



# 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 1, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 2724

City of Coquille  
c/o Forrest Neuerburg, City Manager  
851 N. Central Blvd.  
Coquille, OR 97423

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-WR-2022-008

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$8,044 for violating your wastewater permit by failing to conduct required effluent monitoring and for exceeding total suspended solids limits in your effluent. Your permit requires you to monitor your effluent 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.

City of Coquille  
Case No. WQ/M-WR-2022-008  
Page 2

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: Andy Ullrich, 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 COQUILLE, ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. WQ/M-WR-2022-008

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 a municipal wastewater collection, treatment  
13 and disposal system authorized by a National Pollutant Discharge Elimination System Permit (the  
14 Permit) issued and administered 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 B, Condition 1 of the Permit requires Respondent to monitor its treatment  
18 plant influent and effluent for carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>) twice weekly.

19 4. Respondent failed to monitor its influent twice for CBOD<sub>5</sub> during the weeks of October  
20 18, 2020, and March 14, 2021, and its effluent twice for CBOD<sub>5</sub> during the weeks of February 7 and  
21 March 28, 2021.

22 5. During the period of November 1 to April 30, Schedule A, Condition 1.a.2 of the Permit  
23 limits the daily maximum mass load of total suspended solids (TSS) in Respondent's effluent to 500  
24 pounds (lbs).

25 6. Respondent discharged effluent with daily TSS loadings as follows:

26

Date	TSS Daily Loading	Percentage over Limit
March 31, 2020	560 lbs	12%

27

7. During the period of May 1 to October 31, Schedule A, Condition 1.a.1 of the Permit limits the daily maximum mass load of TSS in Respondent's effluent to 110 lbs.

8. Respondent discharged effluent with daily TSS loadings as follows:

Date	TSS Daily Loading	Percentage over Limit
May 10, 2022	169 lbs	54%
May 12 <sup>th</sup> , 2022	152 lbs	38%

9. During the period of May 1 to October 31, Schedule A, Condition 1.a.1 of the Permit limits the monthly average mass load of TSS in Respondent's effluent to 55 lbs/day.

10. Respondent discharged effluent with a monthly average TSS loading as follows:

Month	TSS Monthly Average Load	Percentage over Limit
May 2022	59 lbs/day	7%

11. During the period of November 1 to April 30, Schedule A, Condition 1.a.2 of the Permit limits the weekly average mass load of TSS in Respondent's effluent to 380 lbs/day.

12. Respondent discharged effluent with weekly average TSS loadings as follows:

Week of	TSS Weekly Average Load	Percentage over Limit
January 2, 2022	433 lbs/day	14%

13. During the period of May 1 to October 31, Schedule A, Condition 1.a.1 of the Permit limits the weekly average mass load of TSS in Respondent's effluent to 83 lbs/day.

14. Respondent discharged effluent with weekly average TSS loadings as follows:

Week of	TSS Weekly Average Load	Percentage over Limit
May 8, 2022	161 lbs/day	94%

15. During the period of May 1 to October 31, Schedule A, Condition 1.a.1 of the Permit limits the weekly average concentration of TSS in Respondent's effluent to 15 mg/L.

16. Respondent discharged effluent with weekly average TSS concentrations as follows:

Week of	TSS Weekly Average Concentration	Percentage over Limit
May 16, 2021	20 mg/L	33%

17. Schedule A, Condition 1.a.3 of the Permit requires Respondent to achieve a monthly average TSS removal efficiency for its effluent of 85%.

18. Respondent achieved monthly average TSS removal efficiencies as follows: December 2021 – 82% and January 2022 – 81%.

19. Schedule F, Condition D.6 of the Permit states “The permittee shall report all instances of noncompliance ... at the time monitoring reports are submitted. The report shall contain a: A description of the noncompliance and its cause; b: The period of noncompliance, including exact dates and times; c: The estimated time noncompliance is expected to continue if it has not been corrected; and d. Steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance.”

20. Respondent did not submit noncompliance reports to DEQ for the Permit effluent exceedances and uncompleted monitoring described in Paragraphs 3-18 above.

