



Oregon

Theodore R. Kulongoski, Governor

Department of Human Services

Public Health Division

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BEFORE THE STATE OF OREGON
DEPARTMENT OF HUMAN SERVICES
OFFICE OF ENVIRONMENTAL PUBLIC HEALTH

In the Matter of

City of Prescott, PWS OR4100692

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Kevin Miller, Mayor
City of Prescott
72742 Blakely St
Rainier, OR 97048

The City of Prescott is a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(175).

The City of Prescott, as a water supplier, has specific responsibilities that are specified in OAR 333-061-0025.

The City of Prescott has at all times mentioned herein operated and continues to operate a community public water system, which serves between 25 and 100 people, and is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0295.



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Pursuant to its authority under ORS 448.150, the Oregon Department of Human Services, Public Health Division, Office of Environmental Public Health, Drinking Water Program (Agency) has conducted an investigation into the operation of the water system operated by the City of Prescott.

The Agency found, during its investigation, that the City of Prescott violated the maximum contaminant level (MCL) for arsenic. Also, the City of Prescott did not consistently report arsenic sample results. The City of Prescott 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 the City of Prescott for specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.285) and rules found during the Agency's investigation.

DESCRIPTION OF RULE VIOLATIONS

- Violation No. 1: The City of Prescott is required to conduct sampling of its water system to determine compliance with the Maximum Contaminant Level (MCL) for arsenic. The City of Prescott exceeded the MCL for arsenic, based upon the available samples and determined by running annual average (RAA) per OAR 333-061-0036(2)(j), in each of the following monitoring periods:
 - Fourth quarter 2008
 - First quarter 2009
- This constitutes two separate violations of OAR 333-061-0030(1).

The adverse health effects language for a violation of the MCL for arsenic (from OAR 333-061-0097) is: "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."

- Violation No. 2: The City of Prescott failed to report arsenic sampling results for each of the following quarterly monitoring periods:
 - First quarter 2008
 - Second quarter 2008
 - Third quarter 2008

This constitutes three violations of OAR 333-061-0036(2)(a).

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

The City of Prescott 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) allegedly violated (ORS 448.255(3)).

- Compliance Action No. 1: The City of Prescott must comply with one of the following options to meet the MCL for arsenic:
 - Option No. 1: Install an approved treatment system that meets the construction standards listed in OAR 333-061-0050(4).
 - Option No. 2: Develop a new water source that meets all applicable requirements in OAR 333-061-0050.
 - Option No. 3: Connect to, and receive water from, another public water system.

The City of Prescott must comply with the following requirements for plan review and construction. All plans for additions and/or alterations to the system must be approved in advance, before installation, by the Agency (OAR 333-061-0060(1)(a)).

- Plans shall have sufficient detail to completely and clearly illustrate what will be constructed and how the water system will meet construction standards (OAR 333-0061-0060(1))
- The City of Prescott must submit construction plans no later than July 31, 2009. These construction plans must clearly indicate which of the three options specified above was selected to meet the MCL for arsenic.

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- Construction must be completed no later than October 31, 2009.
- The City of Prescott shall demonstrate that all system users receive drinking water that consistently meets all applicable state and federal drinking water laws and rules no later than November 30, 2009.

Please submit any plans and the plan review fee to: Marsha Fox, DHS – Drinking Water Program, PO Box 14450, Portland, OR 97293-0450. Please contact the Agency for the plan review fee amount. Please make the check out DHS Health Services.

- Compliance Action No. 2: The City of Prescott, per OAR 333-061-0042(2)(b), must issue a Tier 2 public notice for exceeding the MCL for arsenic and for failure to sample for arsenic. The City of Prescott must issue the public notice no later than May 31, 2009, and re-issue the notice every calendar quarter in accordance with OAR 333-061-0042(3)(b), 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). A copy must be submitted to the Agency no later than 10 days after completing the public notification per OAR 333-061-0040(1)(i). The notice must be delivered in the manner most appropriate to reach all persons served by the system. For example, post the notice in conspicuous locations throughout the area served by the water system, hand deliver the notice to persons served by the water system, or use any other appropriate means of delivery.

Submit copies of the public notice to: Monitoring and Compliance, DHS - Drinking Water Program, PO Box 14350, Portland, OR 97293-0350. Please send an additional copy of the public notice to Mark Edington, Columbia County Environmental Health Services, PO Box 995, 2370 Gable Rd., St. Helens, OR 97051.

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 448.285 and administrative rules OAR 333-061-0005 to 333-061-0295, which remain in full force and effect.

This Order does not relieve the City of Prescott 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 the Agency to forgo any civil actions authorized under the Oregon Drinking Water Quality Act.

Failure to comply with all requirements in this Order by the specified due dates may result in additional enforcement action, which may include assessment of civil penalties in the amount of \$50 per day per violation (OAR 333-061-0090).

NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedure Act (chapter 183, Oregon Revised Statutes). If you want a hearing you must file a written request for hearing with the Agency within 10 days from the date this notice was mailed. If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. The request for hearing must be sent to: David E. Leland, Manager; DHS - Drinking Water Program; PO Box 14450; Portland, OR 97293.

If you do not make a timely request for a hearing, the 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 the Agency subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.


The Agency has designated the Agency's complete file on the City of Prescott 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 letter in an alternate format, or if you have any questions about the requirements in this Order, please contact Brad Daniels at 971-673-0407.

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Dated this 14th day of April, 2009.


Gail R. Shibley, Administrator
Office of Environmental Public Health

cc: Mark Edington, Columbia County Environmental Health Services
Evan Hofeld, DHS-DWP
Chris Hughes, DHS-DWP
James Larson, City of Prescott
Harold Rogers, USEPA

DATE of Service: April 16, 2009


Brad K. Daniels

By certified mail