



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
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TTY 711

June 12, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 3350

Tillamook RV Park LLC
c/o Rondi L. Springer, Registered Agent
1950 Suppress Road
Tillamook OR 97141

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/D-NWR-2020-080

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 \$11,767 for violating state water quality standards, and for exceeding numerous effluent limitations and failing to perform monitoring as enumerated in NPDES Permit No. 101987 in connection with your domestic wastewater treatment facility located at 1950 Suppress Road North in Tillamook, Oregon. DEQ has also cited you without penalty for violating other permit requirements.

DEQ issued this penalty because your permit requires you to monitor how your treatment facility is functioning and to ensure it meets the effluent limits set in your permit. The operation of your treatment facility resulted in the discharge of significantly high levels of pollutants to Smith Creek, including chlorine which caused exceedances of state water quality standards. Smith Creek supports aquatic life and conveys water approximately one-half mile south to the Wilson River, which is listed habitat for threatened Oregon Coast Coho Salmon. Chlorine is a strong chemical oxidizer and is toxic to many aquatic organisms. Discharges of chlorine in excess of permit effluent limitations can harm aquatic life and adversely impact beneficial uses of those waters. DEQ also issued this penalty because your treatment facility discharged effluent on numerous occasions that contained concentrations and mass loads of BOD₅ and TSS greater than 50% of the limits set in your permit. Discharges of these pollutants at the quantities described in the Notice are harmful to aquatic life in Smith Creek.

DEQ appreciates your efforts to improve operations and monitoring at the Facility. 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

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 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Randy Bailey, DEQ, Northwest Region
Tiffany Yelton-Bram, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
TILLAMOOK RV PARK LLC, an Oregon) NOTICE OF CIVIL PENALTY
limited liability company,) ASSESSMENT AND ORDER
Respondent.) CASE NO. WQ/D-NWR-2020-080

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 Chapters 183, and 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 041, and 045.

II. FINDINGS OF FACT

1. Smith Creek is a small year-round freshwater creek in Tillamook County, which flows to the Boquist Slough, and then enters the Wilson River. Smith Creek is in the North Coast Basin and supports aquatic life. Designated beneficial uses for the North Coast Basin include fish, aquatic life, and fishing. OAR 340-041-0230.

2. Respondent operates a domestic wastewater collection, treatment, and disposal system located at 1950 Suppress Road North in Tillamook, Tillamook County, Oregon (the Facility), which discharges to Smith Creek from an outfall, known as Outfall 001. At Respondent's option, the Facility can be switched to discharge to a drain field from Outfall 002.

3. At all material times, the Facility is and was covered by National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit No. 101987 (the Permit). The permitted flow from the Facility is less than two million gallons per day, with an average dry weather design flow of 3,000 gallons per day.

4. The Permit authorizes Respondent to construct, install, modify, or operate a wastewater collection, treatment, control, and disposal system and discharge to public waters adequately treated wastewaters (effluent) from Outfalls 001 and 002 at the Facility only in conformance with the conditions and limitations set forth in the Permit. The Permit requires Respondent to sample its

1 influent, effluent, and the receiving stream for certain parameters and record daily data as well as
2 weekly and monthly averages. The Permit also establishes a mixing zone, which allows Respondent's
3 effluent to dilute in the receiving stream before it is evaluated for compliance with state water quality
4 standards, promulgated in OAR Chapter 340, Division 41.

5 5. Respondent first obtained coverage under the Permit on June 15, 2015 through a transfer
6 application. The Permit was revised and reissued to Respondent on January 1, 2019 and remains in
7 effect.

8 **Total Residual Chlorine**

9 6. Chlorine is a strong chemical oxidizer that is toxic to many aquatic organisms. Oregon's
10 water quality standards, promulgated at OAR Chapter 340, Division 41, establish levels of chlorine
11 allowable in state waters before the concentrations become detrimental to beneficial uses, specifically
12 acutely and chronically toxic to aquatic life. OAR 340-041-0033(1) and (2). The acute criterion for
13 chlorine in freshwater is set at 19 µg/L or 0.019mg/L. OAR 340-041-8033.

