



# Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters  
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Portland, OR 97204-1390  
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July 21, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 2771

City of Sandy  
c/o Seth Atkinson, City Manager  
39250 Pioneer Blvd.  
Sandy, OR 97055

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-NWR-2016-084

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$5,400 for violating conditions of your wastewater discharge permit that limit total suspended solids, biochemical oxygen demand and ammonia in your effluent. These limits are set to protect fish and other aquatic life from pollution in your wastewater and to ensure water quality is protected for other beneficial 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 appreciates the efforts Sandy has been making to address deficiencies in its system by conducting the corrective actions requested in DEQ's Pre-Enforcement Notice. Please be advised that failure to correct any deficiencies may lead to future violations that will be subject to additional civil penalties.

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.



City of Sandy  
Case No. WQ/M-NWR-2016-084  
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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: Randall Bailey, Northwest Region, DEQ  
John Koestler, WQ, HQ

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

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 CITY OF SANDY, ) ASSESSMENT AND ORDER  
a municipality of the state of Oregon, )  
5 Respondent. ) CASE NO. WQ/M-NWR-2016-084

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

12 II. FINDINGS OF FACT

13 1. Respondent operates a wastewater collection, treatment and disposal system pursuant to  
14 National Pollutant Discharge Elimination System Permit No. 102492 (the permit) issued to Respondent  
15 by DEQ.

16 2. The permit authorizes Respondent to construct, install, modify and operate its system  
17 and discharge to public waters adequately treated wastewater (effluent) in conformance with the  
18 requirements, limitations and conditions set forth in the permit.

19 3. The permit was in effect at all material times

20 4. Schedule A, Condition 2 of the permit limits the mass load of total suspended solids  
21 (TSS) in Respondent's effluent to a maximum of 250 pounds per day.

22 5. Respondent discharged effluent with daily TSS mass loads as follows:

Date	TSS Daily Mass Load	Percentage over limit
11/04/15	301 pounds	20%
12/29/15	406 pounds	62%
01/12/16	426 pounds	70%

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Date	TSS Daily Mass Load	Percentage over limit
01/13/16	282 pounds	13%
02/02/16	253 pounds	1%
03/02/16	256 pounds	2%

6. Schedule A, Condition 2 of the permit limits the weekly average mass load of TSS in Respondent's effluent to a maximum of 187 pounds per day (lbs/day).

7. Respondent discharged effluent with weekly average TSS mass loads as follows:

Week	TSS Weekly Average	Percentage over limit
11/01/15	264 lbs/day	41%
12/06/15	1,091 lbs/day	483%
12/20/16	329 lbs/day	76%
12/27/16	278 lbs/day	49%
01/10/16	354 lbs/day	89%
01/17/16	430 lbs/day	130%
01/31/16	231 lbs/day	24%
02/28/16	196 lbs/day	5%
03/06/16	232 lbs/day	24%
03/13/16	275 lbs/day	47%

8. Schedule A, Condition 2 of the permit limits the monthly average mass load of TSS in Respondent's effluent to a maximum of 125 pounds per day (lbs/day).

9. Respondent discharged effluent with monthly average TSS mass loads as follows:

Month	TSS Monthly Average	Percentage over limit
November 2015	156 lbs/day	25%
December 2015	468 lbs/day	274%

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Month	TSS Monthly Average	Percentage over limit
January 2016	271 lbs/day	117%
February 2016	149 lbs/day	19%
March 2016	186 lbs/day	49%

10. Schedule A, Condition 2 of the permit limits weekly average concentration of TSS in Respondent's effluent to 15 milligrams per liter (mg/L).

11. Respondent discharged effluent with weekly average TSS concentration as follows:

Week	TSS Weekly Average	Percentage over limit
11/01/15	20 mg/L	36%
11/29/15	16 mg/L	5%
12/06/15	23 mg/L	53%
12/27/15	19 mg/L	27%
01/10/16	21 mg/L	38%
01/31/16	17 mg/L	10%
03/06/16	16 mg/L	5%

12. Schedule A, Condition 2 of the permit limits the monthly average TSS concentration in Respondent's effluent to 10 mg/L.

