



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Headquarters  
811 SW 6th Ave  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY: 711

June 13, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 2726

City of Coos Bay  
c/o Roger Craddock, City Manager  
500 Central Avenue  
Coos Bay, OR 97420

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-WR-16-057

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$8,000 for the January 13, 2016 discharge of sewage sludge from the city's wastewater treatment facility at 680 Ivy Street to Coos Bay.

Sewage sludge presents a potential public health threat through direct contact, through contact with pets or insects that have been in contact with the sludge, or through consumption of shellfish contaminated by the sludge. In addition, sludge is a significant water pollutant that can harm aquatic life and render public waters unfit for recreational, commercial or agricultural uses.

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. 6<sup>th</sup> 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 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.



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If you have any questions, please contact Jeff Bachman at (503) 229-5950. You may call toll-free within Oregon at 1-800-452-4011, extension 5950.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Steve Nichols, Western Region, Coos Bay Office, DEQ  
John Koestler, WQ, HQ  
Nathan B. McClintock, Corrigall McClintock et al, PO Box 1178, Coos Bay OR 97420



1 **Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty, the Findings of  
2 Fact, Conclusions and Order become final.

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

4 You have a right to a contested case hearing on this Notice, if you request one in writing. You  
5 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you  
6 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in  
7 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters  
8 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
9 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request  
10 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**  
11 **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the  
12 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR  
13 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
14 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or  
15 association.

16 Active duty service-members have a right to stay proceedings under the federal Service  
17 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
18 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
19 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
20 <http://legalassistance.law.af.mil/content/locator.php>.

21 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
22 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
23 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
24 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default

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1 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
2 information submitted by you, as the record for purposes of proving a prima facie case.

3  
4  
5  
6 June 13, 2016

7 Date

Sarah Whelan for

Leah K. Feldon, Manager  
Office of Compliance and Enforcement

EXHIBIT 1

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

- VIOLATION: Causing pollution of waters of the state in violation of ORS 468B.025(1)(a).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012- 0055(1)(a).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i).

"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 6. P is assigned an initial value of 10 pursuant to OAR 340-012-0145(2)(a) and -0145(2)(b) because Respondent has prior significant actions consisting of more than nine Class I equivalent violations stemming from Case Nos. WQ/M-WR-08-154, WQ/M-WR-09-008, and WQ/M-WR-09-173. This value is reduced by 4 for a final value of 6 pursuant to OAR 340-012-0145(2)(d)(A)(ii) because the formal enforcement actions in which Respondent's prior significant actions were cited were issued more than five years before the date the current violation occurred.

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

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation.

"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 violation occurred when Respondent failed to exercise reasonable care to avoid the risk of the violation by not shutting off a pump before it caused the overflow of sewage sludge to Coos Bay.

"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 could not be corrected or the effects of the violation 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:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$4,000 + [(0.1 x \$4,000) x (6 + 0 + 0 + 4 + 0)] + \$0  
= \$4,000 + [\$400 x 10] + \$0  
= \$4,000 + \$4,000 + \$0  
= \$8,000