



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters

811 SW 6th Ave

Portland, OR 97204-1390

(503) 229-5696

FAX (503) 229-6124

TTY: 711

August 26, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5630

City of Hood River
c/o Steve Wheeler, City Manager
211 2nd Street
Hood River, OR 9703

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-ER-2016-100

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$2,380 for violating the biochemical oxygen demand and total suspended solids limits in your wastewater discharge permit in May and June 2016. 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. 6th 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 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.



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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,

A handwritten signature in cursive script, appearing to read "Leah K. Feldon for".

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Carl Nadler, Eastern Region, The Dalles Office, 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 HOOD RIVER,) ASSESSMENT AND ORDER
a municipality of the state of Oregon,)
5 Respondent.) CASE NO. WQ/M-ER-2016-100

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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 183 and 468B 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. 101729 (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.a.i of the permit limits the weekly average concentration of
21 biochemical oxygen demand (BOD₅) in Respondent's effluent to 30 milligrams per liter (mg/L)

22 5. Respondent discharged effluent with a weekly average BOD₅ concentration as follows:

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Week of	Weekly Average BOD ₅	Percentage over limit
24 July 4, 2016	36 mg/L	20%
25 May 22, 2016	39 mg/L	30%
26 May 15, 2016	35 mg/L	17%

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1 IV. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
3 hereby ORDERED TO: Pay a total civil penalty of \$2,380. The determinations of the civil penalties are
4 attached as Exhibits 1 and 2 and are incorporated as part of this Notice.

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

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

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

22 Active duty service-members have a right to stay proceedings under the federal Service
23 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
24 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
25 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
26 <http://legalassistance.law.af.mil/content/locator.php>.

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1 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
2 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
3 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
4 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
5 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
6 information submitted by you, as the record for purposes of proving a prima facie case.
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10 August 26, 2016
11 Date

10 Sarah Muebaja
11 Leah K. Feldon, Manager
12 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 BOD₅ effluent limits in violation of ORS 468B.025(2).

CLASSIFICATION: The classification is Class II pursuant to OAR 340-012-0055(2)(a)(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 \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(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 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 2 + 2 + 0)] + \$0 \\ &= \$1,000 + [\$100 \times 4] + \$0 \\ &= \$1,000 + \$400 + \$0 \\ &= \$1,400 \end{aligned}$$

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 TSS effluent limits in violation of ORS 468B.025(2).

CLASSIFICATION: The violations are Class III violations pursuant to OAR 340-012-0055(3)(b)(A) and OAR 340-012-0145(4)(e).

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 \$700 for a Class III violation pursuant to OAR 340-012-0140(3)(b)(C) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(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 three 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$700 + [(0.1 x \$700) x (0 + 0 + 2 + 2 + 0)] + \$0
= \$700 + [\$70 x 4] + \$0
= \$700 + \$280 + \$0
= \$980