



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

July 23, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 3463

Pliska Investments, LLC
c/o Raymond M. Rask, Registered Agent
1200 SW Main Street
Portland, OR 97205

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/D-ER-2018-042

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$3,900 for violating the effluent limits in your wastewater permit for the Space Age Travel Center at 77522 Highway 207 in Hermiston, Oregon. Specifically, you violated the permit's Nitrate-Nitrogen and Total Nitrogen limits for your onsite sewage treatment system on twenty two occasions between June 2015 and the date of this Notice. The Notice also cites you, without penalty, for other violations of your wastewater permit including failing to report effluent limit exceedances to DEQ within five days of receiving laboratory results, failing to monitor the influent or effluent from your wastewater treatment system in the first quarter of 2015, failing to timely submit Discharge Monitoring Reports (DMR) to DEQ, and failing to include all of the required information in those DMRs.

DEQ issued this penalty because discharging more nitrogen than allowed by your permit poses a significant risk of harm to human health and the environment. Your Hermiston facility is located within the Lower Umatilla Basin Groundwater Management Area, which is designated due to high, area-wide concentrations of Nitrate-Nitrogen in the groundwater that is present as a result of suspected non-point source activities. Groundwater with high nitrogen concentration is a human health concern when used as drinking water. Nitrogen contaminated groundwater that reaches surface waters can also cause algal blooms characterized by low dissolved oxygen, a condition that is harmful to aquatic life.

Included in Section IV is an order requiring you to take the following corrective actions:

- Within 30 days of the order becoming final by operation of law or on appeal, submit to DEQ for approval a corrective action plan prepared by a maintenance provider certified pursuant to OAR 340-071-0650. To be approvable, the corrective action plan must: a) describe an investigation of the cause(s) of the Nitrate-N and Total-N exceedances described in Section II, Paragraph 7 of the Notice, b) describe any corrective actions already taken to address nitrogen levels in the effluent for System 001, and c) propose additional corrective actions, including timelines, to reduce Nitrate-N and Total-N concentrations to meet the effluent limits in the Permit; and

- Implement the DEQ-approved corrective action plan according to the timelines therein. All corrective actions must be completed within six months this Order becoming final.

If you have any questions about how to complete these requirements, please contact Carl Nadler at 541-291-7255 x277.

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.

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 Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jim Pliska, Pliska Investments, LLC, P.O. 1429, Clackamas, OR 97015
Carl Nadler, DEQ

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

3 IN THE MATTER OF:)
4 PLISKA INVESTMENTS, LLC,) NOTICE OF CIVIL PENALTY
5 An Oregon limited liability corporation,) ASSESSMENT AND ORDER
6 Respondent.) CASE NO. WQ/D-ER-2018-042

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9 ORS Chapters 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,
10 040, 045 and 071.

11 II. FINDINGS OF FACT

12 1. In 1990, DEQ declared the Lower Umatilla Basin a groundwater management area
13 (GWMA) because Nitrate-Nitrogen (Nitrate-N) concentrations exceeded 7 milligrams per liter (mg/l) in
14 many area groundwater samples. This level is 70% of the Oregon maximum measurable level and
15 Federal Safe Drinking Water Standard of 10 mg/l and is the trigger level for declaring a GWMA.
16 Under the Oregon Groundwater Protection laws (ORS 468B.150 et seq.), DEQ is required to declare a
17 GWMA if area-wide groundwater contamination is present as a result of suspected non-point source
18 activities.

19 2. Respondent operates the Space Age Travel Center located at 77522 Highway 207 in
20 Hermiston, Oregon (the Facility), which is located in the Lower Umatilla Basin GWMA.

21 3. On September 28, 2006, DEQ issued Respondent Water Pollution Control Facilities Permit
22 No. 101758 for the Facility (the Permit). The Permit was in effect at all material times.

23 4. The Permit authorizes Respondent to operate and maintain a domestic sewage treatment and
24 disposal system, known as "System 001", to serve the Space Age Travel Center in compliance with the
25 requirements of the Permit.

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1 5. Schedule A.1.e of the Permit limits the concentration of Nitrate Nitrogen (Nitrate-N) in any
2 single sample of Respondent's effluent from System 001 to 10 mg/L and the annual average of
3 quarterly samples to 7 mg/L.

4 6. Schedule A.1.e of the Permit limits the concentration of Total Nitrogen (Total-N) in any
5 single sample of Respondent's effluent from System 001 to 15 mg/L and the annual average of
6 quarterly samples to 13 mg/L.

