

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

In the Matter of

Manzanita Hills Homeowners  
Association Public Water System,  
PWS OR4106155

Respondents

James Robinson, President  
PO Box 157  
Shady Cove, OR 97539

CANCELLATION OF BILATERAL  
COMPLIANCE AGREEMENT

NOTICE OF VIOLATION AND  
ADMINISTRATIVE ORDER

The Manzanita Hills Homeowners Association has at all times mentioned herein owned and operated, and continues to own and operate, the public water system (hereinafter “Water System”) serving homes along Cindy Court, Cindy Way and Linda Lane in Shady Cove, Oregon. The Water System is a community public water system serving approximately 30 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.

Manzanita Hills Homeowners Association (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 maximum contaminant level (MCL) for arsenic.

Water Supplier entered into a bilateral compliance agreement (BCA) with DWS on January 3, 2019. In the BCA, Water Supplier agreed, in part, to provide an action plan for construction and installation of an effective arsenic treatment system for the Water System. DWS and Water Supplier executed two subsequent extensions of the deadlines in the original action plan, to allow Water Supplier sufficient time to obtain funding and contracting; however, Water Supplier was unable to facilitate construction and installation of a treatment system according to the terms of the BCA or the subsequent extensions.

Water Supplier has not demonstrated it satisfied the terms of the BCA and subsequent extensions and after reporting sample results that continue to exceed the MCL of 0.010 mg/L as specified in OAR 333-061-0030(1), Water Supplier is 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.

DWS hereby cancels the BCA executed on January 3, 2019 and subsequent extensions executed on May 13, 2019 and July 16, 2019 respectively because Water Supplier failed to satisfy the terms agreed upon therein. This 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, in part, water suppliers to take all reasonable actions to assure that the water delivered to users does not exceed maximum contaminant levels and that water system facilities are free of public health hazards. A water sample reported for the Water System on September 29, 2022 indicated that water provided by the system exceeds the MCL for arsenic as specified in OAR 333-061-0030(1). Water Supplier's failure to operate its treatment system demonstrates Water Supplier has not taken all reasonable actions to ensure that water does not exceed the MCL for

arsenic. This constitutes a violation of OAR 333-061-0025. Each day that the Water Supplier fails to operate the system effectively is a separate violation.

2. 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 September 14, 2017 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 January 13, 2022 and October 7, 2022 is 0.015 mg/L. This exceeds the MCL of 0.010 mg/L and constitutes a violation of OAR 333-061-0030(1).
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 a regulated contaminant is exceeded. Water suppliers must distribute the public notice as soon as practical but no later than 30 days after learning of the violation, in this case that the MCL for arsenic was exceeded. 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 failed to submit a copy of the public notice to DWS following any of the violations of the MCL at the Water System since public notice received by DWS on April 8, 2021. 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 to 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 effect compliance with the rule(s) violated (ORS 448.255(3)).

1. Water Supplier must submit complete, engineered construction plans for treatment to reduce concentrations of arsenic to below the MCL specified in OAR 333-061-0030(1).
  - The construction plans must meet all the applicable requirements of OAR 333-061-0060 and have sufficient detail to completely and clearly illustrate what will be constructed.

- The plans and any additional information required by this compliance action must be submitted to DWS no later than 60 days after the date of service of this Order
2. Water Supplier must complete construction of the arsenic 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 arsenic treatment system.
  - 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 begin operating the arsenic treatment system, constructed or installed according to Compliance Action No. 2, no later than 60 days after notifying DWS of completing construction.
- For this compliance action to be met, Water Supplier must report arsenic monitoring to DWS, conducted according to OAR 333-061-0036(2)(a), within 5 calendar days of receipt of sample result analysis from a laboratory that demonstrates the treatment system effectively removes arsenic.
4. Water Supplier must monitor arsenic at the Water System according to OAR 333-061-0036(2)(a) and 333-061-0036(1)(g) every month after completing Compliance Action No. 3.
- 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).

**It is a violation of this Order if:**

- **Water Supplier fails to immediately begin monitoring according to OAR 333-061-0036(2)(a), 333-061-0036(1)(g) and Compliance Action No. 4.**
- **The average of three monthly samples within any calendar quarter exceed the MCL. Each instance of the average of monthly samples that exceed the MCL within a calendar quarter is a separate violation.**

5. 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 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).
  - The report must be submitted to DWS within five business days of receipt of sample results exceeding the MCL from the laboratory. Each day Water Supplier fails to timely submit written verification to DWS is a separate violation of this Order.
6. 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) upon notification from DWS, 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 March 1, 2023 for failure to submit construction plans to DWS 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: Kari Salis, Manager; Oregon Health Authority, Drinking Water Services; and may be delivered by mail to PO Box 14450, Portland, OR 97293 or by email to [karyl.l.salis@dhsoha.state.or.us](mailto:karyl.l.salis@dhsoha.state.or.us).**

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 time 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 time 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 [bradley.k.daniels@dhsosha.state.or.us](mailto:bradley.k.daniels@dhsosha.state.or.us) or 503-735-5438.

Date January 6, 2023



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

cc: Susan Baker, Jackson County Environmental Public Health  
Zach Golik, Oregon Health Authority, Drinking Water Services

DATE of Service: January 9, 2023



Signature

Brad K. Daniels

By certified mail and first-class mail