



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
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TTY 711

June 27, 2018

CERTIFIED MAIL: 7016 3010 6028 6732

City of Rainier
c/o Debra Dudley, City Administrator
PO Box 100
Rainier, OR 97048

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-NWR-2017-228

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$23,700 for discharging raw sewage to the Columbia River on multiple occasions, for failing to report raw sewage discharges and for failing to comply with wastewater monitoring and reporting requirements in the city's permit.

Raw sewage poses a substantial risk to human health and is also a significant water pollutant that adversely affects water quality. The reporting and monitoring requirements of the city's permit are intended to ensure that DEQ and the public are made aware when sewage releases occur and to provide DEQ and the public with the assurance that operation of the city's sewage treatment plan does not endanger human health and the environment.

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 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: Randy Bailey, Northwest Region, DEQ
Tiffany Yelton-Bram, Northwest Region, DEQ
Julie Cheney, Accounting, DEQ
John Koestler, WQ, DEQ

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

3 IN THE MATTER OF:)
4 CITY OF RAINIER,) NOTICE OF CIVIL PENALTY
a municipality of the state of Oregon,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ/M-NWR-2017-228

6 I. AUTHORITY

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

11 II. FINDINGS OF FACT

12 1. At all relevant times, Respondent operated a municipal wastewater collection, treatment
13 and disposal system pursuant to National Pollutant Discharge Elimination System Permit No. 102571
14 (the permit), issued August 1, 2012, by DEQ.

15 2. The permit expired on July 31, 2017, but remains in effect pursuant to OAR 340-045-
16 0040(2) as Respondent filed a timely renewal application.

17 3. The permit authorizes Respondent to construct, install, modify, or operate a wastewater
18 collection, treatment, control and disposal system and discharge to public waters treated wastewaters
19 only in conformance with the requirements, limitations and conditions set forth in the permit.

20 4. On December 1, 4, 5, 9, 11, 12, 20 and 27, 2016; January 10, 17, 18, and 19, 2017;
21 February 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20 and 21, 2017; May 16 and 17, 2017; June 1 and 10, 2017;
22 September 20 and 29, 2017; October 21 and 22 2017; December 19 and 29, 2017; and January 23 and
23 24, 2018; untreated sewage overflowed from Respondent's collection system and into the Columbia
24 River.

25 5. Schedule F, Section D, Condition 5 of the permit requires Respondent to orally report
26 any overflows of sewage except for basement backups to the Oregon Emergency Response System
27 (OERS) within 24 hours of Respondent becoming aware of the circumstances.

1 6. A flow meter located in the pipe that conveyed the sewage overflows to the Columbia
2 River detected the overflows cited in Paragraph 4 as they were occurring and transmitted that
3 information to Respondent's Supervisory Control and Data Acquisition (SCADA) system where it was
4 recorded and observable to Respondent's staff.

5 7. Respondent failed to orally report to OERS the overflows from its collection system to
6 the Columbia River that occurred on December 1, 4, 5, 9, 11, 12, 20, and 27, 2016; January 10, 17, 18,
7 and 19, 2017; February 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20 and 21, 2017; May 16 and 17, 2017; and
8 June 1 and 10, 2017.

9 8. Schedule B of the permit requires Respondent to monitor its wastewater influent and
10 effluent for specified parameters and to report the results of that monitoring to DEQ monthly on written
11 discharge monitoring reports (DMRs).

12 9. For June 2013, Respondent submitted a DMR reporting monitoring results identical to
13 the monitoring results reported on Respondent's April 2013 DMR.

14 10. For September 2013, Respondent submitted a DMR reporting monitoring results for the
15 first 24 days of the month that were identical to the monitoring results reported for the first 24 days of
16 the month on the DMR submitted for September 2012.

17 11. For March 2014, Respondent submitted a DMR reporting monitoring results for March
18 1-28 for Ultra Violet Light (UV) intensity; turbidity; influent and effluent pH, biochemical oxygen
19 demand (BOD₅) and total suspended solids (TSS) concentrations; and BOD₅ and TSS mass loads; that
20 were identical to the monitoring results reported for these parameters on Respondent's DMR covering
21 February 1-28, 2014.

