



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

May 29, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 0663

Western Rock Resources, LLC
Brent J. Kerr, Registered Agent
395 Shenandoah Lane NE
Woodburn OR 97071

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-WR-2020-040

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 DEQ has issued you a civil penalty of \$4,800 for allowing the discharge of turbid water from your mining operation located at 18250 SE Walnut Hill Road in Amity in violation of state water quality standards. Specifically, in January 2020, you discharged highly turbid stormwater waste from your facility into an unnamed drainage that flows into Palmer Creek.

DEQ issued this penalty because sediment and turbidity can block light from reaching submerged vegetation, reducing photosynthesis and dissolved oxygen. It also decreases water clarity, which can affect the ability of fish to see and catch food, clog fish gills, reduce growth rates, decrease resistance to disease, and prevent egg and larval development. When surface waters are impacted by turbid discharges, it can affect the ability of fish and other aquatic species to survive.

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/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kieran O'Donnell', written over a horizontal line.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Lisa Reinhart, DOGAMI, 229 Broadalbin Street SW, Albany OR 97312-2246
Amber L. Hudspeth, Hudspeth Land+Water, 61514 SE Hillridge Road, Bend OR 97702

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
WESTERN ROCK RESOURCES, LLC,)
Respondent.) NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER
CASE NO. WQ/SW-WR-2020-040

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, ORS 468.126 through 468.140, ORS Chapters 183 and 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 45.

II. FINDINGS OF FACT

1. On December 30, 2019, DEQ received an application from Respondent to transfer coverage under the General Permit National Pollutant Discharge Elimination System Stormwater Discharge Permit Number 1200-A (the Permit) for a property located at 18250 S.E. Walnut Hill Road in Amity (the Property). The application stated that the scheduled permit transfer date was November 27, 2019.

2. On January 29, 2020, DEQ assigned Respondent coverage under the Permit.

3. Surface water discharges from the north-central portion (DP #1) and northeastern corner (DP #2) of the Property into an unnamed drainage which flows into a ditch along Highway 154. The ditch along Highway 154 drains into Palmer Creek. A vegetated impoundment discharges into a culvert immediately upgradient of DP #1.

4. On January 30, 2020, the Department of Geology and Mineral Industries (DOGAMI) conducted an inspection at the Property. At the time of the inspection:

a. Turbid water was flowing across the Property and into the vegetated impoundment upgradient of DP #1;

b. Turbid water was discharging from DP #1 into the unnamed drainage. The discharge was dark tan in color while the surface water flow in the unnamed drainage was clear, upstream of the the discharge.

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III. CONCLUSIONS

Respondent violated ORS 468B.025(1)(b), OAR 340-041-0036, and Schedule A, Condition 4 of the Permit by reducing the water quality of waters of the state below a water quality standard. Specifically, in January 2020, Respondent created more than a ten percent cumulative increase in natural stream turbidity of the unnamed drainage, as alleged in Section II. The unnamed drainage is waters of the state, as that term is defined in ORS 468B.005(10). This is a Class I violation according to OAR 340-012-0055(1)(b). DEQ hereby assesses a \$4,800 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO pay a total civil penalty of \$4,800. The determination of the civil penalty is attached as Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**.

NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

1 unincorporated association, trust or government body, you must be represented by an attorney or a duly
2 authorized representative, as set forth in OAR 137-003-0555.

3 Active duty Service members have a right to stay proceedings under the federal Service
4 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
5 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
6 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
7 Department does not have a toll free telephone number.

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

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17 5/29/2020
18 Date

19 Kieran O'Donnell
20 Kieran O'Donnell, Manager
21 Office of Compliance and Enforcement
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EXHIBIT 1

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

VIOLATION 1: Reducing the water quality of the state below a water quality standard, in violation of ORS 468B.025(1)(b) and OAR 340-041-0036.

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

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). Respondent has coverage under the NPDES 1200-A 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. DOGAMI documented the increase in turbidity on one day only.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. The Permit specifically states that Respondent cannot cause or contribute to a violation of water quality standards. Respondent reasonably should have known that allowing turbid water to discharge into the vegetated impoundment would result in the discharge of that turbid water into the unnamed drainage, resulting in an increase in turbidity that could be in violation of a water quality standard.

"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). Although Respondent submitted a revised Stormwater Pollution Control Plan indicating that it was taking steps to prevent further turbid discharges, that plan has not been approved. Additionally, it is unknown if Respondent has taken the steps to ensure that turbid discharges will no longer occur.

"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. Although additional erosion and sediment control measures need to be implemented to ensure that future turbid discharges do not occur, DEQ is unable to make an estimate of what the cost would be to design, implement and maintain those measures.

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

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