



PUBLIC HEALTH DIVISION
Center for Health Protection, Drinking Water Services

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Authority

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

In the Matter of

Manzanita Hills Homeowners
Association, PWS OR4106155

Respondent

NOTICE OF VIOLATION OF
SETTLEMENT AGREEMENT AND
INTENT TO IMPOSE
CIVIL PENALTY

To: James Robinson, President
Manzanita Hills Homeowners Association
PO Box 157
Shady Cove, OR 97539

James Robinson, Registered Agent
130 Cindy CT
Shady Cove, OR 97539

Pursuant to Oregon Revised Statute (ORS) 448.280, ORS 448.285, and Oregon Administrative Rule (OAR) 333-061-0090, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) intends to impose a civil penalty of \$6,000 against Manzanita Hills Homeowners Association for violations of OAR 333-061-0025, 333-061-0030 and 333-061-0090.¹

Findings of Facts and Conclusions of Law

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"), identified by public water system ID# OR4106155; which is a community

¹ This Notice relies on the definitions provided in ORS 448.115 and OAR 333-61-0020, unless the context indicates otherwise.

water system serving approximately 30 people living in residences along Cindy Court, Cindy Way and Linda Lane in Shady Cove, Oregon. The Water System is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0272.

Manzanita Hills Homeowners Association (hereinafter “Water Supplier”) is therefore a water supplier as defined in ORS 448.115(12) and OAR 333-061-0020 and has specific responsibilities. ORS 448.115(12); OAR 333-061-0020; OAR 333-061-0025 and 333-061-0030.

Water supplier responsibilities include taking 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. Maximum contaminant level (MCL) means the maximum allowable level of a contaminant in the water delivered to users of a public water system. OAR 333-061-0020(83). The MCL for arsenic in drinking water is 0.010 mg/L. OAR 333-061-0030(1). Arsenic occurs in drinking water from the erosion of natural deposits, runoff from orchards or runoff from glass and electronics production wastes. OAR 333-061-0043(3).

Procedural History

DWS served a Notice of Violation and Administrative Order (Order) to Water Supplier on January 9, 2023 for the following failures: (1) failure to take all reasonable actions to assure water delivered to users does not exceed maximum contaminant levels and ensure that water system facilities are free of public health hazards in violation of OAR 333-061-0025; (2) failure to comply with the MCL for arsenic in violation of OAR 333-061-0030(1); and (3) failure to notify all customers at the Water System when maximum contaminant levels were exceeded in violation of OAR 333-061-0042. The Order required Water Supplier to take several actions, including but not limited to: submit complete, engineered construction plans for treatment to reduce concentrations of arsenic in drinking water, complete construction of an arsenic treatment system for which construction plans were submitted, begin effectively operating the arsenic treatment system, and report arsenic monitoring that demonstrates drinking water contains arsenic concentrations below the MCL. The Order is incorporated by reference.

Water Supplier appealed the Order on January 14, 2023. On March 8, 2023, Water Supplier and DWS entered into a Settlement Agreement and Final Order (Settlement). In the Settlement, Water Supplier agreed to complete several actions, including but not limited to: (1) completing the plan approval process for a new groundwater well; (2) submitting construction plans for treatment to reduce the concentration of arsenic if the new groundwater well produced water with arsenic exceeding the MCL; (3) constructing

the arsenic treatment for which plans were submitted; and (4) operating the arsenic treatment system constructed according to the Settlement. In addition, Water Supplier agreed that if the average concentration of arsenic in samples reported for any calendar quarter exceeded the MCL, each instance is a separate violation of the Settlement. Water Supplier also agreed that if DWS determines Water Supplier has violated the Settlement, Water Supplier would have the opportunity to contest whether a violation of the Settlement occurred but would not have the right to contest the violations identified in the Order.

The Settlement was entered into a Final Order on March 8, 2023. The Settlement and Final Order are incorporated herein by reference.

Violations

DWS may impose civil penalties against any person who violates a rule of the Oregon Health Authority relating to the construction, operation, or maintenance of a water system. ORS 448.280(1). It is a violation of rule to fail to comply with an order issued by DWS. OAR 333-061-0090(3)(i).

Each failure of the Water Supplier to comply with the Settlement, as incorporated into a final order, is a separate violation of rule, subject to civil penalty up to \$500 per day per violation. ORS 448.280(1); OAR 333-061-0090(3)(i). Water Supplier's violations are identified below.

Violation 1: Failure to comply with the Settlement in violation of OAR 333-061-0090(3)(i)- Failure to complete plan approval for the new groundwater well.

