



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

April 15, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3480

City of Vernonia
c/o Mayor Rick Hobart
1001 Bridge Street
Vernonia, OR 97064-1240

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-NWR-2022-012

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a total civil penalty of \$7,800 for water quality violations at your wastewater treatment facility in Vernonia. On or about January 2-3, 2022 and January 7-9, 2022, you caused pollution of waters of the state when you discharged untreated sewage mixed with stormwater to Rock Creek and the Nehalem River. You also failed to timely report the discharges to DEQ as required by your wastewater discharge permit.

DEQ issued this penalty because the discharge of wastewater that has not been treated to reduce bacteria can impair water quality and pose a risk to human health. DEQ is especially concerned that these discharges may have exposed nearby residents to pathogens. Failing to comply with the notice requirements of your permit inhibits DEQ's ability to ensure that human health and the environment are protected.

Included in Section IV of the enclosed Notice is an order requiring you to conduct a study to determine the causes of overflows at the Facility and to develop and implement solutions to the overflow issue by October 31, 2023.

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 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 Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,

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

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jeff Burch, City of Vernonia Public Works, 1001 Bridge Street, Vernonia, OR 97064-1240
Mike Pinney, Northwest Region, DEQ
Tiffany Yelton-Bram, Northwest Region, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF: CITY OF VERNONIA,)))))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. WQ/M-NWR-2022-012
Respondent.		

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) 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, and 045.

II. FINDINGS OF FACT

1. Respondent operates a wastewater treatment and collection system located at 943 California Avenue in Vernonia, Columbia County, Oregon (the Facility).
2. On November 2, 2001, DEQ issued National Pollutant Discharge Elimination System Waste Discharge Permit No. 101094 (the Permit) to Respondent. The Permit allows Respondent to discharge treated wastewater from the Facility to the Nehalem River in conformance with the requirements, limits and conditions set forth in the Permit. The Permit expired on May 31, 2011, but DEQ administratively extended it. The Permit was in effect at all material times.
3. On or about January 2, 2022, a sewer manhole at the intersection of Weed Avenue and Clatsop Street in Vernonia overflowed, causing approximately 80,000 gallons of raw sewage mixed with stormwater to discharge to the environment. The stormwater and sewage discharged into a stormwater ditch, into a culvert and onto private property located at 1122 Weed Avenue in Vernonia, where it flowed overland into Rock Creek. The discharge occurred through January 3, 2022.
4. On or about January 7, 2022, the treatment lagoons at the Facility overflowed, causing approximately 1,600,000 gallons of raw sewage mixed with stormwater to discharge to Rock Creek and the Nehalem River. The discharge occurred through January 9, 2022.

1 5. Rock Creek and the Nehalem River are “waters of the state” under ORS 468B.005(10).
2 Rock Creek flows into the Nehalem River approximately 100 feet west of the treatment lagoons at the
3 Facility.

4 6. Schedule F, Section B(6)(b) of the Permit prohibits storm related overflows of raw sewage
5 to waters of the state.

6 7. Schedule F, Section D(5) of the Permit requires Respondent to report to DEQ any
7 noncompliance that may endanger health or the environment. The report must be made orally within 24
8 hours and in writing within five days of the time Respondent becomes aware of the circumstances.

9 8. Respondent was aware of the overflow conditions described in Paragraph 3 above on
10 January 2, 2022.

11 9. Respondent did not make an oral report about the overflow described in Paragraph 3 above
12 to DEQ within 24 hours and did not submit a written report to DEQ within five days of January 2,
13 2022. Respondent made an oral report to the Oregon Emergency Response System on January 4, 2022.
14 DEQ received a written report from Respondent on or about January 19, 2022.

15 10. Respondent was aware of the overflow conditions described in Paragraph 4 above on
16 January 7, 2022.

17 11. Respondent did not submit a written report about the overflow described in Paragraph 4
18 above to DEQ within five days of January 7, 2022. DEQ received a written report from Respondent on
19 or about January 19, 2022.

20 III. CONCLUSIONS

21 1. On or about January 2-3 and 7-9, 2022, Respondent violated ORS 468B.025(1)(a) and
22 Schedule F, Section B(6)(b) of the Permit by discharging raw sewage to Rock Creek and the Nehalem
23 River, thereby causing pollution of waters of the state, as described in Section II, Paragraphs 1-6 above.
24 These are Class I violations according to OAR 340-012-0055(1)(a). DEQ hereby assesses a \$4,800 civil
25 penalty for these violations.

