



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

August 24, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4155

Dennis Anthony, Mayor
City of Haines
P.O. Box 208
Haines, OR 97833-0208

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-M-ER-2023-079

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the City of Haines (the City) a civil penalty of \$5,814 for violating the effluent limits and monitoring requirements set forth in the Water Pollution Control Facilities Permit No. 101375 (the Permit). Specifically, between October 2020 and May 2023, the City exceeded effluent limitations for *E. coli* four times, and between July 2021 and September 2022, the City failed to complete required monitoring 14 times.

DEQ issued this penalty because compliance with monitoring requirements is an essential condition of the Permit. The City's Permit requires wastewater monitoring so DEQ and the public can determine that the City is complying with pollutant limits and operating the treatment system in a manner that is protective of human health and the environment. By exceeding effluent limits, the City 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

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 Emily Knobbe at (971) 300-0770 or emily.knobbe@deq.oregon.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Kieran O'Donnell". The signature is fluid and cursive, with the first name "Kieran" written in a larger, more prominent script than the last name "O'Donnell".

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Anna Morgan-Hayes, DEQ, Bend
Mike Hiatt, 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 HAINES,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ-M-ER-2023-079

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 Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
10 011, 012, and 045.

11 II. FINDINGS OF FACT

- 12 1. Respondent operates a wastewater treatment system under Water Pollution Control
13 Facilities (WPCF) Permit No. 101375 (the Permit).
- 14 2. Pursuant to Schedule A.5.a of the Permit, the permittee is authorized to distribute
15 recycled water if it is treated and used according to the criteria listed in Table A1 of the Permit.
16 Pursuant to Table A1, *E. coli* bacteria may not exceed 406 organisms per 100 mL in any single sample.
- 17 3. Respondent reported the following single samples of *E. coli* bacteria:
18 a. 1410 cfu/100mL on October 21, 2020;
19 b. 488 cfu/100mL on June 30, 2021;
20 c. Greater than 2420 cfu/100mL on August 31, 2022; and
21 d. 1120 cfu/100mL on May 18, 2023.
- 22 4. Pursuant to Schedule B.4 and Table B3 of the Permit, the permittee must monitor *E. coli*
23 bacteria weekly.
- 24 5. Respondent failed to sample effluent recycled water for *E. coli* on the following
25 occasions:
26 a. Twice in July 2021;
27 b. Once in April 2022; and

1 c. Three times in July 2022.

2 6. Pursuant to Schedule B.2 and Table B1 of the Permit, the permittee must monitor the pH
3 of flow into the treatment system a minimum of two times per week.

4 7. In September 2022, Respondent failed to sample influent water for pH on eight
5 occasions.

6 III. CONCLUSIONS

7 1. Respondent has violated ORS 468B.025(2) and Schedule A.5.a of the Permit by violating a
8 technology based effluent limitation. Specifically, on August 31, 2022, Respondent reported a single
9 sample of *E. coli* bacteria of greater than 2420 cfu/100mL, 5.96 times the limit of 408 cfu/100mL, as
10 described in Section II paragraph 3 above. Respondent also reported *E. coli* bacteria exceedances of
11 1410 cfu/100mL on October 21, 2020, 488 cfu/100mL on June 2021, and 1120 cfu/100mL on May 18,
12 2023, as described in Section II. These are Class I violations, according to OAR 340-012-0055(1)(k) and
13 pursuant to OAR 340-012-0145(4)(e). DEQ hereby assesses a \$2,700 civil penalty for this violation.

14 2. Respondent has violated ORS 468B.025(2) and Schedule B of the Permit by failing to
15 comply with minimum monitoring and reporting requirements. Specifically, Respondent failed to sample
16 effluent recycled water for *E. coli* a total of six times: twice in July 2021, once in April 2022, and three
17 times in July 2022, as described in Section II paragraph 8 above. Additionally, Respondent failed to
18 sample influent water pH eight times, as described in Section II paragraph 10 above. These are Class I
19 violations, according to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$3,114 civil penalty for these
20 violations.

21 IV. ORDER TO PAY CIVIL PENALTY

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

24 1. Pay a total civil penalty of \$5,814. The determination of the civil penalties are attached as
25 Exhibits 1-2 and are incorporated as part of this Notice.

26 If you do not file a request for hearing as set forth in Section V below, your check or money
27 order must be made payable to "**Department of Environmental Quality**" and sent to the **DEQ**,

1 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

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

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

22 If you fail to file a timely request for hearing, the Notice will become a final order by default
23 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
24 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
25 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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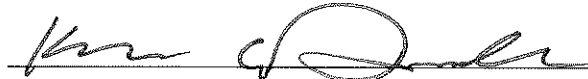

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

- VIOLATION NO. 1 Violated ORS 468B.025(2) and Schedule A.5.a of the Permit by violating a technology-based effluent limitation.
- CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(k)(D) and OAR 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(4)(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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent has two Class II violations in case no. WQ/D-ER-2019-125.
- "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. Each day of violation is a separate occurrence. Respondent had four *E. coli* bacteria exceedances: one in October 2020, one in June 2021, one in August 2022, and one in May 2023.
- "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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. 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 the violation occurring.

"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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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 (2 + 0 + 2 + 4 + 0)] + \0
 $= \$1,500 + (\$150 \times 8) + \$0$
 $= \$1,500 + \$1,200 + \$0$
 $= \$2,700$

EXHIBIT 2

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

VIOLATION NO. 2 Violated ORS 468B.025(2) and Schedule B of the Permit by failing to comply with monitoring requirements.

CLASSIFICATION: These are Class I violations 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).

"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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent has two Class II violations in case no. WQ/D-ER-2019-125.

"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 from seven to 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent failed to sample effluent recycled water for *E. coli* on six occasions and influent water pH on eight occasions, for a total of 14 missed sampling events, as described 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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a 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 \$264. This is the amount Respondent gained by avoiding spending \$25 per test for *E. coli* testing of 6 samples and \$13 per test for pH testing of 8 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 x \$1,500) x (2 + 0 + 3 + 4 + 0)] + \$264
= \$1,500 + (\$150 x 9) + \$264
= \$1,500 + \$1,350 + \$264
= \$3,114