



# 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

December 13, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3916

City of Cascade Locks  
c/o Jordon Bennett, City Administrator  
P.O. Box 308  
Cascade Locks, OR 97014

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-ER-2021-188

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$9,600 for failing to comply with monitoring requirements of your wastewater disposal permit, causing pollution of waters of the state when you discharged non-disinfected wastewater and for violating a state water quality standard. The enclosed notice also cites, without penalty, violations of the limit for *E. coli* bacteria in your permit.

By violating the monitoring requirements of your permit, you denied DEQ and the public with the information necessary to determine whether you are complying with the pollution limits of your permit. Your other violations impaired or threatened to impair the quality 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.oregon.gov](mailto:DEQappeals@deq.oregon.gov)

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 portion of the 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: Justin Sterger, DEQ  
Mike Hiatt, DEQ  
Accounting, 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 CASCADE LOCKS, ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. WQ/M-ER-2021-188

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 468B and 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and  
10 012.

11 II. FINDINGS OF FACT

12 1. At all relevant times, Respondent operated a domestic wastewater collection, treatment and  
13 disposal system authorized by a National Pollutant Discharge System Permit (the Permit) issued and  
14 administered by DEQ.

15 2. The Permit allows Respondent to operate its wastewater system and discharge to state waters  
16 adequately treated wastewater only in conformance with the conditions, requirements and limitations of  
17 the Permit.

18 3. Schedule B, Condition 2 of the Permit requires Respondent to monitor its wastewater influent  
19 for carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>) weekly.

20 4. Respondent did not monitor its influent for CBOD<sub>5</sub> during the weeks of July 4, July 11, and  
21 September 9, 2020 and May 9, 2021.

22 5. Schedule B, Condition 3 of the Permit requires Respondent to monitor its wastewater effluent  
23 for CBOD<sub>5</sub> weekly.

24 6. Respondent did not monitor its effluent for CBOD<sub>5</sub> during the weeks of July 4, July 11, and  
25 September 9, 2020, and May 9, 2021.

26 7. Schedule B, Condition 3 of the Permit requires Respondent to monitor its effluent for total flow,  
27 temperature and UV dosage daily.

1 8. On October 23, 2022, Respondent did not monitor its effluent for total flow, temperature or UV  
2 dosage.

3 9. Respondent's Permit limits the concentration of *E. Coli* bacteria in its discharged wastewater to  
4 a daily maximum of 406 organisms per 100 milliliters (mL) and a monthly geometric mean of 126  
5 organisms per 100 mL.

6 10. *E. Coli* bacteria is limited in wastewater discharges because it is indicator of the presence of  
7 human disease-causing bacteria in treated domestic wastewater.

8 11. *E. Coli* bacteria is present in non-disinfected domestic wastewater at concentrations of  
9 approximately 1,000,000 organisms per 100 mL

10 12. On February 15, 2022, Respondent discharged approximately 110,000 gallons of non-  
11 disinfected wastewater to the Columbia River.

12 13. OAR 340-041-0009(3) states: "Raw Sewage Prohibition: No sewage may be discharged into or  
13 in any other manner be allowed to enter the waters of the State, unless such sewage has been treated in  
14 a manner the Department approved or otherwise allowed by these rules."

15 14. On January 7, 2022, Respondent discharged approximately 4,500 gallons of raw sewage to the  
16 Columbia River.

17 15. On October 8, 2022, Respondent discharged approximately 100 gallons of raw sewage to the  
18 Columbia River.

19 16. Single samples of Respondent's effluent contained *E. coli* in concentrations as follow: July 20,  
20 2021 - >2,419 organisms per 100 mL; July 22, 2021 - >2,419 organisms per 100 mL; July 23, 2021 -  
21 >2,419 organisms per 100 mL; July 24, 2021 - >2,419 organisms per 100 mL; and July 25, 2021 -  
22 >2,419 organisms per 100 mL

### 23 III. CONCLUSIONS

24 1. Respondent violated ORS 468B.025(2) by violating a condition of its wastewater discharge  
25 permit. Specifically, Respondent violated Schedule B, Conditions 2 and 3 by failing to conduct  
26 monitoring of influent and effluent for CBOD<sub>5</sub> and effluent flow, temperature and UV dosing, as  
27 described in Section II, Paragraphs 3-8. These are Class I violations pursuant to OAR 340-012-

0055(1)(o). DEQ assesses a \$4,050 civil penalty for these violations.

2. Respondent violated ORS 468B.025(1)(a) by causing pollution of waters of the water of the state by discharging non-disinfected wastewater to the Columbia River, waters of the state pursuant to ORS 468B.005(10), on February 15, 2022, as described in Section II, Paragraphs 9-12. This is a Class I violation pursuant to OAR 340-012-0055(1)(a). DEQ assesses a \$3,600 penalty for this violation.

