



Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of the Director
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TTY: 711

April 19, 2016

CERTIFIED MAIL: 70142870000133783143

City of Wallowa
c/o Mayor Vikki Knifong
P.O. Box 487
Wallowa, OR 97885

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-ER-16-050

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$1,200 for violating the technology-based effluent limitation for *E. coli* bacteria in your National Pollutant Discharge Elimination System (NPDES) waste discharge permit. The violations occurred in January and February of 2016 at the City's wastewater treatment facility located in Wallowa, Oregon.

DEQ issued this penalty because compliance with waste discharge limitations in your NPDES permit is essential to help protect water quality and public health. *E. coli* bacteria are pathogens that carry disease and an environmental pollutant that can harm aquatic life, contaminate drinking water and impair recreational and commercial uses of water. DEQ calculated the bacteria limit in your permit to prevent the risk and spread of disease and protect water quality in the Wallowa River.

DEQ appreciates your efforts to prevent the violation from recurring by developing a plan to increase chlorination in order to improve disinfection of your effluent. 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 contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

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 it 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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available



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on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Travis Goebel, Public Works Director, City of Wallowa, P.O. Box 487, Wallowa, OR 97885
Troy Baker, P.E., Anderson Perry & Associates, Inc.: tbaker@andersonperry.com
Carl Nadler, The Dalles Office, Eastern Region, DEQ
John Koestler, WQ, HQ

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

3 IN THE MATTER OF:)
4 CITY OF WALLOWA,) NOTICE OF CIVIL PENALTY
5 Respondent.) ASSESSMENT AND ORDER
6) CASE NO. WQ/M-ER-16-050

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

12 II. FINDINGS OF FACT

13 1. Respondent operates a wastewater treatment and collection system located at 700 N. Pine
14 Street in Wallowa, Wallowa County, Oregon (the Facility).

15 2. On May 7, 2010, DEQ issued National Pollutant Discharge Elimination System Waste
16 Discharge Permit No. 101994 (the Permit) to Respondent that allowed it to discharge treated
17 wastewater from the Facility to the Wallowa River, waters of the state, in conformance with the
18 requirements, limits and conditions set forth in the Permit. The Permit expired on December 31, 2012,
19 but DEQ administratively extended it. The Permit was in effect at all material times.

20 3. Schedule A, Condition 1(c) of the Permit contains the following technology-based effluent
21 limitations (TBELs) for *E. coli* bacteria: 126 organisms per 100 milliliters (mL) for the monthly log
22 mean and 406 organisms per 100 mL for a single sample.

23 4. Respondent reported the following bacterial concentrations in its effluent discharge:
24 January 12, 2016: a single sample with over 2420 organisms/100 mL; January 26, 2016: a single
25 sample with 1413 organisms/100 mL; January 2016: monthly geometric mean of 1849 organisms per
26 100 mL; and February 23, 2016: a single sample with 980 organisms/100 mL.

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1 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
2 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
3 association.

4 Active duty service-members have a right to stay proceedings under the federal Service
5 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
6 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
7 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
8 <http://legalassistance.law.af.mil/content/locator.php>.

9 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
10 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
11 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
12 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
13 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
14 information submitted by you, as the record for purposes of proving a prima facie case.

15
16
17
18 April 19, 2016
Date

18 Saman Wheeler for
Leah K. Feldon, Manager
Office of Compliance and Enforcement

EXHIBIT NO. 1

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

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

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(C).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as DEQ has insufficient information to apply the selected magnitude specified in OAR 340-012-0135, 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 has an NPDES permit for a municipal wastewater treatment facility with a permitted flow of less than two million gallons per day.

"P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 1. Respondent had two Class I violations in Case No. WQ/M-ER-08-024, which receives a value of 3 according to OAR 340-012-0145(2)(a)(C) and (D). The Formal Enforcement Action in that case was issued more than five years before the date the current violation occurred, which results in a reduction of 4 according to OAR 340-012-0145(2)(d)(A)(ii). However, pursuant to OAR 340-012-0145(3)(d), the sum of values for "P" and "H" may not be less than 1 unless Respondent took extraordinary efforts to correct or minimize the effects of all PSAs, which did not occur, therefore "P" receives a value of 1.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(b), because there were four occurrences of the violation. Respondent exceeded the TBEL for bacteria for single samples on January 12, January 26, and February 23, 2016; and for the monthly geometric mean in January 2016. Pursuant to OAR 340-012-0145(4)(e), DEQ has assessed one penalty for multiple occurrences, and has used the highest classification and magnitude applicable to any of the occurrences.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent had previous bacteria exceedances during the winter months, for which DEQ issued warning letters in 2014 and 2015. Respondent should have investigated and addressed the underlying issues causing bacteria exceedances during cold weather in order to avoid future exceedances of the bacteria limit. By failing to take these steps, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate the bacteria limits in 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 that the violation would not be repeated. Respondent worked with its consultant to develop a plan to increase chlorination to improve disinfection and maintain *E. coli* levels within permit limits.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because there is insufficient information on which to make an estimate of Respondent's economic benefit, if any.

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

$$\begin{aligned} &= \$750 + [(0.1 \times \$750) \times (1 + 0 + 2 + 4 + (-1))] + \$0 \\ &= \$750 + [\$75 \times 6] + \$0 \\ &= \$750 + \$450 + \$0 \\ &= \$1,200 \end{aligned}$$