

DIVISION OF WATER RESOURCES - CIVIL PENALTY ASSESSMENT

Violator: Ocean Sands Water and Sewer District

Facility Name: Ocean Sands WWTP

Permit Number: WQ0000185

County: Currituck

Case Number: LV-2023-0117

ASSESSMENT FACTORS

- 1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation;**

Significant

The facility is a high-rate infiltration system with a groundwater lowering system and could be discharging wastewater that could impact waters of the state (groundwater and surface water). The facility has consistently had groundwater quality violations since July 2021. The facility has not consistently met effluent limits since November 2020.

- 2) The duration and gravity of the violation;**

Moderately Significant

The facility has not consistently met effluent limits since November 2020. The facility has consistently had groundwater quality violations since July 2021. Inspection performed on 7/28/21 and 1/20/23 found that several components of the WWTP were not operating correctly or not operating at all.

- 3) The effect on ground or surface water quantity or quality or on air quality;**

Moderately Significant

Groundwater and surface water could be impacted. The facility has consistently had groundwater quality violations since July 2021.

- 4) The cost of rectifying the damage;**

Unknown

- 5) The amount of money saved by noncompliance;**

Inspections performed on 7/28/21 and 1/20/23 found that several components of the treatment system were not operating correctly or not operating at all. Costs would be related to adequately maintaining WWTP and to hiring a contractor to repair and/ or replace faulty components of the WWTP.

- 6) Whether the violation was committed willfully or intentionally;**

WaRO does not believe the violations were committed willfully; however, the permittee is aware of the recent effluent limit and groundwater violations. The permittee constructed a new WWTP at the facility approximately 3 years ago.

- 7) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority; and**

The permittee owns and operates other wastewater facilities where chronic compliance issues have occurred in the past and continue to occur. The permittee constructed a new WWTP at the facility approximately 3 years ago.

8) The cost to the State of the enforcement procedures.

\$145.47

4/20/2023

Date

Robert Tankard

Robert Tankard, Assistant Regional Supervisor
Water Quality Regional Operations Section
Washington Regional Office
Division of Water Resources, NCDEQ

ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

RICHARD E. ROGERS, JR.

Director



NORTH CAROLINA
Environmental Quality

Certified Mail 7021 0950 8685 4235

Return Receipt Requested

April 20, 2023

Donald Ike McRee, Jr, County Manager
Ocean Sands Water and Sewer District
153 Courthouse Rd Ste 110
Currituck, NC 27929

SUBJECT: Notice of Violation and Assessment of Civil Penalty
for Violations of Non-discharge Permit No. WQ0000185
Ocean Sands Water and Sewer District
Ocean Sands WWTP
Case No. LV-2023-0117
Currituck County

Dear McRee:

This letter transmits a Notice of Violation and assessment of civil penalty in the amount of \$2,895.47 (\$2,750.00 civil penalty + \$145.47 enforcement costs) against Ocean Sands Water and Sewer District.

This assessment is based upon the following facts: a review has been conducted of the Non-Discharge Monitoring Report (NDMR) and Ground Water Monitoring Report (GW59) submitted by Ocean Sands Water and Sewer District for the month of July 2022. This review has shown the subject facility to be in violation of the limitations and/or monitoring requirements found in Non-discharge Permit No. WQ0000185. The violations, which occurred in July 2022, are summarized in Attachment A to this letter.

Based upon the above facts, I conclude as a matter of law that Ocean Sands Water and Sewer District violated the terms, conditions or requirements of Non-discharge Permit No. WQ0000185 in the manner and extent shown in Attachment A. In accordance with the maximums established by G.S. 143-215.6A(a)(2), a civil penalty may be assessed against any person who violates the terms, conditions or requirements of a permit required by G.S. 143-215.1(a).



