



# 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

November 22, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3855

Harpier Gandhi  
Director of Public Works  
City of Clatskanie  
P.O. Box 9-5082  
Clatskanie, OR 97016

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-NWR-2022-087

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the City of Clatskanie (the City) a civil penalty of \$2,800 for violating the Technology Based Effluent Limits (TBELs) for Biological Oxygen Demand (BOD<sub>5</sub>), Total Suspended Solids (TSS), and bacteria (*E. Coli*) set forth in the National Pollutant Discharge Elimination System (NPDES) permit issued to the City's sewage treatment plant.

DEQ issued this penalty because the City previously received a Warning Letter for violations of these same permit limits. Compliance with NPDES permit limits is critically important to maintaining water quality.

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 Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,

A handwritten signature in black ink, appearing to read "Kieran O'Donnell". The signature is fluid and cursive, with the first name being the most prominent.

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Mark Bentz, DEQ NWR  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON  
3

4 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
5 THE CITY OF CLATSKANIE ) ASSESSMENT AND ORDER  
6 Respondent. ) CASE NO. WQ/M-NWR-2022-087  
7 )

8 I. AUTHORITY

9 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
10 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,  
11 ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions  
12 011, 012, and 045.

13 II. FINDINGS OF FACT

14 1. Respondent is the owner and operator of the Clatskanie Sewage Treatment Plant located at  
15 100 NW 4th Street, ¼ mile west on Dike Road, in Clatskanie, OR (the Facility).

16 2. Respondent was issued renewed coverage under National Pollutant Discharge Elimination  
17 System (NPDES) Permit #101595 on June 12, 2012, with an effective date of August 1, 2012. The  
18 Permit expired on June 30, 2017, but was administratively extended because Respondent submitted a  
19 timely renewal application on December 21, 2016.

20 3. Respondent discharges treated domestic wastewater to the Clatskanie River, which is a  
21 water of the state pursuant to ORS 468B.005(10).

22 4. Schedule A.1.b of the Permit established the following technology based effluent limitations  
23 (TBELs) that apply November 1 – April 30 of each year:

Parameter	Average Effluent Concentrations		Monthly Average lb/day	Weekly Average Lb/day	Daily Maximum lbs
	Monthly	Weekly			
BOD <sub>5</sub>	30 mg/L	45 mg/L	120	190	250
TSS	30 mg/L	45 mg/L	120	190	250

5. DEQ's review of the Facility's Discharge Monitoring Reports (DMRs) from December 2021 through March 2022, identified the following five violations of the BOD<sub>5</sub> TBELs established in the Permit:

Date	Violation	Violation Class
January 2022	The reported monthly average BOD <sub>5</sub> loading of 179.0 lbs/day violates the permit limit by 49%.	II
January 6, 2022	The reported daily maximum BOD <sub>5</sub> loading of 409.0 lbs/d violated the permit limit by 64%.	I
January 2022	The reported monthly average BOD <sub>5</sub> concentration of 39.0 mg/L violates the permit limit by 30%.	II
January 6, 2022	The reported weekly average BOD <sub>5</sub> loading of 409.0 lbs/day violates the permit limit by 115%.	I
January 6, 2022	The reported weekly average BOD <sub>5</sub> concentration of 57.0 mg/L violates the permit limit by 27%.	II

6. DEQ's review of the Facility's DMRs from December 2021 through March 2022, identified the following five violations of the TSS TBELs established in the Prior Permit:

Date	Violation	Violation Class
January 2022	The reported monthly average TSS loading of 242 lbs/d violated the permit limit by 102%.	I
January 6, 2022	The reported daily maximum TSS loading of 581 lb/d violated the permit limit by 132%.	I
January 2022	The reported monthly average TSS concentration of 54 mg/L violated the permit limit by 80%.	I
January 6, 2022	The reported weekly average TSS loading of 581 lbs/d violated the permit limit by 206%.	I
January 6, 2022	The reported weekly average TSS concentration of 60 mg/L violated the permit limit by 33%.	II

7. Schedule A.1.c of the Permit set an *E.Coli* bacteria limit of no more than 126 organisms per 100mL monthly geometric mean. No single sample may exceed 406 organisms per 100mL.