14 7. The Permit establishes two mixing zones. One is a mixing zone (MZ) of 50 percent of
15 Smith Creek flow and no more than 50 feet downstream from Outfall 001. The other is the zone of
16 initial dilution (ZID), defined as 10 percent of the Smith Creek flow and no more than 5 feet
17 downstream from Outfall 001. In issuing the Permit in 2019 and applying the mixing zones, DEQ
18 concluded that if the Facility discharged a maximum concentration of total residual chlorine of 0.02
19 mg/L, Respondent did not have the reasonable potential to cause or contribute to violations of water
20 quality standards specific to chlorine.

21 8. Accordingly, for any discharges from the Facility through Outfall 001, Schedule A,
22 condition 1 of the Permit limits the daily and monthly average concentration of total residual chlorine
23 in Respondent's effluent to 0.02 mg/L. (*See also* Permit, Schedule D, condition 7).

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9. On the following days, Respondent discharged effluent through Outfall 001 with total residual chlorine in excess of Permit limits at the concentrations identified in the table below:

Date	Effluent Conc. (mg/L)	Permit Limit (mg/L)	% Exceedance	Date	Effluent Conc. (mg/L)	Permit Limit (mg/L)	% Exceedance
1/9/2019	0.35	0.02	1650%	3/13/2019	1.27	0.02	6250%
1/10/2019	0.11	0.02	450%	3/14/2019	1.51	0.02	7450%
1/11/2019	0.1	0.02	400%	3/15/2019	1.36	0.02	6700%
1/12/2019	0.09	0.02	350%	3/16/2019	0.64	0.02	3100%
1/20/2019	0.1	0.02	400%	3/17/2019	0.07	0.02	250%
1/25/2019	0.09	0.02	350%	3/18/2019	0.78	0.02	3800%
1/26/2019	0.07	0.02	250%	3/19/2019	0.06	0.02	200%
1/27/2019	0.06	0.02	200%	4/22/2019	0.66	0.02	3200%
2/6/2019	0.09	0.02	350%	4/25/2019	0.07	0.02	250%
2/7/2019	0.06	0.02	200%	5/12/2019	0.1	0.02	400%
2/24/2019	1.03	0.02	5050%	5/13/2019	0.49	0.02	2350%
2/27/2019	0.35	0.02	1650%	5/17/2019	0.07	0.02	250%
2/28/2019	0.26	0.02	1200%	6/13/2019	0.17	0.02	750%
3/1/2019	0.26	0.02	1200%	6/14/2019	0.11	0.02	450%
3/5/2019	0.26	0.02	1200%	6/15/2019	4.4	0.02	21900%
3/6/2019	0.17	0.02	750%	6/16/2019	4.4	0.02	21900%
3/7/2019	0.2	0.02	900%	6/17/2019	1.24	0.02	6100%
3/10/2019	0.44	0.02	2100%	6/18/2019	0.13	0.02	550%
3/11/2019	2.4	0.02	11900%	6/19/2019	0.58	0.02	2800%
3/12/2019	3.44	0.02	17100%				

10. For the month of February 2019, Respondent discharged effluent from its Facility through Outfall 001 with a total residual chlorine monthly average concentration of 0.11 mg/L, which is 450% above the Permit limit.

11. For the month of March 2019, Respondent discharged effluent from its Facility through Outfall 001 with a total residual chlorine monthly average concentration of 0.76 mg/L, which is 3700% above the Permit limit.

12. For the month of June 2019, Respondent discharged effluent from its Facility through Outfall 001 with a total residual chlorine monthly average concentration of 0.53 mg/L, which is 2550% above the Permit limit.

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13. On June 15, 16, and 19, 2019, the flow of Smith Creek was approximately 1.6, 1.5, and 0.6 cubic feet per second (cfs) respectively. On June 15, 16, and 19, 2019 the flow of the Facility's effluent from Outfall 001 into Smith Creek was approximately 0.0008, 0.0012, and 0.0009 million gallons per day (MGD) respectively.

