



# Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah Street, Suite 600

Portland, OR 97232

(503) 229-5382

FAX (503) 229-5787

TTY 711

October 22, 2018

CERTIFIED MAIL: 70160750000034703678

City of Falls City  
c/o Don Poe, Public Works Director  
299 Mill Street  
Falls City, OR 97344

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-WR-2018-105

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a total civil penalty of \$3,507 for violations of your National Pollutant Discharge Elimination System (NPDES) waste discharge permit at your wastewater treatment facility. You failed to monitor your discharge as required under Schedule B of your permit on a total of 33 occasions between 2016 and 2018. You were also cited, without penalty, for violating the pH effluent limitation in December 2017.

DEQ issued this penalty because conducting mandatory monitoring and reporting is an important permit obligation. Without this information, it is difficult for you and DEQ to evaluate the effectiveness of the facility's wastewater treatment system.

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 – 503-229-5100

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 DEQ Environmental Law Specialist Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Julie Ulibarri, Eugene Office, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: )  
 4 CITY OF FALLS CITY, ) NOTICE OF CIVIL PENALTY  
 a municipality of the State of Oregon, ) ASSESSMENT AND ORDER  
 5 Respondent. ) CASE NO. WQ/M-WR-2018-105

6  
7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

13 1. Respondent operates a wastewater treatment and collection system located four miles east of  
14 Highway 223 in Falls City, Polk County, Oregon (the Facility).

15 2. On August 22, 2007, DEQ issued National Pollutant Discharge Elimination System Waste  
16 Discharge Permit No. 101808 (the Permit) to Respondent that allows it to discharge treated wastewater  
17 from the Facility to Little Luckiamute River, waters of the state, in conformance with the requirements,  
18 limits and conditions set forth in the Permit. The Permit expired on June 30, 2012 but was  
19 administratively extended because Respondent submitted a timely application for renewal.

20 3. Schedule B, Condition 1 of the Permit requires Respondent to monitor the Facility's effluent  
21 for various parameters and frequencies, including the following:

- 22 a. pH twice per week;
- 23 b. TKN (total Kjeldahl nitrogen) monthly;
- 24 c. BOD<sub>5</sub> (five-day biochemical oxygen demand) once every two weeks;
- 25 d. TSS (total suspended solids) once every two weeks; and
- 26 e. *E. coli* once every two weeks.

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4. According to its discharge monitoring reports (DMRs), Respondent failed to conduct monitoring required under Schedule B, Condition 1 of its Permit as follows:

Month	Parameter	Monitoring Event(s) Missed
April 2016	pH	Entire month – 8 events
July 2016	pH	Week of 7/2/16 – 1 event
November 2016	pH	Week of 11/27/16 – 1 event
April 2017	pH	Week of 4/30/17 – 1 event
May 2017	pH	Week of 5/21/17 – 1 event
November 2017	pH	1 per week – 4 events
January 2018	pH	Week of 1/21/18 – 1 event
March 2018	TKN	1 event
April 2018	TKN	1 event
March 2016	BOD <sub>5</sub>	Week of 3/27/16 – 1 event
December 2016	BOD <sub>5</sub>	Week of 12/11/16 or 12/25/16 – 1 event
May 2017	BOD <sub>5</sub>	Week of 5/14/17 or 5/28/17 – 1 event
August 2017	BOD <sub>5</sub>	Week of 8/27/17 – 1 event
November 2017	BOD <sub>5</sub>	Week of 11/26/17 – 1 event
March 2018	BOD <sub>5</sub>	Week of 3/25/18 – 1 event
March 2016	TSS	Week of 3/27/16 – 1 event
December 2016	TSS	Week of 12/11/16 or 12/25/16 – 1 event
May 2017	TSS	Week of 5/14/17 or 5/28/17 – 1 event
August 2017	TSS	Week of 8/27/17 – 1 event
November 2017	TSS	Week of 11/26/17 – 1 event
March 2018	TSS	Week of 3/25/18 – 1 event
March 2016	<i>E. coli</i>	Week of 3/27/16 – 1 event
December 2016	<i>E. coli</i>	Week of 12/11/16 or 12/25/16 – 1 event

1 5. Schedule A, Condition 1(a)(3) of the Permit states that the effluent pH must be within the  
2 range of 6.0-9.0.

