



# 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

August 4, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8730

City of La Grande  
c/o Mayor Stephen E. Clements  
1000 Adams Avenue  
La Grande, OR 97850

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/UIC-NWR-2021-117

*DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.*

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the City of La Grande a civil penalty of \$46,504 for violations of its Underground Injection Control (UIC) system permit, which authorizes stormwater discharges from roads and public rights-of-way into UICs (also known as drywells) at approximately 61 locations within the City of La Grande. Specifically, the City failed to monitor stormwater discharges, as required under the permit, during monitoring years 2015-2016 through 2019-2020. In addition, the City has not submitted an approvable groundwater protectiveness demonstration or decommissioning plan to DEQ for the 22 UICs that are located within 500 feet of water wells.

DEQ issued this penalty because monitoring is an important requirement of the permit and the City failed to monitor stormwater discharges to its UIC system during multiple monitoring years. Monitoring may reveal the presence of harmful levels of pollutants that pose a threat to groundwater. Additionally, an approvable groundwater protectiveness demonstration or decommissioning plan is needed for the UICs within the 500 foot setback to ensure that those UICs do not pose a risk to public or private drinking or irrigation water supplies.

Included in Section IV of the attached Notice is an order requiring the City to submit the following to DEQ by September 6, 2021 or within 30 days of this order becoming final by operation of law or on appeal, whichever comes later:

- Any stormwater sampling results for the City's UIC system for monitoring year 2020-2021 (July 1, 2020 – June 30, 2021); and
- An approvable groundwater protectiveness demonstration or decommissioning plan.

Please note the above is a summary; you must consult Section IV of the attached Notice for the order's detailed requirements.

\$32,921 of the civil penalty represents the economic benefit the City gained by failing to monitor stormwater discharges to its UIC system. \$2,783 of the civil penalty represents the economic benefit the City gained by avoiding the labor or consultant cost of preparing an approvable groundwater protectiveness demonstration or decommissioning plan. If the City completes the groundwater protectiveness demonstration or decommissioning plan, DEQ will consider recalculating the \$2,783 cost as delayed rather than avoided and will reduce the civil penalty accordingly.

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](mailto:DEQappeals@deq.state.or.us)

Via fax – 503-229-6762

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: Kyle Carpenter, City of La Grande, Public Works Department, 800 X Avenue, La Grande, OR 97850-2366  
Derek Sandoz, DEQ  
Christine Svetkovich, DEQ  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 CITY OF LA GRANDE, ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. WQ/UIC-NWR-2021-117

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,  
10 044 and 045.

11 II. FINDINGS OF FACT

12 1. Respondent operates a number of drywells, also known as Underground Injection Controls  
13 (UICs) pursuant to Water Pollution Control Facilities Permit No. 103093 (Permit) issued to Respondent  
14 by DEQ on October 8, 2014.

15 2. The Permit was in effect at all material times

16 3. The Permit authorizes Respondent to discharge stormwater runoff and other incidental fluids  
17 specifically identified in the Permit from roads and public rights-of-way into UICs at approximately 61  
18 locations within the City of La Grande, subject to the requirements, limitations and conditions in the  
19 Permit. The UICs discharge to subsurface soils, eventually reaching groundwater.

20 4. Schedule B, Condition 2 of the Permit requires Respondent to prepare and submit to DEQ a  
21 Stormwater Monitoring Plan that describes how Respondent will monitor stormwater and other fluid  
22 discharges. Once approved by DEQ, Respondent must implement the Stormwater Monitoring Plan.

23 5. On or about April 8, 2015, Respondent submitted a Stormwater Monitoring Plan to DEQ and on  
24 April 22, 2015, DEQ approved the Stormwater Monitoring Plan.

25 6. The DEQ-approved Stormwater Monitoring Plan requires Respondent to conduct sampling  
26 twice annually during two separate storm events at three UIC locations (UIC ID Nos. 4, 8 and 17) for  
27 the following constituents: benzo(a)pyrene, pentachlorophenol (PCP), Di(2-ethylhexyl)phthalate

1 (DEHP), Total Lead, Total Zinc, and Total Copper (together, the “Required Constituents”). The  
2 monitoring year is defined in the Stormwater Monitoring Plan as July 1 to June 30.

3 7. During the July 1, 2015 to June 30, 2016 monitoring period, Respondent conducted some  
4 monitoring, but failed to monitor for PCP, and failed to test at a sufficiently low detection limit for  
5 benzo(a)pyrene, as required under Section 2.1 of the DEQ-approved Stormwater Monitoring Plan.  
6 Therefore, DEQ cannot determine whether benzo(a)pyrene was above the Action Level in the Permit.

