



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 6, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8761

Linda Engbretson, City Manager
City of Warrenton
225 S Main Ave. P.O. Box 250
Warrenton, OR 97146

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-NWR-2021-086

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 you a civil penalty of \$562.50 for violating your wastewater permit by discharging wastewater that exceeded TSS limitations in Schedule A, Condition 1 of the Permit. Pollutant levels in your wastewater are limited to protect water quality and aquatic life. By violating these limits, you risked harm to Oregon waters.

DEQ appreciates your efforts to ensure the violation will not be repeated by installing bird nets, closing your septage receiving station, and working with an engineer on a new wastewater facilities plan. DEQ considered these efforts when determining the amount of civil penalty.

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 – 503-229-6762

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 Jeff Bachman at 503-229-5950 or toll free in Oregon at 800-452-4011, extension 5950.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell", is written over a horizontal line.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Mark Bentz, DEQ
Tiffany Yelton-Bram, DEQ
Accounting, DEQ

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

3 IN THE MATTER OF:)
4 CITY OF WARRENTON, a municipality of the NOTICE OF CIVIL PENALTY
5 state of Oregon,) ASSESSMENT AND ORDER
6)
7 Respondent.) CASE NO. WQ/M-NWR-2021-086

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 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,
10 012, and 045.

11 II. FINDINGS OF FACT

12 1. At all relevant times, Respondent owned a wastewater treatment plant located at 105 NE 5th
13 Street, Warrenton, OR 97146.

14 2. At all relevant times, Respondent was authorized to dispose of wastewater from its
15 operations pursuant to a National Pollutant Discharge Elimination System Individual Permit, No.
16 100874 (the Permit). The Permit authorized Respondent to discharge treated wastewater effluent to
17 waters of the state only in accordance with the conditions of the Permit.

18 3. Schedule A, Condition 1 of the Permit limits total suspended solids (TSS) in
19 Respondent's discharged effluent to a daily max loading of 750 pounds per day (lb/day); a weekly
20 average loading of 563 lb/day; and a weekly average concentration of 45 milligrams per liter (mg/L).

21 4. In February 2021, Respondent discharged effluent with a daily max TSS loading of 925
22 lb/day, exceeding the limit by 23%.

23 5. In February 2021, Respondent discharged effluent with a weekly average TSS loading
24 of 607 lb/day, exceeding the limit by 8%.

25 6. In February 2021, Respondent discharged effluent with a weekly average TSS
26 concentration of 51 mg/L, exceeding the limit by 13%.

1 III. CONCLUSIONS

2 1. Respondent violated ORS 468B.025(2) by violating a condition of its Permit. Respondent
3 discharged wastewater that exceeded TSS effluent limitations in Schedule A, Condition 1 of the Permit as
4 described in Section II, Paragraphs 3-6 above. The daily maximum load violation is a Class II violation,
5 according to OAR 340-012-0055(2)(a)(A). The weekly average loading and weekly average concentration
6 violations are Class III violations pursuant to OAR 340-012-0055(3)(b)(A). DEQ assesses a \$562.50 civil
7 penalty for these violations.

8 IV. ORDER TO PAY CIVIL PENALTY

9 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
10 hereby ORDERED TO: Pay a total civil penalty of \$562.50. The determination of the civil penalty is
11 attached as Exhibit 1 and is incorporated as part of this Notice.

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

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, 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 **503-229-6762** 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 contact the Oregon State Bar at 1-800-
5 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
6 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
7 Department does not have a toll free telephone number.

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
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16
17 8/6/21

18 Date

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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 Failure to comply with a wastewater permit condition in violation of ORS 468B.025(2) by discharging wastewater that exceeded TSS effluent limitations in Schedule A, Condition 1 of the Permit.
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A) because Respondent exceeded the limitation by 20 percent or more, but less than 50 percent.
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C) because Respondent's effluent was diluted by the receiving water by a factor of 10 or more.
- 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 \$375 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(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 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 no prior history.
- "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 were more than one but less than seven occurrences of the violation. In February 2021, Respondent committed three effluent limit violations for TSS: the Daily Max Loading, Weekly Average Loading, and Weekly Average Concentration.
- "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. The TSS limit is an express condition of Respondent's Permit. Respondent received warning letters in January 2021 and March 2021 regarding similar violations from February 2020, December 2020, and January 2021. By failing to take the action necessary to ensure compliance with the limit, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. Respondent installed a bird net to prevent birds from interfering with its basin. Respondent also closed its septage receiving station to evaluate the impact on TSS issues and hired an engineering firm to develop a new wastewater facilities plan.

"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 has insufficient information as to the cause of the violation and therefore any estimated cost would be too speculative to be reasonable.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$375 + [(0.1 \times \$375) \times (0 + 0 + 2 + 4 + -1)] + \0
= $\$375 + (\$37.5 \times 5) + \$0$
= $\$375 + \$187.50 + \$0$
= $\$562.50$