

RECEIVED

SEP 18 2014

CIRCUIT COURT, LANE CO

FILED
AT 3:00 O'CLOCK M

SEP 19 2014

Circuit Court For Lane County, Oregon
BY James

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

[PROPOSED] ORDER

ORS 20.140 - State fees deferred at filing

Plaintiff having filed an Ex Parte Motion for Order to Appear and Show Cause with supporting declaration and exhibits, and it appearing to the Court that good cause exists, that this is a proper case for prompt consideration and the Court being otherwise fully apprised:


IT IS HEREBY ORDERED that the defendant, Michael D. Brown, shall appear before this Court at the hour of 8:30 am/pm on the 20th day of October, 2014, then and there to show cause, if any exists, why this Court should not find Defendant in contempt and impose remedial sanctions and stipulated penalties for having violated this Court's permanent injunction entered by Stipulated General Judgment in this action on November 28, 2012.

IT IS FURTHER ORDERED that a copy of this Order, the Motion for Order to Appear and Show Cause and supporting declaration and exhibits shall be served upon the defendant.

DATED this 19 day of September, 2014.


Circuit Court Judge

Submitted by: Stephanie M. Parent
Senior Assistant Attorney General
Of Attorneys for Plaintiff

SEP 22 2014


FILED

14 SEP 18 AM 9:42

CIRCUIT/DISTRICT COURTS
OF OREGON
FOR LANE COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON



FOR THE COUNTY OF LANE

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

Case No. 16-12-14583

Plaintiff,

COMPLAINT FOR CONTEMPT OF COURT
AND IMPOSITION OF REMEDIAL
SANCTIONS
(ORS 33.055)

v.

MICHAEL D. BROWN,

Defendant.

ORS 20.140 - State fees deferred at filing

The State of Oregon, by and through the Oregon Health Authority, for its Complaint for Contempt of Court and Imposition of Remedial Sanctions, accuses Michael D. Brown of committing the following violations of an existing permanent injunction in a Stipulated General Judgment and alleges:

1.

The State of Oregon must ensure that "all Oregonians have safe drinking water." ORS 448.250. The Oregon Health Authority (OHA) is the state agency charged with implementation of the Oregon Drinking Water Act, ORS 448.115 *et seq.* Accordingly, the Oregon Health Authority has statutory authority and the duty to ensure that public water suppliers provide water that meets minimum state standards, including the authority to institute actions seeking compliance with the aforementioned laws. ORS 431.262, 448.131. Included in this authority is the power to institute actions for a mandatory injunction to remove the public health hazard or threat of public health hazard. ORS 448.250.

SEP 18 2014

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

2.

Defendant Michael D. Brown is an individual who owns and operates a water system (PWS OR4100996) for the provision of water for human consumption at Saginaw Park, a mobile home or manufactured dwelling park located at 80116 Highway 99 North, Cottage Grove, Oregon. As such, Defendant Michael D. Brown is a “water supplier” pursuant to ORS 448.115(12) and OAR 333-061-0020(211).

3.

On November 28, 2012, this Court entered a Stipulated General Judgment (Judgment) against defendant Michael D. Brown in this action. Defendant was notified of the Judgment in accordance with ORS 18.078.

4.

Specifically, the Judgment ordered defendant to receive approval from OHA prior to supplying water to customers and, if any corrections are required to receive approval, defendant shall complete the corrections within 30 days of the date OHA mails its notification of corrections by certified mail. Judgment ¶ 1.d.

5.

On July 8, 2014, OHA sent Defendant a letter by certified mail notifying defendant that before OHA can grant final approval to supply water to customers, defendant must make corrections, including: collect and report the results of three additional chemical analyses (inorganic chemicals, volatile organic chemicals and synthetic organic chemicals) and that are and have been a condition of final approval to supply water since OHA approved installation of the treatment system on June 11, 2013. Defendant should have made the corrections within 30 days, or by August 6, 2014, to comply with the Judgment, paragraph 1.d. Defendant has not done so to date, yet defendant is delivering water to customers.

///
///

1 6.