14. On at least June 15, 16, and 19, 2019, discharges from the Facility caused conditions that were acutely toxic to aquatic life in Smith Creek outside of the mixing zones allowed in the Permit. Even after the discharge mixed with Smith Creek using the MZ or ZID defined in the Permit, chlorine concentrations exceeded 0.019mg/L.

Total Suspended Solids (TSS)

15. For discharges from the Facility through Outfall 001, Schedule A, condition 1.a.i. of the Permit sets the following limitations on TSS in Respondent's effluent:

- a. the weekly average concentration limit is 15 mg/L;
- b. the monthly average concentration limit is 10 mg/L;
- c. the daily mass load limit is 0.50 pounds per day (lbs/day);
- d. the weekly average mass load limit is 0.38 lbs/day; and
- e. the monthly average mass load limit is 0.25 lbs/day.

16. Respondent discharged effluent from its Facility through Outfall 001 with weekly average TSS concentrations in excess of the Permit limit for the weeks described in the table below:

Week Ending Date	Permit Limit (mg/L)	Respondent's Weekly Avg. Effl. Conc. (mg/L)	% Exceedance
02/16/2019	15	22	47
11/16/2019	15	16	7
02/29/2020	15	22	46
03/14/2020	15	28	86
03/21/2020	15	23	53
03/28/2020	15	24	60

The weekly average concentration exceedances contributed to exceedances of monthly average concentration limits for the months of February 2019, February 2020 and March 2020.

1 17. For the month of January 2019, Respondent discharged effluent from its Facility through
2 Outfall 001 where the monthly average TSS concentrations exceeded Permit limit of 10 mg/L with an
3 average concentration of 13 mg/L, 30% above the Permit limit.

4 18. For the month of March 2019, Respondent discharged effluent from its Facility through
5 Outfall 001 where the monthly average TSS concentrations exceeded Permit limit of 10 mg/L with an
6 average concentration of 15 mg/L, 50% above the Permit limit.

7 19. On February 28, 2020, Respondent discharged effluent from its Facility through Outfall 001
8 with a daily TSS mass load of 0.52 lbs, which is 4% above the Permit limit. This daily TSS mass load
9 exceedance contributed to exceedances of weekly and monthly average mass load limits in the month
10 of February 2020.

11 20. For the month of March 2020, Respondent discharged effluent from its Facility through
12 Outfall 001 with an average TSS mass load of 0.28 lbs/day, which is 12% above the Permit limit.

13 21. Schedule A, condition 1.a.ii. of the Permit requires Respondent to remove TSS in
14 Respondent's influent at a minimum of 85% before discharging as effluent. This is also referred to in
15 the Permit as an 85% TSS removal efficiency.

16 22. For the month of February and March 2020, Respondent discharged effluent from its
17 Facility through Outfall 001 with a monthly average TSS removal efficiency of 82% and 80%,
18 respectively.

19 **Five-Day Biochemical Oxygen Demand (BOD₅)**

20 23. For discharges from the Facility through Outfall 001, Schedule A, condition 1.a. of the
21 Permit sets the following limitations on BOD₅ concentrations in Respondent's effluent:

- 22 a. the weekly average concentration limit is 15 mg/L;
- 23 b. the monthly average concentration limit is 10 mg/L;
- 24 c. the daily mass load limit is 0.50 lbs/day;
- 25 d. the weekly average mass load limit is 0.38 lbs/day; and
- 26 e. the monthly average mass load limit is 0.25 lbs/day.

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24. Respondent discharged effluent from its Facility through Outfall 001 with daily mass loads of BOD₅ in excess of Permit limits for the days described in the table below:

Date	Permit Limit (lbs/day)	Respondent's Daily Mass Load (lbs/day)	% Exceedance
11/11/2019	0.50	1.1	120
11/18/2019	0.50	0.79	58
02/12/2020	0.50	0.95	90
02/24/2020	0.50	1.43	186
02/28/2020	0.50	0.82	64
03/09/2020	0.50	1.7	240
03/27/2020	0.50	0.81	62

These daily mass load exceedances contributed to exceedances of weekly average mass load limits for the weeks ending on November 16 and 23 of 2019 and February 15, 29, March 14, and 28 of 2020 and monthly average mass load limits for the months of February and March 2020.

