



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

March 12, 2018

CERTIFIED MAIL: 7016 3010 0000 6028 6879

Kauffman Crushing, Inc.
c/o J.C. Minor, Registered Agent
236 W. Olive St.
Newport, OR 97365

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-WR-2017-205

This letter is to inform you that DEQ has issued you a civil penalty of \$14,870 for discharging wastes to waters of the state from an unauthorized outfall and for violating conditions of the National Pollutant Discharge Elimination System General Permit Number 1200-A (the Permit) assigned to the "Eckman Creek Quarries."

DEQ issued this penalty because compliance with conditions of the Permit is necessary in order to protect waterways from pollutants caused by mining operations. At the time of DEQ's and DOGAMI's inspections the stormwater pollution control plan (SWPCP) developed for the mine failed to comply with permit conditions regarding housekeeping, secondary containment of hazardous substances, best management practices and identification of discharge outfalls. The SWPCP was also incomplete and did not reflect current conditions at the mine. Included in Section IV is an order requiring you to submit a revised SWPCP to DOGAMI for approval within 15 days of the order becoming final.

In addition, you have not been performing the monitoring required under the Permit. When your coverage under the permit was renewed in 2013, DEQ communicated that your monitoring waivers were no longer valid and would need to be re-established. DOGAMI also reminded you of the monitoring requirements several times since 2013. Monitoring stormwater discharge from all of the site's stormwater outfalls is essential to evaluating the effectiveness of your site's best management practices and pollution controls.

Lastly, DEQ has cited you for causing pollution to Eckman Creek for the turbid discharges caused by excessive land application of wastewater through the leachlines. We understand that at one time you received approval from DOGAMI to use this land application method and that you have since discontinued its use, and thus we are not assessing penalties for this violation.

Kauffman Crushing, Inc.
Case No. WQ/SW-WR-2017-205
Page 2

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 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 which are environmental improvement projects that you sponsor. Further information is available 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>. Both are available by calling the number below.

If you have any questions, please contact Courtney Brown at 503-229-6839 or 800-452-4011 ext 6839.

Sincerely,



Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement

Enclosures

cc: Lisa Reinhart, DOGAMI, 229 Broadalbin St. SW, Albany, OR 97321
David Kauffman, P.O. Box 540, Waldport, OR 97394-0540

1 conditions. Specifically, the SWPCP did not identify the culvert that discharged “emergency” overflow
2 from the settling pond #1 to Eckman Creek as a discharge point. Even though Respondent began to use
3 flocculant in the fall of 2014, the SWPCP did not identify the use of flocculant. The SWPCP also did
4 not include a complete site map that identified “area 1” where Respondent was performing sampling.

5 6. Schedule A, condition 7.e of the Permit requires that the SWPCP must be kept current
6 and updated as necessary to reflect any changes to the site.

7 7. Schedule A, condition 8.b.ii.(1)-(17) of the Permit requires that the SWPCP contains a
8 site map that includes: drainage patterns, drainage and discharge structures, an outline of the drainage
9 area for each stormwater outfall, paved areas and buildings within each drainage area, areas used for
10 outdoor manufacturing, treatment, storage or disposal of significant materials, operating equipment
11 areas, including any area where a concrete or asphalt batch plant may be located, existing structural
12 control measures for minimizing pollutants in stormwater runoff, structural features that reduce flow or
13 minimize impervious areas, material handling and access areas, hazardous water treatment, storage and
14 disposal facilities, location of wells including waste injection wells, seepage pits, drywells, etc.,
15 location of springs, wetlands and other surface waterbodies both on site and adjacent to the site,
16 location of groundwater wells, location and description of authorizes non-stormwater discharges,
17 location of monitoring points, location of spill prevention and cleanup materials, location of wheel
18 washing activities.

19 8. Schedule B, condition 7.a of the Permit requires permit registrants to conduct daily,
20 weekly, and monthly inspections of active sites. Schedule B, condition 7.c of the Permit requires permit
21 registrants to document its inspection and other required observations in inspection reports that are
22 retained on-site and submitted to DEQ or DOGAMI upon request.

23 9. DOGAMI requested inspection records; Respondent could not produce any inspection
24 records.

25 10. DOGAMI and DEQ staff performed an inspection of the mine on January 10, 2018, and
26 observed a culvert discharging water from sediment settling pond #1 to Eckman Creek and that the land
27 application of process wastewater from leach lines had resulted in saturated soils and turbid water

1 discharges to Eckman Creek. In addition, staff observed trash as well as rusting metal in a settling
2 basin.

3 11. Schedule A, condition 8.b.viii requires that discharge outfalls be identified in the
4 SWPCP.

5 12. The culvert described in paragraph 10 is not identified as an outfall in the SWPCP.

6 13. On January 18, 2018, Respondent's consultant sent an e-mail to DOGAMI staff
7 indicating that the culvert had been plugged on January 16, 2018, and is no longer leaking.

8 14. Settling pond #1 contains water that is collected from mine runoff and is discolored,
9 unfiltered and filled with algae and will or may cause pollution to waters of the state and is considered
10 "wastes" according to ORS 468B.005(9).

