



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
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August 11, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4063

Sue Lawrence
Public Works Director
City of Rainier
P.O. Box 100
Rainier, OR 97048

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-M-NWR-2023-091

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the City of Rainier a civil penalty of \$31,550 for violations of the National Pollutant Discharge Elimination System (NPDES) permit issued to the City of Rainier's wastewater treatment plant. Specifically, between December 2022–June 2023, the City exceeded its permit limits for BOD₅, TSS, and bacteria on numerous occasions and on two occasions in January 2023, the City discharged untreated sewage to waters of the state.

DEQ issued this penalty because the City of Rainier continues to have significant ongoing issues maintaining compliance with its NPDES permit. In the six years immediately preceding the violations alleged in the attached Notice, the City of Rainier experienced over 100 Class I violations at its wastewater treatment plant that resulted in three prior enforcement actions: Case Nos. WQ/M-NWR-2017-228, WQ/M-NWR-2020-179, and WQ/M-NWR-2022-044. Compliance with the effluent limitations set forth in the City's NPDES permit is essential to protect water quality and discharges of untreated sewage pose a significant threat to public health and the environment.

On July 6, 2023, DEQ conducted an inspection of the treatment plant. While no violations were identified during the inspection, a lack of regular maintenance and housekeeping was apparent throughout the facility which may be contributing to the effluent violations. Included in Section IV of the enclosed Notice is an order requiring you to address the maintenance and housekeeping issues within 30 days of the order becoming final by operation of law or on appeal. Additionally, within 180 days of the order becoming final by operation of law or on appeal, the order requires you to repair or replace the dissolved oxygen meters in the aeration channels and add an alarm to the polymer feed system.

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 Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Randall Bailey, DEQ Northwest Region
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF: CITY OF RAINIER Respondent.)))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. WQ/M-NWR-2023-091
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I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapters 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 045.

II. FINDINGS OF FACT

1. On August 1, 2012, the Department of Environmental Quality (DEQ) issued National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit Number 102571 (the Permit) to the Respondent. The Permit authorizes the Respondent to construct, install, modify or operate a wastewater treatment control and disposal facility (Facility or Facilities) and discharge adequately treated wastewaters into the Columbia River, a water of the state, in conformance with the requirements, limitations and conditions set forth in the Permit. The Permit expired on July 31, 2017, but has been administratively extended because Respondent made a timely application for renewal.

2. Pursuant to Condition 1 of Schedule A of the Permit, Respondent must meet the following waste discharge limitations:

a. Outfall Number 001 (May 1 – October 31):

<u>Parameter</u>	AVERAGE EFFLUENT CONCENTRATIONS		EFFLUENT LOADINGS		
	<u>Monthly</u>	<u>Weekly</u>	<u>Monthly Average lbs/day</u>	<u>Weekly Average lbs/day</u>	<u>Daily Maximum Lbs</u>
BOD	10 mg/L	15 mg/L	83	130	170
TSS	10 mg/L	15 mg/L	83	130	170

b. Outfall Number 001 (November 1 – April 30):

<u>Parameter</u>	<u>AVERAGE EFFLUENT CONCENTRATIONS</u>		<u>EFFLUENT LOADINGS</u>		
	<u>Monthly</u>	<u>Weekly</u>	<u>Monthly Average lbs/day</u>	<u>Weekly Average lbs/day</u>	<u>Daily Maximum Lbs</u>
BOD	10 mg/L	15 mg/L	130	190	250
TSS	10 mg/L	15 mg/L	130	190	250

c. Other parameters (year-round):

- i. *E.coli* bacteria: may not exceed 126 organisms per 100 mL monthly geometric mean. No single sample shall exceed 406 organisms per 100 mL.
- ii. BOD₅ and TSS Removal Efficiency: may not be less than 85% monthly average for BOD₅ and 85% monthly average for TSS.

3. From 2022 through June 2023, Respondent discharged effluent with the following values for

BOD₅:

December 27, 2022	The reported daily maximum BOD ₅ loading of 255 lbs/day exceeded the permit limit by 2%.	This is a Class III violation pursuant to OAR 340-012-0055(3)(b).
April 9-15, 2023	The reported weekly BOD ₅ concentration of 16 mg/L exceeded the permit limit by 7%.	This is a Class III violation pursuant to OAR 340-012-0055(3)(b).

