



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

February 24, 2021

CERTIFIED MAIL: 7017 0530 0000 7760 3031

Walsh Trucking Co., LTD, doing business as Walsh & Sons Trucking
c/o Brent M. Crew, Registered Agent
851 SW Sixth Ave., Suite 1500
Portland, OR 97204

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2020-178

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 Walsh Trucking Co. LTD a civil penalty of \$9,428 for failing to perform grab sample monitoring at 1650 NW Sundial Dr., in Troutdale during the 2019-2020 monitoring year as required under the National Pollution Discharge Elimination System Stormwater Discharge General Permit, No. 1200-Z (the Permit).

DEQ issued this penalty because monitoring is an important condition of the Permit and this is a repeat violation. Monitoring may reveal the presence of harmful levels of pollutants that pose a threat to waters of the state. In addition, monitoring allows permittees and DEQ to gauge the effectiveness of stormwater controls and best management practices at reducing levels of pollutants in discharges.

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

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/administrative-rules.aspx> or by calling the number below.

If you have any questions, please contact Courtney Brown at 503-229-6839 or toll free in Oregon at 800-452-4011, extension 6839.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Daria Gneckow, DEQ, Northwest Region
Christine Svetkovich, DEQ, Northwest Region
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	
4	WALSH TRUCKING CO., LTD, doing)	
4	business as WALSH & SONS TRUCKING,)	NOTICE OF CIVIL PENALTY
5	an Oregon corporation,)	ASSESSMENT AND ORDER
5	Respondent.)	CASE NO. WQ/SW-NWR-2020-178

6 I. AUTHORITY

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

11 II. FINDINGS OF FACT

12 1. Respondent is registered under the National Pollutant Discharge Elimination System
13 Stormwater Discharge General Permit, No. 1200-Z (the Permit) for its facility located at 1650 NW
14 Sundial Dr., in Troutdale, Oregon (the Facility).

15 2. Schedule B, condition 2, Table 5 of the Permit requires registrants to monitor for
16 statewide benchmarks four times per monitoring year (July 1 through June 30).

17 3. Respondent performed only one out of the required four instances of grab sample
18 monitoring during the 2019-2020 monitoring year.

19 III. CONCLUSIONS

20 Respondent has violated ORS 468B.025(2) and Schedule B, condition 2 of the Permit by
21 failing to perform three of the required four instances of grab sample monitoring during the 2019-2020
22 monitoring year. These are class I violations pursuant to OAR 340-012-0055(1)(o). DEQ hereby assesses
23 a \$9,428 civil penalty for these violations.

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1 IV. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
3 hereby ORDERED TO: Pay a total civil penalty of \$9,428. The determination of the civil penalty is in the
4 attached Exhibit and is incorporated as part of this Notice.

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

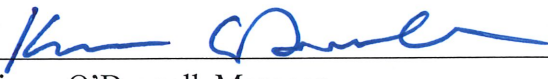
8 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

9 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
10 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
11 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
12 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
13 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
14 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
15 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
16 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge
17 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
18 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
19 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
20 you may represent yourself. If you are a corporation, partnership, limited liability company,
21 unincorporated association, trust or government body, you must be represented by an attorney or a duly
22 authorized representative, as set forth in OAR 137-003-0555.

23 Active duty Service members have a right to stay proceedings under the federal Service
24 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
25 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
26 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
27 Department does not have a toll free telephone number.

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

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10 2/24/2021
11 Date


12 Kieran O'Donnell, Manager
13 Office of Compliance and Enforcement
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EXHIBIT

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

VIOLATION: Violating ORS 468B.025(2) by violating Schedule B, condition 2 of the Permit by failing to perform all the required monitoring of statewide benchmark pollutants in the 2019-2020 monitoring year.

CLASSIFICATION: These are Class I violations 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 2 according to OAR 340-012-0145(2)(a)(C) and (D) because Respondent has a prior significant action (EEO #2018-EEO-3917 issued 9/27/2018) that includes one class I violation.

"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 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. The Permit requires Respondent to monitor stormwater discharge from two outfalls at the Facility. Respondent failed to complete three instances of grab sample monitoring at its two outfalls, for a total of six occurrences.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent applied for coverage under the Permit and has a copy of the Permit, which expressly requires Respondent to perform monitoring for statewide benchmark and impairment pollutants according to the frequency prescribed in the Permit. Additionally, Respondent has been cited for violating the Permit's monitoring requirements in a previous Expedited Enforcement Offer (EEO

#2018-EEO-3917). By failing to adhere to the Permit's monitoring requirements Respondent consciously disregarded a substantial and unjustifiable risk that it would violate Oregon 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)(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 \$628. This is the amount Respondent gained by avoiding spending a total of \$822 for sampling and analysis costs for each missed grab sample during the 2019-2020 monitoring year by June 30, 2020 (\$137 x 3 missed events x 2 outfalls). This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (2 + 0 + 2 + 8 + 0)] + \$628 \\ &= \$4,000 + (\$400 \times 12) + \$628 \\ &= \$4,000 + \$4,800 + \$628 \\ &= \$9,428 \end{aligned}$$