25. For the week ending April 13, 2019, Respondent discharged effluent from its Facility through Outfall 001 with a weekly average mass load of 0.42 lbs/day, 11% above the Permit limit.

26. Respondent discharged effluent from its Facility through Outfall 001 with weekly average BOD₅ concentrations in excess of Permit limits for the weeks described in the table below:

Week Ending Date	Permit Limit (mg/L)	Respondent's Weekly Average Effl. Conc. (mg/L)	% Exceedance
04/13/2019	15	20	33
11/16/2019	15	51	240
11/23/2019	15	41	173
02/15/2020	15	63	320
02/29/2020	15	66	343
03/14/2020	15	96	540

03/21/2020	15	19	27
03/28/2020	15	68	353

The weekly average concentration exceedances contributed to exceedances of monthly average concentration limits for the months of April and November of 2019 and February and March of 2020.

27. For the month of February 2019, Respondent discharged effluent through Outfall 001 that had a monthly average BOD₅ concentration of 11 mg/L, which is 10% above the Permit limit.

28. Schedule A, condition 1.a.ii. of the Permit requires Respondent to remove BOD₅ in Respondent's influent at a minimum of 85% before discharging as effluent. This is also referred to in the Permit as an 85% BOD₅ removal efficiency.

29. For the month of November 2019, Respondent discharged effluent from its Facility through Outfall 001 with a monthly average BOD₅ removal efficiency of the 83%. For the months of February and March 2020, Respondent discharged effluent from its Facility through Outfall 001 with a monthly average BOD₅ removal efficiency of 72% and 81%, respectively.

pH

30. For discharges from the Facility through Outfall 001, Schedule A, condition 1 of the Permit requires the pH in Respondent's effluent to measure within the range of 6.6 to 8.6.

31. On the following days, Respondent discharged effluent from its Facility through Outfall 001 with the following pH measurements:

Date	pH		Date	pH		Date	pH
01/02/19	6.5		01/24/19	5.8		02/09/19	5.9
01/06/19	6.2		01/27/19	5.9		02/13/19	6.0
01/12/19	6.1		01/30/19	5.4		02/18/19	6.2
01/20/19	6.1		02/01/19	5.9		02/24/19	6.3
01/21/19	5.9		02/03/19	5.9		02/28/19	6.0
01/22/19	5.4		02/06/19	6.1		----	--

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1 **Monitoring Background Conditions of Smith Creek**

2 32. Schedule B, condition 4 of the Permit requires Respondent to monitor Smith Creek
3 upstream from Outfall 001 for certain parameters, including stream flow, temperature, and alkalinity.
4 For each month, regardless of whether or not Respondent is discharging through Outfall 001,
5 Respondent must monitor (a) stream flow daily, (b) temperature twice per month, (c) pH twice per
6 month, and (d) alkalinity once per month. (Permit, condition 4, Table B5.)

7 33. Respondent failed to monitor Smith Creek upstream of Outfall 001 for alkalinity in July,
8 August, and September of 2019.

9 34. Respondent failed to monitor Smith Creek upstream of Outfall 001 daily for stream flow on
10 each day beginning on March 19 through March 31, 2019, and beginning on July 4 through July 11,
11 2019.

12 **E.Coli and Fecal Coliform**

13 35. For discharges from the Facility through Outfall 001, Schedule A of the Permit limits E.coli
14 bacteria in its effluent to 406 organisms and fecal coliform bacteria to 140 organisms, each per 100 mL.
15 Schedule A, condition 1.a.ii. of the Permit limits the monthly geometric mean of fecal coliform bacteria
16 in Respondent's effluent to a maximum of 46 organisms per 100 mL. Five times the Permit limit of
17 E.coli bacteria is 2030 organisms and for fecal coliform bacteria it is 700 organisms, each per 100 mL.

