



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 18, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3541

Coburg Road Quarry LLC
c/o Vernon L. Egge, Registered Agent
90436 Coburg Road
Eugene, OR 97408

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-WR-2021-545

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 civil penalty of \$83,055 for operating a quarry without coverage under the National Pollutant Discharge Elimination System Stormwater and Mine Dewatering Discharge General Permit, No. 1200-A (the Permit) and for causing pollution to the McKenzie River.

DEQ issued this penalty because unpermitted turbid stormwater discharges are harmful to beneficial uses of the waters of the state, including aquatic life and habitat. The Permit requires registrants to develop plans and implement and maintain best management practices to minimize and mitigate stormwater runoff. By failing to obtain permit coverage, you failed to take the steps necessary to mitigate stormwater runoff and a risk of harm to water quality.

Included in Section IV of the enclosed Notice is an order requiring you to submit a complete application for coverage under the Permit to the Oregon Department of Geology and Mineral Industries within 30 days of the Notice and Order becoming final. \$55,455 of the civil penalty is the amount you gained by avoiding the costs of compliance, including a wheel wash. If you obtain coverage and install adequate sediment controls, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:
<https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your

account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

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.

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 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: Lisa Reinhart, DOGAMI
Zach Loboy, DEQ
Accounting, DEQ

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III. CONCLUSIONS

1. Respondent has violated ORS 468B.025(1)(a) by causing pollution to waters of the state. Specifically, on December 6, 2021, Respondent discharged turbid industrial stormwater from the Facility to the McKenzie River, waters of the state. The McKenzie River supports numerous beneficial uses including aquatic life and habitat. Turbid industrial stormwater is considered “pollution” according to ORS 468B.005(5) as it tends to render waters of the state harmful, detrimental or injurious to aquatic life or the habitat thereof. This is a Class I violation, according to OAR 340-012-0055(1)(a). DEQ hereby assesses a \$12,600 civil penalty for this violation.

2. Respondent has violated ORS 468B.050(1)(d) by operating an industrial activity that causes an increase in the discharge of wastes into waters of the state without a permit. Specifically, the Facility discharges turbid industrial stormwater to the McKenzie River, waters of the state. Turbid stormwater is considered a “waste” as it is an industrial waste which will or may cause pollution to waters of the state. This is a Class I violation, according to OAR 340-012-0055(1)(d). DEQ asses a \$70,455 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

1. Pay a total civil penalty of \$83,055. The determinations of the civil penalties are attached as Exhibits No.1 and No. 2 and are incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, please pay the penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

1 Pay by check or money order: Make checks payable to “Department of Environmental
2 Quality” and mail to the address on the enclosed payment slip. Please make sure to include the payment
3 slip with your check or money order.

4 2. Submit a complete application for registration under the NPDES General Permit Number
5 1200-A, for the Facility including appropriate fees and supplemental materials, to the Department of
6 Geology and Mineral Industries, 229 Broadalbin St. SW, Albany, OR 97321 within 30 days of this
7 Notice and Order becoming final.

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 exhibits, 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 **503-229-6762** or email it to DEQappeals@deq.oregon.gov. 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.

7
8
9
10 3/18/2022

11 Date



11 Kieran O'Donnell, Manager
12 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 No.1: Causing pollution to the McKenzie River, waters of the state, on or about December 6, 2021, in violation of ORS 468B.025(1)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(a)

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D) because Respondent does not have an NPDES 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 3 according to OAR 340-012-0145(2) (a) (A), because Respondent has one prior significant action (case no. WQ/SW-WR-2016-063) that includes two Class I violations.

"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 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation. Respondent discharged turbid stormwater from the Facility to the McKenzie River on December 6, 2021.

"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. In 2016 Respondent was issued a formal enforcement action for similar conduct, causing pollution by discharging turbid stormwater from its Facility to the McKenzie River. By failing to implement sufficient controls and/or best management practices to prevent and control the discharge, Respondent consciously disregarded a substantial and unjustifiable risk that it would cause unlawful pollution to waters of the state.

"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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 did not obtain an economic benefit through this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$6,000 + [(0.1 \times \$6,000) \times (3 + 0 + 0 + 8 + 0)] + \0
 $= \$6,000 + [\$600 \times 11] + \$0$
 $= \$6,000 + \$6,600 + \$0$
 $= \$12,600$

EXHIBIT No. 2

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

VIOLATION No. 2: Operating an industrial activity which causes an increase in the discharge of wastes into waters of the state without a permit, in violation of ORS 468B.050(1)(d).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(d).