11 15. Schedule A, condition 1.f of the Permit requires permit registrants to routinely clean all
12 exposed areas and pick up litter.

13 16. Schedule B, condition 1.a of the Permit requires permit registrants to monitor for
14 benchmarks identified in the Permit. Schedule B, condition 2 requires that registrants monitor each
15 outfall for benchmarks four times per monitoring year. Schedule B, condition 2.b requires that
16 registrants collect a sample that is representative of the discharge or storm event. The sample must be
17 taken at monitoring points specified in the SWPCP before the stormwater or mine dewatering water
18 joins or is diluted by stormwater or mine dewatering water from a different drainage area of the facility
19 or areas outside the facility; wastewater, or any other wastestream, body of water or substance.

20 17. Schedule B, condition 8.a of the Permit requires permit registrants submit a discharge
21 monitoring report (DMR) form to DEQ or DOGAMI by July 31st of each year.

22 18. Schedule A, condition 12 of the Permit requires "tier I corrective actions" within 30
23 days of obtaining monitoring results that exceed Permit benchmarks in Schedule A, condition 10, table
24 1. The benchmark for pH at Schedule A, condition 10, table 1 of the Permit is 5.5-9.0.

25 19. Respondent submitted its DMR for the 2013-2014 monitoring year on July 28, 2014. It
26 had 5 pH values recorded. According to the DMR, in January, February, March and April of 2014,
27 Respondent's pH was 5. There were no other monitoring results. The DMR included a notation "N-A

1 under waver (sic)". Notes in the "visual observations" indicated that Respondent is attempting to
2 sample from the leach line.

3 20. Respondent submitted its DMR for the 2014-2015 monitoring year on November 9,
4 2015. It had 3 pH values recorded but no other monitoring results. According to the DMR, in
5 November and December 2014, and January 2015, Respondent's pH was 5. The DMR included a
6 notation "N-A under waver [sic]".

7 21. Respondent submitted its DMR for the 2016-2017 monitoring year on October 30,
8 2017. It had 5 pH values recorded but no other monitoring results. According to the DMR in
9 September, October, November, and December of 2016, and January and February and March of 2017,
10 Respondent's pH was 5.

11 22. Respondent had no tier I reports and made no corrective actions in response to pH
12 benchmark exceedances described in paragraphs 19, 20, and 21, above.

13 III. CONCLUSIONS

14 1. Respondent has violated ORS 468B.025(2) by violating Schedule A, condition 8.viii of the
15 Permit by discharging wastes that enter waters of the state from an outfall not identified in the SWPCP.
16 Specifically, as described in Section II paragraphs 5, 10-12, on or before January 10, 2018, until on or
17 about January 12, 2018, Respondent discharged process wastewater from settling pond #1 to Eckman
18 creek, waters of the state according to ORS 468B.005(10), via a culvert that was not identified in its
19 SWPCP. Discharging any waste that enters waters of the state from a discharge point not authorized by
20 a waste discharge permit is a Class I violation, according to OAR 340-012-0055(1)(c). DEQ hereby
21 assesses a \$7,600 civil penalty for this violation.

22 2. Respondent has violated ORS 468B.025(2) by violating Schedule B, condition 1.a and
23 condition 1.e of the Permit by failing to monitor for the benchmarks identified in the Permit four times per
24 monitoring year. Specifically, as described in Section II, paragraphs 19-21, Respondent failed to
25 perform the grab sample monitoring required by the Permit during the 2014-2015, 2015-2016, and
26 2016-2017 monitoring years. Failing to collect monitoring data required in Schedule B of the permit is
27 a Class I violation, according to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$7,270 civil penalty for
these violations.

1 3. Respondent has violated ORS 468B.025(2) by violating Schedule B, condition 8.a of the
2 Permit by submitting its DMR for the 2014-2015 and 2016-2017 monitoring years late. Specifically, as
3 described in Section II paragraphs 17, 20, 21, the Permit requires the DMR to be submitted by July 31st of
4 each monitoring year. Respondent submitted its DMR for the 2014-2015 monitoring year on November 9,
5 2015 and submitted its DMR for the 2016-2017 monitoring year on October 30, 2017. Failing to timely
6 submit a report as required by permit is a Class II violation according to OAR 340-012-0055(2)(b). DEQ
7 has not assessed a civil penalty for these violations.

8 4. Respondent has violated ORS 468B.025(2) by violating Schedule A, condition 12 of the
9 Permit by failing to perform Tier I corrective actions for exceedances of the pH benchmark for
10 monitoring performed in January, February, March, April, November, and December of 2014, and
11 January of 2015, and September, October, November, December of 2016, and January, February and
12 March of 2017, as described in Section II, paragraph 18-22. These are Class II violations according to
13 OAR 340-012-0053(2). DEQ has not assessed a civil penalty for these violations.

14 5. Since on or about November 15, 2013, Respondent has violated ORS 468B.025(2) by violating
15 Schedule B, condition 7 of the Permit by failing to perform inspections and document inspections in
16 inspection reports as described in Section II paragraphs 8 and 9. These are Class II violations according
17 to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for these violations.

