



Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah St Ste 600

Portland, OR 97232-4100

(503) 229-5696

FAX (503) 229-5100

TTY: 711

July 14, 2017

CERTIFIED MAIL: 7016 2140 0000 2409 5076

Corvallis MHC LLC
c/o Morgan Partners, Inc., Registered Agent
19226 66th Ave. South, Suite L-108
Kent, WA 98032

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-WR-2017-104

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a total civil penalty of \$4,500 for violations of your National Pollutant Discharge Elimination System (NPDES) waste discharge permit. The violations occurred in April 2017 at the Knoll Terrace Mobile Home Community located in Corvallis, Oregon, where you operate a wastewater treatment facility. You discharged un-disinfected wastewater which violated the *E. coli* bacteria limit in your permit, and failed to monitor your discharge as required under Schedule B of your permit. You were also cited, without penalty, for failing to properly operate and maintain all facilities and systems of treatment and control, including laboratory controls and appropriate quality assurance procedures.

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 Mountain View Creek. Additionally, it is vital for a waste water treatment facility to monitor its discharge. Without this information, it is difficult for you and DEQ to evaluate the effectiveness of the facility's wastewater treatment system.

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.



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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 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,



Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement

Enclosures

cc: David Johnson, 5055 NE Elliott Circle, Corvallis, OR 97330
Robert Dicksa, Salem Office, DEQ
John Koestler, WQ, HQ
Shaumae Hall, Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:
4 CORVALLIS MHC LLC,

5 Respondent.

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NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER

CASE NO. WQ/M-WR-2017-104

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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 for the Knoll Terrace
14 Mobile Home Community located at 5055 NE Elliott Circle in Corvallis, Benton County, Oregon (the
15 Facility).

16 2. On July 8, 2013, DEQ issued National Pollutant Discharge Elimination System Waste
17 Discharge Permit No. 102611 (the Permit) to Respondent that allows it to discharge treated wastewater
18 from the Facility to Mountain View Creek, waters of the state, in conformance with the requirements,
19 limits and conditions set forth in the Permit. The Permit was effective on July 28, 2013 and expires on
20 December 31, 2017.

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

24 4. On April 20, 2017, Respondent discharged un-disinfected wastewater to Mountain View
25 Creek.

26 5. Untreated domestic wastewater typically has a fecal coliform concentration of 1,000,000
27 organisms per 100 mL. See Wastewater Engineering: Treatment, Disposal, and Reuse, Third Edition.

1 unincorporated association, trust or government body, you must be represented by an attorney or a duly
2 authorized representative, as set forth in OAR 137-003-0555.

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

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

14
15
16 July 14, 2017
17 Date

16 Sarah Wheeler
17 Sarah G. Wheeler, Acting 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 1: Violating the technology-based effluent limitation (TBEL) for *E. coli* bacteria in Schedule A, Condition 1(b) of its NPDES permit, in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(C) because the discharge exceeded a bacteria limit as a result of an inoperative disinfection system where there was no disinfection.

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(2)(a)(B)(i), as the technology-based effluent limitation exceedance was two or more but less than ten when calculated as follows: $D = ((QR/4) - QI)/QI$, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the discharge.

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 an NPDES permit for a private wastewater treatment facility with a permitted flow of less than two 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 1. Respondent had one Class I violation in Case No. WQ/M-WR-13-052, which receives a value of 2 according to OAR 340-012-0145(2)(a)(C). The FEA in that case was issued more than three years before the date the current violation occurred, which results in a reduction of 2 according to OAR 340-012-0145(2)(d)(A)(i). However, 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 0 according to OAR 340-012-0145(4)(a), because there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d). Respondent exceeded the TBEL for bacteria

when discharging un-disinfected wastewater on at least April 20, 2017. DEQ does not have sufficient information to determine how long this discharge had been occurring.

"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 discharged un-disinfected effluent from its Facility because of a malfunctioning valve. Respondent failed to notice the continuous discharge from its outfall, which was discovered during a DEQ inspection. By allowing a discharge of un-disinfected effluent, 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 0 according to OAR 340-012-0145(6)(a)(D), 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 there is insufficient information on which to make an estimate of Respondent's economic benefit, if any.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$1,500 + [(0.1 \times \$1,500) \times (1 + 0 + 0 + 4 + 0)] + \0
 $= \$1,500 + [\$150 \times 5] + \$0$
 $= \$1,500 + \$750 + \$0$
 $= \$2,250$

EXHIBIT NO. 2

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

VIOLATION 2: Failing to collect monitoring data for the Facility's effluent as required in Schedule B, Condition 3 of its NPDES Permit, in violation of ORS 468B.025(2).

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 an NPDES permit for a private wastewater treatment facility with a permitted flow of less than two 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 1. Respondent had one Class I violation in Case No. WQ/M-WR-13-052, which receives a value of 2 according to OAR 340-012-0145(2)(a)(C). The FEA in that case was issued more than three years before the date the current violation occurred, which results in a reduction of 2 according to OAR 340-012-0145(2)(d)(A)(i). However, 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 0 according to OAR 340-012-0145(4)(a), because there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d). Respondent discharged un-disinfected wastewater on April 20, 2017 and failed to monitor its effluent that day and compute the weekly and monthly averages during April 2017. DEQ does not have sufficient information to determine how long this discharge had been occurring, and thus cannot determine how many times Respondent failed to monitor its discharge.

- "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 holds an NPDES permit which specifically requires that Respondent monitor its effluent for numerous parameters. When Respondent failed to monitor its effluent, it failed to take reasonable care to avoid a foreseeable risk that it would violate an important condition of 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)(a)(D), 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 there is insufficient information on which to make an estimate of Respondent's economic benefit, if any.

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

$$= \$1,500 + [(0.1 \times \$1,500) \times (1 + 0 + 0 + 4 + 0)] + \$0$$

$$= \$1,500 + [\$150 \times 5] + \$0$$

$$= \$1,500 + \$750 + \$0$$

$$= \$2,250$$