



Oregon

Kate Brown, 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

January 31, 2018

CERTIFIED MAIL: 7014 2870 0001 3378 3631

City of Portland
c/o Michael Jordan, Director
1120 SW 5th Ave, Room 1000
Portland, OR 97204

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-NWR-2017-163

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$55,200 for violating water quality standards when you caused a discharge of untreated sewage to Woods Creek in Beaverton on July 13, 2017.

The discharge of untreated or partially treated sewage to waters of the state creates a public health threat. Sewage is also a significant water pollutant that can harm aquatic life and render public waters unfit for human consumption and for recreational, commercial, and agricultural uses. In this instance, your discharge resulted in a fish kill in Woods Creek.

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.state.or.us

Via fax – 503-229-5100

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 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/administrative-rules.aspx> or by calling the number below.

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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,



Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement

Enclosures

cc: Mark Hynson, Northwest Region DEQ
Tiffany Yelton-Bram, Northwest Region, DEQ
Shaumae Hall, Accounting, DEQ
John Koestler, WQ, DEQ
Tracy Reeve, Portland City Attorney, 1221 SW 4th Avenue, Room 430, Portland, OR 97204
Matthew Criblez, Environmental Compliance Manager, City of Portland Environmental Services, 1120 SW 5th Avenue, Room 1000, Portland, Oregon 97204-1912
Tom Murtagh, Oregon Department of Fish and Wildlife

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	CITY OF PORTLAND,)	ASSESSMENT AND ORDER
5	a municipality of the state of Oregon,)	
6)	NO. WQ/M-NWR-2017-163
7	Respondent.)	

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) to Respondent, the city of Portland, a municipality of the state of Oregon, pursuant to
10 Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468B, and
11 Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 041, and 045.

12 II. FINDINGS OF FACT

13 1. Respondent operates a sewage collection, treatment and disposal system pursuant to a
14 National Pollutant Discharge Elimination System permit (permit) issued by DEQ. The permit was in
15 effect at all material times.

16 2. The permit authorizes Respondent to operate a sewage collection, treatment and disposal
17 system and to discharge to waters of the state adequately treated wastewater only in conformance with
18 the requirements and limitations of the permit.

19 3. The permit authorizes discharge of treated wastewater to the Columbia River only.

20 4. On July 13, 2017, Respondent caused untreated sewage to discharge from a manhole
21 located at SW 69th Avenue and SW Railroad Street in Beaverton, Oregon, to an unnamed tributary and
22 Woods Creek.

23 5. Woods Creek and its unnamed tributary are tributaries of the Willamette River and are
24 part of the Willamette Basin per the Oregon Basin Index Map (Figure 1) adopted pursuant to OAR 340-
25 041-0340(1).

26 6. Water contact recreation is a designated beneficial use for Woods Creek and its
27 unnamed tributary pursuant to Table 340A adopted pursuant to OAR 340-041-0340(2).

1 7. OAR 340-041-0009(1) states: "Numeric Criteria: Organisms commonly associated with
2 fecal sources may not exceed the criteria in subsections (a)-(c) of this section: (a) Freshwater contact
3 recreation: ... (B) No single sample may exceed 406 E. coli organisms per 100 m[illi]L[iters]."

4 8. Samples collected on July 14, 2017, by Clean Water Services of Respondent's discharge
5 and the area it affected in Woods Creek found E. coli bacteria at a concentration of >240,000 organisms
6 per 100 mL.

7 9. OAR 340-041-0007(10) states: "The creation of tastes or odors or toxic or other
8 conditions that are deleterious to fish or other aquatic life or affect the potability of drinking water or
9 the palatability of fish or shellfish may not be allowed."

10 10. Respondent's July 13, 2017 discharge to Woods Creek and its unnamed tributary killed
11 at a minimum 108 fish identified by Clean Water Services as minnows and sculpin.

12 III. CONCLUSIONS

13 1. On or about July 13, 2017, Respondent violated ORS 468B.025(1)(b) by discharging¹
14 waste² to waters of the state³ that reduced the quality of those waters below a water quality standard
15 established by the Environmental Quality Commission (EQC). Specifically, Respondent violated the
16 water contact recreation bacteria standard set forth in OAR 340-041-0009(1)(a)(B) when it discharged
17 sewage to Woods Creek as described in Section II, paragraphs 4 through 8, above. This is a Class I
18 violation pursuant to OAR 340-012-0055(1)(b). DEQ assesses a \$27,600 penalty for this violation.

