



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
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November 27, 2019

CERTIFIED MAIL No. 7016 0750 0000 3470 4804

City of Portland
Bureau of Environmental Services
c/o Michael Jordan, Director
1120 SW Fifth Ave., Rm 1000
Portland, OR 97204

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-NWR-2019-123

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the City of Portland a civil penalty of \$40,200 for discharging partially treated sewage mixed with stormwater from its Columbia Boulevard sewage treatment plant into the Columbia Slough and for discharging wastes from an unpermitted location on multiple days in September 2018. These discharges violated Oregon's water quality standard that prohibits the discharge of sewage into waters of the state without proper treatment and Oregon statutes prohibiting the use of a new outlet to waters of the state without first obtaining a permit from DEQ, respectively.

DEQ issued this penalty because these unpermitted discharges interfered with the public's ability to access portions of the Columbia Slough for recreational purposes due to sewage contamination, and could have harmed aquatic life and its habitat by adding pollutants to the Slough. DEQ is especially concerned that the City failed to respond for approximately eight hours after the overflow alarm sounded on September 16, 2018, since an unpermitted discharge had occurred from that same location just four days prior.

DEQ appreciates the City's efforts to prevent future discharges of untreated sewage from its Columbia Boulevard sewage treatment plant by reconfiguring its automated alarm systems, replacing pumps, re-routing process water from biosolids conveyor belts, training staff, updating its standard operating procedures and improving documentation of inspection and maintenance activities. DEQ considered these efforts when determining the amount of the civil penalty.

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 Jane Hickman at 503-229-5692 or toll free in Oregon at 800-452-4011, extension 5692.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Michael Pinney, P.E., Northwest Region DEQ
Tiffany Yelton-Bram, WQ Manager, NWR DEQ
Accounting, DEQ
John Koestler, WQ, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 CITY OF PORTLAND,) ASSESSMENT AND ORDER
5 An Oregon municipal corporation,)
6 Respondent.) NO. WQ/M-NWR-2019-123

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty
9 Assessment and Order to Respondent, the City of Portland, an Oregon municipal corporation,
10 pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters
11 183, ORS Chapter 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,
12 012, 041 and 045.

13 II. FINDINGS OF FACT

14 1. Respondent operates a sewage collection, treatment and disposal system pursuant to
15 National Pollutant Discharge Elimination System Permit No. 101505 (Permit) issued by DEQ.
16 The Permit was in effect at all material times.

17 2. The Permit authorizes Respondent to operate a sewage collection, treatment and
18 disposal system only in conformance with the requirements and limitations of the Permit and to
19 discharge adequately treated wastewater and treated storm water to the Columbia River only via
20 Outfall Nos. 002.0, 002.1, and 002.2.

21 3. On September 12, 2018, Respondent discharged approximately 255,000 gallons of
22 wastewater, comprised of stormwater and sewage from the Wet Weather Primary Clarifiers, to
23 the Columbia Slough from the Columbia Boulevard sewage treatment plant via a stormwater
24 pump station outfall and sheet flow. The sewage had received primary treatment but not
25 disinfection.

26 4. On September 16 and 17, 2018, Respondent discharged approximately 8,670 gallons
27 of untreated wastewater, comprised of seal water, cooling water from digester gas compressors,

1 runoff water from outside biosolids conveyor belts and residual stormwater, into the Columbia
2 Slough from Respondent's Columbia Boulevard Sewage Treatment Plant. The wastewater was
3 discharged via a stormwater pump station outfall and sheet flow.

4 5. Respondent issued a sewage advisory for the affected area on September 13, 2018,
5 upon receipt of results of water quality laboratory analysis, and posted the area where the
6 discharge occurred with signs warning people to avoid contact with waters of the Columbia
7 Slough. E.coli levels in the area affected by the discharge remained elevated until approximately
8 September 28, 2018.

9 III. CONCLUSIONS

10 1. On September 12, 2018, Respondent violated ORS 468B.025(1)(b) by discharging
11 wastes into waters of the state such that the discharge reduced the quality of the waters below
12 water quality standards established by the Environmental Quality Commission. Specifically,
13 Respondent violated the water quality standard for bacteria contained in OAR 340-041-0009(3)
14 by discharging partially treated sewage to the Columbia Slough without such sewage being
15 disinfected, as required by the Permit. The Columbia Slough is a waters of the state as defined in
16 ORS 468B.005(10) because it is a system of surface water and wetlands within the territorial
17 limits of the State of Oregon. This is a Class I violation according to OAR 340-012-0055(1)(b).
18 DEQ hereby assesses a \$25,200 civil penalty for this violation.

