



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 2420 4874

Recology Valley View Inc.
National Registered Agents, Inc., Registered Agent
388 State Street, Suite 420
Salem OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-WR-2017-100

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$10,400 for violating conditions of your waste discharge permit issued for leachate produced at your facility at 3000 North Valley View Road in Ashland. You exceeded daily and monthly limits for iron in January 2017. DEQ issued this penalty because you previously exceeded the iron limit in January 2016. DEQ also cited you without penalty for failing to timely submit a report on the exceedance.

Permit limits are established to prevent the discharge of improperly treated leachate. Iron is toxic to many aquatic organisms and the permit limit is to ensure that your discharge does not cause toxic effects.

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 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 which are environmental projects that you sponsor. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.



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DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have questions, please contact Susan Elworth at 5032295152 or at 800-452-4011, ex 5152.

Sincerely,



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

Enclosures

cc: Jon Gasik, Medford office, DEQ
Ranei Nomura, DEQ
Shaumae Hall, Accounting, DEQ
John Koestler, WQ, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
RECOLOGY VALLEY VIEW INC.,) ASSESSMENT AND ORDER
Respondent.) CASE NO. WQ/I-WR-2017-100

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

II. FINDINGS OF FACT

- On November 23, 2014, pursuant to ORS 468B.050, DEQ issued National Pollutant Discharge Elimination System Waste Discharge Permit Number 102405 (Permit) to Respondent. The Permit expires on October 31, 2019.
- The Permit authorizes Respondent to operate a wastewater collection, treatment, control and disposal system, and discharge to public waters adequately treated wastewater only from the authorized discharge points and only in conformance with the terms of the Permit.
- On February 15, 2017, DEQ received a monitoring report from Respondent as required by Schedule B, condition 6 of the Permit. The report shows that on January 12, 2017 Respondent collected a sample from outfall 001. The analysis of the sample for iron showed a concentration of 1.85 mg/L, exceeding the 1.643 mg/L daily and 1.125 mg/L monthly limitation set forth in Schedule A, condition 1.b of the Permit.
- On March 22, 2017, DEQ received from Respondent a report detailing the cause of the noncompliance and the steps taken to reduce, eliminate and prevent reoccurrences of the noncompliance described in paragraph 3 above.

III. CONCLUSIONS

- In January 2017, Respondent violated ORS 468B.025(2) and Schedule A, Condition 1.b of the Permit by exceeding the iron limitation set forth in the Permit. This is a Class I violation

1 according to OAR 340-012-0055(1)(l) because Respondent exceeded a water quality based effluent
2 limitation. DEQ assesses a \$10,400 civil penalty for this violation.

3 2. Respondent violated ORS 468B.025(2) and Schedule F, condition D6 of the Permit by
4 failing to submit a complete report of noncompliance at the time it submitted its discharge monitoring
5 report. This is a Class III violation according to OAR 340-012-0055(3)(a). DEQ did not assess a civil
6 penalty for this violation.

7 IV. ORDER TO PAY CIVIL PENALTY

8 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
9 hereby ORDERED TO pay a total civil penalty of \$10,400. The determination of the civil penalty is
10 attached as Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as
11 set forth in Section V below, your check or money order must be made payable to "**State Treasurer,**
12 **State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600,**
13 **Portland, Oregon 97232**. Once you pay the penalty, the Findings of Fact, Conclusions and Order
14 become final.

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

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

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
17 July 14, 2017
18 Date

17 Sarah Wheeler
18 Sarah G. Wheeler, Acting Manager
19 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: Exceeding the daily and monthly iron concentration set forth in the Permit, in violation of ORS 468B.025(2) and Schedule A, Condition 1.b of the Permit.

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(2)(a)(A)(ii) because the receiving stream flow at the time of the effluent limitation exceedance was below the flow used to calculate the water quality based effluent limitation.

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 \$8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(ii). Respondent has a Tier 2 industrial NPDES permit.

"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) (a) (A), because there are no prior significant actions.

"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 was more than one but less than seven occurrences of the violation.. Respondent exceeded two limitations – the daily and monthly iron concentration - in January 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 that exceeding an effluent limitation in the Permit would be a violation. Respondent's Permit provides that Respondent must comply with the discharge limitations expressly set forth in the Permit.

"C" is Respondent's efforts to correct 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 has proposed to replace several rusting tanks which contributed to the exceedance of the iron concentration.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 available to the Department to make a reasonable estimate.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 2 + 2 - 1)] + \0
 $= \$8,000 + [\$800 \times 3] + \$0$
 $= \$8,000 + \$2,400 + \$0$
 $= \$10,400$