



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

November 7, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6012 48

FormFactor, Inc.
c/o United Corporate Services, Inc.
7185 SW Sandburg Street, Suite 110
Portland, OR 97223

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-NWR-2023-120

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued FormFactor, Inc. a civil penalty of \$7,800 for discharging waste without a permit into a water of the state. Specifically, on May 29, 2023, FormFactor, Inc. discharged process cooling water into a storm drain that flows to Fanno Creek and Little Scott Lake.

DEQ issued this penalty because the unpermitted discharge of wastes into waters of the state can have a significant negative impact on water quality and the process cooling water discharged by FormFactor, Inc. contained products that are known to be harmful to aquatic life.

DEQ appreciates your efforts to correct the system leak that led to the discharge and to ensure future leaks do not occur. DEQ considered these efforts in calculating the civil penalty.

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 your 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,

A handwritten signature in black ink, appearing to read 'Kieran O'Donnell', with a long horizontal flourish extending to the right.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Mark Bruch, FormFactor (via email to Mark.Bruch@formfactor.com)
Mark Bentz, DEQ NWR
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
FORMFACTOR, INC.)
Respondent.)
NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER
CASE NO. WQ/I-NWR-2023-120

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 Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 045.

II. FINDINGS OF FACT

1. Respondent operates a facility located at 9100 SW Gemini Drive in Beaverton, Oregon (the Facility).
2. The Facility is located across the street from Fanno Creek and Little Scott Lake, both of which are waters of the state pursuant to ORS 468B.005(10).
3. On May 29, 2023, Respondent reported to the Oregon Emergency Response System (OERS) that an equipment failure occurred at the Facility which resulted in the release of approximately 4,250 gallons of process cooling water. The discharge entered storm drains at the Facility which discharged to Fanno Creek.
4. The discharge consisted of approximately 590 gallons of Propylene glycol, 2.5 gallons of CETAMINE F4000, 3 gallons of Biotrol 114, and 3,654.5 gallons of domestic water.
5. The Material Safety Data Sheet (MSDS) for CETAMINE F4000 indicates that it is “[t]oxic to aquatic life with long lasting effects.”
6. The MSDS for Biotrol indicates that it is “[v]ery toxic to aquatic life with long lasting effects.”

1 7. Respondent visually inspected and photographed Fanno Creek and Little Scott Lake
2 from May 29, 2023, through June 6, 2023. Respondent recorded no observable impacts to either
3 waterbody during those inspections.

4 8. Respondent repaired the system leak that led to the release, contracted to remove the
5 standing liquid from the affected storm drain, and increased the frequency of equipment inspections to
6 more quickly identify leaks. Longer term, Respondent intends to add water flow sensors on its domestic
7 water feed to continuously monitor flow and more quickly identify leaks.

8 9. "Wastes" is defined in ORS 468B.005(9) as "sewage, industrial wastes, and all other
9 liquid, gaseous, solid, radioactive or other substances which will or may cause pollution or tend to
10 cause pollution of any waters of the state."

11 10. "Pollution" is defined in ORS 468B.005(5) as "such alteration of the physical, chemical,
12 or biological properties of any waters of the state, including change in temperature, taste, color,
13 turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other
14 substance into any waters of the state, which will or tends to, either by itself or in connection with any
15 other substance, create a public nuisance or which will or tends to render such waters harmful,
16 detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial,
17 agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other
18 aquatic life or the habitat thereof."

19 11. Pursuant to ORS 468B.050(1)(a), no person may discharge any wastes into the waters of
20 the state from any industrial or commercial establishment or activity or any disposal system without a
21 permit.

22 III. CONCLUSIONS

23 1. Respondent violated ORS 468B.050(1)(a) by discharging wastes into a water of the state
24 without a permit, as described in Section II, Paragraphs 3–6 above. This is a Class I violation pursuant
25 to OAR 340-012-0055(1)(c). DEQ hereby assesses a \$7,800 civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY

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

4 1. Pay a total civil penalty of \$7,800. The determination of the civil penalty is attached as Exhibit
5 1 and is incorporated as part of this Notice.

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

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

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

24 Active duty Service members have a right to stay proceedings under the federal Service
25 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
26 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
27 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military

1 Department does not have a toll free telephone number.

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

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11/7/2023

Date


Kieran O'Donnell, Manager
Office of Compliance and Enforcement

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EXHIBIT 1

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

VIOLATION: Respondent violated ORS 468B.050(1)(a) by discharging wastes into a water of the state without a permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(c).

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)(D) because Respondent violated ORS 468B.050(1)(a).

"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) because the Respondent has no PSAs.

"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 on May 29, 2023.

"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 more regularly inspect its equipment, Respondent failed to take reasonable care to avoid the foreseeable risk a leak would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(f) because Respondent made reasonable efforts to ensure the violation would not be repeated by repairing the system leak that led to the release and increasing the frequency of equipment inspections.

"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 \times \$6,000) \times (0 + 0 + 0 + 4 + -1)] + \0
= $\$6,000 + (\$600 \times 3) + \$0$
= $\$6,000 + \$1,800 + \$0$
= $\$7,800$