18 36. On November 11, 2019 and January 13, 2020, Respondent discharged effluent from its
19 Facility through Outfall 001 where the effluent on each day contained greater than 2420 E.coli
20 organisms per 100 mL.

21 37. On November 11, 2019 and January 13, 2020, Respondent discharged effluent from its
22 Facility through Outfall 001 where the effluent contained 540 and greater than 1600 fecal coliform
23 organisms per 100 mL, respectively.

24 38. Respondent voluntarily reported to DEQ the effluent limit exceedances and the missing
25 monitoring data described in this Section II.

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III. CONCLUSIONS

1. Respondent has violated ORS 468B.025(1)(a) and ORS 468B.025(1)(b) by discharging its wastes into Smith Creek, a water of the state pursuant to ORS 468B.005(10), which caused conditions deleterious to aquatic life and reduced water quality below state water quality standards, promulgated in relevant part by the Environmental Quality Commission at OAR 340-041-0007(10), OAR 340-041-0033(1) and (2), OAR 340-041-8033, and OAR 340-041-0053(2)(a) and (b). Specifically, Respondent discharged effluent from its Facility on at least June 15, 16, and 19, 2019 that contained chlorine at levels that, even after mixing with Smith Creek, were acutely toxic to the creek's aquatic life, as described in Section II, paragraphs 4 through 14. Such discharges were not authorized by Schedule A of Respondent's Permit, as described in Section II, paragraphs 4 through 8 above. These are Class I violations pursuant to OAR 340-012-0055(1)(b). DEQ hereby assesses a \$6,300 civil penalty for these violations.

2. Respondent has violated ORS 468B.025(2) by violating Schedule A of its Permit specific to daily and monthly average total residual chlorine effluent limits. Specifically, Respondent discharged effluent from its Facility that exceeded the daily total residual chlorine limit established by Schedule A of the Permit, as described in Section II, paragraphs 8 through 14 above. The effluent exceedances are Class I violations pursuant to OAR 340-012-0055(1)(l) because the chlorine effluent limit in Respondent's NPDES Permit is a water quality based effluent limitation. DEQ has not assessed a civil penalty for these violations.

3. Respondent has violated ORS 468B.025(2) by violating Schedule A of its Permit specific to average weekly and monthly TSS effluent limits. Specifically, Respondent discharged effluent from its Facility that exceeded the average daily, weekly, and monthly TSS limits established by Schedule A, condition 1.a. of the Permit, as described in Section II, paragraphs 15 through 20 above. The weekly average effluent concentration exceedances in the weeks ending on March 14, 21, and 28, 2020 and the monthly average effluent concentration exceedances in March of 2019 are Class I violations pursuant to OAR 340-012-0055(1)(k)(A) because the TSS Permit limit was exceeded by 50 percent or more. The weekly average effluent concentration exceedances in the weeks ending on February 16, 2019 and

1 February 29, 2020 and the monthly average effluent exceedance in January 2019 are Class II violations
2 pursuant to OAR 340-012-0055(2)(a)(A) because the TSS Permit limits were exceeded by 20 percent
3 or more but less than 50 percent. The weekly average effluent concentration exceedance on November
4 16, 2019, the daily mass load effluent exceedance on February 28, 2020, and the monthly mass load
5 exceedance in March 2020 are Class III violations pursuant to OAR 340-012-0055(3)(b)(A) because the
6 TSS Permit limit was exceeded by less than 20 percent. DEQ hereby assesses a \$1,200 civil penalty for
7 these violations.