13. Respondent discharged effluent with monthly average TSS concentrations as follows:

Month	TSS Monthly Average	Percentage over limit
November 2015	11 mg/L	10%
December 2015	16 mg/L	60%
January 2016	15 mg/L	50%
February 2016	11 mg/L	10%
March 2016	12 mg/L	20%

14. Schedule A, Condition 2 of the permit limits the mass load of biochemical oxygen demand (BOD<sub>5</sub>) in Respondent's effluent to a maximum of 250 pounds per day.

15. Respondent discharged effluent with daily BOD<sub>5</sub> mass loads as follows:

Date	BOD <sub>5</sub> Daily Mass Load	Percentage over limit
11/04/15	354 pounds	42%
12/29/15	293 pounds	17%
01/13/16	252 pounds	1%

16. Schedule A, Condition 2 of the permit limits the weekly average mass load of BOD<sub>5</sub> in Respondent's effluent to a maximum of 187 lbs/day.

17. Respondent discharged effluent with weekly average BOD<sub>5</sub> mass loads as follows:

Week	BOD <sub>5</sub> Weekly Average	Percentage over limit
11/01/15	286 lbs/day	53%
11/15//15	190 lbs/day	3%
12/06/15	780 lbs/day	317%
12/27/15	264 lbs/day	41%
01/10/16	250 lbs/day	34%
01/17/16	219 lbs/day	17%
01/31/16	189 lbs/day	1%
02/28/16	189 lbs/day	1%
03/06/16	228 lbs/day	22%
03/13/16	248 lbs/day	33%

18. Schedule A, Condition 2 of the permit limits the monthly average mass load of BOD<sub>5</sub> in Respondent's effluent to a maximum of 125 pounds per day (lbs/day).

19. Respondent discharged effluent with monthly average BOD<sub>5</sub> mass loads as follows:

Month	BOD <sub>5</sub> Monthly Average	Percentage over limit
November 2015	176 lbs/day	41%
December 2015	326 lbs/day	161%
January 2016	174 lbs/day	39%
March 2016	178 lbs/day	42%

1 20. Schedule A, Condition 2 of the permit limits weekly average concentration of BOD<sub>5</sub> in  
2 Respondent's effluent to 15 mg/L.

3 21. Respondent discharged effluent with weekly average BOD<sub>5</sub> concentration as follows:

Week	BOD <sub>5</sub> Weekly Average	Percentage over limit
11/01/15	23 mg/L	53%
12/06/15	17 mg/L	10%
12/27/15	19 mg/L	27%
03/06/16	16 mg/L	5%

9 22. Schedule A, Condition 2 of the permit limits the monthly BOD<sub>5</sub> concentration in  
10 Respondent's effluent to 10 mg/L.

11 23. Respondent discharged effluent with monthly average BOD<sub>5</sub> concentrations as follows:

Month	BOD <sub>5</sub> Monthly Average	Percentage over limit
November 2015	12 mg/L	20%
December 2015	12 mg/L	20%
March 2016	12 mg/L	20%

16 24. Schedule A, Condition 3 of the permit limits the monthly ammonia (NH<sub>3</sub>) concentration  
17 in Respondent's effluent to 3.7 mg/L.

18 25. Respondent discharged effluent with monthly average ammonia concentrations as  
19 follows:

Month	NH <sub>3</sub> Monthly Average
November 2015	6.3 mg/L
December 2015	4.5 mg/L

23 26. Schedule A, Condition 3 of the permit limits daily maximum ammonia (NH<sub>3</sub>)  
24 concentration in Respondent's effluent to 10.9 mg/L.

25 27. Respondent discharged effluent with daily maximum ammonia concentrations as  
26 follows:  
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Day	NH <sub>3</sub> Maximum
11/03/15	14.4 mg/L
11/04/15	27 mg/L
12/16/15	12.7 mg/L

III. CONCLUSIONS

1. Respondent violated ORS 468B.025(2) by exceeding the TSS limits in its permit, as described in Section II, Paragraphs 4 through 13 above. Those instances where the limit was exceeded by 50 percent or more are Class I violations pursuant to OAR 340-012-0055(1)(k)(A). Those instances where the limit was exceeded by 20 percent or more, but less than 50 percent, are Class II violations pursuant to OAR 340-012-0055(2)(a)(A). Those instances where the limit was exceeded by less than 20 percent are Class III violations pursuant to OAR 340-12-0055(3)(b)(A). DEQ assesses a \$1,875 civil penalty for these violations.

