



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 5178

Richard and Virginia Sorem
1627 N. Jantzen Ave Moorage
Portland, OR 97217

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-NP-NWR-2022-083

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$8,400 for causing pollution to the Columbia River by allowing paint to fall into the water.

DEQ issued this penalty because the painter that you hired allowed paint to enter the Columbia River. The paint caused a visible sheen on the river and has the potential to cause harm to aquatic life and other beneficial uses of the river.

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.oregon.gov

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 Emily Knobbe at 971-300-9770.

Sincerely,

A handwritten signature in black ink, appearing to read "Kieran O'Donnell". The signature is fluid and cursive, with a large initial "K" and a distinct "O" for "O'Donnell".

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Andrea Matzke, DEQ
Steve Mrazik, DEQ
Accounting, DEQ

1 hereby assesses a \$8,400 civil penalty for this violation.

2 IV. ORDER TO PAY CIVIL PENALTY

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

5 1. Pay a total civil penalty of \$8,400. The determination of the civil penalty is attached as Exhibit
6 1 and is incorporated as part of this Notice.

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

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

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

25 Active duty Service members have a right to stay proceedings under the federal Service
26 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
27 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed

1 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
2 Department does not have a toll free telephone number.

3 If you fail to file a timely request for hearing, the Notice will become a final order by default
4 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
5 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
6 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
7 the relevant portions of its files, including information submitted by you, as the record for purposes of
8 proving a prima facie case.
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12 9/13/2022

13 Date

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13 Kieran O'Donnell, Manager
14 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 NO. 1 Respondents violated ORS 468B.025(1)(a) by causing pollution of waters of the state.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(a).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

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)(D) because Respondents do not have a National Pollutant Discharge Elimination System (NPDES) permit.

"P" is whether Respondents have 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 Respondents, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondents' 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 0 according to OAR 340-012-0145(4)(a) because the violation occurred on one day, March 27, 2022.

"M" is the mental state of the Respondents, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondents' conduct was negligent. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondents hired a painter who is not licensed by the Oregon Construction Contractors Board. The Respondents failed to take reasonable care to avoid paint falling into the Columbia River by hiring an unlicensed person to paint the Residence.

"C" is Respondents' efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' 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 because any economic benefit that the Respondents gained as a result of this violation is de minimis.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 4 + 0)] + \$0 \\ &= \$6,000 + (\$600 \times 4) + \$0 \\ &= \$6,000 + \$2,400 + \$0 \\ &= \$8,400 \end{aligned}$$