



# Oregon

Tina Kotek, 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

March 16, 2023

CERTIFIED MAIL: 7018 1830 0001 6172 7400

City of Independence  
c/o Kenna West, City Manager  
555 S. Main Street  
Independence, OR 97351

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-WR-2021-189

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$8,337 for discharging pollutants to the Willamette River in excess of what is allowed by your wastewater disposal permit, for failing to monitor your wastewater for pollutants as required by your permit, and for failing to timely submit a plan for meeting the new total residual chlorine effluent limits.

DEQ issued this penalty because the violations caused a risk of harm to water quality. The pollutant limits in your permit are set at levels protective of water quality and public health. Your failure to comply with these limits creates a potential risk to water quality. By failing to conduct required monitoring, you deprived DEQ and the public of information necessary to determine whether you are operating your wastewater treatment system in manner that is protective of human health and the environment.

The Notice of Civil Penalty Assessment and Order also requires you to determine the cause of BOD<sub>5</sub> and TSS effluent limit violations, develop a corrective action schedule to prevent future violations, and implement the schedule. In addition, the order requires you to revise, as necessary, and implement the plan for meeting the new total residual chlorine effluent limits.

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,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell".

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Jon Gasik, DEQ  
Ranei Nomura, DEQ  
Accounting, DEQ



May 16, 2021	103	129%
May 23, 2021	180	300%
November 7, 2021	49	9%
November 14, 2021	51	13%

5. Schedule A, Condition 1.a(ii) of the Permit limits the monthly average BOD<sub>5</sub> concentration in Respondent's effluent discharged from Outfall 001 to 30 mg/L.

6. Respondent discharged effluent from Outfall 001 with the following monthly average BOD<sub>5</sub> concentrations in mg/L.

Month	Monthly Average Concentration	Percentage in excess of limit
March 2021	57	90%
May 2021	116	287%
November 2021	40	32%

7. Schedule A, Condition 1.a(ii) of the Permit limits BOD<sub>5</sub> loading in Respondent's effluent discharged from Outfall 001 to a daily maximum of 1,000 pounds (lbs).

8. Respondent discharged effluent from Outfall 001 with the following daily BOD<sub>5</sub> loading in lbs.

Day	Loading	Percentage in excess of limit
February 23, 2021	1,027	3%
May 18, 2021	1,492	47%
May 25, 2021	2,301	230%
November 2, 2021	1,144	14%

9. Schedule A, Condition 1.a(ii) of the Permit limits BOD<sub>5</sub> loading in Respondent's effluent discharged from Outfall 001 to a weekly average of 750 lbs/day.

10. Respondent discharged effluent from Outfall 001 with the following weekly average BOD<sub>5</sub> loading in lbs/day.

Week of	Loading	Percentage in excess of limit
February 21, 2021	1,027	37%

1	March 21, 2021	893	19%
2	May 9, 2021	934	25%
3	May 16, 2021	1,492	97%
4	May 23, 2021	2,301	207%
5	October 31, 2021 (reported as first week in November 2021)	1,144	53%
6			
7	May 22, 2022	880	17%
8	May 29, 2022	799	7%

9 11. Schedule A, Condition 1.a(ii) of the Permit limits BOD<sub>5</sub> loading in Respondent's  
10 effluent discharged from Outfall 001 to a monthly average of 500 lbs/day.

11 12. Respondent discharged effluent from Outfall 001 with the following monthly average  
12 BOD<sub>5</sub> loadings in lbs/day.

13	Month	Loading	Percentage in excess of limit
14	March 2021	671	34%
15	May 2021	1,575	215%
16	November 2021	637	27%
17	December 2022	633	27%

18 13. Schedule A, Condition 1.b of the Permit requires Respondent to achieve a monthly  
19 average BOD<sub>5</sub> removal efficiency of 85% in its effluent discharged from Outfall 001.

20 14. Respondent achieved the following monthly average BOD<sub>5</sub> removal efficiencies for  
21 effluent discharged from Outfall 001: November 2020 – 79%, December 2020 – 2%, February 2021 –  
22 75%, March 2021 - 73%, May 2021 – 65%, November 2021 – 79%, December 2021 – 81% and April  
23 2022 – 80%.