3 6. According to its DMR, on December 7, 2017, the effluent pH was 5.9.

### 4 III. CONCLUSIONS

5 1. Respondent failed to monitor its effluent for various parameters, in violation of Schedule  
6 B, Condition 1 of the Permit and ORS 468B.025(2), as described in Section II, Paragraphs 1-4 above.  
7 These are Class I violations, according to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$3,507 civil  
8 penalty for these violations.

9 2. On December 7, 2017, Respondent violated Schedule A, Condition 1(a)(3) of the Permit  
10 and ORS 468B.025(2) by violating the effluent limitation for pH as described in Section II, paragraphs 5-6  
11 above. This is a Class III violation, according to OAR 340-012-0055(2)(3)(b). DEQ has not assessed a  
12 civil penalty for this violation.

### 13 IV. ORDER TO PAY CIVIL PENALTY

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

16 Pay a civil penalty of \$3,507. The determination of the civil penalty is attached as Exhibit No.  
17 1, and incorporated as part of this Notice.

18 If you do not file a request for hearing as set forth in Section V below, your check or money  
19 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**  
20 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty,  
21 the Findings of Fact, Conclusions and Order become final.

### 22 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

23 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
24 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
25 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
26 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered  
27 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for

1 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
2 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
3 it to **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. An administrative law judge  
4 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
5 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
6 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
7 you may represent yourself. If you are a corporation, partnership, limited liability company,  
8 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
9 authorized representative, as set forth in OAR 137-003-0555.

10 Active duty service-members have a right to stay proceedings under the federal Service  
11 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
12 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
13 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
14 <http://legalassistance.law.af.mil/content/locator.php>.

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

21  
22  
23 10/22/18  
24 Date


23   
24 Kieran O'Donnell, Manager  
25 Office of Compliance and Enforcement  
26  
27

EXHIBIT NO. 1

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

- VIOLATION: Failing to collect monitoring data for the Facility's effluent as required in Schedule B, Condition 1 of its NPDES Permit, in violation of ORS 468B.025(2).
- CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(o).
- 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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent has an NPDES permit for a private wastewater treatment facility with a permitted flow of less than two 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 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "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 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Respondent failed to monitor its discharge for various parameters on a total of 33 occasions during 2016-2018 as follows: pH – 17 occasions, TKN – 2 occasions, BOD – 6 occasions, TSS – 6 occasions, and *E. coli* – 2 occasions.
- "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. Respondent holds an NPDES permit which specifically requires that Respondent monitor its effluent for numerous parameters. When Respondent failed to monitor its effluent on 33 occasions, it failed to take reasonable care to avoid a foreseeable risk that it would violate an important condition of its permit.

"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. In response to the Pre-Enforcement Notice, Respondent prepared and submitted to DEQ a standard operating procedure to ensure future compliance with the monitoring requirements in the Permit.

"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 \$957. This is the amount Respondent gained by avoiding spending a total of \$943 to analyze its effluent for various parameters during 2016-2018 as follows: 2016: \$430 to analyze ten pH samples, two BOD<sub>5</sub> samples, two TSS samples and two *E. coli* samples; 2017: \$324 to analyze six pH samples, three BOD<sub>5</sub> samples, and three TSS samples; and 2018: \$189 for one pH sample, two TKN samples, one BOD<sub>5</sub> sample and one TSS sample. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$1,500 + [(0.1 x \$1,500) x (0 + 0 + 4 + 4 - 1)] + \$957  
= \$1,500 + [\$150 x 7] + \$957  
= \$1,500 + \$1,050 + \$957  
= \$3,507