



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

June 14, 2022

CERTIFIED MAIL: 7018 1830 0001 6172 5871

Carrie Pak, Chief Engineer
Tualatin Valley Water District
1850 SW 170th Avenue
Beaverton, OR 97003

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-NWR-2021-187

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$7,200 for causing pollution to a water of the state. Specifically, DEQ issued this penalty because your August 16, 2021, discharge of between 87,000–150,000 gallons of dechlorinated drinking water from your water storage tank located at 5500 W. Burnside Road in Portland caused a significant increase in turbidity to Balch Creek, a water of the state.

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

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 Erin Saylor 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: Douglas M. Kincaid, Cable Huston LLP
Randall Bailey, DEQ
Accounting, DEQ

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

3 IN THE MATTER OF:)
4 TUALATIN VALLEY WATER DISTRICT,) NOTICE OF CIVIL PENALTY
5 Respondent.) ASSESSMENT AND ORDER
6 CASE NO. WQ/M-NWR-2021-187

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
10 ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
11 011, 012, and 045.

12 II. FINDINGS OF FACT

13 1. Respondent is the owner and operator of a water storage tank located at 5500 W.
14 Burnside Road in Portland (the Facility).

15 2. On August 16, 2021, Respondent released between 87,000–150,000 gallons of
16 dechlorinated domestic drinking water from the Facility to an onsite drainage pipe as part of a
17 scheduled maintenance activity. The release lasted from approximately 9:08am to 2:25pm, at an
18 average discharge rate of about 473 gallons per minute.

19 3. A drainage pipe carried the water to a ravine, which discharges to a local waterway
20 known as Bones Creek. At the time of the discharge, Bones Creek had little or no flow. From the point
21 of the discharge, Bones Creek drainage flows under Cornell Road through a culvert maintained by the
22 City of Portland, past the Portland Audubon Wildlife Care Center, to Balch Creek. The total distance
23 between the point of discharge to where Bones Creek meets Balch Creek, is approximately ½ a mile.

24 4. Employees of the Respondent monitored the discharge as it was occurring but were
25 unable to see the location where the drainage pipe discharged to Bones Creek and thus were unaware of
26 the impact the discharge was having on Bones and Balch Creeks.

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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 order must be
2 made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 700 NE**
3 **Multnomah Street, Suite 600, Portland, Oregon 97232.**

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 exhibit, 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 **503-229-5100** or email it to DEQappeals@deq.state.or.us. 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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6/14/2022

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 1: Respondent violated ORS 468B.025(1)(a) by causing pollution to a water of the state. Specifically, Respondent's rapid release of between 87,000–150,000 gallons of water disturbed soil and created excessively turbid conditions in Balch Creek.

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

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(a)(D).

"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 0 according to OAR 340-012-0145(2)(a)(A) because Respondent has no prior water quality violations.

"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 Respondent has no prior water quality violations.

"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 once occurrence of the violation.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent reasonably should have known that discharging a high volume of water at a high rate during dry conditions would lead to turbidity in the downstream receiving waters.

"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 effects of the violation could not be corrected.

"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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 2 + 0)] + \0
 $= \$6,000 + \$1,200$
 $= \$7,200$