



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
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Portland, OR 97204-1390
(503) 229-5696
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TTY: 711

February 9, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5463

Ninkasi Holding Company, Inc.
c/o Jane M Yates
101 E Broadway Street 200
Eugene, OR 97401

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-WR-16-009

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$6,777 for failing to monitor your stormwater discharge for benchmark levels of acidity (pH levels), total suspended solids, oil and grease, copper, lead and zinc, as well as impairment pollutant levels (including arsenic and iron) as required by National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge General Permit 1200-Z, under which you are registered. These violations occurred during the 2014–2015 monitoring year at your facilities located at 220 Blair Street and 181 Polk Street in Eugene.

DEQ issued this penalty because fulfilling the mandatory monitoring and reporting conditions of your stormwater discharge permit is an important obligation. Without monitoring, your company, DEQ, and the public are unable to evaluate the effectiveness of your stormwater controls in protecting water quality and public health. DEQ is particularly concerned because you have previously received a request for corrective action to monitor pH levels at your facility.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

Via fax - 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review it and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor in lieu of paying your penalty. Further detail regarding SEPs may be found on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.



If you have any questions, please contact DEQ Environmental Law Specialist Sarah Wheeler, at (503) 229-6927. You may call toll-free within Oregon at 1-800-452-4011, extension 6927.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jon Wilson, Stormwater Regulatory Compliance Coordinator, City of Eugene
Nikos Ridge, President, Ninkasi Holding Company, Inc.

1 June 30.

2 6. Schedules B.1.a and B.2.e, Table 4 of the Permit require Respondent to monitor its
3 stormwater for benchmarks listed in Schedule A.9 at least 4 times per year, with two samples from each
4 outfall taken on or before December 31, and two samples from each outfall taken on or after January 1
5 of each stormwater monitoring year (July 1-June 30).

6 7. Schedules B.1.b and B.2.e, Table 4 of the Permit require Respondent to monitor its
7 stormwater for impairment pollutants at least two times per year, with one sample from each outfall
8 taken on or before December 31 and one sample from each outfall taken on or after January 1 of each
9 monitoring year.

10 8. From July 1 through June 30 of the 2014-2015 monitoring year, Respondent did not take
11 any benchmark samples from the Blair Blvd. outfall, and only took three of the required four samples
12 from the Polk St. outfall.

13 9. From July 1 through June 30 of the 2014-2015 monitoring year, Respondent did not
14 take any impairment samples from the Blair Blvd. outfall.

15 III. CONCLUSIONS

16 1. Respondent has violated ORS 468B.025(2) by violating Schedule B of the Permit by
17 failing to monitor for benchmark and impairment pollutants at the Blair Blvd. and Polk St. monitoring
18 sites. Specifically, as described above in Section II, Respondent failed to monitor for iron and arsenic at
19 the Blair Blvd. monitoring site during the 2014-2015 monitoring year. Respondent also failed to
20 monitor for benchmark pollutants on all four required monitoring events at the Blair Blvd. site, and
21 three out of four required monitoring events at the Polk St. Site. These are Class I violations, according
22 to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$6,777 civil penalty for these violations.

23 IV. ORDER TO PAY CIVIL PENALTY

24 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
25 hereby ORDERED TO pay a total civil penalty of \$6,777. The determination of the civil penalty is
26 attached as Exhibit 1 and is incorporated as part of this Notice.

27 If you do not file a request for hearing as set forth in Section V below, your check or money

1 order must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business**
2 **Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of
3 Fact, Conclusions and Order become final.

4 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

5 You have a right to a contested case hearing on this Notice, if you request one in writing. You
6 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
7 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
8 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters
9 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
10 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
11 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
12 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the
13 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
14 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
15 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
16 association.

17 Active duty service-members have a right to stay proceedings under the federal
18 Servicemembers Civil Relief Act. For more information, please call the Oregon State Bar at 1(800)
19 452-8260 or the Oregon Military Department at 1(800) 452-7500. Additional information can be found
20 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website,
21 <http://legalassistance.law.af.mil/content/locator.php>.

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1 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
2 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
3 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing,
4 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
5 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
6 information submitted by you, as the record for purposes of proving a prima facie case.
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10 2/9/16

11 Date

10 Leah K. Feldon

11 Leah K. Feldon, Manager
12 Office of Compliance and Enforcement
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EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 1: Failing to monitor for benchmark and impairment pollutants as required by Permit 1200-Z, in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(o).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent. In this case the respondent has no prior significant actions, therefore the value of P is 0 pursuant to OAR 340-012-0145(2)(a)(A).

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there was no prior significant action.

"O" is whether the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(c), because there were between one and seven occurrences of the violation. Respondent failed to monitor four testing events at the Blair Blvd. outfall, and one testing event at the Polk St. outfall, for a total of five violations.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent has coverage under the 1200-Z Permit, which specifically requires that Respondent monitor its stormwater discharge for benchmark pollutants and impairment pollutants. Respondent had also received a Request for Corrective Action dated September 16, 2013 for failure to properly monitor pH levels at one of its outfalls, and therefore should have been on notice that monitoring was necessary. By failing to ensure it monitored each pollutant at the frequency required by the Permit, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate its Permit.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f), because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$377. This is the amount Respondent gained by avoiding spending \$600 to monitor pH, total suspended solids, oil and grease and all metals. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 2 + 4 + 0)] + \377
 $= \$4,000 + [\$400 \times 6] + \$377$
 $= \$4,000 + \$2,400 + \$377$
 $= \$6,777$