North Carolina Department of Environmental Quality | Division of Water Resources
Washington Regional Office | 943 Washington Square Mall | Washington, North Carolina 27889
252.946.6481

Based upon the above findings of fact and conclusions of law, and in accordance with authority provided by the Secretary of the Department of Environmental Quality and the Director of the Division of Water Resources, I, Robert Tankard, Assistant Regional Supervisor, Washington Regional Office hereby make the following civil penalty assessment against Ocean Sands Water and Sewer District:

<u>\$500.00</u>	<u>1</u> of 1 violations of the Permit Monthly Average for <u>BOD, 5-Day (20 Deg. C)</u> per the limits established in Permit No. WQ0000185
<u>\$500.00</u>	<u>1</u> of 1 violations of the Permit Monthly Average for <u>Nitrogen, Ammonia Total (as N)</u> per the limits established in Permit No. WQ0000185
<u>\$500.00</u>	<u>1</u> of 1 violations of the Permit Monthly Average for <u>Solids, Total Suspended</u> per the limits established in Permit No. WQ0000185
<u>\$500.00</u>	<u>1</u> of 1 violations of the Permit Monthly Geometric Mean for <u>Coliform, Fecal MF, MFC Broth, 44.5 C</u> per the limits established in Permit No. WQ0000185
<u>\$375.00</u>	<u>1</u> of 2 violations of <u>Nitrogen, Ammonia Total (as N)</u> per the limits established in Permit No. WQ0000185
<u>\$375.00</u>	<u>1</u> of 3 violations of <u>Nitrogen, Nitrate Total (as N)</u> per the limits established in Permit No. WQ0000185
<u>\$2,750.00</u>	TOTAL CIVIL PENALTY
<u>\$145.47</u>	Enforcement Costs
<u>\$2,895.47</u>	TOTAL AMOUNT DUE

Pursuant to G.S. 143-215.6A(c), in determining the amount of the penalty I have taken into account the Findings of Fact and Conclusions of Law and the factors set forth at G.S. 143B-282.1(b), which are:

- (1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
- (2) The duration and gravity of the violation;
- (3) The effect on ground or surface water quantity or quality or on air quality;
- (4) The cost of rectifying the damage;
- (5) The amount of money saved by noncompliance;
- (6) Whether the violation was committed willfully or intentionally;
- (7) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority; and
- (8) The cost to the State of the enforcement procedures.

Within **thirty (30) days** of receipt of this notice, you must do **one** of the following:

- (1) Submit payment of the penalty, **OR**
- (2) Submit a written request for remission, **OR**
- (3) Submit a written request for an administrative hearing

Option 1: Submit payment of the penalty:

Payment should be made directly to the order of the Department of Environmental Quality (*do not include waiver form*). Payment of the penalty will not foreclose further enforcement action for any continuing or new violation(s). Please submit payment to the attention of:

Wastewater Branch
Division of Water Resources
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

Option 2: Submit a written request for remission or mitigation including a detailed justification for such request:

Please be aware that a request for remission is limited to consideration of the five factors listed below as they may relate to the reasonableness of the amount of the civil penalty assessed. Requesting remission is not the proper procedure for contesting whether the violation(s) occurred or the accuracy of any of the factual statements contained in the civil penalty assessment document. Because a remission request forecloses the option of an administrative hearing, such a request must be accompanied by a waiver of your right to an administrative hearing and a stipulation and agreement that no factual or legal issues are in dispute. Please prepare a detailed statement that establishes why you believe the civil penalty should be remitted and submit it to the Division of Water Resources at the address listed below. In determining whether a remission request will be approved, the following factors shall be considered:

- (1) whether one or more of the civil penalty assessment factors in NCGS 143B-282.1(b) was wrongfully applied to the detriment of the petitioner;
- (2) whether the violator promptly abated continuing environmental damage resulting from the violation;
- (3) whether the violation was inadvertent or a result of an accident;
- (4) whether the violator had been assessed civil penalties for any previous violations; or
- (5) whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

Please note that all evidence presented in support of your request for remission must be submitted in writing. The Director of the Division of Water Resources will review your evidence and inform you of his decision in the matter of your remission request. The response will provide details regarding the case status, directions for payment, and provision for further appeal of the penalty to the Environmental Management Commission's Committee on Civil Penalty Remissions (Committee). Please be advised that the Committee cannot consider information that was not part of the original remission request considered by the Director. Therefore, it is very important that you prepare a complete and thorough statement in support of your request for remission.

