



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
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October 18, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5390

City of Wilsonville
c/o Barbara Ann Jacobson, City Attorney
29799 SW Town Center, Loop E
Wilsonville, OR 97070

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-NWR-2022-038

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$23,600 for exceeding pollutant effluent limits in the city's National Pollutant Discharge Elimination System wastewater discharge permit. Specifically, the city violated the limits for total suspended solids (TSS), biochemical oxygen demand (BOD₅), and *e. coli* bacteria.

DEQ issued this penalty because the alleged violations posed a risk to water quality. Pollutant limits are set at levels to protect the beneficial uses of state waters, including uses for fish and aquatic life. By violating pollutant limitations, you risked impairing beneficial uses of the Willamette River. Additionally, DEQ is concerned by the repeated nature of these violations. In 2021, DEQ issued the city civil penalties in a prior enforcement action for similar effluent limit exceedances.

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 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', written in a cursive style.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Mark Bentz, Northwest Region, DEQ
Angela Rowland, Northwest Region, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
CITY OF WILSONVILLE,) ASSESSMENT AND ORDER
a municipality of the state of Oregon,)
Respondent.) CASE NO. WQ/M-NWR-2022-038

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 Chapter 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 045.

II. FINDINGS OF FACT

1. At all relevant times, Respondent operated a domestic wastewater collection, treatment, and disposal system as authorized by a National Pollutant Discharge Elimination System Permit (the Permit) issued and administered by DEQ.

2. The Permit authorizes Respondent to discharge to waters of the state adequately treated wastewater only in conformance with the requirements, conditions, and limitations of the Permit.

3. Schedule A, Condition 1 of the Permit limits the concentration of total suspended solids (TSS) in Respondent's effluent to a monthly average of 30 milligrams per liter (mg/L) during the period of November 1 to April 30.

4. Schedule A, Condition 1 of the Permit limits the concentration of TSS in Respondent's effluent to a monthly average concentration of 10 mg/L during the Period of May 1 to October 31.

5. Respondent discharged effluent with monthly average TSS concentrations as follows:

Month	TSS Monthly Average Concentration (mg/L)	Percentage over limit
November 2021	36	20%
April 2022	69	130%
July 2022	14	40%

6. Schedule A, Condition 1 of the Permit limits the concentration of TSS in Respondent's effluent to a weekly average of 45 mg/L during the period from November 1 to April 30.

7. Schedule A, Condition 1 of the Permit limits the concentration of TSS in Respondent's effluent to a weekly average of 15 mg/L during the period from May 1 to October 31.

8. Respondent discharged effluent with weekly average TSS concentrations as follows:

Week of	TSS Weekly Average Concentration (mg/L)	Percentage over limit
November 7, 2021	78	73%
April 17, 2022	238	429%
July 3, 2022	37	147%

9. Schedule A, Condition 1 of the Permit limits the mass loading of TSS in Respondent's effluent to a monthly average of 560 pounds per day (lbs/day) during the period from November 1 to April 30.

10. Schedule A, Condition 1 of the Permit limits the mass loading of TSS in Respondent's effluent to a monthly average of 190 lbs/day during the period from May 1 to October 31.

11. Respondent discharged effluent with monthly average TSS mass loading as follows:

Month	TSS Monthly Average Mass Loading	Percentage over limit
November 2021	1,041	86%
April 2022	1,780	218%
July 2022	267	41%

12. Schedule A, Condition 1 of the Permit limits the mass loading of TSS in Respondent's effluent to a weekly average of 840 lbs/day during the period from November 1 to April 30.

13. Schedule A, Condition 1 of the Permit limits the mass loading of TSS in Respondent's effluent to a weekly average of 280 lbs/day during the period from May 1 to October 31.

14. Respondent discharged effluent with weekly average TSS mass loading as follows:

Week of	TSS Weekly Average Mass Loading (lbs/day)	Percentage Over Limit
November 7, 2021	2,254	168%
February 27, 2022	1,458	74%
April 17, 2022	6,095	626%

July 3, 2022	388	39%
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15. Schedule A, Condition 1 of the Permit limits the mass loading of TSS in Respondent's effluent to a daily maximum of 1,110 pounds during the period of November 1 to April 30.

16. Schedule A, Condition 1 of the Permit limits the mass loading of TSS in Respondent's effluent to a daily maximum of 380 pounds during the period from May 1 to October 31.