4. From December 2022 through June 2023, Respondent discharged effluent with the following values for TSS:

December 2022	The reported monthly average TSS concentration of 19 mg/L exceeded the permit limit by 90%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).
December 2022	The reported monthly average TSS loading of 195 lbs/day exceeded the permit limit by 50%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).

1	December 27, 2022	The reported daily TSS loading of 1,061 lb TSS/day exceeded the permit limit by 324%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).
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3			
4	December 25-31, 2022	The reported weekly average TSS loading of 676 lb TSS/day exceeded the permit limit by 250%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).
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6			
7	December 25-31, 2022	The reported weekly average TSS concentration of 48 mg/L exceeded the permit limit by 220%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).
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9			
10	January 2023	The reported monthly average TSS concentration of 12 mg/L exceeded the permit limit by 20%.	This is Class II violation pursuant to OAR 340-012-0055(2)(a).
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12			
13	February 2023	The reported monthly average TSS concentration of 14 mg/L exceeded the permit limit by 40%.	This is Class II violation pursuant to OAR 340-012-0055(2)(a).
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15			
16	February 19-25, 2023	The reported weekly average TSS concentration of 23 mg/L exceeded the permit limit by 53%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).
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18			
19	April 12, 2023	The reported daily TSS loading of 558 lbs/day exceeded the permit limit by 123%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).
20			
21			
22	April 13, 2023	The reported daily TSS loading of 660 lbs/day exceeded the permit limit by 164%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).
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24			
25	April 2-8, 2023	The reported weekly TSS concentration of 16 mg/L exceeded the permit limit by 7%.	This is a Class III violation pursuant to OAR 340-012-0055(3)(b).
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27			

1	April 9-15, 2023	The reported weekly TSS loading of 609 lbs/day exceeded the permit limit by 221%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).
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3			
4	April 9-15, 2023	The reported weekly TSS concentration of 84 mg/L exceeded the permit limit by 460%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).
5			
6			
7	April 2023	The reported monthly average TSS percent removal minimum of 83.1% exceeded the permit limit by 13%.	This is a Class III violation pursuant to OAR 340-012-0055(3)(b).
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9			
10	April 2023	The reported monthly average TSS loading of 194 lbs/day exceeded the permit limit by 49%.	This is Class II violation pursuant to OAR 340-012-0055(2)(a).
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12			
13	April 2023	The reported monthly average TSS concentration of 30 mg/L exceeded the permit limit by 200%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).
14			
15			
16	May 2-8, 2023	The reported weekly average TSS concentration of 16 mg/L exceeded the permit limit by 7%.	This is a Class III violation pursuant to OAR 340-012-0055(3)(b).
17			
18			
19	May 14-20, 2023	The reported weekly average TSS concentration of 21 mg/L exceeded the permit limit by 40%.	This is Class II violation pursuant to OAR 340-012-0055(2)(a).
20			
21			
22	May 21-27, 2023	The reported weekly average TSS concentration of 38 mg/L exceeded the permit limit by 153%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).
23			
24			
25	May 28-June 3,	The reported weekly average TSS concentration of 37 mg/L exceeded the permit limit by 147%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).
26	2023		
27			

1 2 3	May 2023	The reported monthly average TSS concentration of 25 mg/L exceeded the permit limit by 150%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).
4 5 6	June 4-10, 2023	The reported weekly average TSS concentration of 17 mg/L exceeded the permit limit by 13%.	This is a Class III violation pursuant to OAR 340-012-0055(3)(b).
7 8 9	June 11-17, 2023	The reported weekly average TSS concentration of 36 mg/L exceeded the permit limit by 140%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).
10 11 12	June 18-24, 2023	The reported weekly average TSS concentration of 37 mg/L exceeded the permit limit by 147%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).
13 14 15	June 25-July 1, 2023	The reported weekly average TSS concentration of 16 mg/L exceeded the permit limit by 7%.	This is a Class III violation pursuant to OAR 340-012-0055(3)(b).
16 17 18	June 2023	The reported monthly average TSS concentration of 27 mg/L exceeded the permit limit by 170%.	This is a Class I violation pursuant to OAR 340-012-0055(1)(k).

19 5. In December 2022, Respondent reported a single sample *E.coli* bacteria concentration of 2,420
20 organisms per 100 mL which is over five times the single sample permit limit of 406 organisms per 100
21 mL.

22 6. On January 3, 2023, Respondent's disinfection equipment failed causing a discharge of
23 undisinfectated sewage to the Columbia River.

