Oregon
Theodore R. Kulongoski, Governor

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MAILED
12/15/05

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

In the Matter of City of Sweet Home, Public Water System 4100851 Respondent	NOTICE OF VIOLATION AND REMEDIAL ORDER

To: Craig Fentiman, Mayor
City of Sweet Home
1140 12th Ave.
Sweet Home, OR 97386

The City of Sweet Home (City) has at all times mentioned herein operated a community public water system, which serves between 1,501 and 10,000 people, and is subject to regulation under Oregon Revised Statutes 448.115 to 448.290 and Oregon Administrative Rules (OAR) 333–061–0005 to 333–061–0098.

The Oregon Department of Human Services, Office of Public Health Systems, Drinking Water Program (Agency) has issued this Notice of Violation and Remedial Order to the City for specific violations of state drinking water statutes and rules.

BACKGROUND

The City's existing treatment system went online in the 1930s. The system is old and in deteriorated condition. Agency employees George Waun and Tom Charbonneau determined on August 31, 1998, that the City is not able to operate the system in compliance with OAR 333–061–0032(5) and OAR 333–061–0050(5)(c)(D). Specifically, the treatment system, which includes prechlorination, does not meet the rules because it does not achieve sufficient disinfection.

On October 13, 1998, the Agency issued a Notice of Violation and Administrative Order to the City. The order required compliance with the rules referenced above by June 30, 1999.

In response to the order, the City (Michael Adams) stated in a November 11, 1998, letter that their preference for correcting the violations was to build a new plant rather than to upgrade the old one at considerable expense.

On February 10, 1999, the City (Michael Adams) requested an extension to the order for additional time to obtain a site, prepare engineering plans, and construct the new system. The Agency granted an extension to the City, and over the next five years granted a number of additional extensions through June 30, 2004.

On May 11, 2004, the City made another extension request. The Agency did not grant this request, based on its assessment of progress by the City toward compliance with the 1998 order.

In February 2005, the Agency conducted a study at the system to measure the residual disinfectant concentration and disinfectant contact time. The results of the study confirm that the City can not operate its system in compliance at all times.

On April 26, 2005, the Agency issued a Notice of Violation and Administrative Order to the City. The order required the City to: (1) submit engineering plans for a new treatment plant, (2) operate the existing plant at a maximum flow rate of 2000 gallons per minute, (3) submit a record of the system's flow rates for each month of operation, and (4) distribute quarterly public notices to system users.

The Agency acknowledges that the City has:

- Complied with the April 26, 2005, order.
- Secured property for the new treatment plant.

- Received approval from the State Revolving Loan Fund and the Water-Wastewater Financing Program to construct the new system.

- Implemented operational restrictions at the existing water treatment plant to improve drinking water safety, and purchased and installed monitoring equipment.

- Committed to specific dates leading to project completion.

DESCRIPTION OF RULE VIOLATIONS

The City is required to meet the requirements of OAR 333–061–0032(5) and OAR 333–061–0050(5)(c)(D) at all times when operating its public water system. The City's current system, which includes prechlorination, is in violation of OAR 333–061–0032(5) and OAR 333–061–0050(5)(c)(D) because it does not meet the treatment technique requirements. Specifically, it does not achieve sufficient residual disinfectant concentration for an adequate amount of contact time to achieve the total 3.0–log reduction required for this treatment system.

REMEDIAL ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

The Agency is authorized under ORS 448.255(3) to require the City to conduct remedial action to comply with this order. In order to assure that the City's water system consistently delivers water that meets state drinking water requirements, the City must complete the following remedial actions by the specified due dates:

- The City is required to complete all construction bid documents and submit a copy of the bid documents to the Agency no later than August 18, 2006.

- The City is required to operate the existing treatment plant at a maximum flow rate of 2,000 gallons per minute, or less, at all times until the Agency grants the City permission to operate at a higher maximum flow rate. If the City fails to comply with all requirements in this order by the specified due dates, the Agency may require the City to operate the existing treatment plant at a maximum flow rate of 1,500 gallons per minute (or less) to ensure the City is taking measures to protect the health of the system's users.

- The City is required to submit a photocopy of the circle or strip chart record of the system's flow rates for each month of operation. The photocopies

must be submitted monthly with the surface water reports currently being submitted by the City. Flow records must be received at the Agency no later than by the tenth of the month following the month being reported. For example, the report and flow record for January are due no later than February 10, the report and flow record for February are due no later than March 10, and so forth. Submit copies of the flow records to John Potts in Corvallis.

- The City is required to prepare and distribute public notices each calendar quarter to all system users, and to submit a copy of each public notice to the Agency until it is notified by the Agency that it has achieved full compliance with this order. The notices must explain the violations and provide information about how the City will respond to the violations. Content and delivery of the notices must comply with OAR 333-061-0042 (4). Copies of notices must be submitted to the Agency by the tenth of each month immediately following the end of each calendar quarter. For example, notices must be received by the Agency no later than July 10, October 10, January 10, and April 10. Submit copies of the public notices to John Potts in Corvallis.

- The City is required to complete construction of the new treatment plant and make it fully operational and producing water that meets all applicable drinking water rules and standards no later than January 1, 2008.

CIVIL PENALTIES

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 $500 per day per violation. OAR 333–061–0090.

THE CITY'S RIGHT TO REQUEST A HEARING

The City is entitled to a hearing as provided by the Administrative Procedures Act (ORS Chapter 183). It may be represented by an attorney at the hearing. A corporation or unincorporated association must be represented by an attorney. The Agency will be represented by an Assistant Attorney General. If you want a hearing, you must file a written request for hearing within 10 days from the date of this notice. The request for hearing must be sent to: David E. Leland, Manager; DHS - Drinking Water Program; PO Box 14450; Portland, OR 97293.

If a request for hearing is not received within this 10–day period, the City's right to a hearing under ORS chapter 183 shall be considered waived except as provided in OAR 137–003–0075(4).

Upon receipt of a timely request for hearing, you will be notified of the time and place of the hearing. If you request a hearing, you will be given information on the procedures, rights of representation and other rights of parties relating to the conduct of the hearing, as required under ORS 183.413 (2) before commencement of the hearing.

If you do not request a hearing within 10 days, if you withdraw your request for hearing, if you fail to appear for the hearing, or if a hearing is scheduled and you later notify the hearing officer that you will not appear at the specified time and place, the Agency may issue a final order by default.

The Agency designates as the record the City's complete file with the Agency, which automatically becomes part of the contested case record upon default for the purpose of proving a prima facie case.

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 John Potts in Corvallis at (541) 757–4281.

Dated this 15th day of December, 2005.

Gail R. Shibley, Administrator
Office of Public Health Systems

jmo
By certified mail
c Chris Hughes, DHS-DWP
John Potts, DHS-DWP
Harold Rogers, USEPA