24 15. Schedule A, Condition 1.a(ii) of the Permit limits the weekly average concentration of  
25 total suspended solids (TSS) in Respondent's effluent discharged from Outfall 001 to 80 mg/L.

26 16. Respondent discharged effluent from Outfall 001 with weekly average TSS  
27 concentrations in mg/L as follows:

Week of	Weekly Average Concentration	Percentage in excess of Limit
May 9, 2021	87	9%
May 16, 2021	104	30%

17. Schedule A, Condition 1.a(ii) of the Permit limits the monthly average concentration of TSS in Respondent's effluent discharged from Outfall 001 to 50 mg/L.

18. Respondent discharged effluent from Outfall 001 with a monthly average TSS concentration in mg/L as follows:

Month	Monthly Average Concentration	Percentage in excess of Limit
May 2021	90	80%

19. Schedule A, Condition 1.a(ii) of the Permit limits the TSS weekly average load in Respondent's effluent discharged from Outfall 001 to 1,200 lbs/day.

20. Respondent discharged effluent from Outfall 001 with TSS weekly average loadings in lbs/day as follows:

Week of	Weekly Average Load	Percentage in excess of Limit
May 9, 2021	1,249	4%
May 16, 2021	1,514	26%

21. Schedule A, Condition 1.a(ii) of the Permit limits the TSS monthly average load in effluent discharged from Outfall 001 to 830 lbs/day.

22. Respondent discharged effluent from Outfall 001 with a TSS monthly average loading in lbs/day as follows:

Month	Monthly Average Load	Percentage in excess of Limit
May 2021	1,262	52%

23. Schedule A, Condition 1.b of the Permit requires Respondent to achieve a monthly average TSS removal efficiency of 65% in its effluent discharged from Outfall 001.



1 violations pursuant to OAR 340-012-0055(3)(b)(A). DEQ assesses a \$2,100 civil penalty for these  
2 violations.

3 2. Respondent violated ORS 468B by discharging effluent from its Outfall 001 that exceeded  
4 TSS limits established in Schedule A, Condition 1 of the Permit, as described in Section II, Paragraphs  
5 15-24, above. Those instances where Respondent exceeded by the limit by 50% or more are Class I  
6 violations pursuant to OAR 340-012-0055(1)(k)(A). Those instances where Respondent exceeded the  
7 limit by 20% or more but less than 50% are Class II violations pursuant to OAR 340-012-  
8 0055(2)(a)(A). Those instances where Respondent exceeded the limit by less than 20% are Class III  
9 violations pursuant to OAR 340-012-0055(3)(b)(A). DEQ assesses a \$2,025 civil penalty for these  
10 violations.

11 3. Respondent violated ORS 468B.025(2) by failing to conduct effluent monitoring for *E. coli*  
12 bacteria and nutrients required by Schedule B of the Permit as described in Section II, Paragraph 25-28  
13 above. These are Class I violations pursuant to OAR 340-012-0055(1)(o). DEQ assesses a \$4,212 civil  
14 penalty for these violations.

15 4. Respondent violated ORS 468B.025 by discharging effluent from its Outfall 1 that exceeded  
16 the *E. coli* monthly geometric mean limit established in Schedule A, Condition 1 of the Permit as  
17 described in Section II, Paragraphs 29 and 30 above. This is a Class III violation pursuant to OAR 340-  
18 012-0055(3)(b)(C). DEQ does not assess a civil penalty for this violation.

19 5. Respondent violated ORS 468B.025 and Section C, condition 1 of the Permit by failing to  
20 submit a plan for meeting the new total residual chlorine effluent limits by no later than January 1,  
21 2023, as described in Section II, Paragraph 31 and 32 above. Respondent submitted the plan for  
22 meeting the new total residual chlorine effluent limits on March 6, 2023, approximately two months  
23 after it was due. This is a Class II violation pursuant to OAR 340-012-0055(2)(b). DEQ does not assess  
24 a civil penalty for this violation.

