



# 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 6, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 2748

City of Hood River  
c/o Abigail Elder, City Manager  
211 2nd Street  
Hood River, OR 97031

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-ER-2022-114

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$8,800 for violating Oregon law on August 1, 2022, by discharging raw sewage from your sewage collection system to Indian Creek. Raw sewage presents a significant public health risk because sewage contains bacteria, fungi, parasites, and viruses that can cause intestinal, lung, and other infections. Bacteria may cause diarrhea, fever, cramps, and sometimes vomiting, headache, weakness, or loss of appetite.

DEQ appreciates your efforts to minimize the impacts of the violation by cleaning the affected area and taking steps to prevent human contact. DEQ considered these efforts when determining the amount of civil penalty.

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>.

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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', written in a cursive style.

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:  
4 CITY OF HOOD RIVER,

5 Respondent.

) NOTICE OF CIVIL PENALTY  
) ASSESSMENT AND ORDER

) CASE NO. WQ/M-ER-2022-114

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. ORS 468B.050(1) states in relevant part: “without holding a permit from the Director of  
13 the Department of Environmental Quality or the State Department of Agriculture, which permit shall  
14 specify applicable effluent limitations, a person may not: ... (b) Construct, install, modify or operate  
15 any disposal system or part thereof or any extension or addition thereto.”

16 2. The City of Hood River operates a municipal wastewater collection, treatment and  
17 disposal system as authorized by a National Pollutant Discharge Elimination System Permit (the  
18 Permit) issued and administered by DEQ.

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

21 4. ORS 468B.025(1) states: “... no person shall: ... (b) Discharge any wastes into the  
22 waters of the state if the discharge reduces the quality of such waters below the water quality standards  
23 established by rule for such waters by the Environmental Quality Commission.”

24 5. ORS 468B.005(6) states that “sewage” means: “the water-carried human or animal  
25 waste from residences, buildings, industrial establishments or other places, together with such ground  
26 water infiltration and surface water as may be present.”

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

4 7. On August 1, 2022, Respondent discharged approximately 4,500 gallons of untreated  
5 sewage to Indian Creek from a manhole cover near 1730 College Way, Hood River, Oregon.

6 8. On August 4, 2022, Respondent discharged approximately 5,000 gallons of mixed  
7 potable water and raw sewage from a manhole at 3856 May Street, Hood River, Oregon, to the ground  
8 surface.

9 9. The Permit does not authorize the discharge of wastewater to ground surface.

### 10 III. CONCLUSIONS

11 1. Respondent violated ORS 468B.025(1)(b) by discharging a waste to waters of the state  
12 that reduced the quality of such waters below a water quality standard adopted by the Environmental  
13 Quality Commission. Specifically, Respondent discharged raw sewage to Indian Creek, a water of the  
14 state pursuant to ORS 468B.005(10), reducing the quality of Indian Creek below the water quality  
15 standard established in OAR 340-041-0009(3), as described in Section II, Paragraph 7, above. This is a  
16 Class I violation pursuant to OAR 340-012-0055(1)(b). DEQ assesses a \$8,800 civil penalty for this  
17 violation.

18 2. Respondent violated ORS 468B.025(2) by violating its Permit when it discharged  
19 wastewater to ground surface as described in Section II, Paragraphs 8 and 9, above. This is a Class II  
20 violation pursuant to OAR 340-012-0053(2). DEQ does not assess a civil penalty for this violation.

### 21 IV. ORDER TO PAY CIVIL PENALTY

22 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
23 hereby ORDERED TO: Pay a total civil penalty of \$8,800. The determination of the civil penalty is  
24 attached as Exhibit 1 and is incorporated as part of this Notice.

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

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

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

16 Active duty Service members have a right to stay proceedings under the federal Service  
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
20 Department does not have a toll free telephone number.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default  
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later  
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the  
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of  
2 proving a prima facie case.

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6/6/2023  
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 Discharging a waste that reduced the quality of state waters below a water quality standard established by the Environmental Quality Commission in violation of 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 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)(i) because Respondent operates a municipal sewage treatment facility with a permitted flow of two million or more, but less than five 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 stemming from case nos. WQ/M-ER-2016-100, WQ/M-ER-2017-207, WQ/M-ER-2019-099, WQ/M-ER-2020-074 and WQ/M-WR-2021-183.

"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.

"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. In failing to implement a sewer cleaning program sufficient to prevent the overflow, 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 -2 according to OAR 340-012-0145(6)(d) because Respondent took reasonable efforts to minimize the effects of the violation. Respondent promptly cleaned the ground in the affected area and closed a recreational trail and posted warning signs to minimize the risk of human contact.

"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 make another finding.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$4,000 + [(0.1 \times \$4,000) \times (10 + 0 + 0 + 4 + (-)2)] + \$0$   
 $= \$4,000 + (\$400 \times 12) + \$0$   
 $= \$4,000 + \$4,800 + \$0$   
 $= \$8,800$