In order to request remission, you must complete and submit the enclosed "Request for Remission of Civil Penalties, Waiver of Right to an Administrative Hearing, and Stipulation of Facts" form within thirty (30) days of receipt of this notice. The Division of Water Resources also requests that you complete and submit the enclosed "Justification for Remission Request."

Both forms should be submitted to the following address:

Wastewater Branch
Division of Water Resources
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

Option 3: File a petition for an administrative hearing with the Office of Administrative Hearings:

If you wish to contest any statement in the attached assessment document, you must file a petition for an administrative hearing. You may obtain the petition form from the Office of Administrative Hearings. You must file the petition with the Office of Administrative Hearings within thirty (30) days of receipt of this notice. A petition is considered filed when it is received in the Office of Administrative Hearings during normal office hours. The Office of Administrative Hearings accepts filings Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., except for official state holidays. The petition may be filed by facsimile (fax) or electronic mail by an attached file (with restrictions) - provided the signed original, one (1) copy and a filing fee (if a filing fee is required by NCGS §150B-23.2) is received in the Office of Administrative Hearings within seven (7) business days following the faxed or electronic transmission. You should contact the Office of Administrative Hearings with all questions regarding the filing fee and/or the details of the filing process.

The mailing address and telephone and fax numbers for the Office of Administrative Hearings are as follows:

6714 Mail Service Center
Raleigh, NC 27699 6714
Tel: (919) 431-3000
Fax: (919) 431-3100

One (1) copy of the petition must also be served on DEQ as follows:

Mr. William F. Lane, General Counsel
Department of Environmental Quality
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Please indicate the case number (as found on page one of this letter) on the petition.

Failure to exercise one of the options above within thirty (30) days of receipt of this letter, as evidenced by an internal date/time received stamp (not a postmark), will result in this matter being referred to the Attorney General's Office for collection of the penalty through a civil action. Please be advised that additional penalties may be assessed for violations that occur after the review period of this assessment.

If you have any questions, please contact Randy Sipe with the Division of Water Resources staff of the Washington Regional Office at (252)948-3849 or via email at Randy.Sipe@ncdenr.gov.

Sincerely,

Robert Tankard

Robert Tankard, Assistant Regional Supervisor
Water Quality Regional Operations Section
Washington Regional Office
Division of Water Resources, NCDEQ

ATTACHMENTS

Cc: Laserfiche

JUSTIFICATION FOR REMISSION REQUEST

Case Number: LV-2023-0117

County: Currituck

Assessed Party: Ocean Sands Water and Sewer District

Permit No.: WQ0000185

Amount Assessed: \$2,895.47

Please use this form when requesting remission of this civil penalty. You must also complete the *"Request For Remission, Waiver of Right to an Administrative Hearing, and Stipulation of Facts"* form to request remission of this civil penalty. You should attach any documents that you believe support your request and are necessary for the Director to consider in evaluating your request for remission. Please be aware that a request for remission is limited to consideration of the five factors listed below as they may relate to the reasonableness of the amount of the civil penalty assessed. Requesting remission is not the proper procedure for contesting whether the violation(s) occurred or the accuracy of any of the factual statements contained in the civil penalty assessment document. Pursuant to N.C.G.S. § 143B-282.1(c), remission of a civil penalty may be granted only when one or more of the following five factors apply. Please check each factor that you believe applies to your case and provide a detailed explanation, including copies of supporting documents, as to why the factor applies (attach additional pages as needed).

- ☐ (a) one or more of the civil penalty assessment factors in N.C.G.S. 143B-282.1(b) were wrongfully applied to the detriment of the petitioner *(the assessment factors are listed in the civil penalty assessment document)*;
- ☐ (b) the violator promptly abated continuing environmental damage resulting from the violation *(i.e., explain the steps that you took to correct the violation and prevent future occurrences)*;
- ☐ (c) the violation was inadvertent or a result of an accident *(i.e., explain why the violation was unavoidable or something you could not prevent or prepare for)*;
- ☐ (d) the violator had not been assessed civil penalties for any previous violations;
- ☐ (e) payment of the civil penalty will prevent payment for the remaining necessary remedial actions *(i.e., explain how payment of the civil penalty will prevent you from performing the activities necessary to achieve compliance)*.

