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CIRCUIT COURT, LANE CO

FILED
AT 2:48 O'CLOCK P.M.

NOV 28 2012

Circuit Court
For Lane County, Oregon
BY 30

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

STATE OF OREGON, by and through its
OREGON HEALTH AUTHORITY,

Plaintiff,

v.

Michael D. Brown,

Defendant.

Case No. 16-12-14583

General
STIPULATED JUDGMENT

ORS 20.140 - State fees deferred at filing

Pursuant to the stipulation of the parties, the Court enters Judgment as follows.

1. Defendant, Michael D. Brown, shall bring the Saginaw Park public water system in Saginaw, Oregon (hereafter "the water system") into compliance with the State Maximum Contaminant Level (MCL) for arsenic in drinking water found in Oregon Administrative Rule (OAR) 333-061-0030(1) (arsenic must not exceed 0.010 mg/l). To bring the water system into compliance with the MCL for arsenic, Defendant shall install a central water treatment system that ensures water delivered to every customer's service connection has arsenic levels at or below the MCL for arsenic. Treatment shall be installed in the following manner or be subject to stipulated penalties as set forth in paragraph 9 or further relief as set forth in paragraph 10:

a. Prior to installation and no later than 90 days after the date Defendant signs this Stipulated Judgment, Defendant shall submit to the Oregon Health Authority (OHA) for approval construction and installation plans that:

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- 1) meet all of the requirements specified in OAR 333-061-0060(1), including but not limited to the requirement that any preliminary plans, pilot studies, master plans and construction plans shall be prepared by a Professional Engineer registered in Oregon, as required by OAR 333-061-0060(1)(b), and that include the information required by OAR 333-061-0060(1)(c);
- 2) clearly identify how the proposed treatment system will enable Saginaw Park public water system to supply water with arsenic levels at or below the MCL specified in OAR 333-061-0030(1), including but not limited to as set forth in OAR 333-061-0050(4), requiring demonstration of use of best available technology or supporting pilot studies or data to demonstrate effectiveness of the treatment system; and
- 3) are accompanied by the plan review fee, as required by OAR 333-061-0060(3).

b. If, upon receipt of plans, OHA cannot approve the plans and advises that correction or clarification is required pursuant to OAR 333-061-0060(2)(a), Defendant shall submit clarification or correction no later than 30 days after the date OHA mails to Defendant by certified mail, its determination that correction or clarification is required.

c. No later than 120 days after the date OHA mails by certified mail, its written approval of the construction and installation plans pursuant to OAR 333-061-0060(2)(a) Defendant shall exercise due diligence to:

- 1) complete construction of the arsenic treatment system and any other necessary improvements identified in the construction plans, in accordance with the construction standards in OAR 333-061-0050;
- 2) submit to OHA a statement of a professional engineer registered in Oregon certifying that the project has been constructed in compliance with

1 the approved plans and specifications, as required by OAR 333-061-
2 0060(2)(b);

- 3 3) submit to OHA a report of the results of collection and analysis for
4 arsenic levels of water samples taken from the new treatment system; and
5 4) notify OHA that the system is ready for OHA's inspection.

6 To ensure that Defendant is exercising due diligence, Defendant shall submit written reports on
7 actions Defendant has taken to meet the requirements of this paragraph and the status of the
8 construction every two weeks. When Defendant relies on a third party to meet any of the
9 requirements of this sub-paragraph 1.c., Defendant shall ensure that any third party is instructed
10 in writing to complete the tasks within a timeframe that will allow Defendant to comply with the
11 requirements of this paragraph within 120 days after the date OHA mails by certified mail, its
12 written approval of the construction and installation plans. Defendant shall provide written
13 notice and documentation to OHA immediately upon discovering that there is a risk that a third
14 party's actions will cause Defendant to be unable to meet the requirements of this paragraph
15 within the 120-day timeframe. Depending upon the circumstances, the parties may agree to
16 modify, in writing, the 120-day timeframe in this sub-paragraph 1.c., or OHA may elect to seek
17 further relief from the Court, as provided in paragraph 10.

