

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

In the Matter of

Dunn Court Duplexes

Eugene Labunsky
West Coast Real Estate Holdings, LLC

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Eugene Labunsky
West Coast Real Estate Holdings, LLC
4350 Galewood St., Suite. 110
Lake Oswego, OR 97035

You are a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(207), and as a water supplier, have specific responsibilities that are identified in OAR 333-061-0025.

You have at all times mentioned herein owned and operated, and continue to own and operate the Dunn Court Duplexes (Dunn Court) public water system identified by public water system ID number OR41-00962 and serving residents along Dunn Court in Woodburn, Oregon. The Dunn Court Duplexes water system is a community water system which serves approximately 90 people and is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0272.

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

DWS found, during its investigation, that water provided by the Dunn Court water system exceeds the maximum contaminant level (MCL) for arsenic. You are therefore unable to assure water users at the Dunn Court water system 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 you 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 water suppliers to take all reasonable actions to assure that the water delivered to water users does not exceed maximum contaminant levels. Water samples collected at the Dunn Court water system indicate that water provided by the system exceeds the MCL for arsenic as specified in OAR 333-061-0030(1). You were officially notified in a letter on October 30, 2014 that you would need to take action to ensure the Dunn Court water system delivered water with levels of arsenic below the MCL. You however failed to submit an action plan to DWS as required by the notice or demonstrate in any other manner that you have taken all the reasonable actions to ensure that water does not exceed the MCL for arsenic at the Dunn Court water system. This constitutes a violation of OAR 333-061-0025.
- Violation No. 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 arsenic in drinking water at the Dunn Court water system averaged 0.011 mg/L for the 2014 calendar year. This exceeds the MCL 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))

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

You are 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: You must submit an action plan clearly identifying how you will ensure compliance with the MCL for arsenic at the Dunn Court water system.
 - The action plan must be submitted to DWS within 30 days of the date of service of this administrative order.
- Compliance Action No. 2: You must submit to DWS complete construction plans for water treatment or another modifications of the Dunn Court water system that are reasonably expected to ensure compliance with the MCL for arsenic.
 - The construction plans must be submitted to DWS no later than May 31, 2015.
 - The construction plans must meet all the applicable requirements of OAR 333-061-0060 and have sufficient detail to completely and clearly illustrate what will be constructed.
 - Construction of all improvements or modifications at the Dunn Court water system must meet the applicable construction standards specified in OAR 333-061-0050.
- Compliance Action No. 3: You must ensure construction and installation of the project specified in Compliance Action No. 2 is completed no later than September 30, 2015.
 - Construction must be completed in accordance with the plans approved by DWS.
- Agreement Activity No. 4: You must submit sampling results to DWS that demonstrate all users served by the Dunn Court water system receive drinking water with concentrations of arsenic below the MCL as specified in OAR 333-061-0030(1) following the completion of Compliance Action No. 3 as specified above.
 - Sample results must be reported no later than October 31, 2015.

- Compliance Action No. 5: You must publish and distribute public notice according to OAR 333-061-0042 for arsenic exceeding the MCL at the Dunn Court water system. The notice must meet all of the applicable requirements of OAR 333-061-0042(4). The public notice must be re-published every three months as necessary to include changes or additional information regarding drinking water at the Dunn Court water system, 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)). You must submit a copy of each notice and certification of the method of distribution to DWS no later than 10 days after completing the public notification per OAR 333-061-0040(1)(i).

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 administrative rules OAR 333-061-0005 to 333-061-0272, which remain in full force and effect.

This Order does not relieve you 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.

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 E. Leland, Manager; OHA - Drinking Water Program; PO Box 14450; Portland, OR 97293.**

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>.

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.

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.

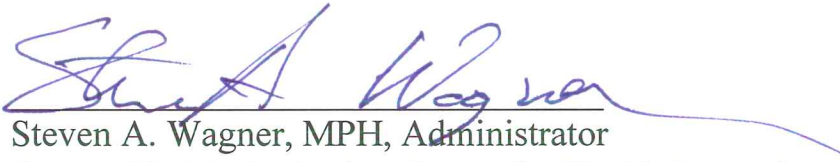
If you do not request a hearing and DWS subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

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.

DWS has designated DWS's complete file on the Dunn Court 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 letter 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 6 day of MARCH, 2015.


Steven A. Wagner, MPH, Administrator
Oregon Health Authority, Center for Health Protection

cc: Gregg Baird, Oregon Health Authority, Drinking Water Services
Greg DeBlase, Marion County Environmental Health

DATE of Service: March 10, 2015


Brad K. Daniels

By certified mail and first class mail