



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

February 10, 2021

CERTIFIED MAIL: 7017 0530 0000 7760 3000

Knife River Corporation - Northwest
c/o CT Corporation System, Registered Agent
780 Commercial St., SE
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SP-WR-2020-163

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$25,000 for violating the chlorine water quality standard on August 11, 2020, when you discharged highly chlorinated water from a construction project to Coos Bay. Chlorine is highly toxic to fish and other aquatic life. By violating the chlorine standard, you created a substantial risk of harm to aquatic life in Coos Bay.

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

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.state.or.us

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 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 instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Jeff Bachman at 503-229-5950 or toll free in Oregon at 800-452-4011, extension 5950.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell".

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Steve Nichols, Western Region, DEQ
Ranei Nomura, Western Region, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 KNIFE RIVER CORPORATION -) ASSESSMENT AND ORDER
5 NORTHWEST, an Oregon Domestic)
Business Corporation,) CASE NO. WQ/SP-WR-2020-163
6 Respondent.)

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
10 ORS Chapter 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012
and 041.

11 II. FINDINGS OF FACT

12 1. On or about August 11, 2020, Respondent was installing domestic drinking water pipe in the
13 vicinity of 4th Street and Anderson Avenue in Coos Bay, Oregon.

14 2. During the course of its work, Respondent discharged approximately 680 gallons of waste
15 sterilization water containing chlorine in a concentration of 50 milligrams per liter (mg/L) to a storm
16 drain that flowed into Coos Bay.

17 3. In an attempt to mitigate potential environmental harm from the sterilization wastewater,
18 Respondent discharge an additional 2,300 gallons of domestic tap water containing chlorine at a
19 concentration of approximately 3 mg/L to the storm drain and Coos Bay.

20 4. The chlorine acute toxicity water quality standard for salt water aquatic life is 0.013 mg/L
21 pursuant to OAR 340-041-0033(2).

22 III. CONCLUSION

23 Respondent violated ORS 468B.025(1)(b) by discharging a waste that reduced the quality of
24 state waters below a water quality standard established by the Environmental Quality Commission.
25 Specifically, Respondent discharged highly chlorinated wastewater, a “waste” pursuant to ORS
26 468B.005(9) to Coos Bay, a “water of the state” pursuant to ORS 468B.005(10), causing an exceedance
27 of the salt water aquatic life toxicity water quality standard for chlorine in OAR 340-041-0033(2) and

1 Table 30 under OAR 340-041-8033, as described in Section II, Paragraphs 1-4, above. This is a Class I
2 violation, according to OAR 340-012-0055(1)(b). DEQ assesses a \$25,000 civil penalty for this violations.

3 IV. ORDER TO PAY CIVIL PENALTY

4 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
5 hereby ORDERED TO: Pay a total civil penalty of \$25,000. The determination of the civil penalty is
6 attached as Exhibit 1 and is incorporated as part of this Notice.

7 If you do not file a request for hearing as set forth in Section V below, your check or money
8 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
9 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

11 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
12 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
13 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
14 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
15 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
16 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
17 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
18 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge
19 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
20 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
21 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
22 you may represent yourself. If you are a corporation, partnership, limited liability company,
23 unincorporated association, trust or government body, you must be represented by an attorney or a duly
24 authorized representative, as set forth in OAR 137-003-0555.

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1 Active duty Service members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
5 Department does not have a toll free telephone number.

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

12
13
14
15 2/10/2021
Date


15 
Kieran O'Donnell, 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 NO. 1 Reducing the quality of state waters below a water quality standard established by the Environmental Quality Commission in violation of ORS 468B.025(1)(b).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(2)(b)(A)(iii) because Respondent's discharge caused a violation in excess of the salt water life acute water quality standard for chlorine.

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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(D) because Respondent did not have a National Pollutant Discharge Elimination System permit.

"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 10 according to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of more than 9 Class I equivalent violations, stemming from Expedited Enforcement Offer no. 2016-EEO-2114, Case No. WQ/SW-NWR-2017-080, Case No. WQ/SW-NWR-2017-204, Case No. WQ/SW-WR-2018-142 and Case No. WQ/SW-NWR-2019-009.

"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 is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Each day of violation constitutes a separate occurrence. The violation occurred on August 11, 2020.

"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 had intended to dechlorinate the sterilization wastewater prior to discharge, but failed to install a critical piece of equipment to its dechlorination system. In failing to ensure that its dechlorination system was adequate to the task, Respondent failed to take reasonable care to avoid the foreseeable risk of committing 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)(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 \$0 because the economic benefit Respondent received, if any, was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$12,000 + [(0.1 \times \$1,200) \times (10 + 0 + 0 + 4 + 0)] + \$0 \\ &= \$12,000 + (\$1,200 \times 14) + \$0 \\ &= \$12,000 + \$16,800 + \$0 \\ &= \$28,000 \end{aligned}$$

Oregon Revised Statute 468.130(1) limits the maximum civil penalty for a single violation of ORS 468.025(1)(b) to \$25,000. Respondent's total civil penalty is \$25,000.