18 6. Respondent has violated ORS 468B.025(1)(a) by causing pollution to waters of the state.
19 Specifically, as described in Section II, paragraph 10, on or about January 10, 2018, DOGAMI and DEQ
20 staff observed discharges of turbid water to Eckman Creek, waters of the state, coming from the soils that
21 were saturated by the leach line discharges at the mine. Turbidity is included in the definition of
22 “pollution” under ORS 468B.005(5). This is a Class I violation pursuant to OAR 340-012-0055(1)(a).
23 DEQ has not assessed a civil penalty for this violation.

24 7. Respondent has violated ORS 468B.025(2) by violating Schedule A, condition 7.e and
25 condition 8.b.ii of the Permit by failing to keep the SWPCP current and updated as necessary to reflect any
26 changes to the site and include an updated site map. Specifically, as described in Section II, paragraph 5,
27 since on or about September 27, 2017, through the present, the SWPCP failed to identify current ,

1 conditions of the mine. This is a Class II violation according to OAR 340-012-0053(2). DEQ has not
2 assessed a civil penalty for this violation.

3 8. Respondent has violated ORS 468B.025(2) by violating Schedule A, condition 1.f of the
4 Permit by failing to keep litter and debris picked up at the mine on or about January 10, 2018, as
5 described in Section II, paragraph 10. This is a Class II violation according to OAR 340-012-0053(2).
6 DEQ has not assessed a civil penalty for this violation.

7 9. Respondent has violated ORS 468B.025(2) by violating Schedule A, condition 1.b of the
8 Permit by failing to store hazardous substances within berms or other secondary containment devices to
9 prevent leaks and spills from contaminating stormwater as described in Section II, paragraph 3. This is
10 a Class II violation according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this
11 violation.

12 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

15 1. Pay a total civil penalty of \$14,870. The determinations of the civil penalties are attached as
16 Exhibits No.1 and No. 2 and are incorporated as part of this Notice.

17 If you do not file a request for hearing as set forth in Section V below, your check or money
18 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
19 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty,
20 the Findings of Fact, Conclusions and Order become final.

21 2. Within 15 days after the Order becomes final by operation of law or on appeal, submit for
22 DOGAMI approval a revised SWPCP that reflects current conditions at the mine and meets the
23 requirements of the Permit. Please submit SWPCP revisions to Lisa Reinhart, DOGAMI, 229 Broadalbin
24 St. SW, Albany, OR 97321.

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(s), 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**. 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, please call the Oregon State Bar at 1-800-
15 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
16 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
17 <http://legalassistance.law.af.mil/content/locator.php>.

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.

24
25
26 March 12, 2018

27 Date

Sarah Wheeler

Sarah G. Wheeler, Acting 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 1: Discharging any waste that enters waters of the state from a discharge point not authorized in a permit in violation of ORS 468B.025(2) and Schedule A, condition 8.viii of the Permit.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(c).
- 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) as 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 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 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. The culvert and discharge to Eckman Creek was first observed on January 10, 2018. On or about January 12, 2018, the flow between the pond and Eckman creek was stopped and culvert was plugged on or about January 16, 2018.
- "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. The culvert was installed with the purpose of creating a connection between settling pond no.1 and Eckman Creek. In doing so, Respondent consciously disregarded a substantial and unjustifiable risk that it would result in an unpermitted discharge of settling pond wastes. The risk was of a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure that the violation would not be repeated. On or about January 16, 2018, Respondent plugged the culvert so that it no longer leaked into the creek.

"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. Respondent gained no economic benefit through this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 2 + 8 + -1)] + \0
= $\$4,000 + (\$400 \times 9) + \$0$
= $\$4,000 + \$3,600 + \$0$
= $\$7,600$

EXHIBIT No. 2

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

VIOLATION 2: Violating ORS 468B.025(2) by failing to collect monitoring data required in Schedule B condition 1 of the Permit.

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) as 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 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 12 occurrences of the violation. Schedule B of the Permit requires registrants to perform grab sample monitoring four times per monitoring year. Respondent performed no grab sample monitoring as required under the Permit during the 2013-2014, 2014-2015, and 2016-2017 monitoring years.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent reasonably should have known of the requirement to perform the grab sample monitoring under the Permit. Respondent was assigned coverage under the revised NPDES General Permit No.: 1200-A on November 15, 2013. At that time DEQ informed Respondent that it was required to meet the permit's monitoring requirements and that Respondent must start sampling for any parameters for which it had monitoring waivers under the old permit. Respondent was reminded via e-mails sent by DOGAMI on August 17, 2016, and November 3, 2015, that it was required to comply with the sampling requirements of its Permit.

"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 \$1,270. This is the amount Respondent gained by avoiding \$600 worth of monitoring costs during the 2013-2014, 2014-2015, and 2016-2017 monitoring years.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 3 + 2 + 0)] + \$1,270$
 $= \$4,000 + (\$400 \times 5) + \$1,270$
 $= \$4,000 + \$2,000 + \$1,270$
 $= \$7,270$