Oregon
Kate Brown, Governor

Department of Environmental Quality
Headquarters
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Portland, OR 97204-1390
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TTY: 711

February 19, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5548

City of Canby
c/o Rick Robinson, City Manager
PO Box 930
Canby, Oregon 97031

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-NWR-16-007

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $9,798 for failing to monitor your Underground Injection Controls the appropriate number of times during the 2014-2015 monitoring year as required by your permit.

DEQ issued this penalty because fulfilling the mandatory monitoring and reporting conditions of your wastewater permit is an important obligation. Without monitoring, your city, DEQ, and the public are unable to evaluate the impact of your underground injection controls on water quality and public health. The cleanliness of underground drinking water is essential for public health.

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 Jeff Bachman at (503) 229-5950. You may call toll-free within Oregon at 1-800-452-4011, extension 5950.

Sincerely,

for Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Matt Kohlbecker, Inspector, NWR, DEQ
John Koestler, WQ, HQ, DEQ

ecc: Mark Gunter, City of Canby
Jerry Nelzen, City of Canby

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: THE CITY OF CANBY, a municipality of the state of Oregon, Respondent.	)))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. WQ/M-NWR-16-007

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) to Respondent, the City of Canby, a municipality of the state of Oregon, pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 040 and 045.

II. FINDINGS OF FACT

1. Respondent operates underground injection controls to help manage stormwater on municipal rights of way pursuant to Water Pollution Control Facilities Permit No. 103077 (the permit), issued by DEQ on April 30, 2014. The Permit was in effect at all material times.

2. The Permit authorizes Respondent to construct, install, modify or operate underground injection controls throughout the area owned or operated by the permittee, and to discharge stormwater below the grounds surface to waters of the state in conformance with the requirements, limitations and conditions set forth in the Permit.

3. Schedule B.4 of the Permit requires Respondent to submit a DEQ-approved Underground Injection Control System Report (Report) form to DEQ by November 30 of each year for the previous annual reporting period. The Report must identify the sampling results for the previous monitoring year and include the laboratory results from the testing laboratory.

4. In accordance with Schedule B.4 of the Permit, a monitoring year runs from July 1 to June 30.

5. Schedule B.2 of the Permit requires Respondent to develop and follow an Underground

Injection Control Stormwater Monitoring Plan (SMP) to monitor its stormwater for actionable levels of the pollutants listed in Schedule A.2, Table 1. The plan must specify sampling locations and schedule, and is subject to approval by DEQ.

6. On May 12, 2015, DEQ approved Respondent's SMP.

7. Section 2.2 of the SMP specifies three sampling locations referred to in the plan as D-99, D-52, and A-07.

8. Section 2.3 of the SMP states that each sampling location will be monitored twice annually during the sampling year with additional samples being taken in the case of an action level exceedence of pollutants (July 1-June 30).

9. During the 2014-15 monitoring year, Respondent failed to conduct two rounds of stormwater monitoring at the sampling locations identified in its SMP.

III. CONCLUSIONS

On or before June 30, 2015, Respondent violated ORS 468B.025(2) by failing to comply with a condition of its waste discharge permit. Specifically, Respondent violated Schedule B.2 of the permit by failing to conduct monitoring required under its SMP, as described in Section II, above. These are Class I violations, according to OAR 340-012-0055(1)(o). DEQ assesses a $9,798 civil penalty for these violations.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO pay a total civil penalty of $9,798. The determination of the civil penalty is attached as Exhibit 1 and is incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. You

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

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

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

2/19/16
Date

Per Leah K. Feldon, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION: Failing to conduct monitoring required by Schedule B of the permit, 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 x BP) x (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)(iv).

"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, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because Respondent has no prior violations.

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

"O" is whether the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(b), because there were more than one but less than seven occurrences of the violation. Respondent only took one of the two required samples from each of the three monitoring sites, creating a total of three occurrences of the violation.

"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's permit specifically requires that Respondent comply with their DEQ-approved Underground Injection Control Stormwater Monitoring Plan (SMP). The SMP expressly states that Respondent will monitor three sites two times each over the course of a monitoring year. By failing to ensure it monitored each site twice as required by the SMP, Respondent failed to take reasonable care to avoid a foreseeable risk that it would commit the violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(a)(D), 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 $3,398. This is the amount Respondent gained by avoiding spending $3,342 to monitor their Underground Injection Controls the requisite number of times during the 2014-2015 monitoring year. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $4,000 + [(0.1 x $4,000) x (0 + 0 + 2 + 4 + 0)] + $3,398
= $4,000 + [$400 x 6] + $3,398
= $4,000 + $2,400 + $3,398
= $9,798