7 7. According to Respondent's Discharge Monitoring Reports (DMR) for 2015, 2016, 2017 and
8 the first quarter of 2018, Respondent's effluent monitoring of System 001 produced the following
9 single sample and annual results for Nitrate-N and Total-N:

Date	Parameter		Monitoring Result (mg/L)
June 24, 2015	Total-N	Single Sample	32
September 2, 2015	Total-N	Single Sample	30
December 10, 2015	Nitrate-N	Single Sample	15
December 10, 2015	Total-N	Single Sample	55
2015	Total-N	Annual Average	39
March 10, 2016	Total-N	Single Sample	56
June 30, 2016	Nitrate-N	Single Sample	19
June 30, 2016	Total-N	Single Sample	22
September 8, 2016	Nitrate-N	Single Sample	13
October 27, 2016	Nitrate-N	Single Sample	20
October 27, 2016	Total-N	Single Sample	21
December 8, 2016	Nitrate-N	Single Sample	28
December 8, 2016	Total-N	Single Sample	29
2016	Nitrate-N	Annual Average	14
2016	Total-N	Annual Average	24
November 30, 2017	Nitrate-N	Single sample	15
November 30, 2017	Total-N	Single sample	18
January 5, 2018	Nitrate-N	Single sample	18
January 5, 2018	Total-N	Single sample	21
February 1, 2018	Nitrate-N	Single sample	11
March 20, 2018	Nitrate-N	Single sample	23
March 20, 2018	Total-N	Single sample	26

24
25 8. In the event of an exceedance of the Permit's effluent limits for Nitrate-N or Total N,
26 Schedule A.1.e(1)-(3) of the Permit requires Respondent to conduct the following within five days of
27 receipt of the analytical results:

1 a. Report the laboratory results to DEQ;
 2 b. Resample to confirm the results; and
 3 c. In the event that the resampling confirms that the effluent from System 001 exceeds the
 4 Permit's effluent limits, within 30 days of receipt of the second set of analytical results, Respondent
 5 must submit a corrective action plan to DEQ to treat the effluent such that it meets the effluent limits.

6 9. Respondent did not report the January 5, 2018, February 1, 2018 or the March 20, 2018
 7 exceedances described above in Paragraph 7 to DEQ within 5 days of receipt of the analytical results.

8 10. Schedule B.1.a of the Permit requires Respondent to collect samples and report to DEQ data
 9 for the concentration of five-day biochemical oxygen demand (BOD₅), grease and oil, and Total
 10 Kjeldahl Nitrogen (TKN) in the influent to treatment System 001 with a minimum frequency of one
 11 sample per calendar quarter.

12 11. Schedule B.1.b of the Permit requires Respondent collect samples and report to DEQ data
 13 for the concentration of BOD₅, Total Suspended Solids (TSS), Nitrate-N, TKN and Total-N in the
 14 effluent of treatment System 001 with a minimum frequency of one sample per calendar quarter.

15 12. Respondent failed to collect any influent or effluent samples and failed to report to DEQ any
 16 influent or effluent data for treatment System 001 during the first quarter of 2015 (January 1, 2015 –
 17 March 31, 2015).

18 13. Schedule B.4.a of the Permit requires Respondent to report its monitoring results for each
 19 calendar quarter by the fifteenth day of the following month (i.e. January 15, April 15, July 15, and
 20 October 15).

21 14. Respondent submitted Discharge Monitoring Reports (DMR) to DEQ as follows:.

Calendar Quarter	Date DMR Submitted to DEQ
Q1 2015	April 20, 2015 and January 19, 2016
Q2 2015	July 16, 2015
Q3 2015	October 19, 2015
Q1 2016	April 15, 2016 and February 2, 2017
Q2 2016	July 25, 2016
Q2 2017	July 21, 2017
Q3 2017	October 19, 2017
Q4 2017	January 22, 2018
Q1 2018	April 18, 2018
Q2 2018	Not submitted to DEQ as of the date of this Notice

1 15. Schedule B.4.a of the Permit also requires Respondent to include, in the last quarterly report
2 of the calendar year, submitted by January 15, a “summary of annual OWTS [onsite wastewater
3 treatment system] performance including calculations showing the Annual Average discharge of 1)
4 Nitrate-N and 2) Total Nitrogen”.

5 16. Respondent’s fourth quarter DMRs submitted to DEQ for 2015, 2016 and 2017 do not
6 include calculations showing the annual average of Nitrate-N and Total-N.

7 III. CONCLUSIONS

8 1. Respondent violated ORS 468B.025(2) by violating a condition in its wastewater discharge
9 permit. Specifically, Respondent discharge effluent that exceeded the effluent limits for Nitrate-N and
10 Total-N in Schedule A.1.e of the Permit as described in Section II, Paragraphs 5-7, above. These are
11 Class I violations, according to OAR 340-012-0055(1)(m). DEQ hereby assesses a \$3,900 civil penalty
12 for these violations.

13 2. Respondent violated ORS 468B.025(2) and Schedule A.1.e(1) of the Permit by failing to
14 report effluent limit exceedances that occurred on January 5, 2018, February 1, 2018 and March 20,
15 2018 to DEQ within five days of receiving the analytical results for those exceedances, as described in
16 Section II, Paragraphs 8-9, above. These are Class II violations, according to OAR 340-012-
17 0060(2)(o). DEQ has not assessed a civil penalty for these violations.

