



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 3862

Rochelle Roaden, City Manager
City of Dayton
P.O. Box 339
Dayton, OR 97114-0339

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-WR-2022-082

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the City of Dayton (the City) a civil penalty of \$3,475 for multiple violations of its National Pollutant Discharge Elimination Permit (NPDES), Permit #101742. Specifically, from December 2019 through March 2022, the City violated the BOD₅ and TSS limits set forth in its permit; failed to meet the minimum removal efficiency standards set forth in its permit for BOD₅ and TSS; submitted inaccurate data reports; and failed to submit complete noncompliance reports.

DEQ issued this penalty because the City continues to experience ongoing effluent limit violations yet has made no effort to determine the cause of these violations or to prevent them from reoccurring. Compliance with effluent limitations set forth in the City's permit is essential in protecting water quality. The Notice includes an Order requiring the City to hire an outside consultant to evaluate the causes of the City's ongoing permit violations and identify steps that can be taken to correct those issues going forward. Additionally, the Order requires the City to conduct an inflow and infiltration (I&I) study of its entire collection 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

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 a long horizontal stroke extending to the right.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jon Gasik, DEQ WR
Gus Glaser, DEQ WR
Bradley Eagleson, DEQ WR
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3
4 IN THE MATTER OF:
5 THE CITY OF DAYTON

) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER

6 Respondent.

)
) CASE NO. WQ/M-WR-2022-082
)
)

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 Dayton Sewage Treatment Plant located at 416
15 Ferry Street in Dayton, OR (the Facility).

16 2. Respondent was issued coverage under National Pollutant Discharge Elimination System
17 (NPDES) Permit #101742 on December 28, 2011 (the Permit). The Permit expired on November 30,
18 2015, but was administratively extended because Respondent submitted a timely renewal application.

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

21 4. Schedule A.1.a(2) of the Permit establishes the following technology based effluent
22 limitations (TBELs) that apply November 1 – April 30 of each year:

23

Parameter	Average Effluent Concentrations		Monthly Average lb/day	Weekly Average Lb/day	Daily Maximum lbs
	Monthly	Weekly			
BOD ₅	30 mg/L	45 mg/L	150	220	290
TSS	50 mg/L	80 mg/L	240	370	490

24
25
26
27

5. DEQ's review of the Facility's Discharge Monitoring Reports (DMRs) from December 2019 through March 2022, identified the following 10 violations of the BOD₅ TBELs established in the Permit:

Date	Violation	Violation Class
December 2019	The reported weekly average BOD ₅ concentration of 51 mg/l violated the permit limit by 13%.	III
January 2020	The reported weekly average BOD ₅ concentration of 47 mg/l violated the permit limit by 4%.	III
January 2020	The reported monthly average BOD ₅ concentration of 36.5 mg/l violated the permit limit by 22%.	II
April 2020	The reported monthly average BOD ₅ concentration of 33.5 mg/l violated the permit limit by 12%.	III
November 2020	The reported weekly average BOD ₅ concentration of 139 mg/l violated the permit limit by 209%.	I
November 2020	The reported weekly average BOD ₅ loading of 587 lb/d violated the permit limit by 167%.	I
November 2020	The reported monthly average BOD ₅ concentration of 54 mg/l violated the permit limit by 80%.	I
November 11, 2020	The reported daily maximum BOD ₅ loading of 587 lb/d violated the permit limit by 102%.	I
November 2020	The reported monthly average BOD ₅ loading of 330 lb/d violated the permit limit by 120%.	I
April 2021	The reported monthly average BOD ₅ concentration of 48 mg/l violated the permit limit by 7%.	III

6. DEQ's review of the Facility's DMRs from December 2019 through March 2022, identified the following two violations of the TSS TBELs established in the Permit:

\\

Date	Violation	Violation Class
December 2020	The reported monthly average TSS concentration of 81 mg/l violated the permit limit by 62%.	I
April 2021	The reported monthly average TSS concentration of 65.5 mg/l violated the permit limit by 31%.	II