24 7. On January 15, 2023, Respondent reported a Sanitary Sewer Overflow (SSO) that resulted in
25 approximately 20,000 gallons of untreated, raw sewage discharging to Fox Creek. Fox Creek is a
26 tributary of the Columbia River and is a water of the state pursuant to ORS 468B.005(10). Respondent
27

1 reported that the SSO event was caused by a garbage bag that had been illegally placed in the line by a
2 third party.

3 8. Pursuant to ORS 468B.025(1)(b), no person shall discharge any wastes into the waters of the
4 state if the discharge reduces the quality of such waters below the water quality standards adopted by
5 rule.

6 9. DEQ's water quality standards for bacteria in OAR 340-041-0009(3) prohibit the discharge of
7 sewage to waters of the State, unless such sewage has been treated in a manner approved by DEQ or
8 otherwise allowed under DEQ's regulations.

9 10. Pursuant to Schedule F, Condition B6.b. of the Permit, overflows of wastewater are prohibited.
10 "Overflow" is defined in the Permit as "any spill, release or diversion of sewage" whether or not the
11 sewage reaches a water of the state.

12 11. Pursuant to Schedule F, Condition A1 of the Permit, Respondent must comply with all
13 conditions of the Permit. Failure to comply with any permit condition is a violation of ORS 468B.025.

14 12. Pursuant to ORS 468B.025(2), no person shall violate the conditions of any waste discharge
15 permit issued under ORS 468B.050.

16 13. DEQ inspected the Facility on July 6, 2023. No violations were identified during the inspection;
17 however, an absence of regular housekeeping and maintenance was apparent throughout the Facility.
18 Specifically, excessive scum and biological growth was present throughout the Facility, including on
19 the clarifier launders, weirs, aeration channels, UV disinfection channel, filters, and effluent sample
20 lines. This buildup may be contributing to the effluent violations noted in Paragraphs 3 and 4 above.

21 III. CONCLUSIONS

22 1. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the Permit
23 limit for BOD₅. Specifically, on two occasions Respondent exceeded the Permit limit for BOD₅ by less
24 than 20%. These are Class III violations pursuant to OAR 340-012-0055(3)(b)(A). DEQ hereby assesses
25 a \$650 civil penalty for these violations.

26 2. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the Permit
27 limit for TSS a total of 26 times. Specifically:

- a. On 17 occasions Respondent exceeded the TBEL for TSS by 50% or more. These are Class I violations pursuant to OAR 340-012-0055(1)(k)(A);
- b. On four occasions Respondent exceeded the TBEL for TSS by 20% or more but less than 50%. These are Class II violations pursuant to OAR 340-012-0055(2)(a)(A);
- c. On five occasions Respondent exceeded the TBEL for TSS by less than 20%. These are Class III violations pursuant to OAR 340-012-0055(3)(b)(A).

DEQ hereby assesses a \$27,300 civil penalty for these violations.

3. Respondent violated ORS 468B.025(1)(b) and (2) by discharging untreated sewage to waters of the state in violation of both the Permit and the narrative water quality standard found in OAR 340-041-0009(3). Specifically, on January 3, 2023, Respondent discharged undisinfecting sewage to the Columbia River. Additionally, on January 15, 2023, Respondent experienced an SSO event that resulted in approximately 20,000 gallons of untreated, raw sewage discharging to Fox Creek. These are Class I violations pursuant to OAR 340-012-0055(1)(b). DEQ hereby assesses a \$3,600 civil penalty for these violations.

4. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the *E.coli* bacteria limit set forth in the Permit. Specifically, in December 2022, Respondent reported an *E.coli* sample of 2,420 organisms per 100 mL, which was over five times the permit limit for a single sample. This is a Class II violation according to OAR 340-012-0055(2)(a)(C). DEQ has not assessed a civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

- 1. Pay a total civil penalty of \$31,550. The determination of the civil penalty is attached as Exhibits 1–3 and is incorporated as part of this Notice.

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

- 1
- 2 2. Within 30 days of this order becoming final by operation of law or on appeal:
- 3 a. Thoroughly clean all areas of the Facility where excessive scum and biological growth
- 4 has been allowed to accumulate, including but not limited to, the clarifier launders,
- 5 weirs, aeration channels, UV disinfection channel, and effluent sample line;
- 6 b. Clean filters to restore performance throughout the facility;
- 7 c. Significantly reduce the amount of sewage sludge stored on site; and
- 8 d. Investigate and address why the overflow valve at the filters activates so frequently.
- 9 3. Within 180 days of this order becoming final by operation of law or on appeal:
- 10 a. Repair or replace the dissolved oxygen meters in the aeration channels; and
- 11 b. Add an alarm to the polymer feed system to alert the plant operator if the system fails.