22 12. For July 2014, Respondent submitted a DMR reporting monitoring results for July 1-30
23 for UV intensity, turbidity, influent and effluent pH, BOD₅ and TSS concentrations; BOD₅ and TSS
24 mass loads; and effluent dissolved oxygen that were identical to the monitoring results reported for
25 these parameters on Respondent's DMR covering June 1-30, 2014.

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1 13. Given the variability in untreated wastewater and in treatment processes, the probability
2 that Respondent had identical monitoring results as reported in the DMRs specified in Paragraphs 9-12
3 above is infinitesimal.

4 14. Schedule B of the permit requires Respondent to monitor its wastewater effluent daily
5 for turbidity and to report the results of that monitoring to DEQ on its DMRs.

6 15. At all relevant times, Respondent conducted turbidity monitoring required by Schedule
7 B through the use of a turbidimeter that electronically transmits the results of monitoring to
8 Respondent's SCADA system, which records the monitoring data.

9 16. During the months of July, August, November and December 2015 Respondent reported
10 turbidity monitoring results on its DMRs that did not match the monitoring results recorded by its
11 SCADA system.

12 17. Schedule A, Condition 1.a of the permit limits the weekly average TSS concentration in
13 Respondent's effluent during the period of May 1-October 31 to 15 milligrams per liter (mg/L).

14 18. For the week of July 23, 2017, Respondent discharged effluent with a weekly average
15 TSS concentration of 34 mg/L.

16 19. Schedule F, Section C, Conditions 8 and 9 of the permit require Respondent to keep
17 records of all monitoring information, including the analytical techniques and analytical methods used
18 and the results of such analyses for a period of three years.

19 20. A laboratory bench sheet is a form used by an analyst to records the result of testing
20 conducted.

21 21. On August 23, 2017, DEQ requested that Respondent produce all records relating to the
22 monitoring of TSS, BOD₅ and *e. coli* bacteria required by Schedule B of the permit for the period of
23 August 31, 2014, to August 23, 2017.

24 22. In response to DEQ's August 23, 2017 request, the bench sheets Respondent provided
25 for August 2015 BOD₅ analyses were blank, and Respondent provided no bench sheets for *e. coli*
26 analyses for the period of August 2014 through January 2016.

27 ////

1 III. CONCLUSIONS

2 1. Respondent violated ORS 468B.025(1)(b) by discharging a waste that reduced he
3 quality of state waters below a water quality standard established by the Environmental Quality
4 Commission. Specifically, Respondent violated the water quality standard established in OAR 340-
5 041-0009(3) when it discharged, as defined in OAR 340-045-0010(5), untreated sewage to the
6 Columbia River as described in Section II, Paragraph 4, above. The Columbia River is a water of the
7 state as defined in ORS 468B.005(10). These are Class I violations pursuant to OAR 340-012-
8 0055(1)(b). DEQ assesses a \$4,200 civil penalty for these violations.

9 2. Respondent violated ORS 468B.025(2) by violating a condition of its wastewater
10 discharge permit. Specifically, Respondent violated Schedule F, Section D, Condition 5 of the permit
11 when it did not orally report sewage overflows to OERS within 24 hours, as described in Section II,
12 Paragraphs 5-7, above. These are Class I violations pursuant to OAR 340-012-0055(1)(e). DEQ
13 assesses a \$2,400 civil penalty for these violations.

14 3. Respondent violated ORS 468B.025(2) by violating a condition of a wastewater
15 discharge permit. Specifically, Respondent violated Schedule B, Condition 2.a of the permit when it
16 did not report the results of monitoring conducted pursuant to Schedule B, Condition 1 of the permit, as
17 described in Section II, Paragraphs 8-13. In addition, when Respondent submitted DMRs with
18 identical monitoring results as previously reported, the inaccurate information caused DEQ to
19 misinterpret substantive facts. These are Class I violations pursuant to OAR 340-012-0053(1)(b).
20 DEQ assesses a \$10,800 civil penalty for these violations.