7. Schedule A.1.a.(3) of the Permit set a TBEL for BOD₅ Removal Efficiency of not less than 85% monthly average.

8. Schedule A.1.a.(3) of the Permit set a TBEL for TSS Removal Efficiency of not less than 65% monthly average.

9. DEQ's review of the Facility's DMRs from December 2019 through March 2022, identified the following 13 violations of the BOD₅ and TSS Removal Efficiency TBELs established in the Permit:

Date	Violation	Violation Class
January 2020	A reported BOD removal efficiency of 38%.	III
February 2020	A reported TSS removal efficiency of 51%.	III
February 2020	A reported BOD ₅ removal efficiency of 83%.	III
April 2020	A reported BOD ₅ removal efficiency of 77%.	III
December 2020	A reported BOD ₅ removal efficiency of 77%	III
January 2021	A reported BOD ₅ removal efficiency of 63.6%.	III
February 2021	A reported BOD ₅ removal efficiency of 73.2%.	III
April 2021	A reported TSS removal efficiency of 27.2%.	III
April 2021	A reported BOD ₅ removal efficiency of 72.5%.	III
December 2021	A reported BOD ₅ removal efficiency of 75.1%.	III
February 2022	A reported TSS removal efficiency of 61.9%.	III
March 2022	A reported TSS removal efficiency of 46.5%.	III
March 2022	A reported BOD ₅ removal efficiency of 72.3%.	III

- 1 b. On one occasion Respondent exceeded the TBEL for BOD₅ by 20% or more but less than
2 50%. These are Class II violations pursuant to OAR 340-012-0055(2)(a)(A); and
3 c. On four occasions, Respondent exceeded the TBEL for BOD₅ by less than 20%. These are
4 Class III violations pursuant to OAR 340-012-0055(3)(b)(A).

5 DEQ hereby assesses a \$1,425 civil penalty for these violations.

6 2. Respondent violated ORS 468B.025(2) and Schedule A.1 of its Permit by exceeding the
7 TBEL established in its permits for TSS two times. Specifically:

- 8 a. On one occasion Respondent exceeded the TBEL for TSS by 50% or more. This is a Class
9 I violation pursuant to OAR 340-012-0055(1)(k)(A); and
10 b. On one occasion Respondent exceeded the TBEL for TSS by 20% or more but less than
11 50%. This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A).

12 DEQ has chosen not to assess a civil penalty for these violations.

13 3. Respondent violated ORS 468B.025(2) and Schedule A.1. of the Permit by failing to meet the
14 minimum removal efficiency required by the Permit for BOD₅ and TSS a total of 13 times. These are Class
15 III violations pursuant to OAR 340-012-0055(3)(c). DEQ hereby assesses a \$475 civil penalty for these
16 violations.

17 4. Respondent violated OAR 340-045-0015(5)(d) by making inaccurate statements on a report
18 required to be submitted to DEQ pursuant to Schedule F, Section C.5 of the Permit. Specifically, in March
19 2020, two of the values reported on Respondent's DMR for BOD₅ mass loading did not match the daily
20 data values that accompanied the DMR. This is a Class II violation pursuant to OAR 340-012-0053(2).
21 DEQ has chosen not to assess a civil penalty for this violation.

22 5. Respondent violated ORS 468B.025(2) and Schedule D.6 of the Permit by failing to submit
23 complete noncompliance reports to DEQ on twelve occasions. Specifically, Respondent submitted reports
24 that failed to adequately describe the cause of the noncompliance or provide any steps taken or planned to
25 prevent reoccurrence of the noncompliance during the following months: December 2019, January 2020,
26 February 2020, March 2020, December 2020, February 2021, April 2021, December 2021, February 2022,
27 and March 2022. These are Class II violations pursuant to OAR 340-012-0055(2)(b). DEQ hereby assesses

1 a \$1,575 civil penalty for these violations.

2 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

- 5 1. Pay a civil penalty of \$3,475. The determination of the civil penalty is attached as Exhibits 1–
6 3 and is incorporated as part of this Notice.

