

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

In the Matter of

Hidden Pines II, LLC / Hidden Pines
RV Park Public Water System, PWS
OR4190137

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Hidden Pines II, LLC
David W Schalker
52158 Elderberry Lane
La Pine OR 97739

Hidden Pines II, LLC has at all times mentioned herein owned and operated, and continues to own and operate, the Hidden Pines RV Park water system (hereinafter "Water System") identified by public water system ID # OR4190137 located at 52158 Elderberry Lane, La Pine OR 97739. The Water System is a transient non-community water system serving approximately 46 people and subject to regulation under Oregon Revised Statutes 448.115 to 448.290 and Oregon Administrative Rules 333-061-0005 to 333-061-0272.

Hidden Pines II, LLC (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 has reviewed the operation of the Water System pursuant to its authority in ORS 431A.010, 448.150 and 448.255. DWS has determined that water provided by the water system exceeds the nitrate maximum contaminant level (MCL) of 10 mg/L as specified in OAR 333-061-0030. Drinking water with concentrations of nitrate above 10 mg/L can cause Methemoglobinemia or blue baby syndrome. There is also an increased risk of recurrent respiratory infections, thyroid dysfunction, negative reproductive outcomes and certain cancers including cancer of the stomach or bladder. OAR 333-061-0097. This represents a potential public health hazard.

A Bilateral Compliance Agreement (“Agreement”) was entered into between DWS and Water Supplier on February 11, 2019 to address the contamination of the drinking water provided by the Water System. However, the Water Supplier did not meet the April 22, 2019 deadline to submit construction plans as listed in the Agreement.

This Notice of Violation and Administrative Order (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 333-061-0030(1) specifies that the maximum contaminant level (MCL) for nitrate in drinking water is 10 mg/L. The average concentration of nitrate in drinking water at the Water System, calculated according to OAR 333-061-0036(2)(h) and based on a sample collected on December 15, 2016 and confirmation sample collected on December 28, 2016 is 12.35 mg/L. This exceeds the MCL of 10 mg/L and constitutes a violation of OAR 333-061-0030(1).
2. OAR 333-061-0025 requires water suppliers to take all reasonable actions to assure that the water delivered to water users does not exceed maximum contaminant levels, that water system facilities are free of public health hazards and that water system operation and maintenance are performed as required by the rules.

A nitrate treatment system was installed at the Water System as of June 8, 2017 but samples collected at the Water System on July 14, 2017, and August 7, 2018 exceeded the MCL for nitrate as specified in OAR 333-061-0030(1). Additionally, the treatment system installed at the water system only removes nitrate from one of the two wells supplying water to the Water System. Water Supplier's failure to operate the treatment system effectively, combined with the installation of treatment for one of the Water System's two sources of water demonstrates that Water Supplier has not taken all reasonable actions to assure water users that water delivered will not exceed the MCL for nitrate. This constitutes a violation of OAR 333-061-0025.

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 affect compliance with the rule(s) violated (ORS 448.255(3)).

1. Water Supplier must submit complete construction plans to DWS for water treatment or other facilities at the Water System that will ensure compliance with the MCL for nitrate in all water delivered to water users. The construction plans must:
 - Be submitted within 30 days of signing this Order; and
 - Meet the requirements in OAR 333-061-0060 for the construction or modification of any facilities at the Water System. Construction plans must be approved by DWS prior to any construction or installation taking place.
2. Water supplier must complete construction or installation of water treatment facilities at the Water System that will ensure compliance with the MCL for nitrate and according to the plans approved by DWS.
 - Construction and installation must be completed within 90 days of DWS granting conditional approval of the construction plans submitted according to Actions Required to Achieve Compliance No. 1. Water Supplier must notify DWS in writing within 5 calendar days of completing construction or installation.
 - For this corrective action to be met, any construction or installation that was performed must meet the applicable construction standards in OAR 333-061-0050, as approved by DWS.

3. Water Supplier must collect water samples according to OAR 333-061-0036(2)(c) and submit testing results to DWS within 30 calendar days of notifying DWS that construction was completed. The test results must show the drinking water produced by the Water System is below the MCL in OAR 333-061-0030(1) for nitrate.
 - o Water Supplier will be in compliance with this Order if samples collected at the Water System have concentrations of nitrate below the MCL specified in OAR 333-061-0030(1) for four consecutive calendar quarters.
4. Water Supplier must publish a Tier 1 public notice according to OAR 333-061-0042 that informs customers that drinking water at the Water System exceeds the MCL for nitrate whenever sample results exceed the MCL. The notice must be distributed within 24 hours of the water supplier learning of the violation. The notice must meet all the applicable requirements in OAR 333-061-0042.
 - o Within 10 calendar days of distributing the public notice to customers, Water Supplier shall send a copy of the notice to DWS along with a written statement that it has fully complied with the distribution and public notification requirements in OAR 333-061-0040(1)(i).

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 July 1, 2019

for failure to submit construction plan according to this Order, the proposed civil penalty could be as much as \$3000.

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: David Emme, Manager; Oregon Health Authority, Drinking Water Services; PO Box 14450; Portland, OR 97293.**

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 Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information, contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll-free telephone number.

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 at 971-673-0407.

Dated this 23rd day of May, 2019.



David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Michelle Byrd, Oregon Health Authority, Drinking Water Services
Jeff Freund, Deschutes County Environmental Health

DATE of Service: 5/23/2019



Signature
Abbie Spielman
Printed Name

By certified mail and first-class mail