June 3, 2022

CERTIFIED MAIL: 7018 1830 0001 6172 5819

City of Hood River
c/o Abigail Elder, City Manager
211 2nd Street
Hood River, OR 97031

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-ER-2021-183

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $7,700 for violating pollution limits in your wastewater discharge permit. Specifically, you discharged effluent that exceeded permit requirements for weekly and monthly limits for total suspended solids (TSS) and you discharged effluent with daily concentrations of E. coli bacteria greater than five times the permitted limit. Pollution limits are established in your permit to protect water quality and the beneficial uses of state waters. In addition, you failed to conduct required toxics monitoring for the second quarter of 2021.

The attached notice also cites you, without penalty, for the following additional violations of your permit: discharging effluent that exceeded permit requirements for weekly limits for BOD and discharging effluent outside the permitted pH range.

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 Jeff Bachman at 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: Justin Sterger, DEQ
    Shannon Davis, DEQ
    Accounting, DEQ
BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: CITY OF HOOD RIVER, a municipal Corporation of the state of Oregon, Respondent.) NOTICE OF CIVIL PENALTY ) ASSESSMENT AND ORDER ) CASE NO. WQ/M-ER-2021-183

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, ORS 468.126 through 468.140, ORS Chapter 183 and 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 045.

II. FINDINGS OF FACT

1. Respondent operates a wastewater collection, treatment, control and disposal system at 818 Riverside Drive in Hood River, Oregon (the Facility).

2. The Facility is operated pursuant to a National Pollutant Discharge Elimination System Permit No. 101729 (the Permit), issued to Respondent by DEQ.

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

4. The Permit authorizes Respondent to operate a wastewater collection, treatment, control and disposal system and discharge adequately treated wastewater (effluent) to waters of the state only in conformance with the conditions and limitations of the Permit.

5. For the period between May 1 and October 31, Schedule A, Condition 1, Table A1 of the Permit limits weekly average effluent total suspended solids (TSS) concentration to 30 mg/L.

6. During the week ending on July 31, 2021, Respondent discharged effluent from its Facility with a weekly average TSS effluent concentration of 42 mg/L.

7. For the period between May 1 and October 31, Schedule A, Condition 1, Table A1 of the Permit limits monthly average effluent TSS concentration to 20 mg/L.

8. During the month of July 2021, Respondent discharged effluent from its Facility with a monthly average TSS effluent concentration of 25 mg/L.
9. During the month of September 2021, Respondent discharged effluent from its Facility with a monthly average TSS effluent concentration of 21 mg/L.

10. For the period between May 1 and October 31, Schedule A, Condition 1, Table A1 of the Permit limits weekly average effluent of biochemical oxygen demand (BOD$_5$) concentrations to 30 mg/L.

11. During the week of September 22, 2021, Respondent discharged effluent with a weekly average BOD concentration of 34 mg/L.

12. Schedule A, Condition 1, Table A1 of the Permit states that no single sample of *E. coli* bacteria may exceed 406 organisms per 100 mL.

13. Respondent discharged effluent with *e. coli* concentrations as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th><em>E. coli</em> Concentration in Organisms per 100 mL</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 4, 2021</td>
<td>2,214</td>
</tr>
<tr>
<td>September 14, 2021</td>
<td>1,021</td>
</tr>
<tr>
<td>September 16, 2021</td>
<td>2,419</td>
</tr>
<tr>
<td>September 18, 2021</td>
<td>2,419</td>
</tr>
<tr>
<td>September 22, 2021</td>
<td>548</td>
</tr>
<tr>
<td>September 23, 2021</td>
<td>2,419</td>
</tr>
<tr>
<td>September 24, 2021</td>
<td>1,414</td>
</tr>
<tr>
<td>September 25, 2021</td>
<td>2,419</td>
</tr>
<tr>
<td>September 26, 2021</td>
<td>1,733</td>
</tr>
<tr>
<td>September 27, 2021</td>
<td>548</td>
</tr>
<tr>
<td>September 28, 2021</td>
<td>2,419</td>
</tr>
<tr>
<td>September 29, 2021</td>
<td>1,733</td>
</tr>
<tr>
<td>September 30, 2021</td>
<td>2,419</td>
</tr>
<tr>
<td>October 1, 2021</td>
<td>411</td>
</tr>
<tr>
<td>October 28, 2021</td>
<td>613</td>
</tr>
</tbody>
</table>
14. Schedule A, Condition 1, Table A1 of the Permit limits monthly geometric mean of E. coli bacteria to 126 organisms per 100 mL.

15. During the month of September 2021, Respondent discharged effluent from its Facility with a monthly geometric mean of E. coli concentrations at 498.10 organisms per 100 mL, 3.95 times the Permit limit.