21 4. Respondent violated ORS 468B.025(2) by violating a condition of a wastewater
22 discharge permit. Specifically, Respondent violated Schedule B, Condition 2.a of the permit when it
23 did not report the results of turbidity monitoring conducted pursuant to Schedule B, Condition 1.b of
24 the permit, as described in Section II, Paragraphs 14-16. In addition, when Respondent submitted
25 DMRs with monitoring results that did not match the information on its SCADA system, Respondent
26 caused DEQ to misinterpret substantive facts. These are Class I violations pursuant to OAR 340-
27 012-0053(1)(b). DEQ assesses a \$3,300 civil penalty for these violations.

1 it to **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
2 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
3 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
4 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
5 you may represent yourself. If you are a corporation, partnership, limited liability company,
6 unincorporated association, trust or government body, you must be represented by an attorney or a duly
7 authorized representative, as set forth in OAR 137-003-0555.

8 Active duty service-members have a right to stay proceedings under the federal Service
9 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
10 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
11 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
12 <http://legalassistance.law.af.mil/content/locator.php>.

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

19
20
21
22 6/27/18

23 Date

22 

23 Kieran O'Donnell, Manager
24 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: Discharging a waste that reduces the quality of state waters below a water quality standard in violation of ORS 468B.025(1)(b) and OAR 340-041-0009(3).

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

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 operates a municipal wastewater treatment system with a 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 0 according to OAR 340-012-0145(2)(f), because Respondent's prior significant action is more than 10 years old.

"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)(e) because DEQ is assessing separate penalties for multiple occurrences of the violation.

"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. By failing to properly maintain its collection system, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"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 as DEQ has insufficient information to arrive at a reasonable estimate of avoided or delayed compliance costs.

PENALTY CALCULATION:

Single Violation Calculation

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] \\ &= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 0 + 4 + 0)] \\ &= \$1,500 + [(\$150 \times 4)] \\ &= \$1,500 + \$600 \\ &= \$2,100 \end{aligned}$$

Pursuant to ORS 468.140(2), each day of violation constitutes a separate violation. Of the 36 occurrences of the violation, DEQ elects to assess gravity-based separate penalties for two violations. Respondent's final civil penalty is calculated by multiplying the number of violations for which a gravity-based penalty is assessed, 2, by the amount of penalty for a single violation, \$2,100, for a total civil penalty of \$4,200.

EXHIBIT 2

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

VIOLATION 2: Failing to comply with a condition of a wastewater discharge permit (Overflow reporting) in violation of ORS 468B.025(2).

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

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

"BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent operates a municipal wastewater treatment system with a 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 0 according to OAR 340-012-0145(2)(f), because Respondent's prior significant action is more than 10 years old.

"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. Each day of violation constitutes a separate occurrence. Respondent failed to comply with the 24-hour reporting requirement on at least the following 28 days: December 1, 4, 5, 9, 11, 12, 20, and 27, 2016; January 10, 17, 18, and 19, 2017; February 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20 and 21, 2017; May 16 and 17, 2017; and June 1 and 10, 2017.

"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 24 hour reporting requirement is an express condition of Respondent's permit. By failing to properly monitor its SCADA system, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"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 as any economic benefit Respondent received was de minimis.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 3 + 4 + 0)] + \$0 \\ &= \$1,500 + [\$150 \times 7] + \$0 \\ &= \$1,500 + \$900 + \$0 \\ &= \$2,400 \end{aligned}$$

EXHIBIT 3

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

VIOLATION 3: Failing to comply with a condition of a wastewater discharge permit (Schedule B Monitoring Data Reporting) in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(b).

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 operates a municipal wastewater treatment system with a 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 0 according to OAR 340-012-0145(2)(f), because Respondent's prior significant action is more than 10 years old.

"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)(e) because DEQ is assessing separate penalties for multiple occurrences of the violation.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted intentionally with actual knowledge of the requirement. The effluent monitoring and reporting conditions are express conditions of the permit. Respondent acted intentionally as defined in OAR 340-012-0030(13) when it recorded inaccurate data on its discharge monitoring reports and submitted the reports to DEQ.