18 d. Prior to supplying water to customers Defendant must receive approval
19 from OHA. If OHA cannot approve supplying water following its inspection OHA shall notify
20 Defendant that corrections are required and Defendant shall complete the corrections within 30
21 days of the date OHA mails its notification of corrections by certified mail.

22 2. After successful completion of the requirements listed in paragraph 1, Defendant
23 shall sample the water monthly for arsenic and report the results to OHA in accordance within
24 OAR 333-061-0040. If Defendant reports sample results for at least three consecutive months
25 that show arsenic levels for the Saginaw Park public water system are at or below the MCL
26 specified in OAR 333-061-0030(1), Defendant can reduce the sampling and reporting frequency

1 for arsenic to quarterly (every three months). If the quarterly water sample results are at or below
2 the MCL for arsenic as specified in OAR 333-061-0030(1) for two years, Defendant may seek
3 approval from OHA to sample and report for arsenic in accordance with OAR 333-061-0036
4 (annually). If any water sample submitted by Defendant exceeds the MCL for arsenic as specified
5 in OAR 333-061-0030(1), Defendant shall resume monthly sampling and reporting for arsenic.
6 The requirements of this paragraph are subject to stipulated penalties as set forth in paragraph 9.

7 3. No later than two (2) days after the date Defendant signs this Stipulated
8 Judgment, Defendant shall notify the public that the Saginaw Park public water system does not
9 meet state standards for arsenic, in accordance with OAR 333-061-0025, OAR 333-061-0040,
10 and OAR 333-061-0042, and report public notification to OHA. Thereafter, every quarter (every
11 three months), Defendant shall notify the public that the Saginaw park public water system does
12 not meet state standards for arsenic, in accordance with OAR 333-061-0025, OAR 333-061-
13 0040, and OAR 333-061-0042, and report public notification to OHA within ten days of the end
14 of the quarter. Defendant shall continue this quarterly public notice and report to OHA unless
15 and until Defendant's quarterly water sample results, as described in paragraph 2, are at or below
16 the MCL for arsenic as specified in OAR 333-061-0030(1) for four consecutive calendar
17 quarters. The requirements of this paragraph are subject to stipulated penalties as set forth in
18 paragraph 9.

19 4. No later than ten (10) days after the date Defendant signs this Stipulated
20 Judgment, Defendant shall submit to OHA the name of the individual qualified to operate the
21 Saginaw Park public water system. The individual named must meet all of the applicable
22 requirements for a small water system operator as specified in OAR 333-061-0228. Defendant
23 shall notify OHA within ten (10) days of any change of the individual qualified to operate the
24 Saginaw Park public water system. The requirements of this paragraph are subject to stipulated
25 penalties as set forth in paragraph 9.

26

1 5. No later than ten (10) days after the date Defendant signs this Stipulated
2 Judgment, Defendant shall submit to OHA the name of the individual to be in direct responsible
3 charge of the water system in accordance with OAR 333-061-0225. Defendant shall notify OHA
4 within ten (10) days of any change of the individual to be in direct responsible charge of the
5 water system. The requirements of this paragraph are subject to stipulated penalties as set forth
6 in paragraph 9.

7 6. Defendant shall submit all documents and information required in this Stipulated
8 Judgment to OHA by facsimile to 971-673-0694 or by mail to:

9 Drinking Water Systems, Water Quality Reporting
10 PO Box 14350
11 Portland, OR 97293-0350

12 7. If Defendant intends to transfer his interest in the water system, in whole or in
13 part, by any means, Defendant shall provide a copy of this Stipulated Judgment to the
14 prospective recipient of any of Defendant's interest in the water system. This provision shall
15 remain in effect until such time as the Defendant has satisfied this Stipulated Judgment as
16 provided in paragraph 11.

17 8. No later than ten (10) days after the date Defendant signs this Stipulated
18 Judgment, Defendant shall submit payment to OHA of \$300 of the \$900 civil penalty specified
19 in the Final Order Imposing Civil Penalty dated January 20, 2012. By this Stipulated Judgment,
20 OHA agrees to waive the remainder of the civil penalty, provided Defendant submits
21 construction and installation plans accompanied by the plan review fee, as set forth in paragraph
22 1.a. The requirements of this paragraph are subject to stipulated penalties as set forth in
23 paragraph 9.

