

BEFORE THE STATE OF OREGON
OREGON HEALTH AUTHORITY
OFFICE OF ENVIRONMENTAL PUBLIC HEALTH

In the Matter of

EASL Properties LLC/Belle Passi
Estates, PWS OR4101221

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Laura Cochran
EASL Properties LLC
Belle Passi Estates public water system
PO Box 992
Newberg, OR 97132

EASL Properties LLC (EASL Properties) is a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(211).

As a water supplier, EASL Properties has specific responsibilities that are identified in OAR 333-061-0025.

EASL Properties has at all times mentioned herein owned and operated, and continues to own and operate the Belle Passi Estates water system, which is a community public water system serving between 25 and 100 people subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0290.

Pursuant to its authority under ORS 448.150, the Oregon Health Authority, Public Health Division, Office of Environmental Public Health, Drinking Water Program (Program) has investigated the operation of the Belle Passi Estates water system.

The Program found, during its investigation, that water provided by Belle Passi Estates exceeds the maximum contaminant level (MCL) for arsenic, and that EASL Properties has also failed to consistently publish public notification for the exceedance of the MCL for arsenic. EASL Properties is therefore unable to assure the water users at the Belle Passi Estates 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, as the Registered Agent and Manager of EASL Properties, due to specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.285) and rules found during the Program's investigation.

DESCRIPTION OF RULE VIOLATIONS

- Violation No. 1: You are required by OAR 333-061-0025 to take all reasonable precautions to assure that the water delivered to water users does not exceed maximum contaminant levels. Sampling results indicate that water provided by the Belle Passi Estates water system has exceeded the MCL for arsenic as specified in OAR 333-061-0030(1) since November 2007.

The Program issued a Notice of Violation on February 24, 2009 requiring the development of a new water source or the installation of an arsenic treatment system at the Belle Passi Estates water system. The Program, with your cooperation, developed extensions to the deadlines included in the Notice of Violation issued on February 24, 2009. These extended deadlines took effect on December 9, 2009 as specified in the Amendment to the Notice of Violation.

Since December 9, 2009 you have failed to complete construction of an arsenic treatment system as required. You have also failed to respond to Program requests for information regarding the submitted plans for a possible arsenic treatment system.

Your failure to complete construction of an arsenic treatment system, coupled with your failure to request additional time to complete this process, and your failure to respond to Program requests demonstrates that you are not taking all reasonable precautions to assure that water does not exceed the MCL for arsenic, and therefore constitutes a violation of OAR 333-061-0025.

- Violation No. 2: You are required by OAR 333-061-0025(4) to notify all of the customers served by the Belle Passi Estates water system when maximum contaminant levels have been exceeded. You are required by OAR 333-061-0042(3) to repeat public notification every three months as long as the Belle Passi Estates water system continues to provide water in exceedance of the MCL for arsenic. You are required by OAR 333-061-0040(1)(j) to submit representative copies of any public notification within ten days of completion to the Program.

You initially published public notice and submitted a copy of that public notification to the Program on June 30, 2009, but have not submitted a copy of any public notification to the Program since the initial notice. Sampling results indicate that water provided by the Belle Passi Estates water system continues to exceed the MCL for arsenic, and therefore the failure to publish public notice every three months constitutes a violation of OAR 333-061-0042(3), or the failure to submit copies of any published notice to the Program constitutes a violation of OAR 333-061-0040(1).

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) allegedly violated (ORS 448.255(3)).

- Compliance Action No. 1: You must immediately publish public notice for exceeding the MCL for arsenic. Specifically, the notice must meet all of the applicable requirements of OAR 333-061-0042(4), must be distributed to every customer served by the Belle Passi Estates water system in accordance with OAR 333-061-0042(3)(b)(E), and must be distributed no later than ten days after the date of service for this Order. A copy of the notice must be submitted to the Agency no later than 10 days after completing the public notification per OAR 333-061-0040(1)(j). You must continue to issue the public notice every three months, 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)).

- Compliance Action No. 2: You must submit complete construction plans to the Program indicating how the Belle Passi Estates water system will comply with the MCL for arsenic no later than June 30, 2011. The plans must meet all of the applicable requirements of OAR 333-061-0060, and must clearly show how the changes to the water system will meet all the applicable construction standards specified in OAR 333-061-0050.
- Compliance Action No. 3: You must ensure that construction of a new water source or an arsenic treatment system and any related and necessary water system improvements are completed at the Belle Passi Estates water system no later than September 30, 2011, and that any related physical or infrastructure changes at the Belle Passi Estates water system meet the applicable construction standards specified in OAR 333-061-0050.
- Compliance Action No. 4: You must submit water sampling results, in accordance with OAR 333-061-0036(2)(a), from the Belle Passi Estates water system that clearly demonstrate that water being provided to all system users is below the MCL for arsenic and meets all the applicable state and federal drinking water laws and rules no later than December 31, 2011.

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 333-061-0290, 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 the Program 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 dates 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 the Program issues a Notice of Intent to Impose Civil Penalty.

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 the Program within 10 days from the date this Order was mailed. The request for hearing must be sent to: David E. Leland, Manager; DHS - Drinking Water Program; PO Box 14450; Portland, OR 97293.

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, or if you withdraw a request for hearing, notify the Program or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Program may issue a final order by default. If the Program issues a final order by default, the Program designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purposes of proving a prima facie case upon 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 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 Program subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

The Program has designated the Program's complete file on the Belle Passi Estates 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 14th day of February, 2011.



Gail R. Shibley, JD, Administrator
Office of Environmental Public Health

cc: Gregg Baird, DHS-DWP
Greg DeBlase, Marion County Environmental Health
Harold Rogers, USEPA

DATE of Service: February 15, 2011



Brad K. Daniels

By certified mail and first class mail