



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 2997

City of Wilsonville
c/o Barbara Ann Jacobson, City Attorney
29799 SW Town Center Loop E
Wilsonville, OR, 97070

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-NWR-2020-139

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 \$6,600 for exceeding the pollutant effluent limits in the city's wastewater discharge permit. Pollutant limits are set at levels to protect the beneficial uses of state waters. By exceeding those levels, you risked impairing beneficial uses of the Willamette River.

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

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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 503-229-5950 or toll free in Oregon at 800-452-4011, extension 5950.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Mark Bentz, Northwest Region, DEQ
Tiffany Yelton-Bram, Northwest Region, DEQ
Accounting, DEQ

6. Respondent discharged effluent with weekly average TSS concentrations as follows:

Week of	TSS Weekly Average Concentration	Percentage over limit
May 10, 2020	28 mg/L	87%
June 14, 2020	189 mg/L	1,160%
July 5, 2020	92 mg/L	513%
July 12, 2020	20 mg/L	20%

7. Schedule A, Condition 1.a of the Permit limits the mass loading of TSS in its effluent to a monthly average of 190 pounds per day (lbs/day) during the period May 1 to October 31.

8. Respondent discharged effluent with monthly average TSS mass loading as follows:

Month	TSS Monthly Average Mass Loading	Percentage over limit
May 2020	197 lbs/day	4%
July 2020	392 lbs/day	106%

9. Schedule A, Condition 1.a of the Permit limits the mass loading of TSS in its effluent to a weekly average of 280 lbs/day during the period May 1 to October 31.

10. Respondent discharged effluent with weekly average TSS mass loading as follows:

Week of	TSS Weekly Average Mass Loading	Percentage over limit
May 10, 2020	491 lbs/day	75%
June 14, 2020	3,986 lbs/day	1,324%
July 5, 2020	1,505 lbs/day	438%
July 12, 2020	289 lbs/day	3%

11. Schedule A, Condition 1.a of the Permit limits the mass loading of TSS in its effluent to a daily maximum of 380 pounds during the period May 1 to October 31.

12. Respondent discharged effluent with daily maximum TSS loadings as follows:

Day of	TSS Daily Mass Loading in Pounds	Percentage over limit
May 13, 2020	552	45%
May 14, 2020	429	12%

Day of	TSS Daily Mass Loading in Pounds	Percentage over limit
June 17, 2020	6,061	1,495%
June 18, 2020	1,911	403%
July 8, 2020	2,519	563%
July 9, 2020	492	30%

13. Schedule A, Condition 1.a of the Permit limits the concentration of carbonaceous biochemical oxygen demand (CBOD₅) in Respondent's effluent to a weekly average of 15 mg/L during the period May 1 to October 31.

14. During the week of June 14, 2020, Respondent discharged effluent with a weekly average CBOD₅ concentration of 26 mg/L, or 73% above the limit.

15. Schedule A, Condition 1.a of the Permit limits the mass loading of CBOD₅ in its effluent to a monthly average of 190 pounds lbs/day during the period May 1 to October 31.

16. During the month of June 2020, Respondent discharged effluent with a monthly average mass loading of 192 lbs/day, or 1% over the limit.

17. Schedule A, Condition 1.a of the Permit limits the mass loading of CBOD₅ in its effluent to a weekly average of 280 lbs/day during the period May 1 to October 31.

18. During the week of June 14, 2020, Respondent discharged effluent with a weekly average CBOD₅ mass loading of 555 lbs/day, or 98% over limit.

19. Schedule A, Condition 1.a of the Permit limits the mass loading of CBOD₅ in its effluent to a daily maximum of 380 pounds during the period May 1 to October 31.

20. On June 17, 2020, Respondent discharged effluent with a mass loading of 807 pounds of CBOD₅, or 112% over the limit.

21. Schedule A, Condition 1.c of the Permit limits the concentration of *e. coli* bacteria in any single sample of Respondent's effluent to 406 organisms per 100 milliliters (mL).

22. Single sample concentrations of *e. coli* bacteria in Respondent's effluent were as follows: June 16, 2020 - >2,419 organisms per 100 mL, and July 14, 2020 - 548 organisms per 100 mL.

