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

October 15, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 3916

Recology Valley View, Inc.
c/o National Registered Agents, Inc., Registered Agent
780 Commercial St., SE, Suite 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-WR-2020-122

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage https://www.oregon.gov/deq/Pages/covid-19.aspx for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $14,400 for exceeding the iron and total phosphorous effluent limits in your wastewater permit during the month of April 2019. Effluent limits in permits are set at levels that are protective of water quality and aquatic life. By exceeding these limits you impaired water quality in Jeffrey Creek.

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 Jeff Bachman at 503-229-5950 or toll free in Oregon at 800-452-4011, extension 5950.

Sincerely,

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Andrew Ullrich, Medford Office, DEQ
Ranei Nomura, Western Region, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: RECOLOGY VALLEY VIEW, INC., an Oregon corporation, Respondent.	))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. WQ/M-WR-2020-122

I. AUTHORITY

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

II. FINDINGS OF FACT

1. At all relevant times, Respondent was authorized by a DEQ-issued National Pollutant Discharge Elimination System Permit (Permit) to operate a landfill leachate wastewater collection, treatment and disposal system located at 3000 North Valley View Road, Ashland, Oregon.

2. The Permit authorizes Respondent to construct, install, modify or operate a wastewater collection, treatment and disposal system and discharge to Jeffrey Creek adequately treated wastewater only in conformance with the requirements, limitations and conditions set forth in the Permit.

3. During the period December 1 to April 30, Schedule A, Condition 1.b of the Permit limits the daily maximum iron concentration in Respondent's effluent to 1.643 milligrams per liter (mg/L).

4. On April 9, 2019, Respondent discharged effluent with an iron concentration of 3.9 mg/L.

5. During the period December 1 to April 30, Schedule A, Condition 1.b of the Permit limits the monthly average iron concentration in Respondent's effluent to 1.125 mg/L.

6. During the month of April 2019, Respondent discharged effluent with a monthly average iron concentration of 3.9 mg/L.

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7. During the period December 1 to April 30, Schedule A, Condition 1.b of the Permit limits the monthly average total phosphorous concentration in Respondent's effluent to 0.08 mg/L.

8. During the month of April 2019, Respondent discharged effluent with a monthly average total phosphorous concentration of 0.77 mg/L.

9. During the period December 1 to April 30, Schedule A, Condition 1.b of the Permit limits the monthly average total suspended solids (TSS) concentration in Respondent's effluent to 27 mg/L.

10. During the month of April 2019, Respondent discharged effluent with a monthly average TSS concentration of 36 mg/L.

III. CONCLUSIONS

1. Respondent violated ORS 468B.025(2) by violating a condition of its wastewater permit. Specifically, Respondent discharged effluent with iron concentrations that exceeded the limits set forth in Schedule A, Condition 1.b of the Permit, as described in Section II, Paragraphs 3 through 6, above. These are Class I violations, according to OAR 340-012-0055(1)(l). DEQ assesses a $7,600 civil penalty for these violations.

2. Respondent violated ORS 468B.025(2) by violating a condition of its wastewater permit. Specifically, Respondent discharged effluent with a total phosphorous concentration that exceeded the limit set forth in Schedule A, Condition 1.b of the Permit, as described in Section II, Paragraphs 7 and 8, above. This is a Class I violation according to OAR 340-012-0055(1)(l). DEQ assesses a $6,800 civil penalty for this violation.

3. Respondent violated ORS 468B.025(2) by violating a condition of its wastewater permit. Specifically, Respondent discharged effluent with a TSS concentration that exceeded the limit set forth in Schedule A, Condition 1.b of the Permit, as described in Section II, Paragraphs 9 and 10, above. This is a Class II violation according to OAR 340-012-0055(2)(a)(A). DEQ does not assess a civil penalty for this violation.

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IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO: Pay a total civil penalty of $14,400. The determination of the civil penalties are attached as Exhibits 1 and 2 and are incorporated as part of this Notice.

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

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

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

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

10/15/2020
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 exceeding the permit effluent limit for iron.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(l), as Respondent's iron limit is a water quality-based effluent limit.

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 $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)) because Respondent has a Tier 2 industrial wastewater permit.

"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 3 pursuant to OAR 340-012-0145(2)(a), because Respondent has prior significant actions consisting of two Class I equivalent violations, stemming from Case No. WQ/I-WR-2017-100.

"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 two occurrences of the violation. Respondent exceeded the daily maximum iron concentration limit on April 9, 2019 and the monthly average iron concentration limit during April 2019.

"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 iron effluent limits are express conditions of Respondent's Permit. By failing to take the action necessary to comply 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 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 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 any estimate that DEQ could arrive at would be too speculative to be reasonable.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $4,000 + [(0.1 x $BP) x (3 + 0 + 2 + 4 + 0)] + $0
= $4,000 + ($400 x 9) + $0
= $4,000 + $3,600 + $0
= $7,600

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION NO. 2 — Failure to comply with a wastewater permit condition in violation of ORS 468B.025(2) by exceeding the permit effluent limit for total phosphorous.

CLASSIFICATION: — This is a Class I violation pursuant to OAR 340-012-0055(1)(l), as Respondent's total phosphorous limit is a water quality-based effluent limit.

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 $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)) because Respondent has a Tier 2 industrial wastewater permit.

"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 3 pursuant to OAR 340-012-0145(2)(a), because Respondent has prior significant actions consisting of two Class I equivalent violations, stemming from Case No. WQ/I-WR-2017-100.

"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 0 according to OAR 340-012-0145(4)(a) because there was one occurrence of the violation. Respondent exceeded the monthly average total phosphorous concentration limit in April 2019.

"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 total phosphorous effluent limit is an express conditions of Respondent's Permit. By failing to take the action necessary to comply 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 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 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 any estimate that DEQ could arrive at would be too speculative to be reasonable.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $4,000 + [(0.1 x $BP) x (3 + 0 + 0 + 4 + 0)] + $0
= $4,000 + ($400 x 7) + $0
= $4,000 + $2,800 + $0
= $6,800