



Oregon

Tina Kotek, 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 7, 2023

CERTIFIED MAIL: 7018 1830 0001 6172 7226

City of Silverton
Attn: Ron Chandler, City Manager
306 S Water Street
Silverton, OR 97381

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-M-WR-2022-015

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$42,130 for exceeding effluent limits in the National Pollutant Discharge Elimination System Permit for the City of Silverton's wastewater treatment facility. The enclosed Notice of Civil Penalty Assessment and Order (Notice), also cites you without penalty for failing to comply with reporting requirements.

DEQ issued this penalty because from May 2021 to August 2022, the effluent from your wastewater treatment facility exceeded permitted limits for ammonia on thirty-two occasions and for total suspended solids on twenty-four occasions. Exceeding these limits may adversely impact water quality and aquatic species in Silver Creek, which is the receiving stream. Ammonia is toxic to many aquatic organisms. Suspended solids can impact aquatic life by blocking light from reaching submerged vegetation, reducing photosynthesis and dissolved oxygen. Suspended solids decrease water clarity, which can affect the foraging ability of fish. High levels of suspended solids can also clog fish gills, reduce growth rates, decrease disease resistance and prevent egg and larval development.

DEQ is concerned because the City has repeated these effluent limit violations and the violations may result from inadequate control of industrial discharges to the City's wastewater treatment facility. Included in Section IV of the enclosed Notice is an order requiring you to submit information to DEQ regarding your permitting and enforcement efforts under the City's voluntary pretreatment program, to submit an industrial user survey to DEQ, and to collect flow and effluent data from industrial dischargers. DEQ will use this information to evaluate whether the City will be required to establish a formal pretreatment program under federal regulations.

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.oregon.gov

Via fax – 503-229-6762

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 portion of the 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 Becka Puskas at 503-229-5058.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Travis Sperle, City of Silverton, Public Works Director, 306 S Water Street, Silverton, OR
97381
Bradley Eagleson, DEQ
Etsegenet Belete, DEQ
Ranei Nomura, 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 CITY OF SILVERTON,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ-M-WR-2022-015

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9 ORS Chapters 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,
10 and 045.

11 II. FINDINGS OF FACT

12 1. Respondent operates a municipal wastewater collection, treatment and disposal system
13 pursuant to National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit
14 Number 101720 (Permit) issued to Respondent by DEQ on August 2, 2005.

15 2. The Permit authorizes Respondent to construct, install, modify or operate a wastewater
16 collection, treatment, control and disposal system (the Facility) and discharge to public waters
17 adequately treated wastewater only from the authorized discharge point and only in conformance with
18 all the requirements, limitations and conditions set forth in the Permit.

19 3. The Permit was in effect at all material times.

20 4. The Permit authorizes Respondent to discharge treated effluent from the Facility to Silver
21 Creek from Outfall 001, and to discharge treated effluent from the Facility to the Oregon Gardens from
22 Outfall 002.

23 5. Schedule A, Condition 1 of the Permit limits, from May 1 through October 31, the ammonia
24 nitrogen (Ammonia-N) concentration of Respondent's discharge from Outfall 001 to a daily maximum
25 of 2.0 micrograms per liter (mg/L) and to a monthly average of 0.88 mg/L. Schedule A, Condition 1 of
26 the Permit also limits the daily maximum and monthly average Ammonia-N concentration of
27 Respondent's discharge at Outfall 002 based on the monthly average effluent temperature as follows:

Monthly average effluent temperature (T)	Daily maximum Ammonia-N limit (mg/L)	Monthly average Ammonia-N limit (mg/L)
T ≤ 12°C	3.0	1.3
12°C < T ≤ 14°C	3.0	1.3
14°C < T ≤ 16°C	2.9	1.3
16°C < T ≤ 18°C	2.9	1.3
18°C < T ≤ 20°C	2.9	1.3
20°C < T ≤ 22°C	2.5	1.1
22°C < T ≤ 24°C	2.2	0.96
T > 24°C	1.9	0.84

