



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 11, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3404

Tidewater Contractors Inc.
c/o Jess Wayne Fitzhugh, Registered Agent
16156 Hwy 101 S.
Brookings, OR 97415

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-WR-2021-057

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 \$12,300 for water quality violations that occurred at your quarry located at 94403 N. Bank Rogue River Rd., in Gold Beach, Oregon. Specifically, you failed to implement a stormwater pollution control plan in violation of the National Pollutant Discharge Elimination System Industrial Stormwater General Permit Number 1200-A for Mining Activities. In addition, you deposited loose soils and sediment in a pond.

DEQ issued this penalty because complying with the conditions of the permit are important to maintaining water quality and protecting aquatic life and human health. The discharge of sediment and other pollutants can degrade water quality and harm aquatic life by interfering with growth, reproduction, respiration, and feeding. By failing to implement the stormwater pollution control and by depositing sediment into a pond you caused a risk of harm to water quality and aquatic life.

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
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
TIDEWATER CONTRACTORS, INC.) ASSESSMENT AND ORDER
Respondent.) CASE NO. WQ/SW-WR-2021-057

I. AUTHORITY

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

II. FINDINGS OF FACT

1. Respondent owns and operates the quarry facility located at or near 94403 N. Bank Rogue River Road in Gold Beach, Oregon (the Facility).

2. The Facility is registered under the National Pollution Discharge Elimination System Industrial Stormwater General Permit Number 1200-A for Mining Activities (the Permit). The Permit has been in effect at all material times.

3. Schedule A, condition 7(d) of the Permit requires the permit registrant to implement its Stormwater Pollution Control Plan (SWPCP).

4. Respondent's SWPWP, effective February 12, 2021 states that:

- a. Pond banks in the southern excavation area are vegetated with a variety of grasses, shrubs and trees;
- b. Waste products are disposed of and located in covered trash bins located inside a building;
- c. Chemicals including oil, grease and antifreeze are located in a covered storage/maintenance building;
- d. No processing water is generated on site; and
- e. Vehicle traffic is restricted from entering mined and disturbed areas during wet weather,

5. On February 12, 2021 the Department of Geology and Mineral Industries (DOGAMI) performed an inspection of the Facility. At the time of the inspection the following conditions persisted at the Facility:

- a. The northern bank of “discharge pond 4” was exposed with bare soil and not vegetated;
- b. Used oil containers, grease tubes and debris were located out in the open, exposed to stormwater and were not contained in covered trash bins or located inside any structure; and
- c. Respondent had been washing rock adjacent to the pond in drainage area 4 which produced process wastewater.

6. On March 19, 2021, heavy vehicle traffic was dumping and piling loose fill on the northern bank of and within the pond in drainage area 4 at the Facility.

7. The pond in drainage area 4 is habitat for aquatic species.

III. CONCLUSIONS

1. Respondent has violated ORS 468B.025(2) by violating Schedule A, condition 7(d) of the Permit. Specifically, on or about February 12, 2021, and March 19, 2021, Respondent failed to implement its SWPCP as described in Section II, paragraphs 4, 5 and 6. This is a Class I violation according to OAR 340-012-0055(1)(r). DEQ has assessed a \$6,700 civil penalty for this violation.

2. Loose fill and sediment have the potential to cause pollution by altering the physical, chemical, and biological properties of waters of the state and are considered “waste” according to ORS 468B.005(9).

3. The pond in drainage area 4 is a considered a “water of the state” according to ORS 468B.005(10) as it is a body of water which effects a junction with the Rogue River, a water of the state.

4. Rock washwater has the potential to cause pollution by altering the physical, chemical, and biological properties of waters of the state and is considered “waste” according to ORS 468B.005(9).

5. On or about March 19, 2021, Respondent violated ORS 468B.050(1)(a) by discharging wastes to waters of the state without a permit. Specifically, Respondent discharged loose soils and

1 sediment to the pond in drainage area 4. This is a Class I violation according to OAR 340-012-
2 0055(1)(a). DEQ has assessed a \$5,600 civil penalty for this violation.

3 6. On or before February 12, 2021, Respondent violated ORS 468B.025(1)(a) by placing
4 wastes in a location where such wastes are likely to escape or be carried into waters of the state by any
5 means. Specifically, Respondent washed rock, which created washwater, a waste, in a location where it
6 could discharge to the pond in drainage area 4. This is a Class II violation according to OAR 340-012-
7 0055(2)(c). DEQ has not assessed a penalty for this violation

8 IV. ORDER TO PAY CIVIL PENALTY IF APPLICABLE: AND TO COMPLY

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

11 Pay a total civil penalty of \$12,300. The determination of the civil penalties are attached as
12 Exhibits No. 1 and 2 and are incorporated as part of this Notice.

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

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

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

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

24 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
25 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
26 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
27 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered

1 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
2 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
3 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
4 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
5 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
6 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
7 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
8 you may represent yourself. If you are a corporation, partnership, limited liability company,
9 unincorporated association, trust or government body, you must be represented by an attorney or a duly
10 authorized representative, as set forth in OAR 137-003-0555.

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

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

22
23
24
25 3/11/2022
26 Date

25 
26 Kieran O'Donnell, Manager
27 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: Respondent has violated ORS 468B.025(2) by violating Schedule A, condition 7.d of the 1200-A Permit by failing to implement the SWPCP developed for the Facility.

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

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 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 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 offense. The SWPCP was not implemented on February 12, 2021, and on March 19, 2021. A revised SWPCP was submitted to DOGAMI on July 7, 2021. The duration of the violation existed from February 12, 2021, the latest, through March 19, 2021, and likely until the SWPCP was revised. Therefore, there were at least 35 days of violation.

"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 Permit plainly requires that registrants must implement the SWPCP. By conducting industrial activities (rock washing and vehicle traffic) in locations not identified in the SWPCP, and by failing to adhere to housekeeping and storage requirements of the SWPCP, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate the Permit and Oregon law.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation by revising its SWPCP.

"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. The economic benefit Respondent gained through this violation is too speculative for DEQ to estimate

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 8 + -3)] + \$0$
 $= \$4,000 + (\$400 \times 9) + \$0$
 $= \$4,000 + \$2,700 + \$0$
 $= \$6,700$

EXHIBIT No.2

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

VIOLATION No.2 (5): Respondent has violated ORS 468B.050(1)(a) by discharging wastes without a permit on March 19, 2021.

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) 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 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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Each day of violation is a separate occurrence. The violation occurred on at least one day, March 19, 2021.

"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. By allowing loose soils to be placed in Discharge Pond 4, Respondent failed to take reasonable care that it would violate Oregon law prohibiting the discharge of wastes without a 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 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. The economic benefit Respondent gained through this violation is too speculative for DEQ to estimate

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 0 + 4 + 0)] + \$0$
 $= \$4,000 + (\$400 \times 4) + \$0$
 $= \$4,000 + \$1,600 + \$0$
 $= \$5,600$