



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 19

City of Woodburn
c/o McKenzie Granum, City Attorney
190 Garfield Street
Woodburn, OR 97071-4730

Re: Notice of Civil Penalty Assessment
Case No. WQ/M-WR-2023-130

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$5,600 for causing pollution of waters of the state by discharging non-disinfected wastewater treatment plant effluent containing *E. coli* bacteria to Pudding River on June 11, 2022. Woodburn also violated its wastewater permit's limits on *E. coli* and total suspended solids (TSS) in its effluent.

DEQ issued this penalty because *E. coli* and TSS in domestic wastewater can threaten public health if untreated. Failure to properly maintain publicly owned treatment facilities renders the facility unable to properly treat sewage before it is discharged, and the risk of contact with non-disinfected, disease-causing water increases.

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>.

City of Woodburn
Case No. WQ/M-WR-2023-130
Page 2

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 "Rebecca Puskas". The signature is written in a cursive, flowing style.

Becka Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Andy Ullrich, Portland Headquarters
Ranei Nomura, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
CITY OF WOODBURN,) ASSESSMENT AND ORDER
Respondent.) CASE NO. WQ/M-WR-2023-130

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, 486B, ORS Chapters 183 ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and 12.

II. FINDINGS OF FACT

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

2. The Permit allows Respondent to operate its system and discharge treated sewage into waters of the State in conformance with the conditions, requirements and limitations of the Permit.

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 11, 2022, the Facility discharged 920,000 gallons of non-disinfected domestic
4 wastewater into the Pudding River.

5 7. Schedule A, Condition 1.a(3) limits the concentration of *E. coli* bacteria in any single
6 sample of Respondent's discharged effluent to 406 organisms per 100 milliliters (mL) of effluent.

7 8. Samples of Respondent's effluent contained *E. coli* bacteria at the following
8 concentrations in organisms per 100 mL.

Sample Date	<i>E. Coli</i> Concentration
July 11, 2022	>2,420
July 18, 2022	1,860
October 25, 2022	1,414
March 13, 2023	817

9
10
11
12
13
14
15 9. Schedule A, Condition 1.a(2) of the Permit limits the loading of total suspended solids
16 (TSS) in Respondent's discharged effluent during the period November 1 to April 30 to a daily
17 maximum of 2,200 pounds per day.

18 10. On March 12, 2023, Respondent discharged effluent with a TSS loading of 2,556
19 pounds.

20 11. Schedule A, Condition 1.a(3) of the Permit requires Respondent to achieve a TSS
21 removal efficiency of 85% in its discharged effluent.

22 12. In March 2023, Respondent achieved a TSS removal efficiency removal of 83% in its
23 discharged effluent.

24 III. CONCLUSIONS

25 1. Respondent violated ORS 468B.025(1)(a) by causing pollution of waters of the state.
26 Specifically, Respondent discharged non-disinfected domestic wastewater effluent containing *E. coli*
27 bacteria, a pollutant pursuant to ORS 468B.005(5), to the Pudding River, a water of the state

1 pursuant to ORS 468B.005(10), as described in Section II, Paragraphs 3 through 6, above. This is a
2 Class I violation, according to OAR 340-012-0055(1)(a). DEQ hereby assesses a \$5,600 civil penalty for
3 this violation.

4 2. Respondent violated ORS 468B.025(2) by exceeding an *E. coli* effluent limit in Schedule A of
5 the Permit as described in Section II, Paragraphs 7 and 8, above. The instance where Respondent exceeded
6 the limit by a factor of five or more is a Class II violation pursuant to OAR 340-012-0055(2)(a)(C). The
7 remaining instances are Class III violations pursuant to OAR 340-012-0055(2)(b)(C). DEQ has not
8 assessed a civil penalty for these violations.

9 3. Respondent violated ORS 468B.025(2) by exceeding the TSS daily loading effluent limit in
10 Schedule A the Permit as described in Section II, Paragraphs 9 and 10, above. This is a Class III violation
11 pursuant to OAR 340-012-0055(3)(b)(A). DEQ does not assess a civil penalty for this violation.

12 4. Respondent violated ORS 468B.025(2) by failing to achieve the TSS removal efficiency in
13 Schedule A of Permit as described in Section II, Paragraphs 11 and 12, above. This is a Class III violation
14 pursuant to OAR 340-012-0055(3)(c). DEQ has not assessed a civil penalty for this violation.

15 IV. ORDER TO PAY CIVIL PENALTY

16 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
17 hereby ORDERED TO: Pay a total civil penalty of \$5,600. The determination of the civil penalty is
18 attached as Exhibit 1 and is incorporated as part of this Notice.

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

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

23 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
24 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
25 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
26 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
27 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for

1 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
2 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
3 it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge
4 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
5 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
6 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
7 you may represent yourself. If you are a corporation, partnership, limited liability company,
8 unincorporated association, trust or government body, you must be represented by an attorney or a duly
9 authorized representative, as set forth in OAR 137-003-0555.

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

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

21
22
23
24 10/10/2024
Date

Rebecca 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 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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent's facility has a permitted flow of less than 5 and more than 2 million 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 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 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 a single 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. By failing to properly maintain its treatment system to ensure disinfection of its effluent, Respondent failed to exercise reasonable care to avoid a foreseeable risk that pollution would occur.
- "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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 0 + 4 + 0)] + \$0
= \$4,000 + (\$400 x 4) + \$0
= \$4,000 + \$1,600 + \$0
= \$5,600