6. Respondent reported the following Ammonia-N concentrations from the Facility's effluent discharges:

Ammonia-N					
	Date	Outfall	Monthly average effluent temperature (°C)	Daily maximum limit (mg/L)	Actual daily value (mg/L)
1	May 19, 2021	001	N/A	2.0	12.2
2	May 20, 2021	001	N/A	2.0	12.0
3	May 19, 2021	002	13.6	3.0	12.2
4	May 20, 2021	002	13.6	3.0	12.0
5	June 30, 2021	001	N/A	2.0	4.9
6	June 30, 2021	002	15.4	2.9	4.9
7	July 7, 2021	001	N/A	2.0	2.1
8	July 13, 2021	001	N/A	2.0	2.5
9	July 27, 2021	001	N/A	2.0	20.6
10	July 28, 2021	001	N/A	2.0	3.7
11	July 27, 2021	002	18.1	2.9	20.6
12	July 28, 2021	002	18.1	2.9	3.7
13	October 7, 2021	001	N/A	2.0	3.2
14	October 6, 2021	001	N/A	2.0	2.1
15	October 6, 2021	002	14	3.0	3.2
16	June 29, 2022	001	N/A	2.0	5.1
17	June 29, 2022	002	12	3.0	5.1
18	June 30, 2022	001	N/A	2.0	2.6
19	July 13, 2022	001	N/A	2.0	2.5
20	July 21, 2022	001	N/A	2.0	2.7
21	August 16, 2022	001	N/A	2.0	4.8
22	August 16, 2022	002	17	2.9	4.8
23	August 17, 2022	001	N/A	2.0	2.6

				Monthly average limit (mg/L)	Actual monthly average (mg/L)
24	May 2021	001	N/A	0.88	3.1
25	May 2021	002	13.6	1.3	3.1
26	July 2021	001	N/A	0.88	3.9
27	July 2021	002	18.1	1.3	3.9
28	October 2021	001	N/A	0.88	1
29	June 2022	001	N/A	0.88	1.1
30	July 2022	001	N/A	0.88	1.7
31	July 2022	002	15.5	1.3	1.7
32	August 2022	001	N/A	0.88	1.3

7. Schedule A, Condition 1 of the Permit limits, from May 1 through October 31, the total suspended solids (TSS) concentration of Respondent's discharge at Outfall 001 to a weekly average of 15 mg/L and a monthly average of 10 mg/L.

8. Schedule A, Condition 1 of the Permit limits the total suspended solids (TSS) concentration of Respondent's discharge at Outfall 002 to a weekly average of 15 mg/L and a monthly average of 10 mg/L. These limits apply year-round.

9. Respondent reported the following regarding TSS in its effluent discharges from the Facility:

TSS Concentration					
	Date	Outfall	Weekly average limit (mg/L)	Actual weekly average (mg/L)	% Over limit
1	May 16-22, 2021	001	15	19	27%
2	May 16-22, 2021	002	15	19	27%
3	June 6-12, 2021	001	15	31	107%
4	June 6-12, 2021	002	15	31	107%
5	June 20-26, 2021	001	15	34	127%
6	June 20-26, 2021	002	15	34	127%
7	July 4-10, 2021	001	15	28	67%
8	July 18-24, 2021	001	15	57	280%
9	July 4-10, 2021	002	15	28	87%
10	July 18-24, 2021	002	15	57	280%
11	August 29 – September 4, 2021	001	15	46	207%
12	August 29 – September 4, 2021	002	15	46	207%

13	October 10-16, 2021	001	15	17	13%
14	October 10-16, 2021	002	15	17	13%
15	June 6-12, 2022	001	15	18	20%
16	June 6-12, 2022	002	15	18	20%
			Monthly average limit (mg/L)	Actual monthly average (mg/L)	% Over limit
17	June 2021	001	10	20	100%
18	June 2021	002	10	20	100%
19	July 2021	001	10	26	160%
20	July 2021	002	10	26	160%
21	September 2021	001	10	16	160%
22	September 2021	002	10	16	160%
23	June 2022	001	10	12	120%
24	June 2022	002	10	12	120%

10. Schedule A, Condition 1 of the Permit states that at both Outfalls 001 and 002, for TSS, the monthly average removal efficiency shall be not be less than 85 percent.

11. Respondent reported the following regarding TSS removal efficiency from the Facility's effluent discharges:

TSS removal efficiency			
	Date	Outfall	Monthly average removal efficiency (%)
1	September 2021	001	83%
2	September 2021	002	83%

12. Schedule A, Condition 1 of the Permit states that at both Outfalls 001 and 002, for *E. coli* bacteria, the effluent concentration of a single sample shall not exceed 406 organisms per 100 mls.

