

BEFORE THE STATE OF OREGON
OREGON HEALTH AUTHORITY
OFFICE OF ENVIRONMENTAL PUBLIC HEALTH

In the Matter of

Evergreen Meadows Water
Improvement District, PWS
OR4105946

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

Respondent

To: Shirley Van Leuven, President
Evergreen Meadows Water Improvement District
PO Box 329
Shady Cove, OR 97539

Evergreen Meadows Water Improvement District (Evergreen Meadows) is a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(211), and as a water supplier, has specific responsibilities that are identified in OAR 333-061-0025.

Evergreen Meadows has at all times mentioned herein owned and operated, and continues to own and operate a community public water system near the intersection of Evergreen Drive and Shipley Terrace in Prospect, Oregon, which serves between 25 and 100 people, and which is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0290.

Pursuant to its authority under ORS 448.150, the Oregon Health Authority, Public Health Division, Office of Environmental Public Health, Drinking Water Program (Program) has investigated the operation of the Evergreen Meadows water system.

The Program found, during its investigation, that water provided at the Evergreen Meadows water system exceeds the maximum contaminant level (MCL) for arsenic. Evergreen Meadows 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 Evergreen Meadows for specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.285) and rules found during the Program's investigation as identified below.

DESCRIPTION OF RULE VIOLATIONS

- Violation No. 1: OAR 333-061-0025 requires water suppliers to take all reasonable precautions to assure that the water delivered to water users does not exceed maximum contaminant levels. Sampling results from the Evergreen Meadows water system indicate that arsenic levels in water supplied to users exceeds the MCL of 0.010 mg/L as specified in OAR 333-061-0030(1), and that sample results have consistently exceeded the MCL since April 2010. Evergreen Meadows was officially notified of the MCL exceedance in a July 2010 letter from the Jackson County Environmental Health Department. The letter from Jackson County also stated that corrective action is required to ensure that water supplied to users has arsenic levels below the MCL. Evergreen Meadows has failed to demonstrate that it has taken all the reasonable actions or precautions to ensure that water does not exceed the MCL for arsenic, which constitutes a violation of OAR 333-061-0025.

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

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

Evergreen Meadows 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) allegedly violated (ORS 448.255(3)).

- Compliance Action No. 1: In order to ensure that water supplied to customers is below the MCL for arsenic, Evergreen Meadows must submit construction plans that clearly indicate what changes will be made at the Evergreen Meadows water system so that water users receive water that is below the MCL for arsenic. The plans must be submitted to the Program no later than August 31, 2011.

All plans for additions or alterations to the Evergreen Meadows water system must be approved by the Program in advance, and must meet all of the applicable requirements of OAR 333-061-0060. Plans must have sufficient detail to completely and clearly illustrate what will be constructed and must show that the changes to the water system will meet all the applicable construction standards specified in OAR 333-061-0050 (OAR 333-0061-0060(1)).

- Compliance Action No. 2: Evergreen Meadows must complete construction of the project for which plans were approved in accordance with Compliance Action No. 1, no later than December 31, 2011.
- Compliance Action No. 3: Evergreen Meadows must demonstrate, no later than March 30, 2012, that the water produced by the Evergreen Meadows water system is below the MCL for arsenic, and that all users receive drinking water that consistently meets all applicable state and federal drinking water laws and rules.

- Compliance Action No. 4: Evergreen Meadows must publish public notice for exceeding the MCL for arsenic every three months, until all corrections are made, and all system users receive drinking water that meets all applicable state and federal drinking water laws and rules (OAR 333-061-025 and OAR 333-061-0042(3)(b)(C)). The notice must meet all of the applicable requirements of OAR 333-061-0042(4), and must be distributed to every customer served by the Evergreen Meadows water system in accordance with OAR 333-061-0042(3)(b)(E). A copy of the notice and certification that the notice was distributed according must be submitted to the Program no later than 10 days after completing each public notification per OAR 333-061-0040(1)(j).
 - The public notice must be submitted to: Brad Daniels, OHA – Drinking Water Program, PO Box 14450, Portland, OR 97293-0450.

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 448.285 and administrative rules OAR 333-061-0005 to 333-061-0290, which remain in full force and effect.

This Order does not relieve the Evergreen Meadows 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 the Program 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 dates 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 the Program issues a Notice of Intent to Impose Civil Penalty.

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 the Program within 10 days from the date this Order was mailed. The request for hearing must be sent to: David E. Leland, Manager; OHA - Drinking Water Program; PO Box 14450; Portland, OR 97293.

If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing.

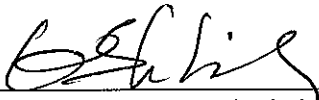
If you do not make a timely request for a hearing, or if you withdraw a request for hearing, notify the Program or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Program may issue a final order by default. If the Program issues a final order by default, the Program designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purposes of proving a prima facie case upon 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 71 days from the day this Order was mailed. If you do not file a petition for judicial review within the 71-day time period, you will lose your right to appeal.

If you do not request a hearing and the Program subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

The Program has designated the Program's complete file on the Evergreen Meadows 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 letter in an alternate format, or if you have any questions about the requirements in this Order, please contact Brad Daniels at 971-673-0405.

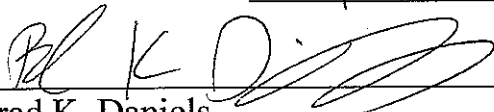
Dated this 19th day of April, 2011.



Gail R. Shibley, JD, Administrator
Office of Environmental Public Health

cc: Carolyn Hinesly, Evergreen Meadows Water Improvement District
Daniel Hough, OHA-DWP
Mike Obereigner, Jackson County Environmental Health

DATE of Service: April 19, 2011



Brad K. Daniels

By certified mail and first class mail