

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

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.

Westport Sewer Service District Case No. WQ/M-NWR-2023-018 Page 2

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. <u>Please review and refer to it when discussing this case with DEQ</u>.

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	BEFORE THE ENVIRONMENTAL QUALITY COMMISSION					
2	OF THE STATE OF OREGON					
3						
4	IN THE MATTER OF WESTPORT SEWER SERVICE DISTRICT	i (	NOTICE OF CIVIL ASSESSMENT AN			
5		Respondent. )	CASE NO. WQ/M-1	NWR-2023-018		
6						
7	I. AUTHORITY					
8	The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment					
9	and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,					
10	ORS Chapters 183 and 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 01					
11	and 045.					
12	II. FINDINGS OF FACT					
13	1. Respondent operates a wastewater treatment and collection system located at 91291					
14	Westport Boat Ramp Road in Westport, Clatsop County, Oregon (the Facility).					
15	2. On September 18, 2019, DEQ issued National Pollutant Discharge Elimination System					
16	Waste Discharge Permit No. 101520 (the Permit) to Respondent. The Permit allows Respondent to					
17	discharge treated wastewater from the Facility to the Westport Slough, waters of the state, in					
18	conformance with the requirements, limits and conditions set forth in the Permit. The Permit was in					
19	effect at all material times.					
20	3. Schedule A, Condition 1(b), Table A1 of the Permit contains the following technology-					
21	based effluent limitations (TBELs) for <i>E. coli</i> bacteria: 126 organisms per 100 milliliters (mL) for the					
22	monthly log mean and 406 organisms per 100 mL for a single sample.  4. Respondent reported the following bacterial concentrations in its effluent discharge:					
23						
24	Date	Permit Effluent Limit (organisms/100mL)	Reported Value (organisms/100mL)	Percentage over Permit Effluent Limit		
25	July 13, 2022	406, daily maximum	435	7%		
26	July 27, 2022	406, daily maximum	2420	496%		

126, monthly log mean

418

July 2022

231%

21 | 22 |

27 ////

////

////

August 2022	126, monthly log mean	177	40%
September 8, 2022	406, daily maximum	2420	496%
September 2022	126, monthly log mean	143.9	14%

- 5. The *E. coli* analysis method used at the Facility has a maximum detection limit of approximately 2419-2420 organisms.
- 6. Schedule A, Condition 1(a) of the Permit contains the following TBELs for BOD<sub>5</sub> for April 1 through October 31: monthly average concentration of 20 mg/L and weekly average concentration of 30 mg/L.
- 7. Respondent reported a monthly average concentration of 21 mg/L for August 2022, and a weekly average concentration of 36 mg/L for BOD<sub>5</sub> for the week of August 7, 2022.
- 8. On April 12, 2022, DEQ issued a Notice of Civil Penalty Assessment and Order in Case No. WQ/NWR-M-2022-019 (the 2022 Order). The 2022 Order required Respondent to "submit a plan for facility improvements and maintenance activities that will prevent future *E. coli* exceedances" to DEQ within thirty (30) days of becoming final.
  - 9. The 2022 Order became final on May 23, 2022.
- 10. As of the date of this Notice, Respondent has not submitted to DEQ a plan as required in the 2022 Order.

#### III. CONCLUSIONS

1. On six occasions in July, August, and September 2022, Respondent violated the TBELs for *E. coli* bacteria in Schedule A, Condition 1(b) of its Permit, in violation of ORS 468B.025(2), as described in Section II, Paragraphs 1-5 above. These violations include two (2) Class I violations according to OAR 340-012-0055(1)(k)(C), and four (4) Class III violations according to OAR 340-012-0055(3)(b)(C). DEQ hereby assesses a \$2,025 civil penalty for these violations.

- 2. In August 2022, Respondent violated the TBEL for BOD<sub>5</sub> in Schedule A, Condition 1(a) of its Permit, in violation of ORS 468B.025(2), as described in Section II, Paragraphs 6-7 above. These are Class III violations according to OAR 340-012-0055(3)(b). DEQ has not assessed a civil penalty for these violations.
- 3. Respondent has violated 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 the 2022 Order as described in Section II, Paragraphs 8-10 above. Respondent is subject to civil penalties for violating a DEQ order, pursuant to ORS 468.140(1)(c). This is a Class I violation according to OAR 340-012-0053(1)(a). DEQ hereby assesses a \$3,900 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:

Pay a total civil penalty of \$5,925. The determination of the civil penalty is attached as Exhibit Nos. 1 and 2, which are 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 "State Treasurer, State of Oregon" and sent to: DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

2. Within three months of the date of this Notice, submit a plan for facility improvements and maintenance activities that will prevent future *E. coli* exceedances. Submit the plan to Mark Bentz at DEQ via email at: mark.bentz@deq.oregon.gov.

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

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing within 20 calendar days from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for

further information about requests for hearing.) You must send your request to: <b>DEQ</b> , <b>Office of</b>				
Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232, fa				
it to 503-229-6762 or email it to <u>DEQappeals@deq.oregon.gov</u> . An administrative law judge				
employed by the Office of Administrative Hearings will conduct the hearing, according to ORS				
Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be				
represented by an attorney at the hearing, however you are not required to be. If you are an individual				
you may represent yourself. If you are a corporation, partnership, limited liability company,				
unincorporated association, trust or government body, you must be represented by an attorney or a dul				
authorized representative, as set forth in OAR 137-003-0555.				
Active-duty Service members have a right to stay proceedings under the federal Service				
Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-				
452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed				
Forces Legal Assistance Office through <a href="http://legalassistance.law.af,mil">http://legalassistance.law.af,mil</a> . The Oregon Military				
Department does not have a toll-free telephone number.				
If you fail to file a timely request for hearing, the Notice will become a final order by default				
without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later				
withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the				
hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates				
the relevant portions of its files, including information submitted by you, as the record for purposes of				
proving a prima facie case.				
9/21/2023 for affect				
Date Kieran O'Donnell, Manager Office of Compliance and Enforcement				

26

27

#### EXHIBIT NO. 1

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

<u>VIOLATION 1:</u> 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.

<u>CIVIL PENALTY FORMULA</u>: 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.

<u>PENALTY CALCULATION</u>: Penalty =  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$ 

- $= $750 + [(0.1 \times $750) \times (10 + 0 + 3 + 4 + 0)] + $0$
- $= \$750 + [\$75 \times 17] + \$0$
- = \$750 + \$1,275 + \$0
- =\$2.025

#### EXHIBIT NO. 2

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

<u>VIOLATION 3:</u> 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).

<u>CLASSIFICATION</u>: 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.

<u>CIVIL PENALTY FORMULA</u>: 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: Penalty = BP + 
$$[(0.1 \times BP) \times (P + H + O + M + C)]$$
 + 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$