The Settlement required Water Supplier to complete the DWS plan approval process to the best of its ability for a new groundwater well at the Water System, within 90 days of certifying well construction according to Settlement Article No. 1.

Water Supplier certified well construction was completed on May 18, 2023. Water Supplier was therefore required to complete the DWS plan approval process by no later than August 16, 2023. As of the date of this Notice, Water Supplier has not completed the plan approval process despite several prompts from DWS. Each day Water Supplier failed to complete the DWS plan approval process after August 16, 2023 is a separate failure to comply with the Settlement and separate violation of a DWS order, authorizing DWS to impose a civil penalty. OAR 333-061-0090(3)(i).

Violation 2: Failure to comply with the Settlement in violation of OAR 333-061-0090(3)(i)- failure to submit complete construction plans.

The Settlement required Water Supplier to submit complete construction plans for treatment to reduce concentrations of arsenic within 60 days after completing well construction, if the new well produced drinking water with concentrations of arsenic exceeding the MCL.

Well construction was completed on May 18, 2023. Water Supplier reported samples from the new well on May 31, 2023 and on June 29, 2023, both of which reported concentrations of arsenic exceeding the MCL specified in OAR 333-061-0030(1). Water Supplier was therefore required to submit construction plans for treatment by no later than July 17, 2023. As of the date of this Notice, Water Supplier has not submitted construction plans for treatment to reduce concentrations of arsenic. Each day Water Supplier failed to submit construction plans after July 17, 2023 is a separate failure to comply with the Settlement and separate violation of a DWS order, authorizing DWS to impose a civil penalty. OAR 333-061-0090(3)(i).

CIVIL PENALTY

Pursuant to OAR 333-061-0090, DWS intends to impose a total civil penalty in the amount of \$6,000 based upon the population served by the public water system and each violation of OAR 333-061-0090. DWS 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 30 people is \$50 per day according to OAR 333-061-0090(4). DWS intends to impose a civil penalty of \$50 per day for the violation.

DWS intends to impose a civil penalty for each day of non-compliance, a total of 60 days. The number of days is based on the period of time from January 1, 2024 through March 1, 2024. 60 days is appropriate for the violation because the Settlement directed Water Supplier to complete plan approval for the new well and submit complete construction plans for arsenic treatment and after multiple reminders, Water Supplier has failed to complete the required actions or demonstrate progress toward completing the actions.

The total proposed civil penalty is \$6,000 (Violation 1: 60 x \$50; and Violation 2: 60 x \$50).

If the violations identified in this Notice continue or if Water Supplier violates any other applicable laws, rules, or orders, it may be subject to additional civil penalties per day per violation.

CIVIL PENALTY FACTORS CONSIDERED

In assessing the civil penalty, DWS 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:
 - There is a history of violating the MCL for arsenic at the Water System since as early as 2017. Prior to 2017, the Water System was not subject to the MCL for arsenic. In addressing the arsenic exceedance, Water Supplier has failed and succeeded on occasion to take all feasible steps to correct the violation as identified below.
 - On February 13, 2018, Jackson County Health & Human Services issued a letter to Water Supplier that required a plan to reduce the concentration of arsenic in drinking water to below the MCL. Water Supplier failed to create or submit a plan and according to the letter and in a response to Jackson County Health & Human Services, according to email communications with DWS on November 8, 2018, claimed Water Supplier was unable to repair an existing treatment system or plan for a new treatment system.
 - DWS and Water Supplier executed a bilateral compliance agreement (Agreement) on January 3, 2019 due to the continued presence of arsenic exceeding the MCL in drinking water at the Water System. In the Agreement, Water Supplier agreed to submit an action plan to DWS no later than June 1, 2019 to ensure compliance with the MCL for arsenic in drinking water at the Water System. Water Supplier failed to meet this deadline and requested an extension to August 1, 2019.
 - On May 13, 2019, DWS approved an extension to the Agreement. In this extension, Water Supplier agreed to submit an action plan to DWS no later than August 1, 2019 to ensure compliance with the MCL for arsenic in drinking water at the Water System. Water Supplier failed to meet this deadline and requested an extension to January 1, 2020 to allow its contractor to complete the treatment project at the water system.