13. Respondent reported the following regarding *E. coli* bacteria from the Facility's effluent discharges:

<i>E. coli</i> bacteria					
	Date	Outfall	Effluent concentration (organisms/100 mls)	Daily maximum	Number of times over limit
1	February 16, 2021	001	792	126	1.95
2	February 17, 2021	001	501	126	1.23

1 14. Schedule A, Condition 1 of the Permit requires that the effluent discharged from the Facility
2 must be in the range of 6.5 to 9.0 at Outfall 001 and in the range of 6.5 to 8.5 at Outfall 002.

3 15. Respondent reported the following regarding pH from the Facility's effluent discharges:

pH				
	Date	Outfall	pH daily minimum	
4	1	October 10, 2021	001	6.2
5	2	October 10, 2021	002	6.2
6	3	October 23, 2021	001	6.3
7	4	October 23, 2021	002	6.3
8	5	October 24, 2021	001	6.4
	6	October 24, 2021	002	6.4

9 16. Schedule B, Condition 1.b of the Permit requires Respondent to measure at Outfall 001 a
10 daily maximum effluent temperature using a continuous monitor, as well as a daily flow value.
11 According to Schedule B, notes 4 and 5, Respondent must use this information to calculate weekly
12 averages of the temperature values and the flow values, and use those weekly averages to calculate
13 excess thermal load on a weekly basis. According to Schedule B, Condition 2.a of the Permit, the
14 results of the calculation must be reported on monthly Discharge Monitoring Reports (DMRs) such that
15 they can be compared to the excess thermal load limits in Schedule A, Condition 1.a of the Permit.

16 17. Similarly, Schedule B, Conditions 1.b and 1.c. of the Permit require Respondent to collect at
17 least two samples per week at each outfall 001 and 002 for carbonaceous biological oxygen demand
18 (CBOD₅) and TSS. According to Schedule B, Condition 2.a of the Permit, the average of the samples
19 taken during each week must be reported on monthly Discharge Monitoring Reports (DMRs) such that
20 they can be compared to the weekly average limits, in both mg/L and lbs/day in in Schedule A,
21 Condition 1 of the Permit.

22 18. On 143 occasions in 2021 and 2022, Respondent performed incorrect calculations, by
23 averaging the weekly averages, and reporting those values instead of the raw weekly average values for
24 CBOD₅ and TSS. Similarly, Respondent used the wrong formula from the Permit to calculate excess
25 thermal load on 4 occasions in 2021 and 2022.

26 19. As of the date of this Notice, Respondent has corrected some of these reporting errors and is
27 in the process of correcting the remaining errors.

1 20. Schedule B, Condition 1 of the Permit requires Respondent to collect daily data for total
2 flow, UV radiation dose, and effluent temperature. Schedule B, Condition 2 of the Permit requires
3 Respondent to report this daily data on its monthly DMRs.

4 21. For the months of February, June, July, August and September 2021, Respondent failed to
5 submit the daily data described in Section II, paragraph 20, above, on its monthly DMRs.

6 22. In December 2022, Respondent submitted the missing daily data described in Section II,
7 paragraph 21, above.

8 23. Schedule F, Condition D.6 of the Permit requires Respondent to report instances of
9 noncompliance with its monthly DMRs, including a description of the noncompliance and its cause, the
10 period of noncompliance, the estimated time the noncompliance is expected to continue if it has not
11 been corrected, and steps taken or planned to address the issue.

12 24. In the months of July 2021 and August 2022, Respondent had instances of noncompliance
13 as described in Section II, paragraphs 5-9, above, but failed to submit a noncompliance report with its
14 monthly DMRs. Respondent has since submitted the missing noncompliance reports to DEQ.

15 25. In February 2006, Respondent submitted to DEQ an industrial pretreatment survey required
16 under Schedule C of the Permit. The 2006 survey concluded that while there was one industry in
17 Silverton that met the federal definition of Significant Industrial User, that user was informed of its
18 status and no further actions were required.

19 26. On February 17, 2009, DEQ issued Warning Letter No. WQ/DOM-Major-WL-WRS-2009-
20 025, citing Respondent for effluent limit violations including four violations of the Permit's TSS limits,
21 two violations of dissolved oxygen limits, and two violations of pH limits, that occurred between July
22 2006 and January 2008.