1 III. CONCLUSIONS

2 1. Respondent violated ORS 468B.025(2) by violating a condition of a wastewater
3 discharge permit. Specifically, Respondent violated Schedule A, Condition 1.a of the Permit by
4 exceeding TSS limits in its effluent as described in Section II, Paragraphs 3-12. Those instances where
5 the limit was exceeded by 50 percent or more are Class I violations pursuant to OAR 340-012-
6 0055(1)(k)(A). Those instances where the limit was exceeded by 20 percent or more, but less than 50
7 percent, are Class II violations pursuant to OAR 340-012-0055(2)(a)(A). Those instances where the
8 limit was exceeded by less than 20 percent are Class III violations pursuant to OAR 340-12-
9 0055(3)(b)(A). DEQ assesses a \$3,400 civil penalty for these violations.

10 2. Respondent violated ORS 468B.025(2) by violating a condition of a wastewater
11 discharge permit. Specifically, Respondent violated Schedule A, Condition 1.a of the permit by
12 exceeding CBOD₅ limits in its effluent as described in Section II, Paragraphs 13-20. Those instances
13 where the limit was exceeded by 50 percent or more are Class I violations pursuant to OAR 340-012-
14 0055(1)(k)(A). The instance where the limit was exceeded by less than 20 percent is a Class III
15 violation pursuant to OAR 340-12-0055(3)(b)(A). DEQ assesses a \$3,200 civil penalty for these
16 violations.

17 3 Respondent violated ORS 468B.025(2) by violating a condition of a wastewater
18 discharge permit. Specifically, Respondent violated Schedule A, Condition 1.c of the Permit by
19 exceeding *e.coli* limits in its effluent as described in Section II, Paragraphs 21 and 22. These are Class
20 III violations pursuant to OAR 340-012-0055(3)(b)(C). DEQ does not assess a civil penalty for these
21 violations.

22 IV. ORDER TO PAY CIVIL PENALTY IF APPLICABLE: AND TO COMPLY

23 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
24 hereby ORDERED TO: Pay a total civil penalty of \$6,600. The determination of the civil penalties are
25 attached as Exhibits 1 and 2 and are incorporated as part of this Notice.

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

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

19 Active duty Service members have a right to stay proceedings under the federal Service
20 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
21 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
22 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
23 Department does not have a toll free telephone number.

24 If you fail to file a timely request for hearing, the Notice will become a final order by default
25 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
26 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
27 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

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6 2 / 10 / 2021
7 Date

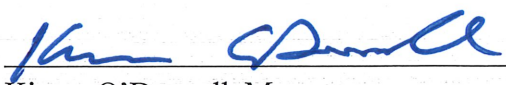
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9 Kieran O'Donnell, Manager
10 Office of Compliance and Enforcement
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EXHIBIT 1

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

VIOLATION NO. 1 Failure to comply with a wastewater permit condition in violation of ORS 468B.025(2) by failing to comply with TSS effluent limits in its Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) and OAR 340-012-0140(4)(e) because Respondent exceeded a TSS limit by 50% or more.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving stream.

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 \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140 (3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent has an NPDES Permit for a municipal sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

"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 there are no prior significant actions.

"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 no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were 19 occurrences of the violation. Respondent committed 19 violations of its TSS concentration or mass load limits during the months of May, June, and July 2020 as detailed in the Notice.

"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. The TSS limits are express conditions of Respondent's Permit. By failing to take action to ensure compliance with the limits, Respondent failed to exercise 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 as DEQ has insufficient information regarding the cause of the violation to arrive at a reasonable estimate of any avoided or delayed compliance costs.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 3 + 4 + 0)] + \$0 \\ &= \$2,000 + (\$200 \times 7) + \$0 \\ &= \$2,000 + \$1,400 + \$0 \\ &= \$3,400 \end{aligned}$$

EXHIBIT 2

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

VIOLATION NO. 2 Failure to comply with a wastewater permit condition in violation of ORS 468B.025(2) by failing to comply with CBOD₅ effluent limits of the Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) and OAR 340-012-0140(4)(e) because Respondent exceeded a CBOD₅ limit by 50% or more.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving stream.

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 \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140 (3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent has an NPDES Permit for a municipal sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

"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 there are no prior significant actions.

"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 no prior history.

"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 four occurrences of the violation. Respondent committed violations of its weekly average CBOD₅ concentration, monthly and weekly average mass loading and daily maximum mass loading limits in June 2020 as detailed in the Notice.

"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. The CBOD₅ limits are express conditions of Respondent's Permit. By failing to take action to ensure compliance with the limits, Respondent failed to exercise 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 as DEQ has insufficient information regarding the cause of the violation to arrive at a reasonable estimate of any avoided or delayed compliance costs.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 2 + 4 + 0)] + \0
 $= \$2,000 + (\$200 \times 6) + \$0$
 $= \$2,000 + \$1,200 + \$0$
 $= \$3,200$