#### 25 IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

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



1           1. Pay a total civil penalty of \$8,337. The determinations of the civil penalties are attached as  
2 Exhibits 1, 2 and 3 and are incorporated as part of this Notice.

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

6           2. Within 180 days of this order becoming final by operation of law or on appeal, Respondent  
7 must submit to DEQ for review and comment a report by an Oregon-registered professional engineer or  
8 an Oregon-certified wastewater treatment plant operator identifying the causes of the BOD<sub>5</sub> and TSS  
9 violations cited in this Notice. The report must include a plan with a schedule for corrective actions,  
10 which may include modification to the inlet to the chlorine contact basin to reduce algae  
11 concentrations.

12           3. Within 30 days of receiving DEQ comments on the March 6, 2023, plan for meeting the  
13 new total residual chlorine effluent limits and the report required by Section IV, paragraph 2 above,  
14 Respondent must submit a revised plan and report that addresses DEQ comments.

15           4. Upon receipt of written notice from DEQ, Respondent must implement the corrective action  
16 schedule in the plan and report.

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

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

1 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
2 you may represent yourself. If you are a corporation, partnership, limited liability company,  
3 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
4 authorized representative, as set forth in OAR 137-003-0555.

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

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

16  
17

18  
19 3/16/2023   
20 Date Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

21  
22  
23  
24  
25  
26  
27

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 permit BOD<sub>5</sub> effluent limits in violation of ORS 468B.025(2).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) and 340-012-0145(4)(e).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(c)(i) because the receiving water diluted Respondent's discharge by a factor of 10 or more.
- 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(a)(F)(i) because Respondent's facility has 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 nine or more Class I equivalent violations as established in Case No. WQ/M-WR-2020-095.
- "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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. There were 36 occurrences of the violation as detailed in the Notice.
- "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 the actions necessary to comply with the limit, the 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 to arrive at a reasonable estimate of Respondent's avoided or delayed compliance costs.

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 x \$750) x (10 + 0 + 4 + 4 + 0)] + \$0  
= \$750 + (\$75 x 18) + \$0  
= \$750 + \$1,350 + \$0  
= \$2,100

EXHIBIT 2

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

- VIOLATION NO. 2 Failure to comply with permit TSS effluent limits in violation of ORS 468B.025(2).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) and 340-012-0145(4)(e).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(c)(i) because the receiving water diluted Respondent's discharge by a factor of 10 or more.
- 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(a)(F)(i) because Respondent's facility has 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 nine or more Class I equivalent violations as established in Case No. WQ/M-WR-2020-095.
- "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 more than six but less than 28 occurrences of the violation. As detailed in the Notice, there were 10 occurrences of the violation.
- "M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The TSS limits are express conditions of Respondent's Permit. By failing to take the actions necessary to comply with the limit, the 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 to arrive at a reasonable estimate of Respondent's avoided or delayed compliance costs.

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

$$\begin{aligned} &= \$750 + [(0.1 \times \$750) \times (10 + 0 + 3 + 4 + 0)] + \$0 \\ &= \$750 + (\$75 \times 17) + \$0 \\ &= \$750 + \$1,275 + \$0 \\ &= \$2,025 \end{aligned}$$

EXHIBIT 3

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

VIOLATION NO. 3 Failure to comply with monitoring requirements in Schedule B of the Permit in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(o) and 340-012-0145(4)(e).

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(a)(F)(i) because Respondent's facility has 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 nine or more Class I equivalent violations as established in Case No. WQ/M-WR-2020-095.

"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 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. The City failed to monitor effluent for bacteria during the weeks of May 30 and June 2021 and recycled water for TKN, nitrate+nitrite-N, ammonia and total phosphorus during the Spring 2021 quarter, for a total of three occurrences of the violation.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The monitoring requirements are express conditions of Respondent's Permit. By failing to take the actions necessary to conduct the monitoring, the 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 \$312. This is the amount Respondent gained by avoiding \$350 in analytical costs necessary to complete the monitoring. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (10 + 0 + 2 + 4 + 0)] + \$312 \\ &= \$1,500 + (\$150 \times 16) + \$312 \\ &= \$1,500 + \$2,400 + \$312 \\ &= \$4,212 \end{aligned}$$