"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 because DEQ has insufficient information to arrive at a reasonable estimate of any avoided or delayed compliance costs.

PENALTY CALCULATION:

Single Violation Calculation

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] \\ &= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 0 + 8 + 0)] \\ &= \$1,500 + [(\$150 \times 8)] \\ &= \$1,500 + \$1,200 \\ &= \$2,700 \end{aligned}$$

Pursuant to ORS 468.140(2), each day of violation constitutes a separate violation. Of the violations cited in the Notice, DEQ elects to assess gravity-based separate penalties for four violations. Respondent's final civil penalty is calculated by multiplying the number of violations for which a gravity-based penalty is assessed, 4, by the amount of penalty for a single violation, \$2,700, for a total civil penalty of \$10,800.

EXHIBIT 4

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

VIOLATION 4: Failing to comply with a condition of a wastewater discharge permit (turbidity monitoring reporting) in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(b).

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 operates a municipal wastewater treatment system with a 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 0 according to OAR 340-012-0145(2)(f), because Respondent's prior significant action is more than 10 years old.

"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 4 according to OAR 340-012-0145(4)(d) because Respondent failed to comply with the turbidity monitoring report on more than 28 occasions. The permit requires Respondent to monitor turbidity daily and each day of violation is a separate occurrence. Respondent reported inaccurate date for each day of the July, August, November and December 2015.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted intentionally with actual knowledge of the requirement. The turbidity monitoring and reporting conditions are express conditions of the permit. Respondent acted intentionally as defined in OAR 340-012-0030(13) when it recorded inaccurate data on its discharge monitoring reports and submitted the reports to the DEQ.

"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 as any economic benefit Respondent received was de minimis.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 4 + 8 + 0)] + \$0 \\ &= \$1,500 + [\$150 \times 12] + \$0 \\ &= \$1,500 + \$1,800 + \$0 \\ &= \$3,300 \end{aligned}$$

EXHIBIT 5

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

VIOLATION 5: Failing to comply with a condition of a wastewater discharge permit (TSS effluent limit) in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(k)(A).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) as Respondent's discharge 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, minor 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 operates a municipal wastewater treatment system with a 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 0 according to OAR 340-012-0145(2)(f), because Respondent's prior significant action is more than 10 years old.

"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 one occurrence of the violation. Respondent exceeded the TSS weekly average concentration limit for the week of July 23, 2017.

"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. The TSS limits are express conditions of Respondent's 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 as DEQ has insufficient information as to the cause of the violation to arrive at a reasonable estimate of any delayed or avoided costs.

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 \$700) \times (0 + 0 + 0 + 2 + 0)] + \0
 $= \$750 + [\$70 \times 2] + \$0$
 $= \$750 + \$150 + \$0$
 $= \$900$

EXHIBIT 6

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

VIOLATION 6: Violating a condition of a wastewater discharge permit (records retention) in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent operates a municipal wastewater treatment system with a 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 0 according to OAR 340-012-0145(2)(f), because Respondent's prior significant action is more than 10 years old.

"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)(e) because DEQ is assessing separate penalties for multiple occurrences of the violation.

"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 records keeping requirement is an express condition of Respondent's permit. By failing to take the actions necessary to retain the required records, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"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 as DEQ has insufficient information to arrive at a reasonable estimate of avoided or delayed compliance costs.

PENALTY CALCULATION:

Single Violation Calculation

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] \\ &= \$750 + [(0.1 \times \$750) \times (0 + 0 + 0 + 4 + 0)] \\ &= \$750 + [(\$75 \times 4)] \\ &= \$750 + \$300 \\ &= \$1,050 \end{aligned}$$

Pursuant to ORS 468.140(2), each day of violation constitutes a separate violation. Of the 72 occurrences of the violation cited in the Notice, DEQ elects to assess gravity-based separate penalties for two violations. Respondent's final civil penalty is calculated by multiplying the number of violations for which a gravity-based penalty is assessed, 2, by the amount of penalty for a single violation, \$1,050, for a total civil penalty of \$2,100.