

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

In the Matter of

The City of Nyssa, PWS OR4100579

BILATERAL COMPLIANCE AGREEMENT

The City of Nyssa (the City) is a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(211), and as a water supplier, has specific responsibilities that are identified in OAR 333-061-0025.

The City has at all times mentioned herein owned and operated, and continues to own and operate, the public water system serving the City of Nyssa located in Malheur County, Oregon. The Nyssa water system is a community water system serving approximately 3,200 people and is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0290.

Pursuant to its authority under ORS 448.150, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) has reviewed the operation of the Nyssa water system.

This agreement is entered into between DWS and the City for the purpose of acknowledging that levels of arsenic in drinking water produced by the Nyssa water system exceed the maximum contaminant level (MCL) as specified in OAR 333-061-0030(1). The further purpose of this agreement is to establish a commitment by the City to reduce levels of arsenic in drinking water produced by the Nyssa water system to below the MCL.

FINDINGS OF FACT

- The MCL for arsenic is 0.010 mg/L as specified in OAR 333-061-0030(1).
- Sampling results for arsenic in drinking water, submitted to DWS by the City, first exceeded the MCL in a sample collected on December 6, 2006. Since that date, inclusive, the arsenic concentration in drinking water produced by the Nyssa water system has averaged 0.0127 mg/L.
- The City has issued public notice for exceeding the MCL for arsenic as required by OAR 333-061-0042.
- The City has reviewed its options for arsenic treatment and is in the process of determining how to proceed.
- The City has applied for financing through the Drinking Water State Revolving Fund and is also seeking other funding sources to ensure compliance with the MCL for arsenic.
- The City has proposed a corrective action plan and submitted it to DWS outlining the steps it will take, and the expected amount of time necessary, to reduce levels of arsenic in drinking water produced by the Nyssa water system.

AGREEMENT

Upon completion of the activities described below, by the deadlines specified herein, The City will have satisfied the terms of this agreement and will be considered to be in compliance with the rule(s) mentioned hereto.

- Agreement Activity No. 1: The City will complete pilot testing and initial system design no later than December 31, 2014.
- Agreement Activity No. 2: The City will submit complete construction plans to DWS identifying how the City will ensure compliance with the MCL for arsenic at the Nyssa water system no later than March 1, 2015.
 - The construction plans will meet all the applicable requirements of OAR 333-061-0060 and have sufficient detail to completely and clearly illustrate what will be constructed.

- Agreement Activity No. 3: The City will complete construction and installation of the project at the Nyssa water system within fifteen months of conditional approval being granted by DWS.
 - Construction will be completed in accordance with the plans approved by DWS and submitted as specified in Agreement Activity No. 2.
 - Construction of any improvements at the Nyssa water system will proceed in accordance with the construction standards specified in OAR 333-061-0050.
- Agreement Activity No. 4: The City will submit sampling results to DWS that demonstrate that all users served by the Nyssa water system receive drinking water with concentrations of arsenic are below the MCL as specified in OAR 333-061-0030(1) within ninety (90) days of completing construction as specified in Agreement Activity No. 3.
- Agreement Activity No. 5: The City will continue to publish public notice for exceeding the MCL for arsenic. The notice will meet all of the applicable requirements of OAR 333-061-0042(4), and be re-published every three months to include changes or additional information regarding arsenic in drinking water at the Nyssa water system. The City will continue to publish the notice until all corrections are made and all system users receive drinking water that meets all applicable state and federal drinking water laws and rules (OAR 333-061-025 and OAR 333-061-0042(3)(b)(C)). The City will submit a copy of the notice and certification of the method of distribution to the DWS no later than 10 days after completing the public notification per OAR 333-061-0040(1)(i).
 - Submit copies of the public notice to: Bill Goss, OHA Drinking Water Services, 700 SE Emigrant Ave., Rm. 240, Pendleton, OR 97801.

GENERAL PROVISIONS

This Agreement does not constitute a waiver, suspension or modification of the requirements of the Oregon Drinking Water Quality Act; ORS 448.115 to 448.285 and administrative rules OAR 333-061-0005 to 333-061-0290, which remain in full force and effect.

This Agreement does not relieve the City of any responsibilities or liabilities established pursuant to any applicable federal, state, or local law or regulation.

DWS has determined that additional enforcement action is not warranted at this time, and so long as The City meets all of the requirements and deadlines specified in this Agreement, DWS will forgo additional enforcement action which could include the assessment of civil penalties as prescribed by OAR 333-061-0090.

Dated this 25th day of May, 2013.

W. Mark Stringer
W. Mark Stringer, Mayor
The City of Nyssa

Dated this 29th day of May, 2013.

Kari Salis
Kari Salis, PE
Interim Program Manager, Drinking Water Services
Oregon Health authority

cc: Bill Goss, OHA-DWS
Roberta Vanderwall, The City of Nyssa