23 27. On April 24, 2015, DEQ issued Pre-Enforcement Notice No. 2016-PEN-748, identifying
24 numerous effluent limit violations that occurred in June-September 2014, including 59 violations of the
25 Permit's Ammonia-N limits, and seven violations of the Permit's TSS limits, among other effluent limit
26 violations.¹ In the Pre-Enforcement Notice, DEQ expressed concern about the pattern of violations, and
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¹ These violations were addressed in Notice of Civil Penalty Assessment and Order No. WQ/M-WR-2015-112, issued on October 16, 2015.

1 required a report concerning Respondent's authority and ability to control industrial discharges. DEQ
2 further stated that additional violations due to interference caused by industrial discharges may prompt
3 DEQ to require the development and implementation of an industrial pretreatment program in
4 accordance with 40 CFR §403.

5 28. On May 26, 2015, Respondent submitted a report in response to the Pre-Enforcement Notice
6 described in Section II, paragraph 27 above, describing efforts it had taken to address several specific
7 industrial dischargers to the Facility. Respondent also stated that updates were underway to the
8 Pretreatment Section of the Silverton Municipal Code, Chapter 13.52, to establish the legal authority
9 for requiring local industries to be permitted and limited for industrial discharge wastewater, and
10 establishing administrative procedures for enforcement actions and civil penalties for violations of
11 permit conditions. Later in 2015, Respondent approved Ordinance 15-05 § 2, adopting the updates to
12 the Silverton Municipal Code.

13 29. On May 7, 2020, DEQ issued Warning Letter No WLOC-2020-5521, citing Respondent for
14 4 Ammonia violations in May and June 2019, two TSS violations in Sept 2017 and one dissolved
15 oxygen violation in June 2017.

16 30. On or about July 26 or July 27, 2021, Respondent reported in a noncompliance report
17 submitted to DEQ that Ammonia-N effluent limit violations were attributable to the discharge of one of
18 the Facility's industrial users. Other noncompliance reports submitted by Respondent, for the months of
19 June, July, August, and October 2022 attribute the noncompliance with Ammonia-N limits to other
20 causes.

21 31. As of the date of this Notice, Respondent's Facility receives discharges from at least two
22 food processing facilities.

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1 III. CONCLUSIONS

2 1. Respondent violated ORS 468B.025(2) by violating a condition of a wastewater discharge
3 permit. Specifically, Respondent failed to comply with effluent Ammonia-N limits in Schedule A,
4 Condition 1 of the Permit as described above in Section II, paragraphs 5-6. These are 32 Class I
5 violations, according to OAR 340-012-0055(1)(l). DEQ hereby assesses a \$20,800 civil penalty for these
6 violations.

7 2. Respondent violated ORS 468B.025(2) by violating a condition of a wastewater discharge
8 permit. Specifically, Respondent failed to comply with the TSS limits in Schedule A, Condition 1 of
9 the Permit as described above in Section II, paragraphs 7-9. There are 18 instances where the limit was
10 exceeded by 50 percent or more. These are Class I violations according to OAR 340-012-
11 0055(1)(k)(A). There are four instances where the limit was exceeded by 20 percent or more, but less
12 than 50 percent. These are Class II violations according to OAR 340-012-0055(2)(a)(A). There are two
13 instances where the limit was exceeded by less than 20 percent. These are Class III violations according
14 to OAR 340-012-0055(3)(b)(A). DEQ hereby assesses a \$20,000 civil penalty for these violations.

15 3. Respondent violated ORS 468B.025(2) by violating a condition of a wastewater discharge
16 permit. Specifically, Respondent failed to comply with the TSS removal efficiency requirements in
17 Schedule A, Condition 1 of the Permit as described above in Section II, paragraphs 10-11. These are
18 two Class III violations according to OAR 340-012-0055(3)(c). DEQ has not assessed a civil penalty for
19 these violations.

20 4. Respondent violated ORS 468B.025(2) by violating a condition of a wastewater discharge
21 permit. Specifically, Respondent failed to comply with the *E. coli* bacteria limits in Schedule A,
22 Condition 1 of the Permit as described above in Section II, paragraphs 12-13. These are two Class III
23 violations according to OAR 340-012-0055(3)(b)(C). DEQ has not assessed a civil penalty for these
24 violations.