- On July 16, 2019, DWS approved an extension to the Agreement. In this extension, Water Supplier agreed to submit an action plan to DWS no later than January 1, 2020 to ensure compliance with the MCL for arsenic in drinking water at the Water System.
- On December 19, 2019, Water Supplier submitted a schematic for a proposed arsenic treatment system to be installed at the Water System in the first calendar quarter of 2020.
- Water Supplier failed to submit an action plan to DWS by the January 1, 2020 deadline, nor did Water Supplier communicate any information to DWS about the plan or work it had completed to produce the plan, or delays it experienced.
 - (b) Prior violations:
- Over the last five years, numerous violations of drinking water regulations occurred at the Water System, some on a repeat basis. These prior violations include:
 - Multiple violations of OAR 333-061-0025(1), which requires monitoring according to OAR 333-061-0036. These violations include but are not limited to:
 - One violation of OAR 333-061-0036(6)(c) for failing to report routine monitoring for coliform bacteria for the month of December 2023 (violation No. 900000044).
 - One violation of OAR 333-061-0036(6)(i) for failing to report groundwater source sampling for the period from January 5, 2021 through January 16, 2021 (violation No. 900000023).
 - Two violations of OAR 333-061-0036(10) for failing to report lead and copper monitoring for the following periods:
 1. January 1, 2019 through June 30, 2019 (violation No. 900000014), and
 2. January 1, 2020 through December 31, 2022 (violation No. 900000035).
 - Multiple violations of OAR 333-061-0025(4), which requires notification to water users according to OAR 333-061-0042. These violations stem from, including but not limited to:
 - Nine violations of OAR 333-061-0042(3)(b) for failing to notify the public about drinking water that exceeded the MCL for arsenic during the periods of:
 1. July 1 through September 30, 2019 (violation No. 900000017),
 2. January 1 through March 31, 2020 (violation No. 900000019),
 3. April 1 through June 30, 2020 (violation No. 900000021),
 4. April 1 through June 30, 2021 (violation No. 900000028),
 5. July 1 through September 30, 2021 (violation No. 900000031)

6. October 1 through December 31, 2021 (violation No. 900000032),
 7. April 1 through June 30, 2022 (violation No. 900000039),
 8. July 1 through September 30, 2022 (violation No. 900000038), and
 9. October 1 through December 31, 2022 (violation No. 900000041).
- Nineteen violations of OAR 333-061-0030(1) because drinking water exceeded the MCL for arsenic during the periods of:
 1. January 1 through March 31, 2019 (violation No. 900000012),
 2. April 1 through June 30, 2019 (violation No. 900000013),
 3. July 1 through September 30, 2019 (violation No. 900000015)
 4. October 1 through December 31, 2019 (violation No. 900000016),
 5. January 1 through March 31, 2020 (violation No. 900000018),
 6. April 1 through June 30, 2020 (violation No. 900000020),
 7. July 1 through September 30, 2020 (violation No. 900000022)
 8. October 1 through December 31, 2020 (violation No. 900000024),
 9. January 1 through March 31, 2021 (violation No. 900000025),
 10. April 1 through June 30, 2021 (violation No. 900000027),
 11. July 1 through September 30, 2021 (violation No. 900000029)
 12. October 1 through December 31, 2021 (violation No. 900000030),
 13. January 1 through March 31, 2022 (violation No. 900000033)
 14. April 1 through June 30, 2022 (violation No. 900000034),
 15. July 1 through September 30, 2022 (violation No. 900000036),
 16. October 1 through December 31, 2022 (violation No. 900000037),
 17. January 1 through March 31, 2023 (violation No. 900000040),
 18. April 1 through June 30, 2023 (violation No. 900000043), and
 19. October 1 through December 31, 2023 (violation No. 900000045).
 - One violation of OAR 333-061-0043(6)(c) for Failing to submit to DWS a copy of the annual consumer confidence report for the 2022 calendar year (violation No. 900000042).

DWS considered these prior violations as an aggravating factor to support imposing the maximum civil penalty in this matter. DWS need not prove every prior violation to support a finding that this factor is aggravating.

- (c) Economic and financial conditions of the person incurring the penalty:
 - DWS has no information about the Water Supplier's economic or financial details, or the economic or financial conditions at the Water System. DWS considered this factor neutral when determining the appropriate civil penalty 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 DWS within 20 days from the date this notice 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 request a hearing within the 20 days, withdraw the request for hearing, notify DWS or the administrative law judge that you will not appear at a scheduled hearing, or fail to appear at a scheduled hearing, DWS may issue a final order by default imposing a civil penalty. If DWS issues a final order by default, DWS designates its files on this matter as the record for the purpose of proving a *prima facie* case upon default.

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>.

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 DWS 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 of \$3,000.

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 bradley.k.daniels@oha.oregon.gov or (503) 735-5438.

Date 3/28/2024



Samina Panwhar, Manager
Drinking Water Services
Oregon Health Authority

cc: Tony George, Jackson County Environmental Health
Luke Scott, Manzanita Hills Homeowners Association
Rebecca Templin, Oregon Health Authority, Drinking Water Services

DATE of Service: March 29, 2024



Brad K Daniels

By certified and first-class mail