



# 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 24, 2021

CERTIFIED MAIL: 7017 0530 0000 7760 3055

City of Cannon Beach  
Attn: Bruce St. Denis, City Manager  
PO Box 368  
Cannon Beach, OR 97110

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-NWR-2020-183

***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 \$1,650 for a sanitary sewer overflow from the city's sewage collection system in July of 2020 that caused a violation of the bacteria water quality standard. The fecal bacteria in untreated sewage are a significant water pollutant and also pose a risk to public health.

Included in Section IV of the Notice is an order requiring you, within 60 days of final order, to submit and implement a written inspection and maintenance plan for all Cannon Beach collection system pump stations to verify the backup systems and alarms are operating correctly, including a description of plans to install an alarm system to detect and report low wetwell level conditions.

DEQ appreciates your prompt efforts to address the violation by cleaning up sewage-contaminated sand at the Nelchena Street Beach. DEQ considered these efforts when determining the amount of civil penalty.

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](mailto: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 Anzie St. Clair at 971-808-7368 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Randall Bailey, DEQ, NW Region  
Tiffany Yelton-Bram, DEQ  
Accounting, DEQ

1                                   BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2   OF THE STATE OF OREGON

3   IN THE MATTER OF:    )  
4   CITY OF CANNON BEACH, a municipal                                    )  
5   corporation,    )  
  Respondent.                    )           NOTICE OF CIVIL PENALTY  
  ASSESSMENT AND ORDER  
  CASE NO. WQ/M-NWR-2020-183

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  041, and 045.

11   II. FINDINGS OF FACT

12           1. At all material times, Respondent operates a wastewater collection, treatment, and disposal  
13   system in Cannon Beach, Clatsop County, Oregon (the Facility). The Facility is designed to discharge  
14   to Ecola Creek via unnamed wetlands.

15           2. The Facility is covered by National Pollutant Discharge System (NPDES) Permit No.  
16   102237 (the Permit), issued to Respondent by DEQ and in effect at all material times.

17           3. The Permit authorizes Respondent to operate its wastewater collection, treatment, and  
18   disposal system and to discharge to public waters adequately treated wastewaters (effluent) from the  
19   Facility only in conformance with the conditions and limitations of the Permit.

20           4. On or about July 17, 2020, Respondent’s Facility Matanuska pump station overflowed and  
21   discharged raw sewage to a storm drain which then conveyed it through an outfall at the end of  
22   Nelchena Street onto the beach and into the Pacific Ocean.

23           5. The Permit does not authorize overflows and discharges of raw sewage from the Facility to  
24   the storm drain, to the beach, or to the Pacific Ocean through the Nelchena Street outfall. (See Permit,  
25   Schedule A, conditions 1, 2, and 4, and Permit, Schedule F, condition B6 and D5)

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1 III. CONCLUSIONS

2 1. Respondent has violated ORS 468B.025(1)(b) when Respondent's Facility discharged raw  
3 untreated sewage, a waste pursuant to ORS 468B.005(9), to the Pacific Ocean, a water of the state  
4 pursuant to ORS 468B.005(10), where it reduced water quality below water quality standards,  
5 specifically OAR 340-041-0009(3) and which was not authorized by Respondent's Permit. This is  
6 Class I violation, according to OAR 340-012-0055(1)(b). DEQ hereby assesses a \$1,650 civil penalty for  
7 this violation.

8 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

11 1. Pay a total civil penalty of \$1,650. The determination of the civil penalty is attached as Exhibit  
12 1 and is incorporated as part of this Notice.

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

16 2. Within 60 days of this order becoming final by operation of law or on appeal, submit to  
17 DEQ for approval a written inspection and maintenance plan for all Cannon Beach collection system  
18 pump stations that includes a monthly visual inspection and verification that each station's backup  
19 systems and alarms are operating properly. Implement the DEQ-approved plan. Submit the written  
20 plan and any revisions requested by DEQ to: DEQ, Attn: Randall Bailey, 700 NE Multnomah St., Suite  
21 600, Portland, Oregon 97232, or by email to [Randall.Bailey@state.or.us](mailto:Randall.Bailey@state.or.us).

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

23 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
24 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
25 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
26 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered  
27 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for

1 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
2 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
3 it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge  
4 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
5 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
6 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
7 you may represent yourself. If you are a corporation, partnership, limited liability company,  
8 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
9 authorized representative, as set forth in OAR 137-003-0555.

10 Active duty Service members have a right to stay proceedings under the federal Service  
11 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
12 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
13 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
14 Department does not have a toll free telephone number.

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

21  
22  
23  
24 2/24/2021  
25 Date

24   
25 Kieran O'Donnell, Manager  
26 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 Discharging a waste that reduces the quality of state waters below a water quality standard in violation of ORS 468B.025(1)(b) and OAR 340-041-0009(3).

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

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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent operates a municipal wastewater treatment system with a flow of less than 2 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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent has one Class I violation in case no. WQ/M-NWR-2015-127, issued on September 10, 2015, which is more than three years but less than five years before the date of the current violation. According to OAR 340-012-0145(2)(d)(A)(i), this amount is reduced by 2. The final P value is 0.

"H" is Respondent's history of correcting prior significant actions, and receives a value of -1 according to OAR 340-012-0145(3)(b) because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior significant actions. According to OAR 340-012-0145(3)(d), this value is increased to 0 because the sum of the "P" and "H" factors may not be less than zero.

"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. Respondent discharged wastes which exceeded water quality standards on July 17, 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. Negligent means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting

in a violation. Respondent submitted a sanitary sewer overflow report to DEQ after the July 2020 event. The report attributed the overflow to operator error, but noted that part of its alarm system was not fully functioning. Respondent last inspected its float system at the pump station in October 2019. Respondent knew or should have known that discharging raw untreated sewage to the Pacific Ocean was prohibited, and that operator errors, infrequent inspections, and inadequate or unmaintained alarm systems could result in an unpermitted discharge from its pump station. It was foreseeable that an overflow could occur where backup alarms were infrequently inspected or not maintained. By failing to perform equipment maintenance and backup alarm system inspections at a higher frequency, Respondent failed to take reasonable care to avoid a foreseeable risk of an overflow.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. After learning of the discharge, Respondent mobilized equipment and removed the remaining sewage solids from the beach on the same day.

"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 de minimis pursuant to OAR 340-012-0150(4). The costs Respondents incurred to clean up the sanitary sewer overflow on July 17, 2020 likely exceeded the costs it avoided by not more frequently inspecting and maintaining its alarm system equipment.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 0 + 4 + -3)] + \$0$   
 $= \$1,500 + (\$150 \times 1) + \$0$   
 $= \$1,500 + \$150 + \$0$   
 $= \$1,650$