7 8. Respondent did not monitor for any of the Required Constituents during the following  
8 monitoring periods:

- 9 a. July 1, 2016 to June 30, 2017;
- 10 b. July 1, 2017 to June 30, 2018;
- 11 c. July 1, 2018 to June 30, 2019; and
- 12 d. July 1, 2019 to June 30, 2020.

13 9. According to Schedule A, Condition 8 of the Permit, Respondent’s UICs are subject to a 500  
14 foot setback requirement from any known public or private drinking water or irrigation water supply  
15 wells unless Respondent submits a groundwater protectiveness demonstration to DEQ. For existing  
16 UICs, Schedule A, Condition 8.b requires Respondent to demonstrate groundwater protectiveness  
17 within one year of discovery of the existing UICs. Alternatively, Respondent may retrofit the UICs or  
18 decommission the UICs within the setback “as soon as practicable” during the term of the permit,  
19 which expires on September 30, 2024.

20 10. On July 14, 2014, Respondent submitted a System Wide Assessment to DEQ that identified 22  
21 UICs located within 500 feet of a water well.

22 11. On February 29, 2016, Respondent submitted to DEQ for approval a memorandum to DEQ  
23 titled “Groundwater Protectiveness Demonstrations for Underground Injection Control (UIC) Devices,  
24 City of La Grande, Oregon.”

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1 12. On December 20, 2016, DEQ disapproved Respondent's February 29, 2016 memorandum  
2 because the memorandum relied upon another groundwater protectiveness determination study that was  
3 performed in a different geologic unit (Missoula Flood Deposits) than the geologic unit in which  
4 Respondent's UICs are located (Quaternary Fanglomerate-Colluvium).

5 13. As of the date of this Notice, Respondent has not submitted the groundwater protectiveness  
6 demonstration to DEQ based on the correct geologic unit for Respondent's UICs, nor has Respondent  
7 submitted a decommissioning plan to DEQ.

### 8 III. CONCLUSIONS

9 1. Respondent violated ORS 468B.025(2) and Schedule B, Condition 2 of the Permit by failing  
10 to monitor for benzo(a)pyrene and PCP in the 2015-2016 monitoring year, and failing to monitor for all  
11 of the Required Constituents at all three monitoring points on each of the required occasions (2 times  
12 per year) during the 2016-2017, 2017-2018, 2018-2019, and 2019-2020 monitoring years, as described  
13 in Section II, Paragraphs 4-8 above. This is a total of 30 occasions of missed monitoring. These are Class I  
14 violations according to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$40,121 civil penalty for these  
15 violations.

16 2. Respondent violated ORS 468B.025(2) and Schedule A, Condition 8 of the Permit by  
17 failing to submit a groundwater protectiveness demonstration or a decommissioning plan to DEQ for 22  
18 existing UICs located within 500 feet of a water well within one year of discovery of those UICs, as  
19 described in Section II, Paragraphs 9-13 above. Specifically, Respondent discovered 22 UICs located  
20 within 500 feet of a water well on or before July 18, 2014 because the 22 UICs are documented in  
21 Respondent's System Wide Assessment. Respondent failed to submit a groundwater protectiveness  
22 demonstration or a decommissioning plan to DEQ for those UICs within one year of discovery, or by  
23 July 18, 2015. As of the date of this Notice, Respondent still has not submitted an approvable  
24 groundwater protectiveness demonstration to DEQ, nor has Respondent submitted a decommissioning  
25 plan to DEQ for the 22 UICs. This is a Class II violation according to OAR 340-012-0055(2)(b). DEQ  
26 hereby assesses a \$6,383 civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

4 1. Pay a total civil penalty of \$46,504. The determination of the civil penalties are attached as  
5 Exhibits 1 and 2 and are incorporated as part of this Notice.

6 If you do not file a request for hearing as set forth in Section V below, your check or money  
7 order must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business**  
8 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

9 2. By September 6, 2021 or within 30 days of this order becoming final by operation of law or  
10 on appeal, whichever comes later:

- 11 a. Submit to DEQ any UIC stormwater sampling results for monitoring year 2020-2021  
12 (July 1, 2020 – June 30, 2021) or a written statement no monitoring was conducted; and  
13 b. For the 22 UICs identified in Respondent's July 14, 2018 System Wide Assessment that  
14 are located within 500 feet of a water well, submit to DEQ for approval:  
15 i. A groundwater protectiveness demonstration that meets the requirements of  
16 Schedule A.8 of the Permit and is conducted in the same geologic unit in which  
17 Respondent's UICs are located (Quaternary Funglomerate-Colluvium); or  
18 ii. A plan to decommission the 22 UICs by September 30, 2024.

