



# 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

June 27, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 2922

City of Albany  
c/o Sean Kidd, City Attorney  
333 Broadalbin Street, SW  
Albany, OR 97321

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-WR-2022-013

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$3,900 for violating your wastewater permit by failing to perform required wastewater monitoring and by exceeding limits on pollution in your effluent. Your permit requires you to monitor your wastewater so DEQ and the public can determine that you are complying with pollutant limits and operating your treatment system in a manner that is protective of human health and the environment. By exceeding effluent limits, you created a risk of harm to water quality and aquatic life.

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 black ink, appearing to read 'Kieran O'Donnell', with a long horizontal flourish extending to the right.

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Bradley Eagleson, 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 CITY OF ALBANY, ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. WQ/M-WR-2022-013

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. Respondent operates a municipal wastewater collection, treatment and disposal system  
13 as authorized by a National Pollutant Discharge Elimination System permit (the Permit) issued and  
14 authorized by DEQ.

15 2. The Permit authorizes Respondent to operate its wastewater collection, treatment and  
16 disposal system only in conformance with the conditions, requirements and limitations of the Permit

17 3. Schedule A, Condition 3 of the Permit limits the concentration of *E. coli* bacteria in any  
18 single sample of Respondent's effluent to 406 organisms per 100 milliliters (mL) of effluent.

19 4. Analysis of single samples of Respondent's effluent determined the concentration of *E.*  
20 *coli* bacteria in organisms per 100 mL as follows:

Sample Date	Concentration
March 27, 2017	920
December 23, 2019	>2,420
December 24, 2019	>2,420
December 25, 2019	>2,420
December 23, 2020	921

1	January 4, 2021	1,414
2	February 1, 2021	579
3	December 21, 2021	921
4	December 22, 2021	727
5	December 23, 2021	1,203
6	November 7, 2022	>2,420
7	December 27, 2022	>2,420

9           5.       Schedule A, Condition 3 of the Permit limits the concentration of *E. coli* bacteria in  
10 Respondent's discharged effluent to a monthly geometric mean of 126 organisms per 100 mL of  
11 effluent.

12           6.       In December 2022, Respondent discharged effluent with a monthly geometric mean  
13 concentration of *E. coli* bacteria of 130 organisms per 100 mL of effluent.

14           7.       Schedule B, Condition 1.b of the Permit requires Respondent to monitor its treatment  
15 plant influent for pH daily.

16           8.       Respondent did not monitor its treatment plant influent for pH 20 times between June  
17 16-30 and July 1-20, 2022.

18           9.       During the period May 1 to October 31, Schedule A, Condition 1.a(1) limits the  
19 concentration of total suspended solids (TSS) in Respondent's discharged effluent to a weekly average  
20 concentration of 30 milligrams per liter (mg/L).

21           10.      During the week of August 22, 2021, Respondent discharged effluent with a weekly  
22 average TSS concentration of 35 mg/L.

23           11.      During the period May 1 to October 31, Schedule A, Condition 1.a(1) limits the daily  
24 loading of TSS in Respondent's discharged effluent to 2,900 pounds.

25           12.      On August 25, 2021, Respondent discharged effluent with a TSS loading of 3,300  
26 pounds of TSS.

1 13. During the period November 1 to April 30, Schedule A, Condition 1.a(2) limits the  
2 weekly average loading of TSS in Respondent's discharged effluent to 5,500 pounds per day.

3 14. During the week of December 12, 2021, Respondent discharged effluent with a weekly  
4 average loading of 6,039 pounds per day.

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

8 16. On April 19, 2023, Respondent discharged approximately 100,000 gallons of untreated  
9 sewage from manholes located in Simpson and Bowman Parks in the city of Albany to the Willamette  
10 River.

### 11 III. CONCLUSIONS

12 1. The Respondent violated ORS 468B.025(2) by discharging effluent that contained *E.*  
13 *coli* in excess of the limits established in Schedule A of the Permit as described in Section II,  
14 Paragraphs 3-6, above. Those instances where Respondent exceeded the limit by a factor of five or  
15 more are Class II violations pursuant to OAR 340-012-0055(2)(a)(C). Those instances where  
16 Respondent exceeded the limit by a factor less than five are Class III violations pursuant to OAR 340-  
17 012-0055(3)(b)(C). DEQ assesses a \$3,900 civil penalty for these violations.

18 2. Respondent violated ORS 468B.025(2) by failing to conduct pH monitoring of its  
19 influent as required by Schedule B of its Permit, as described in Section II, Paragraphs 7 and 8, above.  
20 These are Class I violations pursuant to OAR 340-012-0055(1)(o). DEQ does not assess a civil penalty  
21 for these violations.

22 3. Respondent violated ORS 468B.025(2) by discharging effluent that contained TSS in  
23 excess of the limits established in Schedule A of the Permit as described in Section II, Paragraphs 9-14,  
24 above. These are Class III violations pursuant to OAR 340-012-0055(3)(b)(A). DEQ does not assess a  
25 civil penalty for these violations.

26 4. Respondent violated ORS 468.025(1)(b) by discharging a waste to waters of the state  
27 that reduced the quality of such waters below a water quality standard established by the Environmental

1 Quality Commission. On April 19, 2023, Respondent discharged approximately 100,000 gallons of  
2 untreated sewage to the Willamette River, waters of the state pursuant to ORS 468B.005(10) in  
3 violation of the water quality standard established at OAR 340-041-0009(3). This is a Class I violation  
4 pursuant to OAR 340-012-0055(1)(b). DEQ does not assess a civil penalty for this violation.

#### 5 IV. ORDER TO PAY CIVIL PENALTY

6 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
7 hereby ORDERED TO: Pay a total civil penalty of \$3,900. The determination of the civil penalty is  
8 attached as Exhibit 1 and is incorporated as part of this Notice.

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

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

13 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
14 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
15 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
16 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered  
17 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
18 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
19 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,** fax  
20 it to **503-229-6762** or email it to **[DEQappeals@deg.oregon.gov](mailto:DEQappeals@deg.oregon.gov)**. An administrative law judge  
21 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
22 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
23 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
24 you may represent yourself. If you are a corporation, partnership, limited liability company,  
25 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
26 authorized representative, as set forth in OAR 137-003-0555.

27 ///

1 Active duty Service members have a right to stay proceedings under the federal Service  
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
5 Department does not have a toll free telephone number.

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

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

6/27/2023  
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 Violating ORS 468B.025(2) by exceeding bacteria effluent limits established in Schedule A of the Permit.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(C) and OAR 340-012-0145(4)(e).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C) as Respondent's effluent was diluted by factor of 10 or more in the receiving stream.

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 II, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(E)(i) as Respondent's facility has 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(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 8 according to OAR 340-012-0145(2)(a). P is assigned an initial value of 10 because Respondent has prior significant actions consisting of nine or more Class I equivalent violations stemming from Case No. WQ/M-WR-2018-274. This value is reduced by 2 because the formal enforcement action in which prior significant actions were cited was issued more than three years before the date the most recent current violation occurred resulting in a final value of 8.
- "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 between 7 and 28 occurrences of the violation. There were 13 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 *E. coli* limit is an express requirement of Respondent's Permit. By failing to take the action 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 to arrive at a reasonable estimate of any avoided or delayed compliance costs.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$1,500 + [(0.1 \times \$1,500) \times (8 + 0 + 4 + 4 + 0)] + \$0$   
 $= \$1,500 + (\$150 \times 16) + \$0$   
 $= \$1,500 + \$2,400 + \$0$   
 $= \$3,900$