EXPLANATION:

IN THE MATTER OF ASSESSMENT
OF CIVIL PENALTIES AGAINST

Ocean Sands Water and Sewer District
Ocean Sands WWTP

PERMIT NO. WQ0000185

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**WAIVER OF RIGHT TO AN
ADMINISTRATIVE HEARING AND
STIPULATION OF FACTS**

CASE NO. LV-2023-0117

Having been assessed civil penalties totaling \$2,895.47 for violation(s) as set forth in the assessment document of the Division of Water Resources dated April 20, 2023, the undersigned, desiring to seek remission of the civil penalty, does hereby waive the right to an administrative hearing in the above-stated matter and does stipulate that the facts are as alleged in the assessment document. The undersigned further understands that all evidence presented in support of remission of this civil penalty must be submitted to the Director of the Division of Water Resources within thirty (30) days of receipt of the notice of assessment. No new evidence in support of a remission request will be allowed after (30) days from the receipt of the notice of assessment.

This the _____ day of _____, 20____

SIGNATURE

ADDRESS

TELEPHONE

ATTACHMENT A**Ocean Sands Water and Sewer District****CASE NUMBER:** LV-2023-0117**PERMIT:** WQ0000185**REGION:** Washington**FACILITY:** Ocean Sands WWTP**COUNTY:** Currituck**LIMIT VIOLATION(S)****SAMPLE LOCATION:** PPI001

Violation Date	Report Month/Yr	Parameter	Frequency	Unit of Measure	Limit Value	Calculated Value	% Over Limit	Violation Type	Penalty Amount
7/31/2022	7-2022	BOD, 5-Day (20 Deg. C)	2 X week	mg/l	10	67.25	572.5	Monthly Average Exceeded	\$500.00
7/31/2022	7-2022	Coliform, Fecal MF, MFC Broth, 44.5 C	2 X week	#/100ml	14	130.28	830.6	Monthly Geometric Mean Exceeded	\$500.00
7/31/2022	7-2022	Nitrogen, Ammonia Total (as N)	2 X week	mg/l	4	31.25	681.2	Monthly Average Exceeded	\$500.00
7/31/2022	7-2022	Solids, Total Suspended	2 X week	mg/l	15	99.45	563.0	Monthly Average Exceeded	\$500.00

SAMPLE LOCATION: Well# MW-4

Violation Date	Report Month/Yr	Parameter	Frequency	Unit of Measure	Limit Value	Calculated Value	% Over Limit	Violation Type	Penalty Amount
7/31/2022	7-2022	Nitrogen, Ammonia Total (as N)	Monthly	ug/l	1500	8,800	486.7	Limit Exceeded	\$375.00

SAMPLE LOCATION: Well# MW-5

Violation Date	Report Month/Yr	Parameter	Frequency	Unit of Measure	Limit Value	Calculated Value	% Over Limit	Violation Type	Penalty Amount
7/31/2022	7-2022	Nitrogen, Nitrate Total (as N)	Monthly	mg/l	10	24.8	148.0	Limit Exceeded	\$375.00

SAMPLE LOCATION: Well# MW-6

Violation Date	Report Month/Yr	Parameter	Frequency	Unit of Measure	Limit Value	Calculated Value	% Over Limit	Violation Type	Penalty Amount
7/31/2022	7-2022	Nitrogen, Nitrate Total (as N)	Monthly	mg/l	10	13.3	33.0	Limit Exceeded	\$0.00

SAMPLE LOCATION: Well# MW-9

Violation Date	Report Month/Yr	Parameter	Frequency	Unit of Measure	Limit Value	Calculated Value	% Over Limit	Violation Type	Penalty Amount
7/31/2022	7-2022	Nitrogen, Ammonia Total (as N)	Monthly	ug/l	1500	3,900	160.0	Limit Exceeded	\$0.00
7/31/2022	7-2022	Nitrogen, Nitrate Total (as N)	Monthly	mg/l	10	40.7	307.0	Limit Exceeded	\$0.00