7 If you do not file a request for hearing as set forth in Section V below, your check or money order must
8 be made payable to "**Department of Environmental Quality**" and sent to the **DEQ, Business Office,**
9 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

- 10 2. Within 60 days of this order becoming final by operation of law or on appeal:

- 11 a. Submit to DEQ a report from a qualified operations consultant evaluating the
12 operations at the treatment facility, the causes of the ongoing violations, and
13 potential operational changes to improve effluent quality. Permittee must either
14 implement the consultant's recommendations or provide adequate reasons for not
15 implementing the recommendations.

- 16 3. Within nine months of this order becoming final by operation of law or on appeal:

- 17 a. Submit to DEQ for review and comment an inflow and infiltration (I&I) study of
18 the collection system. The study must include smoke testing of the entire
19 collection system, a map of the entire collection system, flow mapping during
20 storm events, and a comparison of the system's I&I to EPA criteria. The study
21 must include recommendations for eliminating inflow and reducing infiltration.

- 22 4. Within 60 days of receiving DEQ's comments on the study required pursuant to Section
23 IV.3.a. above:

- 24 a. Respond to DEQ's comments, revise the I&I study report accordingly, and
25 resubmit the revised study to DEQ for approval.

- 26 5. Within 60 days of receiving DEQ's approval of the I&I study required pursuant to Section
27 IV.3.a. above (as amended by Section IV.4.a. above):

1 a. Implement the recommended improvements set forth in the study.

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

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

17 Active duty Service members have a right to stay proceedings under the federal Service
18 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
19 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
20 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
21 Department does not have a toll free telephone number.

22 If you fail to file a timely request for hearing, the Notice will become a final order by default
23 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
24 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
25 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

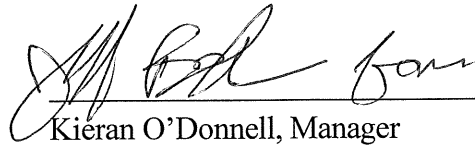
26 \\\

27 \\\

1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

3
4
5
6 11/22/22

7 Date

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27


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

VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the TBELs for BOD₅ set forth in Schedule A.1 of the Permit ten times.

CLASSIFICATION: Of the ten violations, five are Class I violations pursuant to OAR 340-012-0055(1)(k)(A); one is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A); and four are Class III violations pursuant to OAR 340-012-0055(3)(b)(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 two 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 2 according to OAR 340-012-0145(2), because Respondent had one prior Class I violation in the preceding ten years, as established in Case No. WQ/M-NWR-2017-183.

"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 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Respondent violated the TBELs for BOD₅ on ten 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 BOD₅ 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 (2 + 0 + 3 + 4 + 0)] + \0
 $= \$750 + [\$75 \times 9] + \$0$
 $= \$750 + \$675 + \$0$
 $= \$1,425$

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 failing to meet the minimum removal efficiency required by the Permit for BOD₅ and TSS 13 times.

CLASSIFICATION: These are Class III violations pursuant to OAR 340-012-0055(3)(c).

MAGNITUDE: Pursuant to OAR 340-012-0140, 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 two 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 2 according to OAR 340-012-0145(2), because Respondent had one prior Class I violation in the preceding ten years, as established in Case No. WQ/M-NWR-2017-183.

"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 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Respondent failed to meet the minimum removal efficiency for BOD₅ and TSS on 13 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 requirements 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 (2 + 0 + 3 + 4 + 0)] + \0
= $\$250 + [\$25 \times 9] + \$0$
= $\$250 + \$225 + \$0$
= $\$475$

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) and Schedule D.6 of the Permit by failing to submit complete noncompliance reports to DEQ on 12 occasions.

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0055(2)(b).

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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) 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 two 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 2 according to OAR 340-012-0145(2), because Respondent had one prior Class I violation in the preceding ten years, as established in Case No. WQ/M-NWR-2017-183.

"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 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Respondent submitted 11 incomplete noncompliance reports.

"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 requirement to submit complete noncompliance reports is an express condition of Respondent's permit. By failing to include all the required information in its noncompliance reports, 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 2 according to OAR 340-012-0145(6)(g) because Respondent has not addressed the violations.

"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 (2 + 0 + 3 + 4 + 2)] + \0
 $= \$750 + [\$75 \times 11] + \$0$
 $= \$750 + \$825 + \$0$
 $= \$1,575$