16. Schedule B, Condition 1, Table B1 of the Permit requires reporting for parameters in tables B6-B11: effluent toxics characterization. On a quarterly basis, Respondent must submit to DEQ effluent toxics characterization monitoring results for each of the first 4 quarters following the permit effective date of December 1, 2020. Schedule B, Condition 6, Table B10 of the Permit requires Respondent collect and analyze effluent samples for certain toxic pesticides and PCBs, including Mirex.

17. During the second quarter of 2021, Respondent failed to collect monitoring data for Mirex as required by Schedule B of the Permit.

18. Schedule B, Condition 1, Table A1 of the Permit requires daily pH to be within the range of 6.0 to 8.5 standard units.

19. During the month of December 17, 2021, Respondent discharged effluent with a pH of 5.9 standard units.

III. CONCLUSIONS

1. Respondent violated ORS 468B.025(2) by violating Schedule A, Condition 1, Table A1 of its Permit. Specifically, Respondent discharged effluent from its Facility that exceeded the weekly average TSS effluent limit of the Permit, as described in Section II, paragraphs 5 and 6 above. This is a Class II violation, according to OAR 340-012-0055(2)(a)(A). DEQ hereby assesses a $2,600 civil penalty for this violation.

2. Respondent violated ORS 468B.025(2) by violating Schedule A, Condition 1, Table A1 of its Permit. Specifically, Respondent discharged effluent from its Facility that exceeded the monthly average TSS effluent limit of the Permit, as described in Section II, paragraphs 7, 8, and 9 above. The violation that was 20 percent above the limit, but less than 50 percent above the limit is a Class II
violation, according to OAR 340-012-0055(2)(a)(A). The violation that was less than 20 percent above the
limit is a Class III violation, according to OAR 340-012-0055(3)(b)(A). DEQ assesses a $2,400 civil
penalty for this violation.

3. Respondent violated ORS 468B.025(2) by violating Schedule A, Condition 1, Table A1 of its
Permit. Specifically, Respondent discharged effluent with E. coli bacteria concentrations in excess of
permitted limits as described in Section II, paragraphs 12-15 above. The violations where Respondent
exceeded the limit by a factor of five or more are Class II violations pursuant to OAR 340-012-
0055(2)(a)(C). Those violations where Respondent exceeded the limit by less than a factor of five are
Class III violations pursuant to OAR 340-012-0055(3)(b)(C). DEQ assesses a $2,700 civil penalty for
these violations.

4. Respondent violated ORS 468B.025(2) by violating Schedule A, Condition 1, Table A1 of its
Permit. Specifically, Respondent discharged effluent from its Facility that exceeded the weekly average
BOD₅ effluent limits of the Permit, as described in Section II, paragraphs 10 and 11 above. This is a
Class III violation, according to OAR 340-012-0055(3)(b)(A). DEQ does not assessed a civil penalty for
this violation.

5. Respondent violated ORS 468B.025(2) by violating Schedule B, Condition 1 of the Permit.
Specifically, Respondent failed to collect second quarter 2021 monitoring data for Mirex as required by
Tables B1 and B10 and described in Section II, paragraphs 16 and 17 above. This is a Class I violation,
according to OAR 340-0055(1)(o). DEQ does not assess a civil penalty for this violation.

6. Respondent has violated ORS 468B.025(2) by violating Schedule A, Condition 1, Table A1
of its Permit. Specifically, Respondent discharged effluent from its Facility with pH levels that were not
within the range required by the Permit, as described in Section II, paragraphs 18 and 19 above. This is
a Class III violation, according to OAR 340-012-0055(3)(b)(A). DEQ does not assessed a civil penalty
for this violation.

/////
IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO: Pay a total civil penalty of $7,700. The determination of the civil penalties are attached as Exhibits 1, 2, and 3 are incorporated as part of this Notice.

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

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing within 20 calendar days from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232, fax it to 503-229-6762 or email it to DEQappeals@deq.oregon.gov. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

Active duty Service members have a right to stay proceedings under the federal Service Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through http://legalassistance.law.af.mil. The Oregon Military Department does not have a toll free telephone number.
If you fail to file a timely request for hearing, the Notice will become a final order by default without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

6/3/2022

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 Exceeding the Permit’s TSS effluent limits in violation of ORS 468B.025(2) and Schedule A, Condition 1, Table A1 of the Permit

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A) because Respondent exceeded the Permit limit by more than 20 percent but less than 50 percent.

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

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: BP + [(0.1 x BP) x (P + H + O + M + C)] + EB

"BP" is the base penalty, which is $1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent’s permitted design flow is more than two million gallons per day, 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 10 according to OAR 340-012-0145(2)(a), because Respondent has prior significant actions consisting of nine or more Class I equivalent violations stemming from case nos. WQ/M-ER-2016-100, WQ/M-ER-2017-207, WQ/M-ER-2019-099, and WQ/M-ER-2020-074.

