

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

In the Matter of

Willowcreek Elementary School, PWS  
OR4193750

Respondent

NOTICE OF VIOLATION AND  
ADMINISTRATIVE ORDER

To: Vale School District  
Alisha McBride, Superintendent  
403 E Street West  
Vale, OR 97918

Vale School District has at all times mentioned herein owned and operated, and continues to own and operate, the Willowcreek Elementary School public water system (hereinafter "Water System") located at 2300 9<sup>th</sup> Avenue West in Vale, Oregon. The Water System is a non-transient non-community public water system serving approximately 80 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.

Vale School District (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 water provided by the Water System exceeds the maximum contaminant level (MCL) for arsenic. Water Supplier is therefore 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.

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

- Violation No. 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 collected at the Water System indicate that water provided by the system exceeds the MCL for arsenic as specified in OAR 333-061-0030(1) despite Water Supplier's installation of an arsenic treatment system. Water Supplier's failure to operate the treatment system effectively demonstrates it 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.
- Violation No. 2: OAR 333-061-0030(1) specifies that the MCL for arsenic in drinking water is 0.010 mg/L, calculated as a running annual average (RAA) according to OAR 333-061-0036(2)(h). Sample results reported for the Water System on September 8, 2017, February 6, 2018 and October 2, 2018 each exceeded the MCL for arsenic; making the current RAA for arsenic in drinking water at the Water System 0.074 mg/L. This constitutes a violation of OAR 333-061-0030(1).

Arsenic levels at or above 0.035 mg/L have been associated with health effects in children after very short-term exposures (two weeks or less) because children drink more water per body weight than adults and they are passing through important developmental stages, especially in brain development. Potential health effects when drinking water high in arsenic over a short period of time include: stomach pain,

nausea, vomiting, diarrhea, heart, lung, liver, immune, nervous or reproductive system disorders and diabetes.

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)(b).

### 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)).

- Compliance Action No. 1: Water Supplier must keep a log identifying its actions to adequately maintain and operate the arsenic treatment at the Water System. The log must be available to DWS upon request and must include, but isn't limited to:
  1. The depth of salt in the brine tank, recorded at least once every week;
  2. When salt is added to the brine tank and the amount of salt added;
  3. The reading of the flow meter, recorded at least once every week;
  4. Date of maintenance and action(s) performed by the treatment vendor; and
  5. The concentration of arsenic in treated water, recorded at least once every week using a field test approved by DWS.
- Compliance Action No. 2: Water Supplier must conduct arsenic monitoring according to OAR 333-061-0036(2)(a) at the Water System.
  - Monitoring must begin immediately and be conducted every month according to OAR 333-061-0036(1)(g) with results reported to the Authority no more than 10 days after the end of each month according to OAR 333-061-0040(1).
  - This monitoring must continue until DWS notifies Water Supplier that Compliance Action No. 4 was fulfilled.
- Compliance Action No. 3: Water Supplier must publish public notice for exceeding the MCL for arsenic. The notice must be approved by DWS and meet all the applicable requirements of OAR 333-061-0042(4)

- The notice must be distributed so that every person served by the Water System and the parent or guardian of every student served by the Water System receives the notice.
- Water Supplier must reissue the notice every three months until all other compliance actions specified in the order are fulfilled (OAR 333-061-025 and OAR 333-061-0042(3)(b)(C)).
- Water Supplier must submit to the Authority a copy of the notice and certification of the method of distribution and locations where the notice was posted no later than 10 days after completing the public notification per OAR 333-061-0040(1)(i).
- Water Supplier must verify the notice is available and easily accessible at its website, Facebook webpage and any other social media website representing the Water System. Water Supplier must continually post the notice until DWS notifies it that Compliance Action No. 4 was fulfilled.
- Compliance Action No. 4: Water Supplier must report sample results according to Compliance Action No. 2 that demonstrate water delivered by the Water System has concentrations of arsenic below the MCL every month for 12 consecutive months.
  - The twelfth consecutive sample result must be reported to DWS no later than December 10, 2019.

#### 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 November 7, 2018 for failure to submit an action plan 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: 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 Service members. 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 1 (800) 452-7500 for more information. The internet address for the United States Armed Forces Legal Assistance Locator website is <http://legalassistance.law.af.mil/content/locator.php>.

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 971-673-0405.

Dated this 30<sup>th</sup> day of October, 2018.



David Emme, Manager  
Drinking Water Services  
Oregon Health Authority

cc: Bill Goss, Oregon Health Authority, Drinking Water Services  
Malheur County Health Department

DATE of Service: October 31, 2018



Bradley K. Daniels

By certified mail and first-class mail