8 4. Respondent has violated ORS 468B.025(2) by violating Schedule A, condition 1.a. of its
9 Permit where Respondent discharged effluent from its Facility that exceeded average daily, weekly, and
10 monthly BOD₅ effluent limits, as described in Section II, paragraphs 23 through 27 above. The daily
11 mass load exceedances described in Section II, paragraph 24 and the weekly average concentration
12 exceedances described in Section II, paragraph 26 (except the week ending on March 21, 2020) are
13 Class I violations pursuant to OAR 340-012-0055(1)(k)(A) because the BOD₅ Permit limits were
14 exceeded by 50 percent or more. The weekly average effluent exceedance in the week ending on
15 March 21, 2020 is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A) because the BOD₅
16 Permit limit was exceeded by 20 percent or more but less than 50 percent. The weekly average mass
17 load effluent exceedance in the week ending April 13, 2019 and the monthly average concentration
18 exceedance for February 2019 are Class III violations pursuant to OAR 340-012-0055(3)(b)(A) because
19 the BOD₅ Permit limits were exceeded by less than 20 percent. DEQ hereby assesses a \$1,200 civil
20 penalty for these violations.

21 5. Respondent has violated ORS 468B.025(2) by violating Schedule A of its Permit specific to
22 the daily pH effluent range limit. Specifically, Respondent discharged effluent from its Facility that
23 was not within the pH range set by Schedule A of the Permit, as described in Section II, paragraphs 26
24 and 27 above. The effluent exceedances on January 22 and 30, 2019 are Class II violations pursuant to
25 OAR 340-012-0055(2)(a)(B) because the discharge was outside the permitted pH range by more than 1
26 pH unit but less than or equal to 2 pH units. The effluent exceedances on January 2, 6, 12, 20, 21, 24,
27 and 27 and on February 1, 3, 6, 9, 13, 18, 24, and 28, 2019 are Class III violations pursuant to OAR

340-012-0055(3)(b)(B) because the discharge is outside the permitted pH range by 1 pH unit or less.
DEQ has not assessed a civil penalty for these violations.

6. Respondent has violated ORS 468B.025(2) by failing to monitor specific parameters as required by its Permit. Specifically, Respondent failed to monitor Smith Creek for stream flow and alkalinity as required by Schedule B, condition 4 of the Permit, as described in Section II, paragraphs 32 through 34. These are Class I violations pursuant to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$3,067 civil penalty for these violations.

7. On November 11, 2019 and January 13, 2020, Respondent violated ORS 468B.025(2) by violating Schedule A, condition 1.a. of its Permit where Respondent discharged effluent from its Facility that exceeded E.coli bacteria limits, as described in Section II, paragraphs 35 and 36 above. These are both Class II violations pursuant to OAR 340-012-0055(2)(a)(C) because the discharges exceeded the bacteria limit by more than five times the limit. DEQ has not assessed a civil penalty for these violations.

8. On November 11, 2019 and January 13, 2020, Respondent has violated ORS 468B.025(2) by violating Schedule A, condition 1.a. of its Permit where Respondent discharged effluent from its Facility that exceeded fecal coliform bacteria limits, as described in Section II, paragraphs 35 and 37 above. The January 13, 2020 exceedance is a Class II violation pursuant to OAR 340-012-0055(2)(a)(C) because the discharge exceeded the bacteria limit by more than five times the limit. The November 11, 2019 exceedance is a Class III violation pursuant to OAR 340-012-0055(3)(b)(C). DEQ has not assessed a civil penalty for these violations.

9. Respondent has violated ORS 468B.025(2) and Schedule A, condition 1.c. of its Permit by discharging effluent from the Facility and failing to meet the minimum TSS and BOD₅ removal efficiencies, as described in Section II, paragraphs 21, 22, 28, and 29. Specifically, for the months of February 2019 and February and March 2020, Respondent's Facility received influent but did not obtain an 85% BOD₅ removal efficiency before discharging to Smith Creek. For the months of February and March 2020, Respondent's Facility received influent but did not obtain an 85% TSS
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1 removal efficiency. These are Class III violations according to OAR 340-012-0055(3)(c). DEQ has
2 not assessed a civil penalty for these violations.

3 IV. ORDER TO PAY CIVIL PENALTY

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

6 1. Pay a total civil penalty of \$11,767. The determination of the civil penalties are attached as
7 Exhibits 1 through 4 and are incorporated as part of this Notice.