8. DEQ's review of the Facility's DMRs from December 2021 through March 2022, identified the following two violations of the *E.Coli* bacteria limit established in the Permit:

Date	Violation	Violation Class
January 5, 2022	The reported <i>E.Coli</i> daily maximum concentration of 2,420 organisms/100mL violated the permit limit by 496%.	III
March 10, 2022	The reported <i>E.Coli</i> daily maximum concentration of 2,420 organisms/100mL violated the permit limits by 496%	III

9. Schedule A.1.c of the Permit set a TBEL for BOD<sub>5</sub> and TSS Removal Efficiency of not less than 85% monthly average for each.

10. DEQ's review of the Facility's DMRs from December 2021 through March 2022, identified the following five violations of the BOD<sub>5</sub> and TSS Removal Efficiency TBELs established in the Permit:

Date	Violation	Violation Class
December 2021	The reported BOD <sub>5</sub> removal efficiency of 81% was below the permit requirement of 85%.	III
December 2021	The reported TSS removal efficiency of 62% was below the permit requirement of 85%.	III
January 2022	The reported BOD <sub>5</sub> removal efficiency of 69% was below the permit requirement of 85%.	III
January 2022	The reported TSS removal efficiency of 20% was below the permit requirement of 85%.	III
March 2022	The reported TSS removal efficiency of 82% was below the permit requirement of 85%.	III

11. Pursuant to Schedule F, Section A.1. of the Permit, failure to comply with any permit condition is a violation of Oregon Revised Statutes (ORS) 468B.025.

1 12. Pursuant to ORS 468B.025(2), no person shall violate the conditions of any waste  
2 discharge permit issued under ORS 468B.050.

3 III. CONCLUSIONS

4 1. Respondent violated ORS 468B.025(2) and Schedule A.1 of its Permit by exceeding the TBEL  
5 established in the Permit for BOD<sub>5</sub> a total of five times. Specifically:

- 6 a. On two occasions Respondent exceeded the TBEL for BOD<sub>5</sub> by 50% or more. These are  
7 Class I violations pursuant to OAR 340-012-0055(1)(k)(A); and
- 8 b. On three occasions, Respondent exceeded the TBEL for BOD<sub>5</sub> by 20% or more but less  
9 than 50%. These are Class II violations pursuant to OAR 340-012-0055(2)(a)(A).

10 DEQ hereby assesses a \$1,200 civil penalty for these violations.

11 2. Respondent violated ORS 468B.025(2) and Schedule A.1 of its Permit by exceeding the  
12 TBEL established in its Permits for TSS a total of five times. Specifically:

- 13 a. On four occasions Respondent exceeded the TBEL for TSS by 50% or more. These are  
14 Class I violations pursuant to OAR 340-012-0055(1)(k)(A); and
- 15 b. On one occasion Respondent exceeded the TBEL for TSS by 20% or more but less than  
16 50%. This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A).

17 DEQ hereby assesses a \$1,200 civil penalty for these violations.

18 3. Respondent violated ORS 468B.025(2) and Schedule A.1. of its Permit by failing to meet the  
19 minimum removal efficiency required by the Permit for BOD<sub>5</sub> and TSS on five occasions. These are Class  
20 III violations pursuant to OAR 340-012-0055(3)(c). DEQ hereby assesses a \$400 civil penalty for these  
21 violations.

22 4. Respondent violated ORS 468B.025(2) and Schedule A.1 of its Permit by exceeding the  
23 *E. Coli* limit in the Permit on two occasions. These are Class III violations pursuant to OAR 340-012-  
24 0055(3)(b) because both exceedances were less than five times the limit. DEQ has chosen not to assess a  
25 penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY

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

- 4 1. Pay a civil penalty of \$2,800. The determination of the civil penalty is attached as Exhibits 1–  
5 3 and is incorporated as part of this Notice.

