



# 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

February 10, 2020

CERTIFIED MAIL: 7017 0530 000 7760 2980

J.R. Simplot Company  
c/o Corporation Service Company, Registered Agent  
1127 Broadway St. NE, Suite 310  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-NWR-2020-229

***DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.***

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a total civil penalty of \$11,685 for failing to monitor stormwater discharge for benchmark and impairment pollutants during the 2019-2020 monitoring year as required under the National Pollutant Discharge Elimination System Stormwater Discharge General Permit Number 1200-Z (Permit) at the facility located at 14003 North Rivergate Boulevard, in Portland.

DEQ issued this penalty because monitoring is an important requirement of the Permit and you failed to monitor your discharge for all of the required pollutants on three out of the four required sampling events. Monitoring may reveal the presence of harmful levels of pollutants that pose a threat to waters of the state. Without monitoring information, DEQ and the public are unable to evaluate the effectiveness of your stormwater controls in protecting water quality in the Willamette River. In addition, DEQ is concerned that this is third time in approximately five years that that J.R. Simplot has failed to comply with NPDES Permit requirements for pollutant monitoring.

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](mailto: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/Statutes.aspx> or by calling the number below.

If you have any questions, please contact DEQ Environmental Law Specialist Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Ryan McLane, J.R. Simplot Company, 14003 N. Rivergate Blvd, Portland, OR 97203  
Angelica Greene, City of Portland, Bureau of Environmental Services  
Christine Svetkovich, Portland Office, DEQ  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 J.R. SIMPLOT COMPANY, ) ASSESSMENT AND ORDER  
5 a Nevada corporation, )  
6 Respondent. ) CASE NO. WQ/SW-NWR-2020-229

7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

13 1. Respondent operates an industrial facility called “Rivergate Terminal,” which is located at  
14 14003 Rivergate Boulevard in Portland, Multnomah County, Oregon (the Facility).

15 2. On or about October 23, 2018, DEQ reissued the National Pollutant Discharge Elimination  
16 System Waste Discharge Permit No. 1200-Z (the Permit). Respondent was registered under the Permit  
17 at all material times.

18 3. The Permit authorizes Respondent to construct, install, modify, or operate stormwater  
19 treatment or control facilities, and to discharge stormwater to surface waters or to conveyance systems  
20 that discharge to surface waters in conformance with all the conditions in the Permit.

21 4. Schedule B of the Permit requires registrants to monitor its stormwater through grab  
22 sampling for various parameters. Specifically, Schedule B, Condition 1 of the Permit requires  
23 registrants to monitor for the benchmark pollutants identified in Schedule A, Condition 9; applicable  
24 sector-specific pollutants identified in Schedule E; and impairment pollutants and additional pollutants  
25 specified in the permit assignment letter. Schedule A, Condition 2(a) requires Respondent to conduct  
26 sampling at each discharge point monitored.

27 ///

1 5. Schedule B, Condition 2.f of the Permit requires registrants to monitor for benchmark  
2 pollutants and impairment pollutants, where there is no approved monitoring waiver, at a frequency of  
3 four times per monitoring year (July 1 through June 3), with two samples before December 31 and two  
4 samples after January 1.

5 6. Respondent failed to collect three of the required four samples at outfall 001 during the 2019-  
6 2020 monitoring year.

7 8. Respondent collected one sample during the 2019-2020 monitoring year, on June 16, 2020. The  
8 analysis conducted for cyanide used a detection limit of 0.027 mg/L. Because the sector-specific  
9 benchmark for cyanide set forth in Schedule E, Table E.K-1 is 0.022 mg/L, and the result of the analysis  
10 was non-detect, the result was invalid.

### 11 III. CONCLUSION

12 Respondent has violated Schedule B, Conditions 1 and 2 of the Permit and ORS 468B.025(2) by  
13 failing to collect stormwater discharge samples during the 2019-2020 monitoring year during three out of  
14 the required four sampling events at one discharge point, as described in Section II, Paragraphs 1-8 above.  
15 According to OAR 340-012-0055(1)(o), these are Class I violations. DEQ hereby assesses an \$11,685 civil  
16 penalty for this violation.

### 17 IV. ORDER TO PAY CIVIL PENALTY

18 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
19 hereby ORDERED TO:

20 Pay a civil penalty of \$11,685. The determination of the civil penalty is attached as Exhibit No. 1  
21 and incorporated as part of this Notice.

22 If you do not file a request for hearing as set forth in Section V below, your check or money order  
23 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**  
24 **700 NE Multnomah Street, Suite #600, Portland, Oregon 97232.**

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

26 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
27 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If

1 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
2 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered  
3 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
4 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
5 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
6 it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge  
7 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
8 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
9 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
10 you may represent yourself. If you are a corporation, partnership, limited liability company,  
11 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
12 authorized representative, as set forth in OAR 137-003-0555.

13 Active duty Service members have a right to stay proceedings under the federal Service  
14 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
15 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
16 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
17 Department does not have a toll free telephone number.

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

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25  
26  
27  
Date

21 / 10 / 2021

  
Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

EXHIBIT NO. 1

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

- VIOLATION: Failure to conduct monitoring in violation of Schedule B, Conditions 1 and 2 of NPDES Permit No. 1200-Z and ORS 468B.025(2).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(o).
- 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)(iii), because Respondent has coverage under an NPDES general permit.
- "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 6 according to OAR 340-012-0145(2)(a)(C) and (D). Respondent had one Class I violation in EEO No. WQ/SW-NWR-2015-141, and four Class I violations in Case No. WQ/SW-NWR-2019-289.
- "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 (4)(b) through (4)(d).
- "O" is whether the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(b), because there were more than one but less than seven occurrences of the violation. Each missed sampling event from each discharge point constitutes a separate occurrence. During the 2019-2020 monitoring period, Respondent failed to conduct required monitoring of its stormwater discharge at one outfall on three occasions. Also, an incorrect detection limit was used for analyzing cyanide concentration in one sample, resulting in that parameter being missed, which was an additional occurrence. Respondent had a total of four 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. Respondent holds an NPDES 1200-Z Permit, which specifically requires that it collect and analyze stormwater samples

according to the conditions in Schedule B. When Respondent failed to collect three samples at one outfall during the 2019-2020 monitoring year, it failed to take reasonable care to avoid a foreseeable risk that it would violate the Permit and Oregon environmental law.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(a)(D), 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 \$2,885. This is the amount Respondent gained by avoiding spending \$3,511 to collect and analyze three stormwater samples. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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 (6 + 0 + 2 + 4 + 0)] + \$2,885  
= \$4,000 + [\$400 x 12] + \$2,885  
= \$4,000 + \$4,800 + \$2,885  
= \$11,685