



# 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

September 19, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4209

City of Ontario  
c/o Dan Cummings, City Manager  
444 SW 4<sup>th</sup> Street  
Ontario, OR 97914

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-ER-2022-141

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the City of Ontario a civil penalty of \$11,200 for the September 3, 2022, discharge of approximately 400,000 gallons of wastewater into the Malheur River without a permit authorizing such discharge and for causing a violation of the acute toxicity water quality standard for chlorine in the river. The city also violated the pH effluent limit in its wastewater disposal permit, but DEQ did not assess a penalty for this issue.

The city is not permitted to discharge treated wastewater to the Malheur River during the period May 1 to October 31 because flows in the river are too low to assimilate the pollutants in the wastewater without potential adverse effects to water quality. Chlorine is highly toxic to fish and other aquatic life. By discharging wastewater that caused a violation of the chlorine water quality standard in the Malheur River, the city created a risk of harm to these environmental receptors.

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.

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". The signature is fluid and cursive, with the first name being more prominent.

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Anna Morgan-Hayes, 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 ONTARIO,

5 Respondent.

) NOTICE OF CIVIL PENALTY  
) ASSESSMENT AND ORDER

) CASE NO. WQ/M-ER-2022-141

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 wastewater collection, treatment and  
13 disposal system in Ontario, Oregon, as authorized by a National Pollutant Discharge Elimination  
14 System (NPDES) (the Permit) issued and administered by DEQ.

15 2. The Permit authorizes Respondent to operate a wastewater collection, treatment, and  
16 disposal system and to discharge treated wastewater to waters of the state only in conformity with the  
17 requirements, limits, and conditions set forth therein.

18 3. The Permit does not authorize Respondent to discharge wastewater to waters of the state  
19 during the period of May 1 to October 31.

20 4. On September 3, 2022, beginning at approximately 9:45 am and continuing until 11:30  
21 am, Respondent discharged an estimated 400,000 gallons of non-dechlorinated wastewater effluent to  
22 the Malheur River.

23 5. Respondent's effluent discharged to the Malheur River on September 3, 2022, contained  
24 suspended solids, constituents that create biochemical oxygen demand in water bodies and bacteria.

25 6. The wastewater Respondent discharged to the Malheur River on September 3, 2022,  
26 contained chlorine at a concentration of 0.8 milligrams per liter (mg/L).

1 7. OAR 340-041-8033, Table 30, establishes a chlorine acute toxicity water quality  
2 standard for freshwater aquatic life of 0.019 mg/L one-hour average concentration.

3 8. Schedule A of the Permit limits pH in Respondent's effluent to a range between 6.0 and  
4 9.0 standard units (SU).

5 9. On April 4, 2022, Respondent discharged effluent with a pH of 9.1 SU.

### 6 III. CONCLUSIONS

7 1. Respondent violated ORS 468B.050(1)(a) by discharging suspended solids, bacteria and  
8 wastewater constituents causing biochemical oxygen demand, wastes as defined in ORS 468B.005(9),  
9 to the Malheur River, a water of the state, pursuant to ORS 468B.005(10), without a permit authorizing  
10 such discharge, as described in Section II, paragraphs 3-5, above. This is a Class I violation pursuant to  
11 OAR 340-012-0055(1)(d). DEQ assesses a \$5,600 penalty for this violation.

12 2. Respondent violated ORS 468B.025(1)(b) by discharging chlorine, a waste pursuant to ORS  
13 468B.005(9), that caused an exceedance of the acute toxicity water quality standard for chlorine in the  
14 Malheur River, a water of the state pursuant to ORS 468B.005(10), as described in Section II,  
15 Paragraphs 4, 6 and 7. This is a Class I violation pursuant to OAR 340-012-0055(1)(b). DEQ assesses  
16 a \$5,600 civil penalty for this violation.

17 3. Respondent violated ORS 468B.025(2) by discharging effluent with a pH that exceeded the  
18 limit established in Schedule A of the Permit, as described in Section II, Paragraphs 8-9, above. This is  
19 a Class III violation pursuant to OAR 340-012-0055(3)(b)(B). DEQ does not assess a civil penalty for  
20 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 \$11,200. The determinations of the civil penalties are  
24 attached as Exhibits 1 and 2 and are 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 exhibits, 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**. 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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9/19/2023



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 wastes to waters of the state without a permit authorizing such discharge in violation of ORS 468B.050(1)(a).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(d).
- 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's facility has a permitted flow of 2 million or more, but less than 5 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 0 according to OAR 340-012-0145(2)(a)(A), because Respondent has 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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Each day of violation is a separate occurrence. The violation occurred on one day, September 3, 2022.
- "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. By failing to appropriately inspect and maintain the pipe whose failure caused the unpermitted discharge, 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 because DEQ has insufficient information to arrive at a reasonable estimate of Respondent's avoided or delayed compliance costs..

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 0 + 4 + 0)] + \$0$   
=  $\$4,000 + (\$400 \times 4) + \$0$   
=  $\$4,000 + \$1,600 + \$0$   
=  $\$5,600$



EXHIBIT 2

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

VIOLATION NO. 2 Reducing the quality of public waters below a water quality standard established by the Environmental Quality Commission in violation of ORS 468B.025(1)(b).

CLASSIFICATION: Violating a water quality standard 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's facility has a permitted flow of 2 million or more, but less than 5 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 0 according to OAR 340-012-0145(2)(a)(A) because there are 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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Each day of violation is a separate occurrence. The violation occurred on one day, September 3, 2022.

"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.

A burst pipe caused Respondent to discharge 400,000 gallons of chlorinated wastewater to the Malheur River. By failing to properly inspect and maintain the pipe to prevent failure,

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 there is insufficient information on which DEQ can arrive at a reasonable estimate of avoided or delayed compliance costs.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 0 + 4 + 0)] + \$0$   
 $= \$4,000 + (\$400 \times 4) + \$0$   
 $= \$4,000 + \$1,600 + \$0$   
 $= \$5,600$