



# 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 12, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3473

Westport Sewer Service District  
c/o Dan Keranen  
Clatsop County Public Works Department  
1100 Olney Ave.  
Astoria, OR 97103

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-NWR-2022-019

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$2,025 for water quality violations at your wastewater treatment facility in Westport. On eighteen occasions, you exceeded *E. coli* bacteria effluent limits in your wastewater discharge permit. You were also cited, without penalty, for violating pH effluent limits on four occasions.

DEQ issued this penalty because compliance with the terms of your permit is essential to protecting the quality of state waters. Effluent limits are set to protect aquatic life and human health. *E. coli* is bacteria that indicates fecal contamination with the possible presence of pathogens and the risk of disease. The discharge of effluent with high levels of *E. coli* poses a risk to human health.

Included in Section IV of the enclosed Notice is an order requiring you to submit a plan and implement facility improvements and maintenance activities that will prevent future *E. coli* exceedances.

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](mailto: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>.

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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: Mark Bentz, 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: )  
WESTPORT SEWER ) NOTICE OF CIVIL PENALTY  
SERVICE DISTRICT, ) ASSESSMENT AND ORDER  
Respondent. ) CASE NO. WQ/M-NWR-2022-019

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

- Respondent operates a wastewater treatment and collection system located at 91291 Westport Boat Ramp Road in Westport, Clatsop County, Oregon (the Facility).
- On September 18, 2019, DEQ issued National Pollutant Discharge Elimination System Waste Discharge Permit No. 101520 (the Permit) to Respondent. The Permit allows Respondent to discharge treated wastewater from the Facility to the Westport Slough, waters of the state, in conformance with the requirements, limits and conditions set forth in the Permit. The Permit was in effect at all material times.
- Schedule A, Condition 1(b), Table A1 of the Permit contains the following technology-based effluent limitations (TBELs) for *E. coli* bacteria: 126 organisms per 100 milliliters (mL) for the monthly log mean and 406 organisms per 100 mL for a single sample.

4. Respondent reported the following bacterial concentrations in its effluent discharge:

Date	Permit Effluent Limit (organisms/100mL)	Reported Value (organisms/100mL)	Percentage over Permit Effluent Limit
July 24, 2021	406, daily maximum	435	7%
July 2021	126, monthly log mean	291.2	131%
August 13, 2021	406, daily maximum	2419	496%



1 II violations according to OAR 340-012-0055(2)(a)(C) and fifteen (15) Class III violations according to  
2 OAR 340-012-0055(3)(b)(C). DEQ hereby assesses a \$2,025 civil penalty for these violations.

3 2. On October 5, 12, 27 and 28, 2021, Respondent violated the TBEL for pH in Schedule A,  
4 Condition 1(b) of its Permit, in violation of ORS 468B.025(2), as described in Section II, Paragraphs 6-  
5 7 above. These are Class III violations according to OAR 340-012-0055(3)(b). DEQ has not assessed a  
6 civil penalty for these violations.

#### 7 IV. ORDER TO PAY CIVIL PENALTY

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

10 1. Pay a civil penalty of \$2,025. The determination of the civil penalty is attached as Exhibit No.  
11 1 and incorporated as part of this Notice.

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

16 2. Within thirty (30) days of this order becoming final by operation of law or on appeal, submit to  
17 DEQ a plan for facility improvements and maintenance activities that will prevent future *E. coli*  
18 exceedances. The plan must include a schedule for implementation improvements and maintenance  
19 activities. Submit the plan to Mark Bentz at DEQ via email at: [mark.bentz@deq.oregon.gov](mailto:mark.bentz@deq.oregon.gov).

20 3. Implement the improvements and maintenance activities according to the schedule in the plan.

#### 21 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

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

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

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

22  
23 4 / 12 / 2022  
24 Date

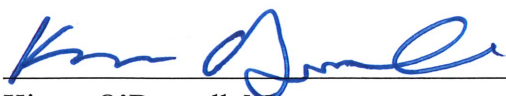
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Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

EXHIBIT NO. 1

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

VIOLATION: Violating the technology-based effluent limitations (TBELs) for *E. coli* bacteria in Schedule A, Condition 1(b) of its NPDES permit, in violation of ORS 468B.025(2).

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0055(2)(a)(C) because Respondent violated TBELs and the discharges exceeded bacteria limits by a factor of five or more.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C), because the dilution of the exceedances was 10 or more.

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 \$375 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(iii) 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 (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10. Respondent had eight Class I violations, one Class II violation and eight Class III violations in Case No. WQ/M-NWR-2016-165, which receives a value of 13 according to OAR 340-012-0145(2)(a)(B)-(D). The Formal Enforcement Action in which the PSAs were cited was issued more than three years before the date the current violation occurred, which results in a reduction of 2 according to OAR 340-012-0145(2)(d)(A)(i). Additionally, according to OAR 340-012-0145(1)(b), the value of "P" will not exceed 10.

"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. Respondent exceeded the TBEL for bacteria for single samples on 14 days and exceeded the monthly log mean in July, August, September and October, 2021, which is a total of 18 occurrences. Pursuant to OAR 340-012-0145(4)(e), DEQ has assessed one penalty for multiple occurrences, and has used the highest classification and magnitude applicable to any of the occurrences.

- "M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent had previous *E. coli* bacteria exceedances that were caused by problems with its UV treatment system. Respondent should have promptly investigated and addressed the underlying issues causing bacteria exceedances. By failing to take these steps, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate the *E. coli* limits in its permit.
- "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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e) or (6)(g).
- "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:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$= \$750 + [(0.1 \times \$750) \times (10 + 0 + 3 + 4 + 0)] + \$0$$

$$= \$750 + [\$75 \times 17] + \$0$$

$$= \$750 + \$1,275 + \$0$$

$$= \$2,025$$