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

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

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

24 Active duty Service members have a right to stay proceedings under the federal Service  
25 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
26 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
27 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military

1 Department does not have a toll free telephone number.

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


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11/22/22  
Date

  
Kieran O'Donnell, Manager  
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

VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the TBELs for BOD<sub>5</sub> set forth in Schedule A.1 of the Permit five times.

CLASSIFICATION: Of the five violations, two are Class I violations pursuant to OAR 340-012-0055(1)(k)(A) and three are Class II violation pursuant to OAR 340-012-0055(2)(a)(A). Pursuant to OAR 340-012-0145(4)(e), the penalty is calculated as a Class I penalty.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because the receiving stream flow at the time of the exceedances was more than 10 times the flow of Respondent's discharge.

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 \$750 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent has an NPDES permit for a facility with a permitted flow of less than 2 million gallons per day.

"P" is whether Respondent has any prior significant actions (PSAs), 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), because Respondent has had no prior water quality violations in the preceding ten years.

"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.

"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 more than one but less than seven occurrences of the violation. Respondent violated the TBELs for BOD<sub>5</sub> on five 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. The BOD<sub>5</sub> limits are express conditions of Respondent's permit. By failing to take necessary actions to comply with the limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk a permit violation would occur.

"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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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

$$\begin{aligned} &= \$750 + [(0.1 \times \$750) \times (0 + 0 + 2 + 4 + 0)] + \$0 \\ &= \$750 + [\$75 \times 6] + \$0 \\ &= \$750 + \$450 + \$0 \\ &= \$1,200 \end{aligned}$$

EXHIBIT 2

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

VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the TBELs for TSS set forth in Schedule A.1 of the Permit five times.

CLASSIFICATION: Of the five violations, four are Class I violations pursuant to OAR 340-012-0055(1)(k)(A) and one is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A). Pursuant to OAR 340-012-0145(4)(e), the penalty is calculated as a Class I penalty.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because the receiving stream flow at the time of the exceedances was more than 10 times the flow of Respondent's discharge.

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 \$750 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent has an NPDES permit for a facility with a permitted flow of less than 2 million gallons per day.

"P" is whether Respondent has any prior significant actions (PSAs), 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), because Respondent has had no prior water quality violations in the preceding ten years.

"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.

"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 more than one but less than seven occurrences of the violation. Respondent violated the TBELs for TSS on five 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. The TSS limits are express conditions of Respondent's permit. By failing to take necessary actions to comply with the limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk a permit violation would occur.

"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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$750 + [(0.1 \times \$750) \times (0 + 0 + 2 + 4 + 0)] + \$0$   
 $= \$750 + [\$75 \times 6] + \$0$   
 $= \$750 + \$450 + \$0$   
 $= \$1,200$

EXHIBIT 3

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

- VIOLATIONS: Respondent violated ORS 468B.025(2) by failing to meet the minimum removal efficiency for BOD<sub>5</sub> and TSS set forth in Schedule A.1 of the Permit on five occasions.
- CLASSIFICATION: These are Class III violations pursuant to OAR 340-012-0055(3)(c).
- MAGNITUDE: Pursuant to OAR 340-012-0140(1), no magnitude determination is required for Class III violations.
- 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 \$250 for a Class III violation in the matrix listed in OAR 340-012-0140(4)(b)(C) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent has an NPDES permit for a facility with a permitted flow of less than 2 million gallons per day.
- "P" is whether Respondent has any prior significant actions (PSAs), 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), because Respondent has had no prior water quality violations in the preceding ten years.
- "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.
- "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 more than one but less than seven occurrences of the violation. Respondent failed to meet the minimum removal efficiency on five 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. The minimum removal efficiency standards are express conditions of Respondent's permit. By failing to take necessary actions to comply with the requirements, Respondent failed to exercise reasonable care to avoid the foreseeable risk a permit violation would occur.
- "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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$250 + [(0.1 \times \$250) \times (0 + 0 + 2 + 4 + 0)] + \$0$   
=  $\$250 + [\$25 \times 6] + \$0$   
=  $\$250 + \$150 + \$0$   
=  $\$400$