as part of the sanitary survey, you have not submitted construction plans. Submission of the construction plans to the Authority for review is a reasonable action to ensure water system facilities are free from public health hazards. Therefore, this failure demonstrates a violation of OAR 333-061-0025.

Violation 5. Violation of OAR 333-061-0090(3)(i) for failing to comply with an order issued by the Authority.

The Authority may impose a civil penalty for failure to comply with an Authority order. OAR 333-061-0090(3)(i). Water system operators must comply with all Authority orders. OAR 333-061-0232(1).

Due to the failure to comply with the MCL for arsenic, the failure to submit construction plans, and the failure to correct significant deficiencies, the Authority served a notice of violation and administrative order to you regarding the Mt. Terrace water system on November 6, 2017 (Order) citing six violations of applicable laws and rules. The Order is incorporated by reference. To remediate the violations, the Order, required in part that you: submit construction plans for the unapproved groundwater well serving the Mt. Terrace water system within 30 days of the date of service of the Order; monitor for arsenic in drinking water at the Mt. Terrace water system every month; immediately publish and distribute public notice; immediately designate a certified operator for the Mt. Terrace water system; ensure significant deficiencies are corrected at the Mt. Terrace water system; and immediately monitor for *E. coli* bacteria in the groundwater sources at the Mt. Terrace water system.

You did not appeal the Order. While you did complete two of the corrective actions (published public notice and monitored for *E. coli*), you did not submit construction plans, monitor for arsenic, designate a certified operator, or correct significant deficiencies by the deadlines specified in the Order. Your failure to comply with the Order issued by the Authority violates OAR 333-061-0090(3)(i). The failure to timely complete any one required compliance action demonstrates a violation of OAR 333-061-0090(3)(i).

CIVIL PENALTY

Pursuant to ORS 448.280 and OAR 333-061-0090, the Authority intends to impose a total civil penalty of \$7,500.00 based on the population served by the public water system and each day the violations noted above occurred. The Authority 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 60 people is \$50 per day according to OAR 333-061-0090(4). The Authority intends to impose a civil penalty of \$50 per day for each of the five violations as set out in the civil penalty schedule.

For each of the violations, the Authority 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 of time from December 6, 2017 through January 5, 2018. For violation 1, as of September 30, 2017, the Mt. Terrace water system violated the MCL level for arsenic. No new testing indicates that the water system has come into compliance with the arsenic MCL. The water system therefore violated the MCL from no less than December 6, 2017 through January 5, 2018. For violation 2, the Mt. Terrace water system has exceeded the MCL for arsenic beginning no later than September 30, 2017 and you took no action to address the exceedance between December 6, 2017 and January 5, 2018. For violation 3, you failed to take action to correct all of the significant deficiencies identified in the May Survey or be in compliance with an Authority-approved correction action plan by the deadline of November 9, 2017 or at any time from December 6, 2017 to January 5, 2018. For violation 4, you did not take any reasonable action between December 6, 2017 and January 5, 2018 to ensure the Mt. Terrace water system is free from public health hazards by submitting construction plans for the additional groundwater well. For violation 5, you have not taken certain compliance actions in the Order which required action immediately or by December 6, 2017. Therefore, you violated the obligation to comply with the Order beginning no later than December 6, 2017 and took no action continuing through January 5, 2018. It is therefore appropriate to impose the civil penalty for the entire 30-day time period.

The Authority may therefore impose a civil penalty for each of the violations for each day between December 6, 2017 and January 5, 2018. The total proposed civil penalty is \$7,500 (30 x 5 x \$50).

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

CIVIL PENALTY FACTORS CONSIDERED

In assessing the civil penalty, the Authority 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:
 - The Order issued November 6, 2017 in part required you to submit construction plans within 30 days for the groundwater well that was constructed without prior approval and preceding evidence of arsenic in the drinking water at the Mt. Terrace water system. Specifically, the Order required you to submit construction plans for the new groundwater well and to issue public notice by a specific deadline. You did not appeal the Order. You did timely issue public notice, but did not timely complete all of the required compliance actions. While the Authority considered the issuance of public notice to support decreasing the civil penalty in this matter, the Authority considers the failure to comply with one of the key requirements in the Order to support imposing the maximum civil penalty in this matter because review of the unapproved well construction is essential for determining the source of the arsenic contamination and taking effective corrective action to resolve the situation.
- (b) Prior violations:
 - Over the last five years, numerous violations of drinking water regulations occurred at the Mt. Terrace water system, some on numerous occasions. These prior violations include seventeen violations of OAR 333-061-0025(1), one violation of OAR 333-061-0025(2), one violation of OAR 333-061-0025(4), five violations of OAR 333-061-0025(5), one violation of OAR 333-061-0030(1), one violation of OAR 333-061-0036(2)(a), one violation of OAR 333-061-0036(2)(c), one violation of OAR 333-061-0036(2)(d), one violation of OAR 333-061-0036(3)(a), one violation of OAR 333-061-0036(3)(b), one violation of OAR 333-061-0036(4)(c) six violations of OAR 333-061-0036(6), five violations of OAR 333-061-0036(7), one violation of OAR 333-061-0042, five violations of OAR 333-061-0043, one violation of OAR 333-061-0070(9)(a), five violations of OAR 333-061-0070(9)(c) and one violation of OAR 333-061-0225. However, because

the Mt. Terrace water system was under different ownership at the time, the Authority considered this factor neutral in determining the appropriate civil penalty in this matter.

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

The Authority considered all of these factors and determined the civil penalty of \$50/day for each violation is warranted 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 the Authority within 20 days from the date this notice was mailed. **The request for hearing must be sent to: David Emme, Manager; Oregon Health Authority, Drinking Water Services; PO Box 14450; Portland, OR 97293-0450. If a request for hearing is not received with the 20-day period, you will have waived your right to a hearing.**

If you request a hearing, the Authority 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. The Authority will be represented by an Assistant Attorney General. Prior to the hearing date, the Authority 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 the Authority or the administrative law judge that you will not appear at a scheduled hearing, or fail to appear at a scheduled hearing, the Authority may issue a final order by default imposing a civil penalty. If the Authority issues a final order by default, the Authority designates its files on this matter as the record for the purpose of proving a *prima facie* case upon default.

Notice to Active Duty Service members. 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 1 (800) 452-7500 for more information. The internet address for the United States Armed Forces Legal Assistance Locator website is <http://legalassistance.law.af.mil/content/locator.php>.

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, the Authority 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.

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 (971) 673-0405.

Dated this 29th day of January, 2018.



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

cc: Rick Hallmark, Marion County Environmental Health
Betsy Parry, Oregon Health Authority, Drinking Water Services
Shannon O'Fallon, Oregon Department of Justice

DATE of Service: January 30, 2018



Brad K. Daniels

By certified mail and first class mail