



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
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Portland, OR 97232-4100
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August 30, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5024

Gregory Geist, Director
Clackamas Water Environment Services
150 Beaver Creek Rd., Ste. 200
Oregon City, OR 97045-4302

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-NWR-2022-052

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Clackamas Water Environment Services (WES) a civil penalty of \$7,500 for violating the Water Quality Based Effluent Limits (WQBELs) set forth in the National Pollutant Discharge Elimination System (NPDES) permit (Permit #100962) issued to the Hoodland Sewage Treatment Plant in Welches. Specifically, in December 2021 and January 2022, the facility exceeded the WQBELs established for total residual chlorine in the facility's wastewater four times.

DEQ issued this penalty because chlorine residual in treated wastewater, even at low concentrations, is toxic to aquatic life. The penalty was exacerbated by the five previous water quality enforcement actions issued to WES in the prior 10 years for violations at the Kellogg Creek and Boring sewage treatment plants (case numbers: WQ/M-NWR-2012-075, WQ/M-NWR-2013-022, WQ/M-NWR-2014-053, WQ/M-NWR-2015-155, and WQ/M-NWR-2018-078).

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 Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Randall Bailey, DEQ NWR
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON
3

4 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
5 CLACKAMAS WATER ENVIRONMENT) ASSESSMENT AND ORDER
6 SERVICES.)
7 Respondent.) CASE NO. WQ/M-NWR-2022-052

8 I. AUTHORITY

9 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
10 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
11 ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
12 011, 012, and 045.

13 II. FINDINGS OF FACT

14 1. Respondent is the owner and operator of the Hoodland Sewage Treatment Plant located at
15 24596 E. Bright Avenue in Welches (the Facility).

16 2. Respondent was formerly known as Clackamas County Service District #1.

17 3. Respondent's current National Pollutant Discharge Elimination System (NPDES) permit
18 (# 100962) (the Permit) was issued on August 28, 2017, with an effective date of September 18, 2017.
19 The Permit was modified on January 24, 2019, to change the name of the permittee to Water
20 Environment Services, increase the size of the mixing zone, and revise the monitoring descriptions in
21 Schedule B.

22 4. The Permit allows and regulates the discharge of treated domestic wastewater to the Sandy
23 River, a tributary of the Columbia River. Both the Sandy River and the Columbia River are waters of
24 the state, pursuant to ORS 468B.005(10).

25 5. The Permit established both an acute mixing zone—or “zone of initial dilution” (ZID)—and
26 a chronic mixing zone. The ZID is a small area where acute criteria can be exceeded provided the
27 exceedance does not cause acute toxicity to the organisms drifting through it. The chronic mixing zone

1 (“the mixing zone”) is an area where acute criteria must be met but chronic criteria can be exceeded.
2 Schedule A.2. identifies the allowable mixing zone for the Facility’s discharges as “a trapezoidal
3 portion of the Sandy River that is 10 feet wide at the outfall, extending to a point 100 feet downstream
4 and 15 feet wide at the downstream end. The Zone of Immediate Dilution (ZID) shall be defined as that
5 portion of the allowable mixing zone that is downstream and within ten (10) feet of the point of
6 discharge.”

7 6. Schedule A.1. of the Permit establishes the effluent limitations the Facility must meet.

8 7. The Permit includes a Water Quality Based Effluent Limitation (WQBEL) for Total
9 Residual Chlorine.

10 8. Chlorine is considered a toxic pollutant, which pursuant to OAR 340-041-0002(66) is
11 defined as “those pollutants or combinations of pollutants, including disease-causing agents, that after
12 introduction to waters of the state upon exposure, ingestion, inhalation or assimilation either directly
13 from the environment or indirectly by ingestion through food chains will cause death, disease,
14 behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including
15 malfunctions in reproduction), or physical deformations in any organism or its offspring.”

16 9. Pursuant to Schedule A.1.b. of the Permit, the monthly average effluent concentration of
17 Total Residual Chlorine in the Facility’s wastewater may not exceed 0.02 mg/L.

18 10. Pursuant to Schedule A.1.b. of the Permit, the daily maximum effluent concentration of
19 Total Residual Chlorine in the Facility’s wastewater may not exceed 0.04 mg/L.

20 11. The acute chlorine toxicity criteria in fresh water is 0.019mg/L. Compliance with the acute
21 toxicity criteria is required at the edge of the ZID.

22 12. The chronic chlorine toxicity criteria in fresh water is 0.011mg/L. Compliance with the
23 chronic toxicity criteria is required at the end of the mixing zone.

24 13. The dilution ratio at the edge of the mixing zone is 26.