17. Respondent discharged effluent with daily maximum TSS loading as follows:

Day of	TSS Daily Mass Loading in Pounds	Percentage Over Limit
November 13, 2021	10,339	831%
March 2, 2022	2,617	136%
April 20, 2022	8,775	691%
April 21, 2022	3,415	208%
July 6, 2022	688	81%

18. Schedule A, Condition 1 of the Permit limits the concentration of five-day biochemical oxygen demand (BOD₅) in Respondent's effluent to a monthly average of 30 mg/L during the period of November 1 to April 30.

19. During the month of April 2022, Respondent discharged effluent with a monthly average BOD₅ concentration of 38 mg/L, or 27% over the limit.

20. Schedule A, Condition 1 of the Permit limits the concentration of BOD₅ in Respondent's effluent to a weekly average of 45 mg/L during the period from November 1 to April 30.

21. During the week of April 17, 2022, Respondent discharged effluent with a monthly average BOD₅ concentration of 122 mg/L, or 171% over the limit.

22. Schedule A, Condition 1 of the Permit limits the mass loading of BOD₅ in Respondent's effluent to a monthly average of 560 lbs/day during the period of November 1 to April 30.

23. During the month of April 2022, Respondent discharged effluent with a monthly average BOD₅ loading of 966 lbs/day, or 73% over the limit.

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24. Schedule A, Condition 1 of the Permit limits the mass loading of BOD₅ in Respondent's effluent to a weekly average of 840 lbs/day during the period of November 1 to April 30.

25. During the week of April 17, 2022, Respondent discharged effluent with a weekly average BOD₅ loading of 3,121 lbs/day, or 272% over the limit.

26. Schedule A, Condition 1 of the Permit limits the mass loading of BOD₅ to a daily maximum of 1,110 pounds during the period from November 1 to April 30.

27. Respondent discharged effluent with daily maximum BOD₅ loadings as follows:

Day of	BOD ₅ Daily Mass Loading in Pounds	Percentage Over Limit
November 13, 2021	2,468	122%
April 20, 2022	4,906	342%
April 21, 2022	1,337	20%

28. Schedule A, Condition 1 of the Permit limits the concentration of *e. coli* bacteria in any single sample of Respondent's effluent to 406 organisms per 100 milliliters (mL).

29. On November 12, 2021, a sample of Respondent's effluent contained *e. coli* bacteria at a concentration of 2,419 organisms per 100 mL.

30. Schedule A, Condition 1 of the Permit requires Respondent to achieve a monthly average TSS removal efficiency of 85% when treating its effluent.

31. During April 2022, Respondent achieved a monthly average TSS removal efficiency of 80%.

III. CONCLUSIONS

1. Respondent violated ORS 468B.025(2) by violating a condition of a wastewater discharge permit. Specifically, Respondent violated Schedule A, Condition 1 of the Permit by exceeding TSS limits in its effluent as described in Section II, Paragraphs 3 to 17. Those instances in which the limit was exceeded by 50% or more are Class I violations pursuant to OAR 340-012-0055(1)(k)(A). Those instances in which the limit was exceeded by 20% or more but less than 50% are Class II violations pursuant to OAR 340-012-0055(2)(a)(A). DEQ assesses a penalty of \$10,800 for these violations.

2. Respondent violated ORS 468B.025(2) by violating a condition of a wastewater discharge permit. Specifically, Respondent violated Schedule A, Condition 1 of the Permit by exceeding BOD₅ limits in its effluent as described in Section II, 18 through 27. Those instances in which the limit was exceeded by 50% or more are Class I violations pursuant to OAR 340-012-0055(1)(k)(A). The instance in which the limit was exceeded by 20% or more but less than 50% is a Class II violations pursuant to OAR 340-012-0055(2)(a)(A). DEQ assesses a penalty of \$10,400 for these violations.

3. Respondent violated ORS 468B.025(2) by violating a condition of a wastewater discharge permit. Specifically, Respondent violated Schedule A, Condition 1 of the Permit by exceeding an *e. coli* limit as described in Section II, Paragraphs 28 and 29. This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(C). DEQ assesses a penalty of \$2,400 for this violation.

4. Respondent violated ORS 468.025(2) by violating a condition of a wastewater discharge permit. Specifically, Respondent violated Schedule A, Condition 1 of the Permit by failing to achieve the required TSS removal efficiency as described in Section II, Paragraphs 30 and 31. This is a Class III violation pursuant to OAR 340-012-0055(3)(c). DEQ does not assess a penalty for this violation.