19 2. On September 12, 2019, Respondent violated ORS 468B.050(1)(e) and OAR 340-
20 045-0015(1)(e) by using using a new outlet for the discharge of wastes into waters of the state.
21 Specifically, Respondent discharged partially treated sewage from a stormwater pump and via
22 sheet flow to the Columbia Slough. The Permit authorizes discharge of treated municipal sewage
23 to the Columbia Slough only via Outfall Nos. 002.0, 002.1, and 002.2. The partially treated
24 wastewater is "waste" according to ORS 468B.005(9) because it caused or tended to cause
25 pollution of waters of the state by raising E. coli to levels that made recreational use of the
26 Columbia Slough unsafe from September 12, 2018 until approximately September 28, 2018, as
27

1 described in Section II, paragraph 5. This is a Class I violation according to OAR 340-012-
2 0055(1)(c). DEQ is not assessing a civil penalty for this violation.

3 3. On September 16 and 17, 2018, Respondent violated ORS 468B.050(1)(e) and OAR
4 340-045-0015(1)(e), by using using a new outlet for the discharge of wastes into waters of the
5 state without obtaining a permit. Specifically, Respondent discharged untreated wastewater,
6 comprised of seal water, cooling water from digester gas compressors, runoff water from outside
7 biosolids conveyor belts and residual stormwater from a stormwater pump and via sheet flow to
8 the Columbia Slough. The Permit authorizes discharge of treated municipal sewage to the
9 Columbia Slough only via Outfall Nos. 002.0, 002.1, and 002.2. The untreated wastewater
10 described above is "waste" according to ORS 468B.005(9) because it caused or tended to cause
11 pollution of waters of the state by altering the physical, chemical or biological properties of
12 waters of the state in a manner that tended to render waters of the state harmful to fish or other
13 aquatic life or its habitat. Cooling water from digester gas compressors may have raised
14 temperatures in the Columbia Slough. Runoff from the biosolids conveyor belts may have
15 contained heavy metals, nutrients and pathogens, and untreated stormwater often contains
16 sediment and oil and grease. These are Class I violations according to OAR 340-012-0055(1)(c).
17 DEQ hereby assesses a \$15,000 civil penalty for these violations.

18 IV. ORDER TO PAY CIVIL PENALTY

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

21 1. Pay a total civil penalty of \$40,200. The determination of the civil penalties are attached
22 as Exhibit Nos. 1 and 2 and are incorporated as part of this Notice.

23 If you do not file a request for hearing as set forth in Section V below, your check or
24 money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ,**
25 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.** Once you
26 pay the penalty, the Notice becomes final.

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

2 You have a right to a contested case hearing on this Notice, if you request one in writing.
3 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive
4 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this
5 Notice or attached exhibits, you must do so in your request for hearing, as factual matters not
6 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
7 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your
8 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**
9 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to
10 DEQappeals@deq.state.or.us. An administrative law judge employed by the Office of
11 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
12 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
13 attorney at the hearing; however, you are not required to be. If you are an individual, you may
14 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
16 a duly 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 1-800-452-
19 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
23 default without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing
24 but later withdraw your request, fail to attend the hearing or notify DEQ that you will not be
25 attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3).