26 ///

27 ///

1 2. Respondent violated Schedule F, Section D(5) of the Permit by failing to make timely oral
2 and written reports of the sanitary sewer overflows to DEQ, as described in Section II, Paragraphs 7-11
3 above. These are Class I violations according to OAR 340-012-0055(1)(e). DEQ hereby assesses a
4 \$3,000 civil penalty for these violations.

5 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

8 1. Pay a total civil penalty of \$7,800. The determination of the civil penalty is attached as Exhibit
9 Nos. 1 and 2, which are incorporated as part of this Notice. If you do not file a request for hearing as set
10 forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of**
11 **Oregon**" and sent to: **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland,**
12 **Oregon 97232**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

13 2. Comply with Oregon law by taking the following actions:

- 14 a. Within one year of the date of this order becoming final by operation of law or on appeal,
15 submit a report to DEQ that summarizes the results of a study of the causes of overflows at
16 the Facility. The study must investigate the collections system, inflow and infiltration (I&I),
17 the condition of the manhole where the overflow occurred, and the capacity of the main
18 sanitary sewer line serving the area. The report must propose solutions to prevent future
19 overflows. Submit the completed report to Mike Pinney for review and approval by email
20 at Mike.Pinney@deq.oregon.gov.
- 21 b. After DEQ has approved the report, implement the approved solutions by October 31,
22 2023.

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

24 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
25 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
26 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
27 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered

1 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
2 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
3 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
4 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
5 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
6 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
7 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
8 you may represent yourself. If you are a corporation, partnership, limited liability company,
9 unincorporated association, trust or government body, you must be represented by an attorney or a duly
10 authorized representative, as set forth in OAR 137-003-0555.

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

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

22
23
24
25 4/15/2022
26 Date


25 
26 Kieran O'Donnell, Manager
27 Office of Compliance and Enforcement

EXHIBIT NO. 1

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

VIOLATION 1: Causing pollution of waters of the state, in violation of ORS 468B.025(1)(a), by discharging raw sewage, in violation of Schedule F, Section B(6)(b) of the Permit.

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0130(3) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had a significant adverse impact on human health or the environment. In making this finding, DEQ considered the following reasonably available information: the two discharges lasted a total of five days and resulted in the release of approximately 1,680,000 gallons of stormwater containing raw sewage into Rock Creek and the Nehalem River. Additionally, the discharges reached nearby wetlands, a farm and residential properties.

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 \$3,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(4)(a)(B)(i) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent has an NPDES permit for a municipal wastewater treatment facility with a permitted flow of less than two 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)(b), because there were more than one but less than seven occurrences of the violation. Overflows of raw sewage from Respondent's Facility occurred on a total of five days: January 2-3, 2022 and January 7-9, 2022.

"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 was aware that high rainfall events caused overflows at the Facility, and that the wastewater discharged into waters of the state and onto private properties. These conditions have occurred over a period of approximately fifteen years. By failing to make improvements to the Facility and infrastructure to prevent overflows of sewage and failing to appropriately respond to these events, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate its Permit and Oregon law.

"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 \$0 because there is insufficient information on which to make an estimate of Respondent's economic benefit, if any.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$3,000 + [(0.1 x \$3,000) x (0 + 0 + 2 + 4 + 0)] + \$0
= \$3,000 + [\$300 x 6] + \$0
= \$3,000 + \$1,800 + \$0
= \$4,800

EXHIBIT NO. 2

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

VIOLATION 2: Failing to timely report an overflow as required by Schedule F, Section D(5) of the Permit, in violation of ORS 468B.025(2).

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

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)(a)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent has an NPDES permit for a municipal wastewater treatment facility with a permitted flow of less than two 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)(b), because there were more than one but less than seven occurrences of the violation. Respondent failed to timely report the January 2-3, 2022 overflow orally and in writing, and failed to timely submit a written report for the January 7-9, 2022 overflow, which is a total of three separate occurrences of the violation.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent's permit has express reporting requirements for noncompliance events including overflows that are intended to protect public health and the environment and provide information to DEQ. Property owners near the Facility had taken measures to divert discharges from the Facility, indicating that overflows were a persistent problem. However, Respondent had not reported any overflows to DEQ for at least ten years prior to January 2022. By failing to timely report these overflows to DEQ, Respondent consciously disregarded a substantial and unjustifiable risk

that it would violate its obligations under the Permit. Because the overflows posed a risk to public health and the environment, disregarding the risk constituted a gross deviation from the standard of care a reasonable facility operator would observe in that situation.

"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 \$0 because there is insufficient information on which to make an estimate of Respondent's economic benefit, if any.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 2 + 8 + 0)] + \$0 \\ &= \$1,500 + [\$150 \times 10] + \$0 \\ &= \$1,500 + \$1,500 + \$0 \\ &= \$3,000 \end{aligned}$$