



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

January 19, 2023

CERTIFIED MAIL: 7020 2450 0000 3349 5680

Black Butte Ranch Corporation
c/o Josh Newton, Registered Agent
360 SW Bond St., Suite 400
Bend, OR 97702

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/D-ER-2022-061

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$5,100 for exceeding the ammonia limits in your wastewater discharge permit in January, February, and March 2022. DEQ sets pollutant limits at levels necessary to protect public health and the environment. Ammonia is highly toxic to fish and other aquatic life. By failing to comply with your limits, you created a risk of harm to aquatic life in Indian Ford 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.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.

Black Butte Ranch Corporation
Case No. WQ/D-ER-2022-061
Page 2

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,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Justin Sterger, DEQ
Mike Hiatt, DEQ
Accounting, DEQ
Shawn McCance, Black Butte Ranch Corporation, P.O. Box 8000, Black Butte, OR 97759

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
BLACK BUTTE RANCH CORPORATION,) ASSESSMENT AND ORDER
an Oregon corporation,)
Respondent.) CASE NO. WQ/D-ER-2022-061

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 468B and 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and 012.

II. FINDINGS OF FACT

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

2. Specifically, the Permit authorizes Respondent to operate a wastewater collection, treatment, control and disposal system and discharge treated wastewater to Indian Ford Creek, waters of the state only in conformance with the requirements, limits, and conditions set forth in the Permit.

3. Schedule A, Condition 1 of the Permit limits the concentration of ammonia in Respondent's discharged effluent to a monthly average concentration of 7.0 milligrams per liter (mg/L).

4. Respondent discharged effluent with monthly average ammonia concentrations as follows:

Month	Concentration in mg/L	Average Monthly Steam Flow in cfs ¹
January 2022	18	4.4
February 2022	19	3.7

¹ Cubic feet per second

5. Schedule A, Condition 1 of the Permit limits the concentration of ammonia in Respondent's discharged effluent to a daily maximum of 14 mg/L.

6. Respondent discharged effluent with daily maximum ammonia concentrations as follows:

Date	Concentration in mg/L	Receiving Stream Flow in cfs
January 25, 2022	17	3.8
January 26, 2022	15	3.8
January 30, 2022	27	3.8
February 9, 2022	17	3.7
February 16, 2022	15	3.7
February 23, 2022	32	3.6
March 2, 2022	15	4.2

7. DEQ used an assumed stream flow of 4.5 cfs to determine the ammonia concentration effluent limits in Schedule A, Condition 1 of the Permit.

III. CONCLUSION

Respondent violated ORS 468B.025(2) by violating a condition of its wastewater permit. Specifically, Respondent violated the ammonia effluent limits established in Schedule A, Condition 1 of the Permit, as described in Section II, above. These are Class I violations pursuant to OAR 340-012-0055(I). DEQ assesses a \$5,100 civil penalty for these 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 \$5,100. The determination of the civil penalty is attached as Exhibit 1 and is/are 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.**

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

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

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

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

25 ///

26 ///

27 ///

1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

3
4
5
6 1/19/2023
7 Date

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
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

<u>VIOLATION</u>	Exceeding the Permit's effluent limits for ammonia in violation of ORS 468B.025(2).
<u>CLASSIFICATION:</u>	This is a Class I violation pursuant to OAR 340-012-0055(1)(I) because the limit violated is a water quality-based effluent limit (WQBEL).
<u>MAGNITUDE:</u>	The magnitude of the violation is major pursuant to OAR 340-012-0135(2)(a)(A)(ii) and OAR 340-012-012-0145(4)(e) as the receiving stream flow at the time of the violation was at or below the flow used to calculate the WQBEL.
<u>CIVIL PENALTY FORMULA:</u>	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 \$3,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) as Respondent operators a private domestic wastewater treatment facility with a flow of less 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 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. Respondent exceeded the monthly average concentration limit during the months of January and February 2022 and the daily concentration limit on January 25, 26 and 30; February 9, 16, and 23; and March 2, 2022, for a total of 9 occurrences 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 ammonia limits are express conditions of Respondent's 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 because Respondent received no more than a de minimis economic benefit as a result of the violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$3,000 + [(0.1 x \$3,000) x (0 + 0 + 3 + 4 + 0)] + \$0
= \$3,000 + (\$300 x 7) + \$0
= \$3,000 + \$2,100 + \$0
= \$5,100