"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 occurrence of the violation but less than seven. The violation occurred during the months of July and September 2021.

"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 the action necessary to ensure compliance with the limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation. In addition, Respondent was previously cited in case nos. WQ/M-ER-2017-207, WQ/M-ER-2019-099, and WQ/M-ER-2020-074 for exceeding the TSS limits set by the 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 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 pursuant to OAR 340-12-0150(4) as DEQ does not have sufficient information as to the upgrades Respondent needs to make to its treatment system to arrive at a reasonable estimate of costs avoided or delayed as a result of Respondent’s noncompliance.

**PENALTY CALCULATION:**

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

\[
= 1,000 + [(0.1 \times 1,000) \times (10 + 0 + 2 + 4 + 0)] + 0
\]

\[
= 1,000 + (100 \times 16) + 0
\]

\[= 1,000 + 1,600 + 0\]

\[
= 2,600
\]
EXHIBIT 2

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

VIOLATION NO. 2
Exceeding the Permit's monthly average TSS effluent limit in violation of ORS 468B.025(2) and Schedule A, Condition 1, Table A1 of the Permit

CLASSIFICATION:
This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A) because Respondent exceeded the Permit limit by more than 20 percent but less than 50 percent.

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

CIVIL PENALTY FORMULA:
The formula for determining the amount of penalty of each violation is: BP + [(0.1 x BP) x (P + H + O + M + C)] + EB

"BP" is the base penalty, which is $1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent's permitted design flow is more than two million gallons per day, 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 10 according to OAR 340-012-0145(2)(a), because Respondent has prior significant actions consisting of nine or more Class I equivalent violations stemming from case nos. WQ/M-ER-2016-100, WQ/M-ER-2017-207, WQ/M-ER-2019-099, and WQ/M-ER-2020-074.

"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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation during the month of July 2021.

"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 the action necessary to ensure compliance with the limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation. In addition, Respondent was previously cited in
case nos. WQ/M-ER-2017-207, WQ/M-ER-2019-099, and WQ/M-ER-2020-074 for exceeding the TSS limits set by the 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 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 pursuant to OAR 340-12-0150(4) as DEQ does not have sufficient information as to the upgrades Respondent needs to make to its treatment system to arrive at a reasonable estimate of costs avoided or delayed as a result of Respondent’s noncompliance.

**PENALTY CALCULATION:**

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

\[
= 1,000 + [(0.1 \times 1,000) \times (10 + 0 + 0 + 4 + 0)] + 0
\]

\[
= 1,000 + (100 \times 14) + 0
\]

\[
= 1,000 + 1,400 + 0
\]

\[
= 2,400
\]
EXHIBIT 3

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

VIOLATION NO. 3  Exceeding the Permit’s single sample *E. coli* bacteria concentration limit in violation of ORS 468B.025(2) and Schedule A, Condition 1, Table A1 of the Permit

CLASSIFICATION:  This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A) because Respondent discharged effluent with concentrations of *E. coli* bacteria greater than 5 times the single sample limit.

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

CIVIL PENALTY FORMULA:  The formula for determining the amount of penalty of each violation is: BP + [(0.1 x BP) x (P + H + O + M + C)] + EB

"BP"  is the base penalty, which is $1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent’s permitted design flow is more than two million gallons per day, 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 10 according to OAR 340-012-0145(2)(a), because Respondent has prior significant actions consisting of nine or more Class I equivalent violations stemming from case nos. WQ/M-ER-2016-100, WQ/M-ER-2017-207, WQ/M-ER-2019-099, and WQ/M-ER-2020-074.

"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 *E. coli* single sample limit on the following days: May 4, 2021; September 14, 16, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29 and 30, and October 1 and 28, 2021 for a total of 16 violations.

"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 *E. coli* bacteria concentration limit is an express condition of Respondent’s Permit. By failing to take the action necessary to ensure compliance with the limit, Respondent failed to exercise reasonable care to avoid
the foreseeable risk of committing the violation. In addition, Respondent was previously cited in case no. WQ/M-ER-2020-074 for discharging effluent with *e. coli* bacteria concentrations in excess of the permitted limits.

"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 pursuant to OAR 340-12-0150(4) as DEQ does not have sufficient information as to the upgrades Respondent needs to make to its treatment system to arrive at a reasonable estimate of costs avoided or delayed as a result of Respondent’s noncompliance.

Penalty Calculation: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
  = $1,000 + [(0.1 x $1,000) x (10 + 0 + 3 + 4 + 0)] + $0
  = $1,000 + ($100 x 16) + $0
  = $1,000 + $1,700 + $0
  = $2,700