



# 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

September 13, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5208

City of Pendleton  
c/o Robb Corbett, City Manager  
4255 S.W. 28<sup>th</sup> Drive  
Pendleton, Oregon 97801

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-ER-2021-195

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$11,400 for violating your wastewater permit by discharging wastewater that exceeded total residual chlorine limitations. DEQ has also cited you, without penalty, for violations of the permit's effluent limit for *E. coli* bacteria. Pollutant levels in your wastewater are limited to protect water quality and aquatic life. By violating these limits, you risked adverse harm to Oregon waters.

DEQ appreciates your efforts to ensure the violation will not be repeated by ordering new sodium hypochlorite pumps for replacement and adding dechlorination chemicals to the wastewater. 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](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>.

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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".

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Anna Morgan-Hayes, DEQ  
Mike Hiatt, DEQ  
Accounting, DEQ

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

3 IN THE MATTER OF:  
4 CITY OF PENDLETON

) NOTICE OF CIVIL PENALTY  
) ASSESSMENT AND ORDER  
)  
Respondent. ) CASE NO. WQ/M-ER-2021-195

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 and  
10 012.

11 II. FINDINGS OF FACT

12 1. At all relevant times Respondent operated a municipal wastewater treatment plant  
13 located at 4300 SW Houtama Road in Pendleton, Oregon, as authorized by a National Pollutant  
14 Discharge Elimination System Permit issued and administered by DEQ.

15 2. The Permit allows Respondent to discharge treated wastewater from the Facility to  
16 McKay Creek and the Umatilla River, waters of the state, in conformance with the requirements, limits  
17 and conditions set forth in the Permit. The Permit was in effect at all material times.

18 3. Schedule A, Condition 1(a)(1) of the Permit limits total residual chlorine in effluent  
19 discharged by Respondent from May 1 to October 31 to a daily maximum of 0.05 milligrams per liter  
20 (mg/L).

21 4. On September 20, 2021, Respondent discharged effluent with a daily maximum residual  
22 chlorine concentration of 0.13 mg/L.

23 5. Schedule A, Condition 1(a)(2) of the Permit limits total residual chlorine in effluent by  
24 Respondent from November 1 to April 30 a daily maximum concentration of 0.04 mg/L.

25 6. On April 5, 2022, Respondent discharged effluent with a daily maximum residual  
26 chlorine concentration of 0.10 mg/L.

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1 7. On April 12, 2022, Respondent discharged effluent with a daily maximum residual  
2 chlorine concentration of 0.06 mg/L.

3 8. On April 13, 2022, Respondent discharged effluent with a daily maximum residual  
4 chlorine concentration 0.31 mg/L.

5 9. Schedule A, Condition 1(a)(2) limits the monthly average residual chlorine  
6 concentration in Respondent's effluent to 0.01 mg/L during the period of November 1 to April 30.

7 10. During the month of April 2022, Respondent discharged effluent with a monthly  
8 average residual chlorine concentration of 0.02 mg/L.

9 11. Schedule A, Condition 1(a)(3) of the Permit limits the concentration of *E. coli* bacteria  
10 in any single sample of Respondent's effluent to 406 organisms per 100 milliliters (mL).

11 12. On September 13, 2021, a sample of Respondent's effluent contained *E. coli* bacteria at  
12 a concentration of 1,553 organisms per 100 mL.

13 13. On September 14, 2021, a sample of Respondent's effluent contained *E. coli* bacteria at  
14 a concentration of 2,420 organisms per 100 mL.

15 III. CONCLUSIONS

16 1. Respondent violated ORS 468B.025(b) and Schedule A, Conditions 1(a)(1) and (2) of the  
17 Permit by discharging wastewater from its sewage treatment facility that contained total residual  
18 chlorine at concentrations in excess of the effluent limitations, as described in Section II, Paragraphs 3-  
19 10, above. These are Class I violations, according to OAR 340-012-0055(1)(l). DEQ assesses a \$11,400  
20 civil penalty for this violation.

21 2. Respondent violated ORS 468B.025(b) and Schedule A, Condition 1(a)(3) of the Permit by  
22 discharging wastewater at its sewage treatment facility that exceeded an *E. coli* effluent limitations as  
23 described in Section II, Paragraphs 11-13, above. The September 13, 2021, violation is a Class III  
24 violation pursuant to OAR 340-012-0055(3). The September 14, 2021 violation is a Class II violation  
25 pursuant to OAR 340-012-055(2)(a)(C). DEQ does not assessed a civil penalty for this violation.

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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 \$11,400. The determination of the civil penalty is  
4 attached as Exhibit 1 and is 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, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

9 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
10 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
11 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
12 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
13 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
14 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
15 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
16 it to **503-229-6762** or email it to [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov). An administrative law judge  
17 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
18 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
19 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
20 you may represent yourself. If you are a corporation, partnership, limited liability company,  
21 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
22 authorized representative, as set forth in OAR 137-003-0555.

23 Active duty Service members have a right to stay proceedings under the federal Service  
24 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
25 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
26 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
27 Department does not have a toll free telephone number.

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

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9/13/2022  
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 NO. 1 Failure to comply with a wastewater permit condition in violation of ORS 468B.025(2) by discharging wastewater that exceeded daily maximum residual chlorine effluent limitations in Schedule A, Condition 1(a) of the Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(I) because the chlorine limits in Respondent's permit are water quality based effluent limitations.

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(2)(a)(B)(ii) because the receiving streamflow was greater than, but less than twice, the streamflow used to calculate the WQBEL.

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140 (2)(a)(E)(i) because Respondent's facility has a permitted flow greater than 5 million gallons per day.

"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 4 pursuant to OAR 340-012-0145(2)(a) Respondent has prior significant actions consisting of three Class I equivalent violations stemming from Case Nos. WQ/M-ER-2018-250 and WQ/SW-ER-2019-071.

"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)(b) because there were five occurrences of the violation. Respondent exceeded the daily maximum total residual chlorine concentration limitation once in September 2021 and three times in April 2022, and the monthly average concentration limit in April 2022.

"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 residual chlorine concentration limit is an express condition of Respondent's Permit. 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 turned up the dechlorination chemical and put adjustable maximum and minimum limits on its sodium hypochlorite pump. Respondent also ordered new pumps for replacement.

"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:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (4 + 0 + 2 + 4 + -1)] + \$0 \\ &= \$6,000 + (\$600 \times 9) + \$0 \\ &= \$6,000 + \$5,400 + \$0 \\ &= \$11,400 \end{aligned}$$