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

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

12 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
13 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
14 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
15 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
16 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
17 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
18 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
19 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge
20 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
21 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
22 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
23 you may represent yourself. If you are a corporation, partnership, limited liability company,
24 unincorporated association, trust or government body, you must be represented by an attorney or a duly
25 authorized representative, as set forth in OAR 137-003-0555.

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1 Active duty Service members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
5 Department does not have a toll free telephone number.

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

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14 6/12/2020
15 Date


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19 Kieran O'Donnell, Manager
20 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 1: Violating ORS 468B.025(1)(a) and (1)(b) by causing conditions deleterious and acutely toxic to aquatic life in violation of state water quality standards, specifically OAR 340-041-0007(10), OAR 340-041-0033(1) and (2), and OAR 340-041-8033.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(b).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(2)(b)(A)(iii) because Respondent's effluent increased Smith Creek's concentration of chlorine, a toxic pollutant, over the acute toxicity criterion of 0.019 mg/L, promulgated in OAR 340-041-8033.
- 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)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent has an NPDES Permit for a private wastewater treatment facility and its Facility has a permitted design 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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has two Class I violations in case no. 2018-EEO-3483, issued on May 3, 2018 for discharging without an NPDES 1200-C permit and causing pollution.
- "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. Respondent ceased discharging to the creek and provided DEQ with site stabilization photos following its construction work.
- "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 but less than seven occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondent's effluent caused a violation of state water quality standards on at least June 15, 16, and 19, 2019, as described in Section II, paragraphs 4 through 14 of the Notice. This amounts to three occurrences.

"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. The Permit requires Respondent to submit monthly discharge monitoring reports (DMRs) to DEQ describing the concentrations of total residual chlorine in the Facility's effluent. (Permit, Schedule B.) On April 3, 2018, DEQ inspected the Facility and noted several Permit violations, including a failure to fully and accurately collect monitoring data. Respondent submitted its January 2019 DMR to DEQ on or about February 8, 2019 and its February 2019 DMR to DEQ on or about March 18, 2019. Each of those DMRs described significant exceedances of daily total residual chlorine limits. Respondent was aware that such exceedances were a violation of its Permit. Yet in March, April, May, and June, the Facility continued to have numerous daily exceedances of total residual chlorine limits.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. Respondent installed newer equipment and increased its oversight of the Facility.

"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. In accordance with OAR 340-012-0150(4), DEQ does not have sufficient information on which to make an estimate under this rule.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$3,000 + [(0.1 x \$3,000) x (3 + -1 + 2 + 8 + -1)] + \$0
= \$3,000 + (\$300 x 11) + \$0
= \$3,000 + \$3,300 + \$0
= \$6,300

EXHIBIT 2

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

VIOLATION 3: Exceeding the Permit's TSS effluent limits in violation of ORS 468B.025(2) and Schedule A, condition 1.a.i. of the Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) because Respondent exceeded the Permit limit by 50% or more.

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

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

"BP" is the base penalty, which is \$750 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent has a NPDES Permit for a private wastewater treatment facility and its Facility has a permitted design 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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has two Class I violations in case no. 2018-EEO-3483, issued on May 3, 2018 for discharging without an NPDES 1200-C permit and causing pollution.

"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. Respondent ceased discharging to the creek and provided DEQ with site stabilization photos following its construction work.

"O" is whether the violation was repeated or ongoing, and receives a value 3 according to OAR 340-012-0145(4)(c) and OAR 340-012-0145(4)(e) because there were from seven to 28 occurrences of the violation. Each exceedance constitutes one violation. Respondent's effluent exceeded Permit limits for TSS as described in Section II, paragraphs 15 through 22 and Section III, paragraph 3 of the Notice. This amounts to ten occurrences.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. On or about November 22, 2019, Respondent received a Pre-

Enforcement Notice from DEQ regarding Permit effluent exceedances of TSS limits at its Facility. Respondent was aware that such exceedances were a violation of its Permit.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. In March 2020, Respondent stopped discharging its effluent to Outfall 001 and instead to its drainfield through Outfall 002.