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 exhibits, 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@deq.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 Active duty Service members have a right to stay proceedings under the federal Service

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

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

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8/11/2023

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

- VIOLATIONS: Respondent violated ORS 468B.025(2) by twice exceeding the BOD₅ limits set forth in Schedule A of the Permit.
- CLASSIFICATION: These are Class III violations pursuant to OAR 340-012-0055(3)(b)(A) because Respondent exceeded the Permit limit by less than 20 percent.
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by 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 \$250 for a Class III violation in the matrix listed in OAR 340-012-0140(4)(b)(C) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent's facility has a permitted flow of less than two million gallons per day.
- "P" is whether Respondent has any prior significant actions (PSAs), 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 because Respondent has more than 100 prior Class I violations stemming from Case Nos. WQ/M-NWR-2017-228, WQ/M-NWR-2020-179, and WQ/M-NWR-2022-044. According to OAR 340-012-0145(2)(b), the value of "P" will not exceed 10.
- "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 violated the BOD₅ limits twice.
- "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 BOD₅ limits are express conditions of Respondent's permit. By failing to take necessary actions to comply with the limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk a permit violation would occur.

"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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$250 + [(0.1 \times \$250) \times (10 + 0 + 2 + 4 + 0)] + \$0 \\ &= \$250 + [\$25 \times 16] + \$0 \\ &= \$250 + \$400 + \$0 \\ &= \$650 \end{aligned}$$

EXHIBIT 2

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

VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the TSS limits set forth in Schedule A.1.a. of the Permit a total of 26 times.

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(k)(A) because Respondent exceeded the Permit limits by 50 percent or more.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by 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 \$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's facility has a permitted flow of less than two million gallons per day.

"P" is whether Respondent has any prior significant actions (PSAs), 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 because Respondent has more than 100 prior Class I violations stemming from Case Nos. WQ/M-NWR-2017-228, WQ/M-NWR-2020-179, and WQ/M-NWR-2022-044. According to OAR 340-012-0145(2)(b), the value of "P" will not exceed 10.

"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). Respondent violated the TSS limits a total of 26 times, DEQ is assessing a separate penalty only for 14 Class I violations. To arrive at "O", DEQ divides the total number of violations by the number of violations penalized. Therefore, each assessed penalty represents 1.9 occurrences for an "O" factor value of 2.

"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 limits are express conditions of Respondent's permit. By failing to take necessary actions to comply with the

limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk a permit violation would occur.

"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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$750 + [(0.1 x \$750) x (10 + 0 + 2 + 4 + 0)] + \$0
= \$750 + [\$75 x 16] + \$0
= \$750 + \$1,200 + \$0
= \$1,950

ORS 468.140(2) states that each day of violation constitutes a separate occurrence of the offense. DEQ is assessing penalties only for 14 Class I violations. The single occurrence violation penalty is therefore multiplied by 14 for a final civil penalty of \$27,300.

EXHIBIT 3

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

VIOLATIONS: Respondent violated ORS 468B.025(1)(b) and (2) by discharging untreated sewage to waters of the state.

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 \$1,500 for a Class I moderate 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 two million gallons per day.

"P" is whether Respondent has any prior significant actions (PSAs), 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 because Respondent has more than 100 prior Class I violations stemming from Case Nos. WQ/M-NWR-2017-228, WQ/M-NWR-2020-179, and WQ/M-NWR-2022-044. According to OAR 340-012-0145(2)(b), the value of "P" will not exceed 10.

"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 one occurrence of the violation. Because the January 15, 2023, SSO event was caused by an illegal act of a third-party, DEQ is assessing a penalty only for the January 3, 2023, release of undisinfected sewage.

"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. By failing to install adequate alarms to notify the plant operator that the disinfection equipment had failed, Respondent failed to exercise reasonable care to avoid the foreseeable risk a violation would occur.

"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 (10 + 0 + 0 + 4 + 0)] + \0
 $= \$1,500 + [\$150 \times 14] + \$0$
 $= \$1,500 + \$2,100 + \$0$
 $= \$3,600$