Oregon
Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
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May 14, 2024

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City of Gervais
c/o Roger Brown, Interim City Manager
PO Box 329
Gervais, OR 97026

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-WR-2023-067

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $1,275 for exceeding effluent limits for biochemical oxygen demand in your wastewater discharge permit. Permit effluent limits are set at levels to ensure that pollutants in the city's wastewater discharge to the Pudding River does not impair water quality.

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 Jeff Bachman at 503-229-5950 or toll free in Oregon at 800-452-4011, extension 5950.

Sincerely,

Rebecca J Puskas

Becka Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Brenda Kuiken, DEQ
Ranei Nomura, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: CITY OF GERVAIS, Respondent.	))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. WQ/M-WR-2023-067

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 and 012.

II. FINDINGS OF FACT

1. At all relevant times, Respondent owned and operated a municipal wastewater collection, treatment and disposal system as authorized by a National Pollutant Discharge Elimination System Permit (Permit) issued and administered by DEQ.

2. The Permit authorized Respondent to construct, install, modify, or operate a wastewater collection, treatment, control and disposal system and discharge to public waters adequately treated wastewaters only in conformance with all the requirements, limitations, and conditions of the Permit. Respondent's facility discharges to the Pudding River.

3. Schedule A, Condition 1.a(2) limits the biochemical oxygen demand (BOD_5) in Respondent's discharged effluent during the period May 1 to October 31 to a monthly average loading of 110 pounds per day (ppd).

4. Respondent discharged effluent with the following monthly average BOD_5 loading:

Month	BOD_5 Loading in ppd	Percentage over Limit
December 2021	183	66%
March 2022	139	26%
December 2022	129	17%

5. Schedule A, Condition 1.a(2) limits the BOD_5 in Respondent's discharged effluent during the period May 1 to October 31 to a weekly average loading of 160 pounds ppd.

6. Respondent discharged effluent with the following weekly average BOD_5 loading:

Week of	BOD_5 Loading in ppd	Percentage over Limit
December 2021. Exact week not reported by Respondent.	366	129%
March 2022. Exact week not reported by Respondent.	164	3%

7. Schedule A, Condition 1.a(2) limits the BOD_5 in Respondent's discharged effluent during the period May 1 to October 31 to a daily maximum loading of 210 pounds ppd.

8. Respondent discharged effluent with the following daily maximum BOD_5 loading:

Date	BOD_5 Loading in ppd	Percentage over Limit
December 2021. Exact date not reported by Respondent.	366	74%

9. Schedule A, Condition 1.a(2) limits the BOD_5 in Respondent's discharged effluent during the period May 1 to October 31 to a weekly average concentration of 45 milligrams per liter (mg/L).

10. Respondent discharged effluent with the following weekly average BOD_5 concentration:

Week of	BOD_5 Concentration in mg/L	Percentage over Limit
March 2022. Exact week not reported by Respondent.	49	9%

11. Schedule B, Condition 2.a of the Permit requires Respondent to report the results of required wastewater monitoring monthly on a form approved by DEQ.

12. Respondent did not include all information required on the approved monitoring form for the months of December 2021 and March 2022 when it did not report the dates on which samples were collected.

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III. CONCLUSIONS

1. Respondent violated ORS 468B.025(2) by discharging wastewater effluent to the Pudding River that contained BOD_5 in excess of the limits established in Schedule A, Condition 1 of the Permit, as described in Section II, paragraphs 1-9, above. Those instances where Respondent discharged effluent that exceeded the the limit by 50% or more are Class I violations pursuant to OAR 340-012-0055(1)(k)(A). The instance where Respondent discharged effluent that exceeded the limit by 20% or more but less than 50% is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A). Those instances where Respondent discharged effluent that exceeded the limit by less than 20% are Class III violations pursuant to OAR 340-012-0055(3)(b)(A). DEQ assesses a $1,275 civil penalty for these violations.

2. Respondent violated ORS 468B.025(2) when it did not include all monitoring required by Schedule B, Condition 2.a of the Permit as described in Section II, Paragraphs 10 and 11, above. These are Class III violations pursuant to OAR 340-012-0055(3)(a). DEQ does not assess a civil penalty for theses violations.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO: Pay a total civil penalty of $1,275. The determination of the civil penalty is attached as Exhibit 1 and is 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 "**Department of Environmental Quality**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**.

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 exhibit, 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: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. 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 duly 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 http://legalassistance.law.af.mil. 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.

5/14/2024
Date

Rebecca J Puskas
Becka Puskas, Interim 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 NO. 1 — Exceeding BOD_5 effluent limits established in Schedule A of the Permit in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) and OAR 340-012-0145(4)(e).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) as Respondent's discharged 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 $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).

"P" is whether Respondent has any prior significant actions, 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)(a)(A), because there are no prior significant actions.

"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 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. There were seven occurrences of the violation as detailed in Section II of the Notice.

"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 BOD_5 limits are express conditions of the Permit. By failing to take the action necessary to comply with the limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"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 the violation or the effects of the violation could not be corrected or minimized.

"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 as there is insufficient information on which to base another finding.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $750 + [(0.1 x $750) x (0 + 0 + 3 + 4 + 0)] + $0
= $750 + ($75 x 7) + $0
= $750 + $525 + $0
= $1,275