19 2. On or about July 13, 2017, Respondent violated ORS 468B.025(1)(b) by discharging
20 waste to waters of the state that reduced the quality of those waters below a water quality standard
21 established by the EQC. Specifically, Respondent violated the narrative standard set forth in OAR 340-
22 041-0007(10) when its sewage discharge resulted in a fish kill in Woods Creek as described in Section
23 II, paragraphs 9 and 10, above. This is a Class I violation pursuant to OAR 340-012-0055(1)(b). DEQ
24 assesses a \$27,600 penalty for this violation.

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27 ¹ As defined in OAR 340-045-0010(5).

² As defined in ORS 468B.005(9).

³ As defined in ORS 468B.005(10).

1 IV. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
3 hereby ORDERED TO: Pay a total civil penalty of \$55,200. The determinations of the civil penalties are
4 attached as Exhibits 1 and 2 and are incorporated as part of this Notice.

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

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(s), 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 **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. 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, please call the Oregon State Bar at 1-800-
26 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
27 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
<http://legalassistance.law.af.mil/content/locator.php>.

1 If you fail to file a timely request for hearing, the Notice will become a final order by default
2 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
3 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
4 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
5 the relevant portions of its files, including information submitted by you, as the record for purposes of
6 proving a prima facie case.
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9

10 January 31, 2018
11 Date

10 Sarah G. Wheeler
11 Sarah G. Wheeler, Acting Manager
12 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 1: Discharging a waste that reduces the quality of state waters below a water quality standard (bacteria) established by the Environmental Quality Commission in violation of ORS 468B.025(1)(b).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(b).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(2)(b)(A)(i) as Respondent's discharge caused an exceedance of the bacteria standard by more than 25% of the standard.
- 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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(E)(i) as Respondent has an NPDES permit for a municipal sewage treatment facility with a permitted flow of five million or more gallons per day.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(16), 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 according to OAR 340-012-0145(2)(a)(C) and (2)(a)(D). Respondent's prior significant actions, established in case nos. WQ/M-NWR-15-011, WQ/M-NWR-14-181, WQ/M-NWR-14-012, WQ/M-NWR-11-091 and WQ/M-NWR-10-069, consist of more than nine Class I equivalent violations.
- "H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(a)(B), because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations.
- "O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because the violation occurred on one day.
- "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. Due to operator error, Respondent left a valve open on its Fanno Creek pressure line that caused sewage to overflow to an unnamed tributary and Woods Creek. In failing to operate its equipment correctly, Respondent did not 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 the violation did not result from Respondent avoiding or delaying compliance costs.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$12,000 + [(0.1 x \$12,000) x (10 + (-)1 + 0 + 4 + 0)] + \$0
= \$12,000 + (\$1,200 x 13) + \$0
= \$12,000 + \$15,600 + \$0
= \$27,600

EXHIBIT 2

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

VIOLATION 2: Discharging a waste that reduces the quality of state waters below a water quality standard (narrative standard) established by the Environmental Quality Commission in violation of ORS 468B.025(1)(b).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0130(3) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had a significant adverse impact on the environment as it resulted in a fish kill.

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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(E)(i) as Respondent has an NPDES permit for a municipal sewage treatment facility with a permitted flow of five million or more gallons per day.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(16), 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 according to OAR 340-012-0145(2)(a)(C) and (2)(a)(D). Respondent's prior significant actions, established in case nos. WQ/M-NWR-15-011, WQ/M-NWR-14-181, WQ/M-NWR-14-012, WQ/M-NWR-11-091 and WQ/M-NWR-10-069, consist of more than nine Class I equivalent violations.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(a)(B), because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations.

"O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because the violation occurred on one day.

"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. Due to operator error, Respondent left a valve open on its Fanno Creek pressure line that caused sewage to overflow to an unnamed tributary and Woods Creek. In failing to operate its equipment correctly, Respondent did not 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 the violation did not result from Respondent avoiding or delaying compliance costs.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$12,000 + [(0.1 \times \$12,000) \times (10 + (-)1 + 0 + 4 + 0)] + \0
 $= \$12,000 + (\$1,200 \times 13) + \$0$
 $= \$12,000 + \$15,600 + \$0$
 $= \$27,600$