2 The Judgment provided that if defendant failed to comply with the orders of this Court,
3 Defendant shall pay a stipulated penalty of \$25 for each day beyond the deadlines to comply
4 with any requirement of the Judgment (Judgment ¶ 9) and that OHA may seek remedial or
5 punitive sanctions for failure to comply with the Judgment and may seek further relief from this
6 Court as provided in ORS 448.250.

7 7.

8 As of August 6, 2014, defendant has unlawfully and willfully violated and disobeyed the
9 Stipulated General Judgment by failing to make corrections within 30 days from the date OHA
10 mailed notice of the corrections by certified mail.

11 8.

12 Defendant's actions contrary to the Stipulated General Judgment present a threat to
13 public health in that defendant is continuing to operate a public water system without reporting
14 three chemical analyses required to ensure water delivered is within safe levels.

15 9.

16 Defendant is liable for contempt pursuant to ORS 33.015 *et seq.* (contempt proceedings)
17 for failing to comply with the Stipulated General Judgment by continuing to operate his public
18 water system without timely reporting the chemical analyses required for OHA's final approval
19 to supply water to customers.

20 10.

21 Specifically, ORS 33.105(1) authorizes the following remedial sanctions:

22 (a) Payment of a sum of money sufficient to compensate a party for loss, injury, or costs
23 suffered by the party as a result of the contempt of court,

24 (b) Confinement for so long as the contempt continues, or six months, whichever is the
25 shorter period,

1 (c) An amount not to exceed \$500 or one percent of the defendant's annual gross income,
2 whichever is greater, for each day the contempt of court continues. The sanction imposed under
3 this paragraph may be imposed as a fine or to compensate a party of the effects of the continuing
4 contempt,

5 (d) An order designed to ensure compliance with a prior order of this Court, including
6 probation,

7 (e) Payment of all or part of any attorney fees incurred by a party as a result of a
8 contempt of court,

9 (f) A sanction other than the sanctions specified in paragraphs (a) to (e) of this subsection
10 if the court determines that the sanction would be an effective remedy for the contempt.

11 11.

12 Further, ORCP 78(b) authorizes this Court to enforce an order or judgment directing a
13 party to perform a specific act by punishing the party refusing or neglecting to comply therewith,
14 as for a contempt as provided in ORS 33.015 to 33.155.

15 12.

16 Therefore, pursuant to ORS 33.105(1), plaintiff seeks the following remedial sanctions
17 against defendant MICHAEL D. BROWN:

18 (a) Until such time that defendant complies with the Stipulated General Judgment to
19 make the corrections required to receive final approval from OHA to supply water to customers,
20 defendant shall cease and desist operating the public water system at Saginaw Park, a mobile
21 home or manufactured dwelling park located at 80116 Highway 99 North, Cottage Grove,
22 Oregon;

23 (b) Defendant shall pay \$25 per day for each day the contempt of court continues;

24 (c) If Defendant refuses to comply with the order of the court within ten days,
25 appointment of a special master to operate the water system; with costs of operation and
26 improvement during operation charged to Defendant or collected by impounding revenue due to

1 the water supplier from customers or other revenues due to the water supplier (ORS
2 448.250(2)(a));

3 (d) An award of attorney fees and costs for plaintiff (ORS 33.105(1)(e)); and

4 (e) An Order of such other relief as the Court may deem just and proper (ORS
5 33.105(1)(f)).

6 WHEREFORE, plaintiff prays to this Court for a Judgment finding defendant in
7 contempt of court for willfully and knowingly violating the terms of the Stipulated General
8 Judgment, and respectfully asks that this Court impose the remedial sanctions as requested herein
9 above, to the extent this Court finds them appropriate.

10 DATED this 16th day of September, 2014.

11 ELLEN F. ROSENBLUM
12 Attorney General

13 
14 STEPHANIE M. PARENT #925908
15 Senior Assistant Attorney General
16 Department of Justice
17 1515 SW Fifth Ave., Suite 410
18 Portland, OR 97201
19 Telephone: (971) 673-1880
20 Facsimile: ((71) 673-2196
21 Stephanie.M.Parent@doj.state.or.us
22 Of Attorneys for Plaintiff