2. Respondent violated ORS 468B.025(2) by exceeding the BOD<sub>5</sub> limits in its permit, as described in Section II, Paragraphs 14 through 23 above. Those instances where the limit was exceeded by 50 percent or more are Class I violations pursuant to OAR 340-012-0055(1)(k)(A). Those instances where the limit was exceeded by 20 percent or more, but less than 50 percent, are Class II violations pursuant to OAR 340-012-0055(2)(a)(A). Those instances where the limit was exceeded by less than 20 percent are Class III violations pursuant to OAR 340-12-0055(3)(b)(A). DEQ assesses a \$1,800 civil penalty for these violations.

3. Respondent violated ORS 468B.025(2) by exceeding the ammonia limits in its permit, as described in Section II, Paragraphs 24 through 27 above. These are Class I violations pursuant to OAR 340-012-0055(1)(l). DEQ assesses a \$1,725 civil penalty for these violations.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO: Pay a total civil penalty of \$5,400. The determination of the civil penalties attached as Exhibit 1, 2 and 3 and are incorporated as part of this Notice.

1           If you do not file a request for hearing as set forth in Section V below, your check or money  
2 order must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business**  
3 **Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of  
4 Fact, Conclusions and Order become final.

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

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

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

23           If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
24 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
25 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
26 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.

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6 July 21, 2016

7 Date

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11 Sumah Wheeler for

12 Leah K. Feldon, Manager  
13 Office of Compliance and Enforcement  
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## EXHIBIT 1

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

VIOLATION 1: Exceeding the permit's TSS effluent limits in violation of ORS 468B.025(2).

CLASSIFICATION: The Classification is Class I pursuant to OAR 340-012-0055(1)(k)(A) and OAR 340-012-0145(4)(e).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent 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).

"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 9 according to OAR 340-012-0145(2)(a), because Respondent has prior significant actions totaling eight Class I equivalent violations, stemming from Case No. WQ/M-NWR-13-139.

"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 there were more than 28 occurrences of the violation.

"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 because the effluent limits are express in the 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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 does not have sufficient information as to the upgrades Respondent needs to make to its treatment system to arrive at a reasonable estimate of costs avoided or delayed.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$750 + [(0.1 \times \$750) \times (9 + 0 + 4 + 2 + 0)] + \$0$   
 $= \$750 + [\$75 \times 15] + \$0$   
 $= \$750 + \$1,125 + \$0$   
 $= \$1,875$

## EXHIBIT 2

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

VIOLATION 2: Exceeding the permit's BOD<sub>5</sub> effluent limits in violation of ORS 468B.025(2).

CLASSIFICATION: The Classification is Class I pursuant to OAR 340-012-0055(1)(k)(A) and OAR 340-012-0145(4)(e).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent 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).

"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 9 according to OAR 340-012-0145(2)(a), because Respondent has prior significant actions totaling eight Class I equivalent violations, stemming from Case No. WQ/M-NWR-13-139.

"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)(d), because there were 25 occurrences of the violation.

"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 because the effluent limits are express in the 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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 does not have sufficient information as to the upgrades Respondent needs to make to its treatment system to arrive at a reasonable estimate of costs avoided or delayed.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$750 + [(0.1 \times \$750) \times (9 + 0 + 3 + 2 + 0)] + \$0$   
 $= \$750 + [\$75 \times 14] + \$0$   
 $= \$750 + \$1050 + \$0$   
 $= \$1,800$

EXHIBIT 3

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

VIOLATION 3: Exceeding the permit's ammonia effluent limits in violation of ORS 468B.025(2).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(l).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(ii) because the flow in the receiving stream at the time of the discharge was two or more times greater than the flow used to calculate the effluent limit.

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).

"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 9 according to OAR 340-012-0145(2)(a), because Respondent has prior significant actions totaling eight Class I equivalent violations, stemming from Case No. WQ/M-NWR-13-139.

"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)(d), because there were four occurrences of the violation.

"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 because the effluent limits are express in the 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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 does not have sufficient information as to the upgrades Respondent needs to make to its treatment system to arrive at a reasonable estimate of costs avoided or delayed.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$750 + [(0.1 \times \$750) \times (9 + 0 + 2 + 2 + 0)] + \$0$   
 $= \$750 + [\$75 \times 13] + \$0$   
 $= \$750 + \$975 + \$0$   
 $= \$1,725$