



# 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 21, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4117

Westport Sewer Service District  
c/o Dan Keranen  
Clatsop County Public Works Department  
1100 Olney Ave.  
Astoria, OR 97103

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-NWR-2023-018

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a total civil penalty of \$5,925 for water quality violations at your wastewater treatment facility in Westport. Specifically, DEQ cited you for exceeding the *E. coli* bacteria effluent limits in your wastewater discharge permit and for failing to submit to DEQ a plan for facility improvements and maintenance activities to prevent future *E. coli* exceedances required by a previous DEQ order. In addition, DEQ cited you, without penalty, for violating BOD<sub>5</sub> effluent limits on two occasions.

DEQ issued this penalty because compliance with the terms of your permit is essential to protecting the quality of state waters. Effluent limits are set to protect aquatic life and human health. *E. coli* is bacteria that indicates fecal contamination with the possible presence of pathogens and the risk of disease. The discharge of effluent with high levels of *E. coli* poses a risk to human health. Additionally, your failure to develop and implement a plan to prevent *E. coli* exceedances as required by DEQ resulted in repeated violations.

Included in Section IV of the enclosed Notice is an order requiring you to submit a plan for facility improvements and maintenance activities that will prevent future *E. coli* exceedances within three months.

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 Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Mark Bentz, Northwest Region, DEQ  
Tiffany Yelton-Bram, Northwest Region, DEQ  
Accounting, DEQ







1 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
2 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
3 it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge  
4 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
5 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
6 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
7 you may represent yourself. If you are a corporation, partnership, limited liability company,  
8 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
9 authorized representative, as set forth in OAR 137-003-0555.

10 Active-duty Service members have a right to stay proceedings under the federal Service  
11 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
12 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
13 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
14 Department does not have a toll-free telephone number.

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

21  
22  
23  
24 9/21/2023

25 Date


26   
27 Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

EXHIBIT NO. 1

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

VIOLATION 1: Violating the technology-based effluent limitations (TBELs) for *E. coli* bacteria in Schedule A, Condition 1(b) of its NPDES permit, in violation of ORS 468B.025(2).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(k)(C) because Respondent violated TBELs for bacteria in an NPDES permit as a result of an inoperative disinfection system where there was no disinfection.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C), because the dilution of the exceedances was 10 or more.

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 has an NPDES permit for a municipal wastewater treatment facility with 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. Respondent had eight Class I violations, one Class II violation and eight Class III violations in Case No. WQ/M-NWR-2016-165, and three Class II and nineteen Class III violations in Case No. WQ/M-NWR-2022-019, which receives a total value of 24 according to OAR 340-012-0145(2)(a)(B)-(D). However, according to OAR 340-012-0145(1)(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 were more than one but less than seven occurrences of the violation. Respondent exceeded the TBEL for bacteria for single samples on three days and exceeded the monthly log mean in July, August, and September 2022, which is a total of six occurrences. Pursuant to OAR 340-012-0145(4)(e), DEQ has assessed one penalty for multiple occurrences, and has used the highest classification and magnitude applicable to any of the occurrences.

"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. Respondent had previous *E. coli* bacteria exceedances that were caused by problems with its UV treatment system, and previously received enforcement for these violations. In Case No. WQ/M-NWR-2022-019, DEQ required Respondent to submit a plan for facility improvements and maintenance activities to prevent future *E. coli* exceedances, but Respondent failed to comply with this requirement or to adequately fix the problems with its UV treatment system. By failing to take these steps, Respondent failed to take reasonable care to avoid a foreseeable risk that it would again violate the *E. coli* limits in its permit.

"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) or (6)(g).

"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 there is insufficient information on which to make an estimate of Respondent's economic benefit, if any.

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

$$\begin{aligned} &= \$750 + [(0.1 \times \$750) \times (10 + 0 + 3 + 4 + 0)] + \$0 \\ &= \$750 + [\$75 \times 17] + \$0 \\ &= \$750 + \$1,275 + \$0 \\ &= \$2,025 \end{aligned}$$



EXHIBIT NO. 2

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

VIOLATION 3: Violating a DEQ order by failing to submit a plan for facility improvements and maintenance activities that will prevent future *E. coli* exceedances, in violation of ORS 468.140(1)(c).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).

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 has an NPDES permit for a municipal wastewater treatment facility with 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. Respondent had eight Class I violations, one Class II violation and eight Class III violations in Case No. WQ/M-NWR-2016-165, and three Class II and nineteen Class III violations in Case No. WQ/M-NWR-2022-019, which receives a total value of 24 according to OAR 340-012-0145(2)(a)(B)-(D). However, according to OAR 340-012-0145(1)(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 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. According to the Order in Case No. WQ/M-NWR-2022-019, the plan was due to DEQ on June 22, 2022. DEQ subsequently granted an extension request until April 30, 2023. Respondent did not submit the plan by that deadline, and has not submitted the plan as of the date of this Notice. The duration of the violation is approximately five months.

- "M" is the mental state of the Respondent and receives a value of 0 according to OAR 340-012-0145(5)(a) because there is insufficient information on which to base a finding under paragraphs (5)(b) through (5)(e).
- "C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because the respondent did not address the violation as described in paragraphs (6)(a) through (6)(e), and the facts do not support a finding under paragraph (6)(f).
- "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 there is insufficient information on which to make an estimate of Respondent's economic benefit, if any.

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

$$= \$1,500 + [(0.1 \times \$1,500) \times (10 + 0 + 4 + 0 + 2)] + \$0$$

$$= \$1,500 + [\$150 \times 16] + \$0$$

$$= \$1,500 + \$2,400 + \$0$$

$$= \$3,900$$