



# Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters

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Portland, OR 97204-1390

(503) 229-5696

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TTY: 711

June 23, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 3136

City of Baker City  
c/o Mike Kee, City Manager  
P.O. Box 650  
Baker City, OR 97814

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-ER-16-058

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$6,800 for exceeding the biochemical oxygen demand limits in Baker City's wastewater discharge permit in October 2015.

Biochemical oxygen demand measures the potential for pollutants in wastewater to diminish dissolved oxygen, which is necessary for fish and other aquatic life, in receiving waters. Your permit limits are intended to ensure that the city's wastewater does not decrease dissolved oxygen in the Powder River. By exceeding these limits, you created a risk of adverse impacts to aquatic life in the river.

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 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 Baker City  
Case No. WQ/M-ER-16-058  
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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: Paul Daniello, Eastern Region, Pendleton 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 BAKER CITY,	)	ASSESSMENT AND ORDER
5	a municipality of the state of Oregon,	)	CASE NO. WQ/M-ER-16-058
6	Respondent.	)	

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
9 and Order (Notice) to Respondent, the city of Baker City, a municipality of the state of Oregon, pursuant to  
10 Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468B and  
11 Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012 and 045.

12 II. FINDINGS OF FACT

13 1. At all relevant times, Respondent operated a municipal wastewater treatment collection,  
14 treatment and disposal system pursuant to a National Pollutant Discharge Elimination System Permit  
15 (permit) issued by DEQ.

16 2. The permit authorized Respondent to operate its system and to discharge to public  
17 waters adequately treated wastewaters only in conformance with the requirements, limitations and  
18 conditions of the permit. The permit was in effect at all relevant times.

19 3. Schedule A, Condition 1, of the permit limits five day biochemical oxygen demand  
20 (BOD<sub>5</sub>) in Respondent's effluent to a weekly average concentration of 65 milligrams per liter (mg/L)  
21 when discharging to waters of the state.

22 4. Respondent discharged effluent to the Powder River with weekly average BOD<sub>5</sub>  
23 concentrations of 68 mg/L during the week of October 5, 2015; 80 mg/L during the week of October  
24 12, 2015; and 85 mg/L during the week of October 19, 2015.

25 5. Schedule A, Condition 1, of the permit limits BOD<sub>5</sub> in Respondent's effluent to a  
26 monthly average concentration of 45 mg/L when discharging to waters of the state.

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1 **Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty, the Findings of  
2 Fact, Conclusions and Order become final.

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

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

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 request for hearing in writing within 20 calendar days of receipt of the  
22 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
23 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
24 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.  
3  
4

5  
6 June 23, 2016

7 Date

8 Leah K. Feldon

9 Leah K. Feldon, Manager  
10 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: Exceeding wastewater discharge permit effluent limits in violation of ORS 468B.025(2).

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(2)(a)(B)(i) because dilution of the technology based effluent limitation exceedance was two or more but less than 10.

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)(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. P is assigned an initial value of 4 pursuant to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of three Class I equivalent violations, stemming from Case Nos. WQ/M-ER-07-065 and WQ/M-ER-07-0145. This value is reduced by 4 for a final value of 0 pursuant to OAR 340-012-0145(2)(d)(A)(ii) because the formal enforcement actions in which Respondent's prior significant actions were cited were issued more than five years before the date the current violation occurred.

"H" is Respondent's history of correcting prior significant actions and receives a value of 1 according to OAR 340-012-0145(3)(d), because the sum of the "P" and "H" factors may not be less than 1 unless Respondent took extraordinary efforts to correct or minimize the effects of all prior significant actions.

"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 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. The violation occurred when Respondent accepted for treatment an excess amount of septage generated outside the city's collection system. In accepting too much septage, 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 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 is unable to estimate the fees the city was paid to accept the excess septage and therefore to arrive at a reasonable approximation of the economic benefit it received.

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 x \$400) x (0 + 1 + 2 + 4 + 0)] + \$0  
= \$4,000 + [\$400 x 7] + \$0  
= \$4,000 + \$2,800 + \$0  
= \$6,800