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D) because Respondent does not have an NPDES 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 3 according to OAR 340-012-0145(2) (a) (A), because Respondent has one prior significant action (case no. WQ/SW-WR-2016-063) that includes two Class I violations.

"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 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondent has required coverage since at late as December 6, 2021, when Respondent discharged turbid stormwater from the Facility to the McKenzie River. As of the date of this Notice and Order Respondent has not obtained coverage under the Permit.

"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. In 2008 DEQ sent Respondent a

Warning Letter informing it of the need to obtain coverage under an NPDES 1200-A Permit for stormwater runoff discharging from its Facility to the McKenzie River. In 2016 Respondent was issued a formal enforcement action for operating without a 1200-A and agreed to take steps to ensure there would be no stormwater discharges from its Facility to the McKenzie River. By discharging stormwater from the Facility to the McKenzie River without permit coverage, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate Oregon law requiring a permit for stormwater discharges from industrial activities.

"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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 \$55,455. This is the amount Respondent gained by avoiding spending \$1,348 on the NPDES 1200-A permit fee, \$7,500 to prepare a Stormwater Pollution Control Plan in accordance with the permit's requirements, \$1,108 to educate employees on permit implementation, and \$293 in monitoring costs (laboratory analysis and labor), and \$75,000 on a wheel wash. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$6,000 + [(0.1 \times \$6,000) \times (3 + 0 + 4 + 8 + 0)] + \$55,455$
 $= \$6,000 + [\$600 \times 15] + \$55,455$
 $= \$6,000 + \$9,000 + \$55,455$
 $= \$70,455$

Oregon Department of Environmental Quality
 700 NE Multnomah Street, Suite 600
 Portland, OR 97232-4100



State of Oregon
 Department of Environmental Quality

Phone: 503-229-5437
 Fax: 503-229-5850

CIVIL PENALTY - ORS 468.135(2)

| | |
|------------------------|----------------|
| DATE: | March 17, 2022 |
| RESPONSE DATE : | May 26, 2022 |
| TOTAL PENALTY: | \$83,055.00 |

| | | | |
|----------------------|-----------------------------|--------------------------|---------------------|
| Account Name: | COBURG ROAD QUARRY, LLC | | |
| Account Type: | Vendor/Organization/Company | Reference Number: | CPGFD2200024 |
| SubSystem ID: | N/A | FIMS Acct. ID: | 6951 |

Penalty Summary

| Penalty Amount | Interest | Adjustment | Amount Paid | Total Penalty |
|----------------|----------|------------|-------------|---------------|
| \$ 83,055.00 | \$ 0.00 | \$ 0.00 | \$ 0.00 | \$ 83,055.00 |

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit <https://ydo.oregon.gov> and select 'Register Account'



 PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



| | | | |
|------------------------|---------------------------------------|---------------------------|--------------|
| REFERENCE NO. | CPGFD2200024 | | |
| PAYCODE: | 00401 7400 10040 74001 0500 000000 00 | | |
| FEE PROGRAM ID: | 950 | RESPONSE DATE: | May 26, 2022 |
| FIMS ACCT. ID: | 6951 | TOTAL PENALTY DUE: | \$83055.00 |

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

DEQ FINANCIAL SERVICES - LBX4244
 PO BOX 4244
 PORTLAND OR 97208-4244

Check this box if updated address information has been provided on the back of the form.

00401 7400 10040 74001 0500 000000 009500006951&CPGFD220002400083055004



State of Oregon
Department of
Environmental
Quality

State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
Phone: 503-229-5437
Fax: 503-229-5850

Penalty Detail

| Transaction Date | Description | Amount |
|------------------|----------------------------|-------------|
| 3/16/2022 | 2021-545 WQ-SW-WR-2021-545 | \$83,055.00 |

SFMS Agencies Use:

| Trans Code | Treasury Fund | SFMS | Index | PCA (5) | Agency Object | Project # | Phase |
|------------|---------------|------|-------|---------|---------------|-----------|-------|
| 723 | 00401 | 7400 | 10040 | 74001 | 0500 | 00000 | 00 |

Address Changes

Please visit <https://ydo.oregon.gov> to update your mailing address online or provide the following information:

Name _____
Address _____
City, State, Zip _____