



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
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TTY 711

November 9, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4339

City of Klamath Falls
c/o Chris Claymore
1200 South Spring Street
Klamath Falls, OR 97601

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-M-ER-2023-072

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the City of Klamath Falls (the City) a civil penalty of \$1,500 for violations of the National Pollutant Discharge Elimination System (NPDES) permit issued to the City's wastewater treatment plant. Specifically, between December 2022–July 2023, the City exceeded its permit limits for BOD₅, six times, discharged untreated sewage from an unapproved discharge point where it was likely to be carried to waters of the state, failed to complete required monitoring, and failed to submit a timely facility plan.

DEQ issued this penalty because compliance with the effluent limitations and monitoring requirements set forth in the City's NPDES permit is essential to protecting water quality and discharges of untreated sewage pose a significant threat to public health and the environment.

DEQ appreciates your efforts to ensure the effluent violations are not repeated by reprogramming and testing the backup generator to eliminate future failures, adding another clarifier, and lowering the waste activated sludge rate to help manage higher flow events. DEQ considered these efforts when determining the amount of 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 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 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: Justin Sterger, DEQ Eastern Region
Mike Hiatt, DEQ Eastern Region WQ Manager
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF:

CITY OF KLAMATH FALLS

Respondent.

NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER

CASE NO. WQ/M-ER-2023-072

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

II. FINDINGS OF FACT

1. On October 14, 2020, the Department of Environmental Quality (DEQ) issued National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit Number 100701 (the Permit) to the Respondent. The Permit authorizes the Respondent to operate the City of Klamath Falls Wastewater Treatment Plant and Reclamation Facility located at 1200 South Spring Street in Klamath Falls, Oregon (the Facility) and to discharge treated wastewater into the Klamath River, a water of the state, in conformance with the requirements, limitations and conditions set forth in the Permit. The Permit was modified by DEQ on August 4, 2022.

2. Schedule A of the Permit authorizes Respondent to discharge wastewater from a single outfall: Outfall 001.

3. Pursuant to Condition 1 of Schedule A of the Permit, from November 1 through April 30 of each year, Respondent must meet the following waste discharge limitations for BOD₅ from Outfall 001:

Parameter	AVERAGE EFFLUENT CONCENTRATIONS		EFFLUENT LOADINGS		
	Monthly	Weekly	Monthly Average lbs/day	Weekly Average lbs/day	Daily Maximum Lbs
BOD	30 mg/L	45 mg/L	1,500	2,250	3,000

4. From December 2022 through February 2023, Respondent exceeded the BOD₅ limits in the

Permit as follows:

December 4-10, 2022	The reported weekly BOD ₅ concentration of 63 mg/L exceeded the permit limit by 40%.	This is Class II violation pursuant to OAR 340-012-0055(2)(a).
December 2022	The reported monthly average BOD ₅ concentration of 44 mg/L exceeded the permit limit by 47%.	This is Class II violation pursuant to OAR 340-012-0055(2)(a).
February 2023	The reported monthly average BOD ₅ concentration of 32 mg/L exceeded the permit limit by 7%.	This is a Class III violation pursuant to OAR 340-012-0055(3)(b).

5. Pursuant to Condition 1 of Schedule A of the Permit, from May 1 to October 31 each year, Respondent must meet the following waste discharge limitations for BOD₅ from Outfall 001:

Parameter	AVERAGE EFFLUENT CONCENTRATIONS		EFFLUENT LOADINGS		
	Monthly	Weekly	Monthly Average lbs/day	Weekly Average lbs/day	Daily Maximum Lbs
BOD	20 mg/L	30 mg/L	580	870	1,160

6. In June and July 2023, Respondent exceeded the BOD₅ limits in the permit as follows:

June 2023	The reported monthly average BOD ₅ loading of 628 lbs/day exceeded the permit limit by 8%.	This is a Class III violation pursuant to OAR 340-012-0055(3)(b).
June 2023	The reported monthly average BOD ₅ concentration of 23 mg/L exceeded the permit limit by 15%.	This is a Class III violation pursuant to OAR 340-012-0055(3)(b).
July 2023	The reported monthly average BOD ₅ concentration of 24 mg/L exceeded the permit limit by 20%.	This is Class II violation pursuant to OAR 340-012-0055(2)(a).

1 7. The December 2022 BOD₅ exceedances were caused by a high flow event combined with a
2 power outage during which the Facility's backup generator failed. Respondent has since reprogrammed
3 and tested the generator to eliminate future failures. Additionally, Respondent has added another
4 clarifier and lowered the waste activated sludge (WAS) rate to help manage higher flow events.

5 8. Pursuant to Schedule B, Table B5 of the Permit, on a quarterly basis Respondent must complete
6 pretreatment monitoring for several listed chemicals on three consecutive days between Monday and
7 Friday, inclusive. During the 4th quarter of 2022, the Facility staff collected samples on only two
8 consecutive days; the third sample was not collected. The Permit does not include any effluent limits or
9 benchmarks for the missed parameters.

10 9. Pursuant to Schedule B.f. of the Permit, Respondent must develop and implement a written
11 Quality Assurance Plan that conforms to the requirements of 40 C.F.R. § 136.7. Respondent's March
12 15, 2023, BOD analysis failed Quality Assurance / Quality Control (QA/QC) requirements for blank
13 dilution water used in conducting the analysis. As a result, per DEQ's NetDMR submittal guidance, the
14 results were reported but not included in the Facility's calculations. Due to the QA/QC failure, DEQ
15 was unable to evaluate Respondent's compliance with the BOD limits during the relevant reporting
16 period.

