

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

In the Matter of

Harper Elementary and High  
School Public Water System,  
PWS OR4190575

Respondents

Ron Talbot  
Harper School District #66  
2987 Harper/Westfall Road  
Harper, OR 97906

CANCELLATION OF BILATERAL  
COMPLIANCE AGREEMENT

NOTICE OF VIOLATION AND  
ADMINISTRATIVE ORDER

Harper School District #66 has at all times mentioned herein owned and operated, and continues to own and operate the Harper Elementary and High School public water system (hereinafter "Water System") located at 2987 Harper/Westfall Road in Harper, Oregon. The Water System is a community public water system serving approximately 120 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.

Harper School District #66 (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 August 10, 2022. In the BCA, Water Supplier agreed, in part, to report arsenic monitoring for six consecutive months with arsenic concentrations at or below the MCL in every sample; however, Water Supplier was unable to operate its arsenic treatment system such that concentrations of arsenic were at or below the MCL at any time since signing the BCA.

Water Supplier has not demonstrated it satisfied the terms of the BCA and after reporting a sample result on October 4, 2022 with an arsenic concentration of 0.0448 mg/L, which exceeds 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 August 10, 2022 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. Water samples reported for the Water System on October 4 and October 12, 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 maximum contaminant level (MCL) for arsenic in drinking water is 0.010 mg/L. Sample results reported for the Water System, beginning with a sample collected on May 18, 2022 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 May 18, 2022 and October 5, 2022 is 0.030 mg/L. This exceeds the MCL of 0.010 mg/L and constitutes a violation of OAR 333-061-0030(1).

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

3. OAR 333-061-0065(1)(a) requires water suppliers to operate all phases and components of the water system effectively in the manner for which they were designed. The Water System has an arsenic treatment system and this treatment is not operated effectively such that arsenic concentrations are at or below the MCL. The failure to operate the arsenic treatment system constitutes a violation of OAR 333-061-0065(1)(a). Each day that the Water Supplier fails to operate the arsenic treatment system is a separate violation of OAR 333-061-0065(1)(a).

### 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 immediately restore the arsenic treatment at the Water System to effective operation such that concentrations of arsenic in drinking water are below the MCL specified in OAR 333-061-0030(1). Each day that the Water Supplier fails to operate the arsenic treatment at the Water System is a separate violation of this Order.
2. Water Supplier must submit a written plan to DWS no later than November 30, 2022, for effectively operating the treatment at the Water System such that concentrations of arsenic will remain below the MCL specified in OAR 333-061-0030(1) in the future. The plan must identify the cause of previous treatment failures at the Water System, include and identify a schedule for replacing any required treatment components or

chemicals, criteria for determining the schedule and documentation from the manufacturer of the treatment confirming the frequency will be sufficient for effective operation of the treatment.

3. Water Supplier must monitor arsenic at the Water System according to OAR 333-061-0036(2)(a) and 333-061-0036(1)(g) as follows:
  - Monitoring must begin immediately in November 2022 and be conducted every month according to OAR 333-061-0036(1)(g). 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 Corrective Action No. 3.**
- **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.**

4. 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).
  - Each day Water Supplier fails to timely submit written verification to DWS is a separate violation of this Order.
5. 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), 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 \$100 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 December 1, 2022 for failure to submit a written action plan to DWS according to this Order, the proposed civil penalty could be as much as \$3,000.

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

Date 10/26/22



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Kari Salis, PE  
Interim Manager  
Drinking Water Services  
Oregon Health Authority

cc: Bill Goss, Oregon Health Authority, Drinking Water Services  
Amy Word, Oregon Health Authority, Drinking Water Services

DATE of Service: October 28, 2022



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Signature

Brad K Daniels

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Printed Name

By certified mail and first-class mail