18 3. Respondent violated ORS 468B.025(2) and Schedule B.1.a and Schedule B.1.b of the
19 Permit by failing monitor the influent or the effluent for System 001 during the first quarter of 2015 as
20 described in Section II, Paragraphs 10-12, above. These are Class II violations, according to OAR 340-
21 012-0060(2)(l). DEQ has not assessed a civil penalty for these violations.

22 4. Respondent violated ORS 468B.025(2) and Schedule B.4.a of the Permit by failing to timely
23 submit quarterly DMRs to DEQ on ten occasions between 2015 and 2018, as described in Section II,
24 Paragraphs 13-14, above. These are Class II violations, according to OAR 340-012-0060(2)(o). DEQ
25 has not assessed a civil penalty for these violations.

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1 5. Respondent violated ORS 468B.025(2) and Schedule B.4.a of the Permit by failing to
2 include annual average calculations for Nitrate-N and Total-N in its fourth quarter DMRs submitted to
3 DEQ for 2015, 2016 and 2017, as described in Section II, Paragraphs 15-16, above. These are Class II
4 violations, according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for these
5 violations.

6 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

7 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
8 hereby ORDERED TO:

9 1. Pay a total civil penalty of \$3,900. The determination of the civil penalty is attached as Exhibit
10 1 and is incorporated as part of this Notice.

11 If you do not file a request for hearing as set forth in Section V below, your check or money
12 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
13 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty,
14 the Findings of Fact, Conclusions and Order become final.

15 2. Within 30 days of the order becoming final by operation of law or on appeal, submit to
16 DEQ for approval a corrective action plan prepared by a maintenance provider certified pursuant to
17 OAR 340-071-0650. To be approvable, the corrective action plan must: a) describe an investigation of
18 the cause(s) of the Nitrate-N and Total-N exceedances described in Section II, Paragraph 7, above, b)
19 describe any corrective actions already taken to address nitrogen levels in the effluent for System 001,
20 and c) propose additional corrective actions, including timelines, to reduce Nitrate-N and Total-N
21 concentrations to meet the effluent limits in the Permit.

22 3. Implement the DEQ-approved corrective action plan according to the timelines therein. All
23 corrective actions must be completed within six months this Order becoming final.

24 Written documentation demonstrating Respondent's compliance with Section IV, Paragraphs 2 and 3
25 above must be sent to Oregon Department of Environmental Quality, Attn: Carl Nadler, 400 E Scenic
26 Drive, Suite 307, The Dalles, OR 97058 or Nadler.Carl@deq.state.or.us.

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

2 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
3 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
4 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
5 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
6 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
7 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
8 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
9 it to **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
10 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
11 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
12 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
13 you may represent yourself. If you are a corporation, partnership, limited liability company,
14 unincorporated association, trust or government body, you must be represented by an attorney or a duly
15 authorized representative, as set forth in OAR 137-003-0555.

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

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7/23/18
Date

Kieran O'Donnell
Kieran O'Donnell, 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 No. 1: Violating a wastewater discharge permit condition in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(m) because Respondent violated WPCF permit limitations for Nitrate-Nitrogen in the Lower Umatilla Basin Groundwater Management Area, which is established to address high concentrations of Nitrate-Nitrogen in the groundwater.

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)(G), because Respondent violated an onsite sewage disposal permit and Respondent is not a residential owner occupant.

"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 10 according to OAR 340-012-0145(2)(a)(C) and (D) and OAR 340-012-0145(2)(b), because Respondent has 16 Class I violations in Case No. WQ/D-ER-2015-031 and 22 Class I violations in Case No. WQ/D-ER-2013-057.

"H" is Respondent's history of correcting prior significant actions, and receives a value of -1 according to OAR 340-012-0145(3)(b) because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior significant actions.

"O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. As detailed in the table in Section II, Paragraph 7 of the Notice, Respondent exceeded the Permit's Nitrate-N or Total-N effluent limits on 22 occasions from June 2015 through the first quarter of 2018.

"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. Negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. The Nitrate-N and Total-N effluent limits are express conditions of Respondent's Permit. Respondent's discharge exceeded the Nitrate-N and Total-N effluent limits in its Permit on 22 occasions from June 2015 to through the first quarter of 2018. Despite this history of violations, Respondent has not taken steps to thoroughly investigate the cause of the exceedances, nor has Respondent taken adequate corrective actions to address the pattern of exceedances. By failing to thoroughly investigate the cause of the exceedances and failing to maintain its onsite system such that the exceedances would be prevented, despite knowledge that the system was prone to exceedances, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

"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 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 DEQ has insufficient information to calculate an economic benefit.

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 (10 + -1 + 3 + 4 + 0)] + \0
 $= \$1,500 + (\$150 \times 16) + \$0$
 $= \$1,500 + \$2,400 + \$0$
 $= \$3,900$