III. CONCLUSIONS

1. Respondent violated ORS 468B.025 by failing to conduct monitoring required by Schedule A of Permit, as described in Section II, Paragraphs 3-4 above. These are Class I violations, according to OAR 340-012-0055(1)(o). DEQ assesses a \$4,144 civil penalty for these violations.

2. Respondent violated ORS 468B.025(2) by exceeding TSS effluent limits in Schedule A of the Permit as described in Section II, Paragraphs 5-18 above. Exceedances of a TSS permit limit by 50% or more are Class I violations pursuant to OAR 340-012-0055(1)(k)(A). Exceedances of a TSS limit by 20% or more, but less than 50% of a permit limit are Class II violations pursuant to OAR 340-012-0055(2)(a)(A). Exceedances of a TSS limit by less than 20% are Class III violations pursuant to OAR 340-012-0055(3)(b)(A). DEQ assess a \$3,900 a civil penalty for these violations.

///  
///  
///

1 3. Respondent violated ORS 468B.025(2) when it failed to file noncompliance reports as required  
2 by Schedule F, Condition D.6 of the Permit as described in Section II, Paragraphs 19-20, above. These are  
3 Class II violations pursuant to OAR 340-012-0055(2)(b). DEQ does not assess a civil penalty for these  
4 violations.

5 IV. ORDER TO PAY CIVIL PENALTY

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

8 1. Pay a total civil penalty of \$8,044. The determinations of the civil penalties are attached as  
9 Exhibits 1 and 2 and are incorporated as part of this Notice.

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

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

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

6/1/2023  
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 failing to conduct CBOD<sub>5</sub> monitoring required by Schedule B of the Permit.
- 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 operates a municipal 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 according 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-WR-2019-299 and WQ/M-WR-2018-111.
- "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 was more than one but less than seven occurrences of the violation. Respondent failed to conduct required CBOD<sub>5</sub> during the weeks of October 18, 2020, and February 7, March 14 and March 28, 2021, for a total of four occurrences.
- "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 the Permit. By failing to take the actions necessary to ensure the monitoring was conducted, 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 \$244. This is the amount Respondent gained by avoiding spending \$300 to conduct CBOD<sub>5</sub> analysis of four effluent samples. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$1,500 + [(0.1 \times \$1,500) \times (10 + 0 + 2 + 4 + 0)] + \$244$   
 $= \$1,500 + (\$150 \times 16) + \$244$   
 $= \$1,500 + \$2,400 + \$244$   
 $= \$4,144$

EXHIBIT 2

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

- VIOLATION NO. 2 Violating ORS 468B.025(2) by exceeding TSS effluent limits established in the Permit.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) and OAR 340-012-0145(4)(e).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because the receiving stream flow at the time of the violation diluted Respondent's effluent discharge by 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(4)(a)(F)(i) because Respondent operates a municipal 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 according 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-WR-2019-299 and WQ/M-WR-2018-111.
- "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)(c) because there was more than one but less than seven occurrences of the violation. To arrive at a value for "O", the number of occurrences of the violation is divided by the number of occurrences assessed separate penalties. There were nine occurrences of the violation as detailed in the Notice. DEQ assesses separate penalties for two occurrences of the violation resulting in 4.5 occurrences of the violation per violation penalized.
- "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 effluent limits are express conditions of the Permit. By failing to take the actions necessary to comply with the

TSS effluent limits, 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 effort to arrive at a reasonable estimate of any avoided or delayed compliance costs.

SINGLE PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})]$   
 $= \$750 + [(0.1 \times \$750) \times (10 + 0 + 2 + 4 + 0)]$   
 $= \$750 + (\$75 \times 17)$   
 $= \$750 + \$1,200$   
 $= \$1,950$

DEQ assesses separate penalties for the two Class I occurrences of the violation.

TOTAL PENALTY CALCULATION:  $\text{Penalty} = \text{Single Penalty Calculation} \times \text{number of violations penalized} + \text{EB}$

$$\$1,950 \times 2 + 0 = \$3,900$$