



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 21, 2023

CERTIFIED MAIL: 7018 1830 0001 5906 2711

Oregon State University
c/o Rebecca Gose, General Counsel
630 Kerr Administration Building
Corvallis, OR 97331-2158

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-WR-2021-197

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$6,800 for violating the chlorine produced oxidant effluent limits in your wastewater permit for the Hatfield Marine Science Center (HSMC) in Newport, Oregon. Chlorine is highly toxic to fish and other aquatic life. Your exceedances of these limit created a risk of harm to aquatic life in Yaquina Bay.

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

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 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.

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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

Enclosure

cc: Jon Gasik, DEQ
Ranei Nomura, 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 OREGON STATE UNIVERSITY,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ/I-WR-2021-197

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 183 and 468B 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 the Hatfield Marine Science Center, located
13 at 2030 S. Marine Science Drive, Newport, Oregon (the facility).

14 2. At all relevant times, Respondent managed and disposed of wastewater from the facility
15 pursuant to a National Pollutant Discharge Elimination System Permit (the Permit) issued and
16 administered by DEQ.

17 3. The Permit authorized Respondent to construct, install, operate or modify a wastewater
18 collection, treatment, control and disposal system and to discharge to public waters adequately treated
19 wastewaters only in conformance with the requirements, limitations and conditions of the permit.

20 4. Schedule A, Condition 1.c limits the daily average concentration of chlorine produced
21 oxidants in the effluent Respondent discharges from Outfall 001b to 0.03 milligrams per liter (mg/L).

22 5. Respondent discharged effluent from its Outfall 001b with daily maximum
23 concentrations of chlorine produced oxidants in mg/L as follows: January 20, 2020 – 0.20; February
24 10, 2020 - 0.20; February 11, 2020 – 0.32; February 12, 2020 – 0.36; February 13, 2020 – 0.36; March
25 13, 2020 – 0.11; March 15, 2020 – 0.33; March 16, 2020 – 0.30; March 17, 2020 – 0.17; March 18,
26 2020 – 0.13; March 19, 2020 – 0.13; December 12, 2020 – 0.18 mg/L; December 24, 2020 – 0.14
27 mg/L; December 28, 2020 – 0.14; December 29 – 0.24; January 1, 2021 – 0.18; January 7, 2021 – 0.19;

1 January 8, 2021 – 0.14; January 11, 2021 – 0.29; January 15, 2022 – 0.17; January 17, 2022 – 0.11,
2 January 30, 2021 – 0.13; January 31, 2021 – 0.20, March 3, 2022 – 0.12.

3 6. Schedule F, Section D, Condition 6 of the Permit requires Respondent to submit reports
4 of any noncompliance with the Permit along with its monthly discharge monitoring reports.

5 7. Respondent did not report the chlorine produced oxidants described in this section with
6 its monthly discharge monitoring reports.

7 III. CONCLUSIONS

8 1. Respondent violated ORS 468B.025(2) by exceeding the Permit's effluent limit for chlorine
9 produced oxidants as described in Section II, Paragraphs 4-5, above. These are Class I violations,
10 according to OAR 340-012-0055(1)(I). DEQ assesses a \$6,800 civil penalty for these violations.

11 2. Respondent violated ORS 468B.025(2) by violating a condition of its Permit. Specifically,
12 Respondent failed to submit required noncompliance reports as described in Section II, Paragraphs 6 and
13 7, above. These are Class II violations pursuant to OAR 340-012-0055(2)(b). DEQ does not assess a
14 penalty for these violations.

15 IV. ORDER TO PAY CIVIL PENALTY

16 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
17 hereby ORDERED TO: Pay a total civil penalty of \$6,800. The determination of the civil penalty is
18 attached as Exhibit 1 and is incorporated as part of this Notice.

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

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

23 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
24 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
25 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
26 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
27 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for

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

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

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

21
22
23
24 3/21/2023
25 Date


24 
25 Kieran O'Donnell, Manager
26 Office of Compliance and Enforcement
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EXHIBIT 1

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

VIOLATION NO. 1 Violating the chlorine produced oxidants effluent limit in Schedule A of the Permit in violation of ORS 468B.025(2).

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

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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(ii) because Respondent has a Tier 2 industrial source NPDES permit.

"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 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"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 Respondent has no prior significant actions.

"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 was more than six but less than 28 occurrences of the violations. There were 24 occurrences of the violation as detailed in the Notice.

"M" is the mental state of the Respondent and receives a value of 4 because Respondent's conduct was negligent. The chlorine produced oxidants limit is an express condition of Respondent's Permit. By failing to take the actions necessary to comply with the limit, 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 as to what measures Respondent would have taken to prevent the violation to arrive at a reasonable estimate of avoided or delayed compliance costs.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 3 + 4 + 0)] + \$0
= \$4,000 + (\$400 x 7) + \$0
= \$4,000 + \$2,800 + \$0
= \$6,800