"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. In accordance with OAR 340-012-0150(4), DEQ does not have sufficient information on which to make an estimate under this rule.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$750 + [(0.1 \times \$750) \times (3 + -1 + 3 + 2 + -1)] + \0
= $\$750 + (\$75 \times 6) + \$0$
= $\$750 + \$450 + \$0$
= $\$1,200$

EXHIBIT 3

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

- VIOLATION 4: Exceeding the Permit's BOD₅ effluent limits in violation of ORS 468B.025(2) and Schedule A, condition 1.a.i. of the Permit.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) because Respondent exceeded the Permit limit by 50% or more.
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent flow was diluted by a factor of 10 or more in the receiving stream.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$750 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent has a NPDES Permit for a private wastewater treatment facility and its Facility has a permitted design 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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has two Class I violations in case no. 2018-EEO-3483, issued on May 3, 2018 for discharging without an NPDES 1200-C permit and causing pollution.
- "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. Respondent ceased discharging to the creek and provided DEQ with site stabilization photos following its construction work.
- "O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) and OAR 340-012-0145(4)(e) because there were from seven to 28 occurrences of the violation. Each exceedance constitutes one violation. Respondent's effluent exceeded Permit limits for BOD₅ as described in Section II, paragraphs 23 through 27 and Section III, paragraph 4 of the Notice. This amounts to 17 occurrences.
- "M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. On or about November 22, 2019, Respondent received a Pre-

Enforcement Notice from DEQ regarding Permit effluent exceedances of TSS limits at its Facility. Respondent was aware that such exceedances were a violation of its Permit.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. In March 2020, Respondent stopped discharging its effluent to Outfall 001 and instead to its drainfield through Outfall 002.

"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. In accordance with OAR 340-012-0150(4), DEQ does not have sufficient information on which to make an estimate under this rule.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$750 + [(0.1 \times \$750) \times (3 + -1 + 3 + 2 + -1)] + \0
= $\$750 + (\$75 \times 6) + \$0$
= $\$750 + \$450 + \$0$
= $\$1,200$

EXHIBIT 4

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

VIOLATION 6: Violating ORS 468B.025(2) by failing to collect monitoring data on specific parameters as required by Schedule B, condition 4 of the Permit.

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

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 has a NPDES Permit for a private wastewater treatment facility and its Facility has a permitted design 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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has two Class I violations in case no. 2018-EEO-3483, issued on May 3, 2018 for discharging without an NPDES 1200-C permit and causing pollution.

"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. Respondent ceased discharging to the creek and provided DEQ with site stabilization photos following its construction work.

"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. As described in Section II, paragraphs 33 and 34, Respondent missed monitoring monthly for alkalinity for four months and missed monitoring daily for stream flow for 21 days. This amounts to 25 occurrences.

"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. Reckless means the conscious disregard of a substantial and unjustifiable risk that a particular result would occur or that a circumstance existed. The Permit requires Respondent to submit monthly discharge monitoring reports (DMRs) to DEQ describing monitoring results. (Permit, Schedule B.) On April 3, 2018 and May 10, 2018, DEQ requested that Respondent submit missing DMRs from prior months. On or about August 17, 2018, when Respondent failed to produce records requested by DEQ, DEQ sent Respondent a pre-enforcement notice for failing to perform monitoring. Respondent subsequently sent Respondent its DMRs but they were incomplete. On or about January 18, 2019, DEQ notified Respondent that it would not pursue formal enforcement at that time but warned Respondent that future monitoring violations could result in civil penalties. Aware of the requirement to monitor for parameters in the Permit and that failing to do so was likely to result in a violation, Respondent nonetheless failed to collect required monitoring data in March, April, July, August, and September 2019 and consciously disregarded a substantial and unjustifiable risk that it would continue to violate 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 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 \$67. This is the amount Respondent gained by avoiding spending approximately \$100 to collect and analyze four stream samples for alkalinity. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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 (3 + -1 + 3 + 8 + 0)] + \67
 $= \$1,500 + (\$150 \times 10) + \$67$
 $= \$1,500 + \$1,500 + \$67$
 $= \$3,067$