



# 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 21, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6012 86

WPC 59th, LLC  
Attn: Steven Klein  
c/o Kidder Mathews  
101 SW Main St., Ste 1200  
Portland, OR 97204

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/NP-NWR-2023-123

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued WPC 59th, LLC a civil penalty of \$7,800 for discharging waste without a permit into a water of the state. Specifically, because of a blocked sewer line, laundry water was discharged from your property located at 6800 NE 59th Place in Portland into a storm drain that flows to the Columbia Slough.

DEQ issued this penalty because the unpermitted discharge of wastes into waters of the state can have a significant negative impact on water quality. Specifically, soap and detergents can harm aquatic life by damaging the protective mucus layers on fish, damaging gills, and reducing the oxygen levels in the water. Phosphates in detergents can also cause freshwater algal blooms.

DEQ appreciates your efforts to ensure the violation does not happen again by hiring a contractor to investigate and clear the blockage. 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](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 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,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Janet Coffman, Norris & Stevens (via email to [JanetC@norris-stevens.com](mailto:JanetC@norris-stevens.com))  
Mark Bentz, DEQ NWR  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3		)	
4	IN THE MATTER OF:	)	NOTICE OF CIVIL PENALTY
5	WPC 59TH, LLC	)	ASSESSMENT AND ORDER
6	Respondent.	)	CASE NO. WQ/NP-NWR-2023-123

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, ORS 468.126 through 468.140,  
10 ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions  
11 011, 012, and 045.

12 II. FINDINGS OF FACT

- 13 1. Respondent owns a commercial building located at 6800 NE 59th Pl. in Portland,
- 14 Oregon (the Property).
- 15 2. On June 1, 2023, DEQ conducted a site visit of the Property. At that time, a dried white,
- 16 crusty, papery residue was visible leading from a small hole in the asphalt outside the building
- 17 downslope towards a storm drain.
- 18 3. The storm drain discharges to the Columbia Slough, a water of the state pursuant to ORS
- 19 468B.005(10).
- 20 4. The property management company Respondent has retained to oversee the Property
- 21 confirmed on July 21, 2023, that a blocked sewer line caused wastewater from a tenant’s laundry
- 22 operations to surface through a hole in the asphalt behind the Property from which it flowed to the
- 23 storm drain.
- 24 5. During the site visit, DEQ spoke with other tenants at the Property who described
- 25 similar wastewater backup issues in their units.
- 26 6. The property management company hired a contractor to investigate the cause of the
- 27 overflow. The contractor excavated the pipe and cleared the blockage.

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

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

12 9. Soap and detergents can harm aquatic life by damaging the protective mucus layers on  
13 fish, damaging gills, and reducing the oxygen levels in the water. Phosphates in detergents can also  
14 cause freshwater algal blooms.

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

### 18 III. CONCLUSIONS

19 1. Respondent violated ORS 468B.050(1)(a) by discharging wastes into a water of the state  
20 without a permit, as described in Section II, Paragraphs 2–4 above. This is a Class I violation pursuant  
21 to OAR 340-012-0055(1)(c). DEQ hereby assesses a \$7,800 civil penalty for this violation.

### 22 IV. ORDER TO PAY CIVIL PENALTY

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

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

27 \\\

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

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

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

19           Active duty Service members have a right to stay proceedings under the federal Service  
20 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
21 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
22 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
23 Department does not have a toll free telephone number.

24           If you fail to file a timely request for hearing, the Notice will become a final order by default  
25 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later  
26 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the  
27 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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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11/21/2023  
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: 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 is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).

"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 maintain its sewer lines, Respondent failed to take reasonable care to avoid the foreseeable risk that a backup 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 hiring a contractor to investigate and correct the cause of the backup.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 4 + -1)] + \$0 \\ &= \$6,000 + (\$600 \times 3) + \$0 \\ &= \$6,000 + \$1,800 + \$0 \\ &= \$7,800 \end{aligned}$$