25 14. Schedule B.1. of the Permit requires Respondent to submit discharge monitoring reports
26 (DMRs) to DEQ each calendar month.

27 15. In December 2021, Respondent’s daily maximum Residual Chlorine level was 1.4 mg/L and

1 the monthly average Residual Chlorine level was 0.11mg/L.

2 16. In January 2022, Respondent's daily maximum Residual Chlorine level was 0.9 mg/L and
3 the monthly average Residual Chlorine level was 0.09 mg/L.

4 17. Respondent reported that the January 2022, chlorine exceedances were caused by a power
5 fluctuation that resulted in a tripped electrical breaker that cut power to the non-potable water system
6 pump. An alarm alerted Respondent to the issue. DEQ has determined that these chlorine exceedances
7 were beyond Respondent's reasonable control because the system was known to be in good working
8 order and reasonable alarms were in place.

9 18. Pursuant to Schedule F.A1 of the Permit, failure to comply with any permit condition is a
10 violation of Oregon Revised Statutes (ORS) 468B.025.

11 19. Pursuant to ORS 468B.025(2), no person shall violate the conditions of any waste discharge
12 permit issued under ORS 468B.050.

13 III. CONCLUSIONS

14 1. Respondent violated ORS 468B.025(2) and Schedule A.1.b of the Permit by exceeding the
15 WQBEL for Total Residual Chlorine on four occasions. Specifically, Respondent exceeded the Total
16 Residual Chlorine limits as follows: December 2021 (exceeded the monthly average limit by 450% and the
17 daily maximum limit by 3400%); January 2022 (exceeded the monthly average limit by 350% and the
18 daily maximum limit by 2100%). The violations of the daily maximum chlorine limits were more than 26
19 times the acute criteria. These are Class I violations pursuant to OAR 340-012-0055(1)(i). DEQ hereby
20 assesses a \$7,500 civil penalty for this violation.

21 IV. ORDER TO PAY CIVIL PENALTY

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

- 24 1. Pay a civil penalty of \$7,500. The determination of the civil penalty is attached as Exhibit 1
25 and is incorporated as part of this Notice.

26 If you do not file a request for hearing as set forth in Section V below, your check or money order must
27 be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 700**

1 **NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

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

17 Active duty Service members have a right to stay proceedings under the federal Service
18 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
19 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
20 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
21 Department does not have a toll free telephone number.

22 If you fail to file a timely request for hearing, the Notice will become a final order by default
23 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
24 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
25 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

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8 / 30 / 2022

Date



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 1: Respondent violated ORS 468B.025(2) and Schedule A.1.b. of the Permit by exceeding the WQBEL for Total Residual Chlorine in its wastewater permit four times.

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(2)(a)(A)(iii)(I) because the chlorine levels in Respondent's discharge were more than 26 times the acute criteria.

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 \$3,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent's facility has a permitted flow of less than two million gallons per day.

"P" is whether Respondent has any prior significant actions (PSAs), 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 an initial value of 14 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had two Class I and three Class II violations in Case #WQ/M-NWR-2012-075; one Class I violation in Case #WQ/M-NWR-2013-022; five Class I violations, six Class II violations, and five Class III violations in Case #WQ/M-NWR-2014-053; two Class I violations in Case #WQ/M-NWR-2015-155; and three Class I violations in Case #WQ/M-NWR-2018-078. According to OAR 340-012-0145(2)(d)(A)(i) the value of "P" was reduced by 2 because all of Respondent's PSAs were issued more than three years before the date the current violation occurred. The final "P" value is reduced to 10 because, according to OAR 340-012-0145(2)(b), the value of "P" will not exceed 10.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(e) because there was more than one but less than seven occurrences of the violation. Respondent exceeded the Total Residual Chlorine limit in its permit a total of four times; however, because DEQ has determined that the January 2022, violations were

beyond Respondent's reasonable control, DEQ is assessing a penalty only for the two violations that occurred in December 2021.

"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. By failing to ensure the bi-sulfite pump was operating in the correct mode, Respondent failed to take reasonable care to avoid the foreseeable risk that a permit violation would occur.

"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 the Respondent made reasonable efforts to ensure the violation would not be repeated. Specifically, Respondent plans to install flow meters to enable staff to monitor and record pump output remotely and to create additional alarm points to notify operations staff if an exceedance occurs again in the future.

"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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$3,000 + [(0.1 \times \$3,000) \times (10 + 0 + 2 + 4 + -1)] + \0
 $= \$3,000 + [\$300 \times 15] + \$0$
 $= \$3,000 + \$4,500 + \$0$
 $= \$7,500$