24 9. Defendant shall pay a stipulated penalty of \$25 for each day beyond the deadlines
25 provided in paragraphs 1 through 6 and 8 that Defendant fails to comply with any requirement in
26 this Stipulated Judgment.

1 10. OHA may seek remedial or punitive sanctions for failure to comply with this
2 Stipulated Judgment and may seek further relief from this Court as provided in ORS 448.250,
3 including but not limited to a mandatory injunction compelling Defendant to cease and desist
4 operation, make further improvements or corrections, appoint a special master to operate the
5 water system, or require sale of the water system to a responsible party, if the water system
6 presents or threatens to present a public health hazard, including but not limited to the following
7 situations:

8 a. Defendant fails to bring the Saginaw Park public water system into
9 compliance with the MCL for arsenic in OAR 333-061-0030(1) (arsenic must not exceed 0.010
10 mg/l) by not installing a water treatment system within the deadlines specified in paragraph 1; or

11 b. The water sample results submitted by the Defendant exceed the MCL for
12 arsenic as specified in OAR 333-061-0030(1) in any three sample results within a two year
13 period from the date sampling begins in accordance with paragraph 2; or

14 c. Defendant fails to provide public notice as provided in paragraph 3 on
15 three consecutive required occasions.

16 11. If consecutive sample results taken in accordance with paragraph two are at or
17 below the MCL for arsenic as specified in OAR 333-061-0030(1) for four consecutive years and
18 the Defendant has complied with all other terms in this Stipulated Judgment, Defendant will be
19 considered to have complied with the terms of this Stipulated Judgment. Defendant and the
20 water system shall continue to comply with all legal requirements for this water system or be
21 subject to future enforcement actions as long as Defendant continues to own the water system. If
22 Defendant sells the water system, Defendant is no longer subject to the terms of this Stipulated
23 Judgment except Defendant shall pay any civil or stipulated penalties.


24 12. This Stipulated Judgment is limited to addressing the installation of a treatment
25 system to ensure compliance with the MCL for arsenic found at OAR 333-061-0030(1) and
26 related sampling and public notice requirements. This Stipulated Judgment does not address,

1 waive or affect other legal requirements the Defendant must comply with as a water supplier
2 pursuant to OAR 333, Division 61, nor does it waive or otherwise affect any other legal
3 requirement that may apply to Defendant.

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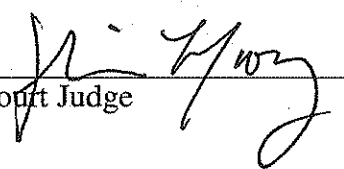
1 Defendant has declined to retain counsel, but by signing he acknowledges that he has
2 read, understands and agrees to this Stipulated Judgment to resolve the Complaint in this matter.

3 SO STIPULATED:

4 
5 STEPHANIE M. PARENT
6 Attorney for Plaintiff,
7 State of Oregon


MICHAEL D. BROWN
Defendant

8 JUDGMENT is hereby entered this 28th day of November, 2012.

9
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11 
Circuit Court Judge


12 Submitted by: Stephanie M. Parent
13 Assistant Attorney General
14 Of Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I certify that on November 19, 2012, I served the foregoing STIPULATED
3 JUDGMENT upon the parties hereto by the method indicated below, and addressed to the
4 following:

5
6 Michael D. Brown
7 922 Old Town Loop Road
8 Oakland, OR 97462
9 Defendant *pro se*

___ HAND DELIVERY
___ MAIL DELIVERY
___ OVERNIGHT MAIL
___ TELECOPY (FAX)
___ E-MAIL

10
11 
12 STEPHANIE M. PARENT #925908
13 Senior Assistant Attorney General
14 Trial Attorney
15 Tel (971) 673-1880
16 Fax (971) 673-5000
17 Stephanie.M.Parent@doj.state.or.us
18 Of Attorneys for Plaintiff
19
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CERTIFIED TO BE A TRUE COPY OF THE
ORIGINAL DOCUMENT CONSISTING OF
9 PAGES, WHICH IS FILED IN
THIS OFFICE AND OF WHICH I AM THE
LEGAL CUSTODIAN.

DATED 12/11/2012
Circuit Court
Lane County, Oregon
By [Signature]