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1 5. Respondent violated ORS 468B.025(2) by violating a condition of a wastewater discharge
2 permit. Specifically, Respondent failed to comply with the pH limits in Schedule A, Condition 1 of the
3 Permit as described above in Section II, paragraphs 14-15. These are six Class III violations according
4 to OAR 340-012-0055(3)(b)(B). DEQ hereby assesses a \$1,330 civil penalty for these violations.

5 6. Respondent violated OAR 340-045-0015(5)(d) and Schedule B, Condition 2 of the Permit by
6 failing to comply with DEQ's requirements for reporting, as described above in Section II, paragraphs
7 16-22. These are Class II violations according to OAR 340-012-0053(2). DEQ has not assessed a civil
8 penalty for these violations.

9 7. Respondent violated ORS 468B.025(2) by violating a condition of a wastewater discharge
10 permit. Specifically, Respondent failed to submit noncompliance reports with its monthly DMRs as
11 required by Schedule F, Condition D.6 of the Permit, as described above in Section II, paragraphs 23-
12 24. These are Class II violations according to OAR 340-012-0053(2). DEQ has not assessed a civil
13 penalty for these violations.

14 8. Based on the violations described in Section III, paragraphs 1-3 above, and the additional
15 findings in Section II, paragraphs 25-31, above, DEQ has determined that additional information is needed
16 to evaluate Respondent's implementation of its voluntary pretreatment program (described in Section II,
17 paragraph 28, above) and the nature and volume of the Industrial User discharges to the Facility, which
18 may be causing or contributing to violations of the effluent limits in Respondent's Permit. DEQ is
19 requiring Respondent to submit the information described in Section IV, paragraph 2, below to evaluate
20 whether Respondent should be required to develop a pretreatment program under 40 CFR §403.

21 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

22 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
23 hereby ORDERED TO:

24 1. Pay a total civil penalty of \$42,130. The determination of the civil penalties are attached as
25 Exhibits 1-3 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 "**Department of Environmental Quality**" and sent to the **DEQ,**
3 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

4 2. Comply with the following schedule of corrective actions:

5 a. Within 30 days of this order becoming final by operation of law or on appeal, submit to
6 DEQ:

7 i. A copy of all wastewater permits issued to industrial users pursuant to Chapter
8 13.52 of the Silverton Municipal Code; and

9 ii. A copy of all actions taken by the City of Silverton pursuant to Chapter
10 13.52.270 through 13.52.360 of the Silverton Municipal Code from 2015 to the
11 present (Notification of Violation, Consent Orders, Compliance Orders, Cease
12 and Desist Orders, Emergency Suspensions, Permit Revocation, Injunctive
13 Relief, Civil Penalties).

14 b. Within 180 days of this order becoming final by operation of law or on appeal,
15 Respondent must submit to DEQ an Industrial User survey that complies with the
16 requirements in 40 CFR 403.8(f)(2)(i-iii).

17 c. Starting with the month of March 2023 or within 30 days of this order becoming final by
18 operation of law or on appeal, whichever comes later, Respondent must require all
19 Industrial Users, as defined in 40 CFR §403.3, to monitor daily flow discharged to the
20 Facility until the Permit is renewed.

21 d. For any Industrial User that discharges flows of greater than 1,000 gallons per day, on
22 average, in any month, Respondent must also require the Industrial User to monitor
23 BOD₅, TSS and ammonia nitrogen at a frequency of at least once per week, for one
24 calendar year.

25 e. Respondent must collect and submit the data required in Section IV, paragraphs 2.a and
26 2.b, above to DEQ on a monthly basis by no later than the 15th of the following month,
27 along with Respondent's DMR submittal for that month.

1 3. Written documentation demonstrating Respondent's compliance with the requirements in
2 Section IV, paragraph 2, must be sent to Bradley Eagleson at
3 bradley.eagleson@deq.oregon.gov.

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 **503-229-6762** or email it to DEQappeals@deq.oregon.gov. 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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2/7/2023
Date



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 Violating a condition of a wastewater permit (Ammonia-N limits), in violation of ORS 468B.025(2).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(2)(a)(A)(ii) because the receiving stream flow at the time of at least three of the water quality based effluent limit violations in July 2021 was at or below the flow used to calculate the limit. According to OAR 340-012-0145(4)(e), If DEQ assesses one penalty for multiple occurrences of a violation, the penalty will be based on the highest classification and magnitude applicable to any of the occurrences.