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 \$23,600. The determination of the civil penalties are attached as Exhibits 1, 2 and 3 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 503-229-6762 or email it to DEQappeals@deq.oregon.gov. 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.

10/18/2022

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 failing to comply with TSS effluent limits in the Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) because Respondent exceeded a TSS limit by 50% or more.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135 (2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving stream.

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 \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140 (3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140 (3)(a)(E)(i) because Respondent has an NPDES Permit for a municipal sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons a 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 10 according to OAR 340-012-0145(2)(a). Respondent has prior significant actions consisting of nine or more Class I equivalent violations stemming from Case No. WQ/M-NWR-2020-139.

"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 another finding.

"O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c). There were 18 occurrences of the violation as detailed in the Notice. DEQ is assessing a separate penalty for two of the violations. To arrive at "O," DEQ divides the total number of violations by the number of violations penalized. Therefore, each assessed penalty represents 9 occurrences for an "O" factor value of 3.

"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 TSS limits are express conditions of Respondent's Permit. By failing to take action to ensure compliance with

limits established in the Permit, 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 because DEQ has insufficient information to arrive at a reasonable estimate of any avoided or delayed compliance costs.

SINGLE PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 3 + 4 + 0)]$
 $= \$2,000 + (\$200 \times 17)$
 $= \$2,000 + \$3,400 + \$0$
 $= \$5,400$

MULTIPLE PENALTY CALCULATION

Single occurrence penalty calculation x number of violations penalized + economic benefit

In exercising its enforcement discretion, DEQ elects to assess separate base penalties for two of the Class I occurrences of the violation.

FINAL PENALTY CALCULATION

$\$5,400 \times 2 + \$0 = \$10,800$

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 failing to comply with BOD₅ effluent limits in the Permit.

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

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135 (2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving stream.

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 \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140 (3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140 (3)(a)(E)(i) because Respondent has an NPDES Permit for a municipal sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons a 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 10 according to OAR 340-012-0145(2)(a). Respondent has prior significant actions consisting of nine or more Class I equivalent violations stemming from Case No. WQ/M-NWR-2020-139.

"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 another finding.

"O" is whether the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(b). There were 7 occurrences of the violation as detailed in the Notice. DEQ is assessing a separate penalty for two of the violations. To arrive at "O," DEQ divides the total number of violations by the number of violations penalized. Therefore, each assessed penalty represents 3.5 occurrences for an "O" factor value of 2.

"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 BOD₅ limits are express conditions of Respondent's Permit. By failing to take action to ensure compliance with limits defined in the Permit, 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 because DEQ has insufficient information to arrive at a reasonable estimate of any avoided or delayed compliance costs.

SINGLE PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 2 + 4 + 0)]$
 $= \$2,000 + (\$200 \times 16)$
 $= \$2,000 + \$3,200 + \$0$
 $= \$5,200$

MULTIPLE PENALTY CALCULATION

Single occurrence penalty calculation x number of violations penalized + economic benefit

In exercising its enforcement discretion, DEQ elects to assess separate base penalties for two of the Class I occurrences of the violation.

FINAL PENALTY CALCULATION

$\$5,200 \times 2 + \$0 = \$10,400$

EXHIBIT 3

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

VIOLATION NO. 3 Failure to comply with a wastewater permit condition in violation of ORS 468B.025(2) by failing to comply with *e. coli* limits in the Permit.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(C) because Respondent exceeded a bacteria limit by more than five times the limit.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135 (2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving stream.

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 \$1,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140 (3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140 (3)(a)(E)(i) because Respondent has an NPDES Permit for a municipal sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons a 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 10 according to OAR 340-012-0145(2)(a). Respondent has prior significant actions consisting of nine or more Class I equivalent violations stemming from Case No. WQ/M-NWR-2020-139.

"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 no prior history of correcting prior significant actions.

"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 is only one violation of *e. coli* limit on November 12, 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. The *e. coli* limit is an express condition of Respondent's Permit. By failing to take action to ensure compliance with limits defined in the Permit, 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 because DEQ has insufficient information to arrive at a reasonable estimate of any avoided or delayed compliance costs.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,000 + [(0.1 x \$1,000) x (10 + 0 + 0 + 4 + 0)] + \$0
= \$1,000 + (\$100 x \$14) + \$0
= \$1,000 + \$1,400 + \$0
= \$2,400