19 Written documentation demonstrating Respondent's compliance with the requirements of  
20 Section IV, Paragraph 2, above, must be sent to Derek Sandoz, DEQ, 700 NE Multnomah Street, Suite  
21 600, Portland OR 97232 or [derek.sandoz@deq.state.or.us](mailto:derek.sandoz@deq.state.or.us).

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


23 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
24 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
25 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
26 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
27 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for

1 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
2 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
3 it to **503-229-6762** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge  
4 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
5 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
6 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
7 you may represent yourself. If you are a corporation, partnership, limited liability company,  
8 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
9 authorized representative, as set forth in OAR 137-003-0555.

10 Active duty Service members have a right to stay proceedings under the federal Service  
11 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
12 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
13 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
14 Department does not have a toll free telephone number.

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

21  
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23  
24 8/4/2021  
25 Date

24   
25 Kieran O'Donnell, Manager  
26 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 NO. 1                      Failing to monitor stormwater discharges, in violation of ORS 468B.025(2) and Schedule B, Condition 2 of the Permit.
- 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 \$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)(iv) because Respondent has a population of less than 100,000 but more than 10,000 as determined by the most recent national census and Respondent has a WPCF Municipal Stormwater UIC System 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)(f), because all of Respondent's prior significant actions are more than ten years old.
- "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 no prior history accounted for in this penalty calculation.
- "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. Respondent failed to monitor on 30 occasions (5 years x 2/year x three monitoring locations), from the 2015-2016 monitoring year through the 2019-2020 monitoring year.
- "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. According to OAR 340-012-0030, negligent means the Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent prepared a submitted a Stormwater Monitoring Plan to DEQ. Thus, Respondent was familiar with the monitoring requirements under that plan and the Permit. Respondent conducted some incomplete monitoring during the first year after the plan was approved by DEQ, but then failed to



monitor any monitoring during four subsequent monitoring years. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a monitoring 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 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 \$32,921. This is the amount Respondent gained by avoiding spending \$30,405 in lab costs to analyze samples for the Required Constituents for the 2015-2016 through 2019-2020 monitoring years. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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 +  $[(0.1 \times \$4,000) \times (0 + 0 + 4 + 4 + 0)] + \$32,921$   
= \$4,000 + (\$400 x 8) + \$32,921  
= \$4,000 + \$3,200 + \$32,921  
= \$40,121

## EXHIBIT 2

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

- VIOLATION NO. 2                      Failing to submit a groundwater protectiveness demonstration or a decommissioning plan to DEQ, in violation of ORS 468B.025(2) and Schedule A, Condition 8 of the Permit.
- CLASSIFICATION:                      This is a Class I violation pursuant to OAR 340-012-0055(2)(b).
- 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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iv) because Respondent has a population of less than 100,000 but more than 10,000 as determined by the most recent national census and Respondent has a WPCF Municipal Stormwater UIC System 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)(f), because all of Respondent's prior significant actions are more than ten years old.
- "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 no prior history accounted for in this penalty calculation.
- "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. Each day is a separate occurrence of the violation. Respondent was required to submit a groundwater protectiveness demonstration or a decommissioning plan to DEQ by July 18, 2015. As of the date of this Notice, Respondent has not submitted an approvable groundwater protectiveness determination or decommissioning plan to DEQ.
- "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. According to OAR 340-012-0030, negligent means the Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent was notified of the need to

submit a groundwater protectiveness demonstration or a decommissioning plan to DEQ in Warning Letter No. 2015-WLOTC-1026, issued on September 3, 2015. On December 20, 2016, DEQ disapproved Respondent's initial submittal and explained the issue that needed to be corrected. Nevertheless, Respondent did not follow up with a new proposed deadline for a groundwater protectiveness determination or with the determination itself. On March 31, 2021, DEQ issued Warning Letter No. 2021-WLOTC-6185, reiterating the requirement to submit the groundwater protectiveness demonstration or a decommissioning plan to DEQ. As of the date of this Notice, DEQ has not received an approvable groundwater protectiveness demonstration or a decommissioning plan from Respondent. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation of the Permit requirement that the groundwater protectiveness demonstration or a decommissioning plan be submitted within one year of discovery of existing UICs within 500 feet of a water well.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"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 \$2,783. This is the amount Respondent gained by avoiding spending \$2,500 in labor or consultant costs to prepare or revise a groundwater protectiveness determination. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$2,000 + [(0.1 x \$2,000) x (0 + 0 + 4 + 4 + 0)] + \$2,783  
= \$2,000 + (\$200 x 8) + \$2,783  
= \$2,000 + \$1,600 + \$2,783  
= \$6,383