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 \$8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent has a 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 initially receives a value of 10 according to OAR 340-012-0145(2)(a)(C) and (D) and OAR 340-012-0145(2)(b), because Respondent has more than 10 Class I violations in case no. WQ-M-WR-2015-112, issued on October 16, 2015. According to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because all the formal enforcement actions in which prior significant actions were cited were issued more than five years before the date the current violation occurred. Therefore, the value of P is 6.

"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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. There were 32 occurrences of the violation, described in Section II, paragraph 6 of 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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. In case no. WQ-M-WR-2015-112, issued on October 16, 2015, DEQ cited Respondent for violating the Ammonia-N daily and monthly limits 59 times in 2014 and 2015. DEQ also cited Respondent for four violations of the Ammonia-N limits in Warning Letter No WLOC-2020-5521, issued on May 7, 2020. Despite this history of violations, Respondent has not taken corrective actions to ensure consistent compliance with the Ammonia-N limits in the Permit. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting additional Ammonia-N violations.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"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 DEQ has insufficient information to calculate an economic benefit for this violation.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (6 + 0 + 4 + 4 + 2)] + \$0 \\ &= \$8,000 + (\$800 \times 16) + \$0 \\ &= \$8,000 + \$12,800 + \$0 \\ &= \$20,8000 \end{aligned}$$

EXHIBIT 2

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

- VIOLATION NO. 2 Violating a condition of a wastewater permit (TSS limits), in violation of ORS 468B.025(2).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(2)(a)(A)(i) because the dilution of the technology based effluent limit exceedances was less than 2 for at least one violation the week of July 18-24, 2021. According to OAR 340-012-0145(4)(e), If DEQ assesses one penalty for multiple occurrences of a violation, the penalty will be based on the highest classification and magnitude applicable to any of the occurrences.
- 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 \$8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent has a 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 initially receives a value of 10 according to OAR 340-012-0145(2)(a)(C) and (D) and OAR 340-012-0145(2)(b), because Respondent has more than 10 Class I violations in case no. WQ-M-WR-2015-112, issued on October 16, 2015. According to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because all the formal enforcement actions in which prior significant actions were cited were issued more than five years before the date the current violation occurred. Therefore, the value of P is 6.
- "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 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. There were 24 occurrences of the violation, described in Section II, paragraph 9 of 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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. In case no. WQ-M-WR-2015-112, issued on October 16, 2015, DEQ cited Respondent for violating the TSS concentration limits seven times in 2014 and 2015. DEQ also cited Respondent for two violations of the TSS limits in Warning Letter No WLOC-2020-5521, issued on May 7, 2020. Despite this history of violations, Respondent has not taken corrective actions to ensure consistent compliance with the TSS limits in the Permit. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting additional TSS limit violations.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"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 DEQ has insufficient information to calculate an economic benefit for this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$8,000 + [(0.1 x \$8,000) x (6 + 0 + 3 + 4 + 2)] + \$0
= \$8,000 + (\$800 x 15) + \$0
= \$8,000 + \$12,000 + \$0
= \$20,000

EXHIBIT 3

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

VIOLATION NO. 5 Violating a condition of a wastewater permit (pH limits), in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class III violation pursuant to OAR 340-012-0055(3)(b)(B).

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 \$700 for a Class III violation in the matrix listed in OAR 340-012-0140(3)(b)(C) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent has a 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 initially receives a value of 10 according to OAR 340-012-0145(2)(a)(C) and (D) and OAR 340-012-0145(2)(b), because Respondent has more than 10 Class I violations in case no. WQ-M-WR-2015-112, issued on October 16, 2015. According to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because all the formal enforcement actions in which prior significant actions were cited were issued more than five years before the date the current violation occurred. Therefore, the value of P is 6.

"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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. There were 6 occurrences of the violation, described in Section II, paragraph 15 of the Notice.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. As a permittee, Respondent has constructive knowledge of the pH limits in the Permit.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. The pH limit violations were caused by a plug in

the pH dose pump. Respondent unplugged the pump and returned the pump to normal operation, which prevented additional violations.

"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 DEQ has insufficient information to calculate an economic benefit for this violation.

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

$$\begin{aligned} &= \$700 + [(0.1 \times \$700) \times (6 + 0 + 2 + 2 + -1)] + \$0 \\ &= \$700 + (\$70 \times 9) + \$0 \\ &= \$700 + \$630 + \$0 \\ &= \$1,330 \end{aligned}$$