3. Respondent violated ORS 468B.025(1)(b) by discharging a waste that reduced the quality of state waters below a water quality standard established by the Environmental Quality Commission. Specifically, Respondent violated OAR 340-041-0009(3) by discharging raw sewage, a waste as defined in ORS 468B.005(9), to the Columbia River on January 7, 2022, and October 8, 2022, as described in Section II, Paragraphs 13-15. These are Class I violations pursuant to OAR 340-012-0055(1)(b). DEQ assesses a \$1,950 civil penalty for these violations.

4. Respondent violated ORS 468B.025(2) by violating a condition of its wastewater discharge permit. Specifically, Respondent violated Schedule A, Condition 1(b), Table A2 of the Permit by exceeding effluent limits for *E. coli* bacteria, as described in Section II, Paragraphs 16 and 17. These are Class II violations pursuant to OAR 340-012-0055(2)(a)(C). DEQ does not assess a civil penalty for these violations.

#### IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO: Pay a total civil penalty of \$9,600. The determination of the civil penalties is attached as Exhibits 1, 2 and 3 and are incorporated as part of this Notice.

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

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


You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached

1 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
2 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
3 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
4 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
5 it to **503-229-6762** or email it to [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov). An administrative law judge  
6 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
7 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
8 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
9 you may represent yourself. If you are a corporation, partnership, limited liability company,  
10 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
11 authorized representative, as set forth in OAR 137-003-0555.

12 Active duty Service members have a right to stay proceedings under the federal Service  
13 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
14 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
15 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
16 Department does not have a toll free telephone number.

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

23  
24  
25  
26 12 / 13 / 2022  
27 Date

  
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 NO. 1 Failure to comply with the monitoring requirements of Schedule B of the Permit in violation ORS 468B.025(2).

CLASSIFICATION: This is a Class I violation 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 a municipal wastewater treatment facility with a permitted flow of less than 2 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 10 according to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of 9 or more Class I equivalent violations stemming from Case Nos. WQ/M-ER-2019-076 and WQ/M-ER-2020-084.

"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 conduct monitoring for influent CBOD<sub>5</sub> for the weeks of July 4, July 11, September 19, 2020, and May 9, 2021, effluent CBOD<sub>5</sub> for the weeks of July 4, July 11, and September 19, 2020, and May 9, 2021, and effluent temperature, effluent flow and UV dosage on October 23, 2022, for a total of nine violations.

"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 monitoring conditions are express requirements of Respondent Permit. By failing to take the actions necessary to

conduct the monitoring, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"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 as any economic benefit Respondent received was de minimis.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$1,500 + [(0.1 x \$1,500) x (10 + 0 + 3 + 4 + 0)] + \$0  
= \$1,500 + (\$150 x 17) + \$0  
= \$1,500 + \$2,550 + \$0  
= \$4,050

## EXHIBIT 2

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

- VIOLATION NO. 2                      Causing pollution of waters of the state in violation of ORS 468B.025(1)(a).
- CLASSIFICATION:                      This is a Class I violation pursuant to OAR 340-012-0055(1)(a).
- 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 a municipal wastewater treatment facility with a permitted flow of less than 2 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 10 according to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of 9 or more Class I equivalent violations stemming from Case Nos. WQ/M-ER-2019-076 and WQ/M-ER-2020-084.
- "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. Respondent discharged non-disinfected wastewater on one day, February 15, 2022.
- "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 knows or should have known that it cannot discharge effluent unless that effluent is fully treated, including disinfection. By failing to take the actions necessary to prevent the discharge of undisinfected effluent, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"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 as any economic benefit Respondent received was de minimis.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$1,500 + [(0.1 x \$1,500) x (10 + 0 + 0 + 4 + 0)] + \$0  
= \$1,500 + (\$150 x 14) + \$0  
= \$1,500 + \$2,100 + \$0  
= \$3,600

### EXHIBIT 3

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

- VIOLATION NO. 3 Discharging raw sewage to waters of the state in violation of OAR 340-041-0009(3) and 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 minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and the Department finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. In making this finding, the Department considered the following reasonably available information: The low volume of the discharges and the high flow of the Columbia River resulted in instantaneous dilution of the raw sewage to levels that posed no more than a de minimis risk to public health and the environment.
- 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)(a)(B)(iii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent operates a domestic 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 10 pursuant to OAR 340-012-0145(2)(a), because Respondent has prior significant actions consisting of more than 9 Class I equivalent violations stemming from Case Nos. WQ/M-ER-2019-076 and WQ/M-ER-2020-084.
- "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 2 pursuant to OAR 340-012-0145(4)(b) because there were two occurrences of the violation, on January 7 and October 8, 2022.

- "M" is the mental state of the Respondent, and receives a value 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Respondent knows or should have known that it cannot discharge raw sewage to waters of the state. By failing to take the actions necessary to prevent the discharges, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.
- "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 as DEQ has insufficient information on which to base another finding.

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

$$\begin{aligned} &= \$750 + [(0.1 \times \$750) \times (10 + 0 + 2 + 4 + 0)] + \$0 \\ &= \$750 + (\$75 \times 16) + \$0 \\ &= \$750 + \$1,200 + \$0 \\ &= \$1,950 \end{aligned}$$