



# 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

October 10, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6535 26

City of Portland  
c/o Robert L. Taylor, City Attorney  
1221 SW 4th Avenue, Suite 430  
Portland, OR 97204

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/M-NWR-2023-112

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a \$12,600 civil penalty for causing pollution of waters of the state when you discharged non-disinfected domestic wastewater treatment plant effluent from your Tryon Creek facility to the Willamette River on June 14, 2023.

Non-disinfected domestic wastewater treatment plant contains disease-carrying bacteria at levels that threaten human health and environmental receptors. By failing to disinfect its wastewater prior to discharge to the Willamette, particularly at a time when the river is being used for water-contact recreation, Portland created a risk of harm to public health and the environment.

DEQ appreciates your efforts to correct prevent the violation from recurring by installing an alarm that will promptly notify treatment plant staff if disinfection is interrupted. DEQ considered these efforts when determining the amount of 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 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,

A handwritten signature in black ink that reads "Becca Puskas". The signature is written in a cursive style with a large, stylized initial "B".

Becca Puskas, Interim Manager  
Office of Compliance and Enforcement

Enclosures

cc: Mike Pinney, PE, DEQ  
Tiffany Yelton-Bram, DEQ  
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
CITY OF PORTLAND, ) ASSESSMENT AND ORDER  
Respondent. ) CASE NO. WQ/M-NWR-2023-112

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 operated the Tryon Creek Wastewater Treatment Plant located at 195 Foothills Road, Lake Oswego, Oregon.

2. Respondent's Tryon Creek plant treats domestic and industrial wastewater and discharges treated effluent to the Willamette River as authorized by a National Pollutant Discharge Elimination System permit issued and administered by DEQ.

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

4. Contact with water containing *E. coli* bacteria can cause severe diarrhea, vomiting and other adverse health effects in humans.

////

1 5. *E. coli* is present in non-disinfected domestic wastewater at concentrations of over  
2 1,000,000 organisms per 100 mL.

3 6. On June 14, 2023, the chlorination system that Respondent was using to disinfect and  
4 kill *E. coli* and other bacteria in its wastewater failed resulting in the discharge of approximately 30,000  
5 gallons of undisinfecting domestic wastewater to the Willamette River.

### 6 III. CONCLUSION

7 Respondent violated ORS 468B.025(1)(a) by causing pollution of waters of the state.  
8 Specifically, Respondent discharged non-disinfected domestic wastewater containing *E. coli* bacteria,  
9 pollution as defined in ORS 468B.005(5), to the Willamette River, a water of the state as defined in  
10 ORS 468B.005(10), as described in Section II, above. This is a Class I violation pursuant to OAR 340-  
11 012-0055(1)(a). DEQ assesses a \$12,600 penalty for this violation

### 12 IV. ORDER TO PAY CIVIL PENALTY

13 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
14 hereby ORDERED TO: Pay a total civil penalty of \$12,600. The determination of the civil penalty is  
15 attached as Exhibit 1 and is incorporated as part of this Notice.

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

### 19 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

1 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
2 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. If you request a  
3 hearing, you will be notified of the time and place of the hearing and you will be given information on  
4 the procedures, and other rights of parties relating to the conduct of the hearing before commencement  
5 of the hearing. You have a right to be represented by an attorney at the hearing, however you are not  
6 required to be. If you are an individual, you may represent yourself. If you are a corporation,  
7 partnership, limited liability company, unincorporated association, trust or government body, you must  
8 be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

9 Active duty Service members have a right to stay proceedings under the federal Service  
10 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
11 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
12 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
13 Department does not have a toll free telephone number.

14 If you fail to file a timely request for hearing, the Notice will become a final order by default  
15 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later  
16 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the  
17 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates  
18 the relevant portions of its files, including information submitted by you, as the record for purposes of  
19 proving a prima facie case.  
20  
21

22  
23 10/10/2024  
24 Date

22  
23 Rebecca Puskas  
24 Becca Puskas, Interim Manager  
25 Office of Compliance and Enforcement  
26  
27

## EXHIBIT 1

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

- VIOLATION NO. 1                      Causing pollution of waters of the state in violation of ORS 468B.025(1)(a).
- CLASSIFICATION:                      This is a Class I violation pursuant to OAR 340-012-0055(1)(a).
- 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)(i) and applicable pursuant to OAR 340-012-01409(2)(a)(E)(i) because Respondent operates 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(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 8 pursuant to OAR 340-012-0145(2)(a). P is assigned an initial value of 10 as Respondent has prior significant actions consisting of nine or more Class I equivalent violations as established in Case Nos. WQ/M-NWR-2019-123, WQ/M-NWR-2017-163, WQ/M-NWR-15-011, WQ/M-NWR-14-181 and WQ/M-NWR-14-012. The initial value is reduced by 2 to a final P value of 8 pursuant to OAR 340-012-0145(2)(d)(A)(i) because all the formal enforcement actions in which prior significant actions were cited were issued more than three years before the date the current violation occurred.
- "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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "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.
- "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 violation occurred because Respondent had not installed an alarm to provide notification if the feed of chlorine it was

using for disinfection was interrupted. By failing to install the alarm, 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 -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated by installing an alarm for its chlorine feed.

"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 DEQ has insufficient information as to the cost of installing the chlorine feed alarm to arrive at a reasonable estimate of any delayed or avoided compliance costs.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$6,000 + [(0.1 \times \$6,000) \times (8 + 0 + 0 + 4 + (-1))] + \$0$   
=  $\$6,000 + (\$600 \times 11) + \$0$   
=  $\$6,000 + \$6,600 + \$0$   
=  $\$12,600$