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

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4 11 / 27 / 2019
5 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 1: Discharging wastes into waters of the state such that the discharge reduced the quality of the waters below water quality standards established by the Environmental Quality Commission, in violation of ORS 468B.025(1)(b) and OAR 340-041-0009(3).
- 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 340-012-0130(3) because Respondent's discharge had a significant adverse impact on human health or the environment. In making this determination, DEQ has considered the degree of deviation from applicable statutes and DEQ standards, the concentration and volume of the materials involved, and the duration of the violation. OAR 340-041-0009(3) prohibits the discharge of any untreated sewage into waters of the state, and Respondent discharged approximately 255,000 gallons of undisinfected sewage over a period of approximately twenty minutes. The violation resulted in E. coli levels of 5,200 MPN/100 mL 640 feet downstream of the spill. Respondent's NPDES permit allows no more than 406/100 mL E. coli in any one sample. The sewage spill prevented any public use of this stretch of the Columbia Slough for approximately two weeks.
- 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) because Respondent has an NPDES permit for a municipal sewage treatment facility with a permitted flow of five million or more gallons per day.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(16), 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)(C) and (2)(a)(D). Respondent's prior significant actions, established in case nos. WQ/M-NWR-2017-163, WQ/M-NWR-15-011, WQ/M-NWR-14-181, WQ/M-NWR-14-012, WQ/M-NWR-11-091 and WQ/M-NWR-10-069, consist of more than nine Class I equivalent violations. According to OAR 340-012-0145(2)(b), the value of "P" will not exceed 10.

"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 one occurrence of the violation, on September 12, 2018.

"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. By moving the switch at the top of the actuator structure to manual position, Respondent caused the system to malfunction. Had Respondent inspected the top of the actuator structure to ensure the switch was in "auto" mode, Respondent would have avoided a foreseeable risk that the effluent gate for the wet weather primary clarifiers would fail to open automatically. Respondent is aware that if wastewater treatment systems are not thoroughly and frequently inspected, the systems may fail and cause untreated sewage to discharge to waters of the state.

"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 Respondents made reasonable efforts to correct the violation. Within 20 minutes after the discharge began, Respondent discovered the switch at the top of the actuator structure was in the incorrect position and stopped the discharge. Respondent has also reconfigured its automated system to display the status of the switch at the top of the actuator structure and has updated its standard operating procedures to provide directions to staff in the event of power loss or interruption of communication with the automation system.

"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(3), because the EB obtained by Respondent from delaying the costs of changing the electronic notification system and amending its standard operating procedures for approximately one month is 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 x \$12,000) x (10 + 0 + 0 + 4 - 3)] + \$0
= \$12,000 + (\$1,200 x 11) + \$0
= \$12,000 + \$13,200 + \$0
= \$25,200

EXHIBIT NO. 2

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

VIOLATION 3: Discharging waste from a new outlet to waters of the state without first obtaining a permit from DEQ, in violation of ORS 468B.050(1)(e) and OAR 340-045-0015(1)(e).

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

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(E)(i).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(16), 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)(C) and (2)(a)(D). Respondent's prior significant actions, established in case nos. WQ/M-NWR-2017-163, WQ/M-NWR-15-011, WQ/M-NWR-14-181, WQ/M-NWR-14-012, WQ/M-NWR-11-091 and WQ/M-NWR-10-069, consist of more than nine Class I equivalent violations. According to OAR 340-012-0145(2)(b), the value of "P" will not exceed 10.

"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 one occurrence of the violation. Each day of a violation with a duration of more than one day is a separate occurrence. The discharge occurred for a period of 9 hours and 40 minutes, on September 16 and 17, 2018.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. The discharge occurred because Respondent had turned off a critical pump at the electrical disconnects, so the pump failed to prevent the wet wells from overflowing into the Columbia Slough. A wet well bypass alarm

for the pump was triggered at approximately 7:00 PM on September 16, 2018, but Respondent failed to conduct an inspection until approximately 3:00 AM on September 17, 2018. Respondent was unable to find any records for when or why the electrical disconnect was turned off. By failing to respond to the alarm for nearly eight hours, Respondent consciously disregarded a substantial and unjustifiable risk that wastewater would be discharged from the wet wells into the Columbia Slough. Respondent had discharged undisinfected sewage from that same point only four days prior and was aware of the risk.

"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 made reasonable efforts to correct the violation. Respondent conducted training of its wastewater plant operators in November 2018 and May 2019. Respondent conducts monthly preventative maintenance on the pumps at issue. Respondent re-routed process water from the conveyor belts handling biosolids was re-routed to the plant for treatment in May 2019. Respondent replaced the pumps at issue in October 2019 because they were beyond their useful life.

"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 determine the amount of any economic benefit Respondent gained from these violations.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (10 + 0 + 0 + 8 - 3)] + \$0
= \$6,000 + (\$600 x 15) + \$0
= \$6,000 + \$9,000 + \$0
= \$15,000