



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
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TTY 711

November 4, 2021

CERTIFIED MAIL: 7018 1830 0001 5906 3008

Clean Water Services
c/o Diane Taniguchi-Dennis, Chief Executive Officer
2550 SW Hillsboro Hwy
Hillsboro, OR 97123

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SP-NWR-2021-109

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 \$13,200 for a June 3 sewer overflow from the Meyers Farm pump station in Tigard that caused a violation of the bacteria water quality standard in an unnamed tributary of the Tualatin River.

The bacteria water quality standards are set at levels to protect human health and the environment from the hazards posed by the bacteria found in sewage. By grossly exceeding the standard, you created a substantial risk that people could be exposed to disease pathogens. Sewage is also a significant water pollutant that impairs the beneficial uses of public waters.

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 – 503-229-6762

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>.

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: Mike Pinney, DEQ
Tiffany Yelton-Bram, DEQ
Accounting, DEQ

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

3 IN THE MATTER OF:)
4 CLEAN WATER SERVICES,) NOTICE OF CIVIL PENALTY
a service district of the state of Oregon,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ/SP-NWR-2021-109

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, 012
10 and 041.

11 II. FINDINGS OF FACT

12 1. On or about June 3, 2021, Respondent discharged approximately 38,435 gallons of raw
13 sewage from its Meyers Farm sanitary sewer pump station located at 16392 SW Bray Lane, Tigard,
14 Oregon, to an unnamed tributary of the Tualatin River.

15 2. Table 340A adopted pursuant to OAR 340-041-0340 states that water contact recreation
16 is a designated beneficial use of tributaries to the Willamette River.

17 3. The Tualatin River is a tributary to the Willamette River.

18 4. OAR 340-041-0009(1)(a)(B) states that for waters with a designated beneficial use of
19 water contact recreation no single sample can exceed an *E. coli* concentration of 406 organisms per 100
20 milliliters (mL).

21 5. Analysis of a sample collected on June 4, 2021, from the unnamed tributary downstream
22 of Respondent's discharge point found an *E. coli* concentration of greater than 242,000 organisms per
23 100 mL.

24 6. Analysis of a sample collected on June 4, 2021, from the unnamed tributary upstream of
25 Respondent's discharge point found an *E. coli* concentration of 3,100 organisms per 100 mL.

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1 III. CONCLUSIONS

2 Respondent violated ORS 468B.025(1)(b) by discharging a waste that reduced the quality of
3 state waters below a water quality standard adopted by the Environmental Quality Commission.
4 Specifically, Respondent discharged raw sewage, a waste pursuant to ORS 468B.005(9), to an
5 unnamed tributary of the Tualatin River, waters of the state pursuant ORS 468B.005(10), causing an
6 exceedance of the bacteria water quality standard established in OAR 340-041-0009(1)(a)(B), as
7 described in Section II, above. This is a Class I violation, according to OAR 340-012-0055(1)(b). DEQ
8 assesses a \$13,200 civil penalty for this violation.

9 IV. ORDER TO PAY CIVIL PENALTY

10 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
11 hereby ORDERED TO: Pay a total civil penalty of \$13,200. The determination of the civil penalty is
12 attached as Exhibit 1 and is incorporated as part of this Notice.

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

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

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

1 you may represent yourself. If you are a corporation, partnership, limited liability company,
2 unincorporated association, trust or government body, you must be represented by an attorney or a duly
3 authorized representative, as set forth in OAR 137-003-0555.

4 Active duty Service members have a right to stay proceedings under the federal Service
5 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
6 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
7 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
8 Department does not have a toll free telephone number.

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

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18 11 / 4 / 2021
19 Date


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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 Discharging a waste that reduces the quality of state waters below a water quality standard adopted by the Environmental Quality Commission in violation of ORS 468B.025(1)(b).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(2)(b)(A)(i) as the discharged increased the concentration of bacteria in the unnamed tributary to the Tualatin River by more than 25%.

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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(E)(i) as Respondent's facility has a permitted flow of 5 million gallons per day or greater.

"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 an initial value of 2 according to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of one Class I equivalent violation stemming from Case Nos. WQ/M-NWR-12-106 and WQ/M-NWR-2018-039. This value is reduced by 2 for a final value of 0 because all the formal enforcement actions in which prior significant actions were cited were issued more than three years before the date the current violation occurred.

"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 only one occurrence of the violation.

"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 discharge occurred when Respondent's staff failed to properly secure a hose to a temporary pump and the hose came loose. Respondent's failure to properly secure the hose constituted a failure to exercise reasonable care to prevent the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation by cleaning the area of the sewage overflow.

"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 economic benefit Respondent received was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 0 + 4 + (-3))] + \0
 $= \$12,000 + (\$1,200 \times 1) + \$0$
 $= \$12,000 + \$1,200 + \$0$
 $= \$13,200$