



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 3, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6007 15

Western Royal Inn, LLC
c/o Cindy M. Burbach, Registered Agent
26611 S Highway 213
Mulino, OR 97042

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-NP-NWR-2023-058

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Western Royal Inn, LLC a civil penalty of \$12,000 for discharging untreated sewage into the Dougherty Slough from a broken sewer line at the Western Royal Inn located at 1125 N. Main Avenue, Highway 101, in Tillamook.

DEQ issued this penalty because Oregon's water quality standards prohibit the discharge of untreated sewage to waters of the state. Discharges of untreated sewage pose a significant threat to public health and the environment. The Western Royal's failure to report the broken line to the City of Tillamook and failure to take steps to immediately repair the break resulted in the discharge of an estimated 10,000 gallons of sewage over the course of three days.

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>.

Western Royal Inn, LLC
Case No. WQ-NP-NWR-2023-058
Page 2

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,

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: Mike Pinney, DEQ Northwest Region
Accounting, DEQ

6. Respondent did not notify the City or DEQ of the break—the City discovered the break by chance on March 8, 2023.

7. Respondent did not immediately take steps to stop the discharge or to repair the break. Rather, Respondent connected a hose to the broken lateral pipe and directed the discharging sewage under a building at the Property and onto the grounds of the Property.

8. As a result of the broken lateral pipe, sewage discharged into at least two storm drains: one located in the parking lot of the Property and another located on Highway 101. Both storm drains discharge to the Dougherty Slough, which flows to Tillamook Bay.

9. Both the Dougherty Slough and Tillamook Bay are waters of the state pursuant to ORS 468B.005(10).

10. *E. Coli* bacteria are commonly associated with the presence of untreated sewage. The City conducted *E. Coli* bacteria testing of the Dougherty Slough both upstream and downstream of the Property from March 8, 2023, through March 14, 2023. The results indicated that untreated sewage had entered Dougherty Slough:

Date	Time	E.Coli Level (MPN/100ml)	Location	Tide
March 8, 2023	4:23pm	2,419.6	Downstream	Outgoing
March 9, 2023	2:30pm	298.7	Upstream	Incoming
March 9, 2023	2:35pm	272.3	Downstream	Incoming
March 10, 2023	1:08pm	59.8	Upstream	Incoming
March 10, 2023	1:13pm	77.6	Downstream	Incoming
March 11, 2023	12:18pm	62.7	Upstream	Incoming
March 11, 2023	12:22pm	106.7	Downstream	Incoming
March 12, 2023	11:42am	387.3	Upstream	Outgoing
March 12, 2023	11:56am	816.4	Downstream	Outgoing
March 13, 2023	2:18pm	61.3	Upstream	Outgoing
March 13, 2023	2:22pm	93.5	Downstream	Outgoing

1 Class I violation according to OAR 340-012-0055(1)(c). DEQ has not assessed a civil penalty for this
2 violation.

3 IV. ORDER TO PAY CIVIL PENALTY

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

6 1. Pay a total civil penalty of \$12,000. The determination of the civil penalty is attached as
7 Exhibit 1 and is incorporated as part of this Notice.

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

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

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

26 Active duty Service members have a right to stay proceedings under the federal Service
27 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-

1 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
2 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
3 Department does not have a toll free telephone number.

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

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8/3/2023
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: Respondent violated ORS 468B.025(1)(b) and OAR 340-041-0009(3) by discharging untreated sewage into the waters of the state thereby reducing the quality of such waters below water quality standards.

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D).

"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 0 according to OAR 340-012-0145(2)(a), because Respondent has had no prior significant actions.

"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 no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(a) because there was more than one but less than seven occurrences of the violation. The violation continued for three days. Each day of violation with a duration of more than one day is considered a separate occurrence. The overflow event began on March 6, 2023, and ended on March 9, 2023.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. By failing to maintain the lateral line so as to prevent a break, failing to immediately report the break in the lateral line to the City, and rerouting the discharge rather than taking steps to immediately stop the discharge, Respondent consciously disregarded a substantial and unjustifiable risk that the sewage would reach waters of the state.

"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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e).

"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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 2 + 8 + 0)] + \$0
= \$6,000 + [\$600 x 10] + \$0
= \$6,000 + \$6,000 + \$0
= \$12,000