

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

¹ This Notice of Violation of Settlement Agreement and Intent to Impose Civil Penalty relies on the definitions provided in ORS 448.115 and OAR 333-61-0020, unless the context indicates otherwise.

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FINDINGS OF FACT & 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 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

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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 Agreement #1”). In Settlement Agreement #1, 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 Settlement Agreement #1. 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 Settlement Agreement #1. Water Supplier also agreed that if DWS determines Water Supplier has violated Settlement Agreement #1, Water Supplier would have the opportunity to contest whether a violation of Settlement Agreement #1 occurred but would not have the right to contest the violations identified in Settlement Agreement #1. Settlement Agreement #1 is incorporated herein by reference.

DWS served a Notice of Violation of Settlement Agreement and Intent to Impose Civil Penalty (Notice) to Water Supplier on March 29, 2024 for the following failures: (1) failure to comply with the Agreement in violation of OAR 333-061-0090(3)(i) by not completing plan approval for a new groundwater well; and (2) failure to comply with the Agreement in violation of OAR 333-061-0090(3)(i) by not submitting complete construction plans for arsenic treatment. The Notice proposed a civil penalty of \$6,000. The Notice is incorporated by reference.

Water Supplier appealed the Notice on April 7, 2024. Water Supplier and DWS entered into a Settlement Agreement and Final Order (“Settlement Agreement #2” on May 3, 2024. Settlement Agreement #2 is incorporated herein by reference.

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In Settlement Agreement #2, Water Supplier agreed to complete plan review and obtain DWS approval, according to the letter dated November 29, 2022 for the new groundwater well developed at the Water System and identified by Well Tag L150762 within 90 days of signing Settlement Agreement #2, which occurred on April 30, 2024. Water Supplier also agreed, in the Settlement, to install or construct treatment to reduce the concentration of arsenic in drinking water to below the MCL within 90 days of signing Settlement Agreement #2 and according to construction plans approved by DWS. DWS agreed in the Settlement to hold in abeyance 95% of the proposed civil penalty (\$5,700) pending Water Supplier's compliance with the Settlement Agreement #2.

Water Supplier agreed to pay the remaining civil penalty of \$5,700.00 if Water Supplier failed to meet the terms of Settlement Agreement #2 within 10 days of the issuance of this Notice of Violation of Settlement Agreement and Intent to Impose Civil Penalty.

Settlement Agreement #2 was entered into a Final Order on May 3, 2024. The Settlement Agreement 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 Water Supplier to comply with Settlement Agreement #2, as incorporated into a final order, is a separate violation of rule, subject to civil penalties 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 Settlement Agreement #2 in violation of OAR 333-061-0090(3)(i)—Failure to complete plan review for the groundwater well identified by Well Tag L150762.

Water Supplier failed to complete plan review for the new groundwater well identified by Well Tag L150762 within 90 days of signing Settlement Agreement #2a.

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Violation 2: Failure to comply with Settlement Agreement #2 in violation of OAR 333-061-0090(3)(i)—Failure to install or construct treatment to reduce the concentration of arsenic in drinking water to below the MCL.

Water Supplier failed to install or construct treatment to reduce the concentration of arsenic in drinking water to below the MCL within 90 days of signing Settlement Agreement #2.

As of the date of this Notice of Violation of Settlement Agreement and Intent to Impose Civil Penalty, Water Supplier has not completed plan review for the groundwater well identified by Well Tag L150762 or installed or constructed treatment to reduce the concentration of arsenic in drinking water to below the MCL. Water Supplier has failed to take the required actions or demonstrate progress toward completing the required actions.

CIVIL PENALTY

Pursuant to OAR 333-061-0090(3)(i), DWS proposes to lift the abeyance on the \$5,700 civil penalty that was entered in Settlement Agreement #2 and impose a total civil penalty of \$5,700 for the violations identified in the Notice of Violation of Settlement Agreement and Intent to Impose Civil Penalty dated March 29, 2024 and pursuant to the methodology described therein.

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

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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.

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GENERAL PROVISIONS

Civil penalty amounts are established in Oregon Administrative Rule 333-061-0090. If unpaid, civil penalties may be recorded and filed with county clerks as liens against property 10 days after the expiration of the statutory appeals period. DWS may assign liquidated and delinquent civil penalties to the Department of Revenue, as provided in ORS 293.250.

If you have any questions about payment, or wish to make payment arrangements, please refer to the invoice attached to this final order. Make Checks payable to the Oregon Health Authority, Drinking Water Services. Refer to the attached invoice for where to send the payment and payment options.

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.

You are entitled to a judicial review of this Order in accordance with ORS 183.482. To appeal, you must file a petition for judicial review with the Court of Appeals within 60 days from the date of service of this Order.

If you need to receive the information in this letter in an alternate format, or if you have any questions regarding this Order, please contact Brad K. Daniels at (503) 735-5438.

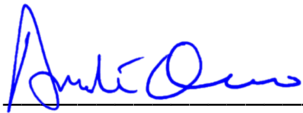
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Manzanita Hills Homeowners Association

Date December 2, 2024



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

cc: Tawni Bean, Business Oregon
Tony George, Jackson County Environmental Public Health Division
Zach Golik, Oregon Health Authority, Drinking Water Services
Rebecca Templin, Oregon Health Authority, Drinking Water Services

DATE of Service: December 4, 2024



Brad K Daniels

By certified and first-class mail

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