17 10. Pursuant to Schedule C, Table C2 of the of the Permit, by October 31, 2023, Respondent was
18 required to "[c]omplete a Facility Plan that selects options for improvements to the treatment facility to
19 comply with the mercury, ammonia, and phosphorus final effluent limits and submit the Facility Plan to
20 DEQ for review and approval." On August 8, 2023, Respondent submitted a permit modification
21 request to DEQ to extend this deadline.

22 11. On April 4, 2023, Respondent experienced an overflow event from a manhole located near 1900
23 Esplanade Avenue in Klamath Falls. Approximately 2,500 gallons of untreated sewage spilled into the
24 gutter plate of the road due to a blockage in the mainline. The overflow occurred approximately 500
25 feet from the A Canal; however, no sewage was reported discharged to the canal or to storm drains
26 leading to Lake Ewauna. Respondent promptly responded to the overflow by cleaning the area with
27 fresh water and utilizing a vac truck. Respondent also disinfected the area with a bleach/water solution.

1 12. Pursuant to Schedule F, Condition B6 of the Permit, “overflow is defined as “any spill, release
2 or diversion of sewage” whether or not the sewage reaches a water of the state.

3 13. Pursuant to ORS 468B.025(1)(a), no person shall “cause pollution of any waters of the state or
4 place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried
5 to waters of the state by any means.”

6 14. The definition of “water” or “waters of the state” in ORS 468B.005(10) includes, but is not
7 limited to, canals and all “bodies of surface or underground waters, natural or artificial”

8 15. Pursuant to Schedule F, Condition A1 of the Permit, Respondent must comply with all
9 conditions of the Permit. Failure to comply with any permit condition is a violation of ORS 468B.025.

10 16. Pursuant to ORS 468B.025(2), no person shall violate the conditions of any waste discharge
11 permit issued under ORS 468B.050.

12 III. CONCLUSIONS

13 1. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the Permit
14 limit for BOD₅ on six occasions. Specifically, three times the Respondent exceeded the Permit limit for
15 BOD₅ by 20% or more but less than 50%; and on three occasions Respondent exceeded the Permit for
16 BOD₅ by less than 20%. The exceedances of 20% or more are Class II violations pursuant to OAR 340-
17 012-0055(2)(a). DEQ hereby assesses a \$1,500 civil penalty for these violations.

18 2. Respondent violated ORS 468B.025(1) and (2) by discharging waste in a location not approved
19 by the Permit where it was likely to be carried to a water of the state. Specifically, on April 4, 2023,
20 Respondent experienced an overflow event that discharged 2,500 gallons of untreated sewage from an
21 unauthorized discharge point approximately 500 feet from the A Canal, a water of the state. This is a
22 Class II violation pursuant to OAR 340-012-0055(2)(c). DEQ has not assessed a civil penalty for this
23 violation.

24 3. Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to complete
25 pretreatment monitoring sampling on three consecutive days, as described in Section II, Paragraph 6
26 above. This is a Class I violation pursuant to OAR 340-012-0055(1)(o). DEQ has not assessed a civil
27 penalty for this violation.

1 4. Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to follow Quality
2 Assurance / Quality Control requirements for blank dilution water, as described in Section II, Paragraph 7
3 above. This is a Class II violation pursuant to OAR 340-012-0055(2)(d). DEQ has not assessed a civil
4 penalty for this violation.

5 5. Respondent violated ORS 468B.025(2) and Schedule C of the Permit by failing to submit the
6 Facility Plan described in Section II, Paragraph 10 above to DEQ by October 31, 2023. Although
7 Respondent submitted a permit modification request to DEQ before the expiration date, the request was
8 submitted with inadequate notice for DEQ to complete the permit modification process. This is a Class II
9 violation pursuant to OAR 340-012-0055(2)(b). DEQ has not assessed a civil penalty for this violation.

10 IV. ORDER TO PAY CIVIL PENALTY

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

13 1. Pay a total civil penalty of \$1,500. The determination of the civil penalty is attached as Exhibit
14 1 and is incorporated as part of this Notice.

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

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

19 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
20 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
21 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
22 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
23 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
24 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
25 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
26 it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge
27 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS

1 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
2 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
3 you may represent yourself. If you are a corporation, partnership, limited liability company,
4 unincorporated association, trust or government body, you must be represented by an attorney or a duly
5 authorized representative, as set forth in OAR 137-003-0555.

6 Active duty Service members have a right to stay proceedings under the federal Service
7 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
8 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
9 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
10 Department does not have a toll free telephone number.

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

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20 11/9/2023
21 Date


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21 Kieran O'Donnell, Manager
22 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

- VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the BOD₅ limits set forth in Schedule A of the Permit six times.
- CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0055(2)(a)(A) because Respondent exceeded the Permit limit by 20 percent or more but less than 50 percent.
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving stream.
- 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 \$1,000 for a Class II violation in the matrix listed in OAR 340-012-0140(3)(b)(B) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent's facility has a permitted flow of two million or more, but less than five 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 0 according to OAR 340-012-0145(2) because Respondent has had no PSAs in the prior ten years.
- "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)(b) because there was more than one but less than seven occurrences of the violation. Respondent violated the BOD₅ limits six times.
- "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. The BOD₅ limits are express conditions of Respondent's permit. By failing to take necessary actions to comply with the limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk a permit violation 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)(e) because the Respondent made reasonable efforts to ensure that the violation would not be repeated by reprogramming and testing the backup

generator to eliminate future failures, adding another clarifier, and lowering the WAS rate to help manage higher flow events.

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

$$\begin{aligned} &= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 2 + 4 + -1)] + \$0 \\ &= \$1,000 + [\$100 \times 5] + \$0 \\ &= \$1,000 + \$500 + \$0 \\ &= \$1,500 \end{aligned}$$