



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah St Ste 600

Portland, OR 97232-4100

(503) 229-5696

FAX (503) 229-5100

TTY: 711

June 9, 2017

CERTIFIED MAIL: 7014 2870 0001 3378 4546

Oregon Ice Cream, LLC  
c/o Capitol Corporate Services, Inc., Registered Agent  
325 13<sup>th</sup> Street, NE, Suite 404  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-WR-2017-082

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$36,171 for failing to complete stormwater source control and treatment measures at your facility located at 885 Grant Street in Eugene and for placing wastes in a location where they are likely to be carried to Amazon Creek. Specifically, you failed to install flow-through filter inserts and paint the galvanized roofing at your facility by the June 30, 2016 deadline established in your industrial stormwater permit. In addition, you allowed wash water containing soap and milk fat to discharge through an exterior door to the adjacent sidewalk where it is likely to be washed into a catch basin that drains to Amazon Creek. The Notice also cites you, without penalty, for additional violations of your industrial stormwater permit, including failing to complete Tier I corrective actions, failing to conduct employee education, failing to conduct facility inspections, and failing to provide secondary containment for hazardous materials.

DEQ issued this penalty because the violations pose a risk to human health and the environment. The stormwater discharges from your facility have exceeded statewide benchmark pollutant concentrations for Total Zinc, Total Copper and Total Suspended Solids (TSS). In order to comply with your stormwater discharge permit, you were required to complete "Tier II" treatment, which is a combination of source control and stormwater treatment measures intended to reduce the concentrations of these pollutants by June 30, 2016. By failing to implement Tier II treatment, you have failed to adequately address the pollutant levels in your stormwater discharge. Benchmark exceedances for Total Zinc, Total Copper and TSS indicate the presence of harmful levels of these pollutants in your stormwater that, without adequate treatment, could pose a risk of harm to aquatic life and other beneficial uses of Amazon Creek. In addition, the discharge of waste from interior wash water at your facility into Amazon Creek could damage aquatic species and their habitat and reduce the safety of waters for public use.

Included in Section IV is an order requiring you to complete the following requirements:

- Within 60 days of this order becoming final by operation of law or on appeal, submit to the City of Eugene revisions to the Tier II Plan addressing the 2<sup>nd</sup> year geometric mean exceedances for Total Zinc, Total Copper and TSS reported to the City of Eugene in your Discharge Monitoring Report (DMR) for the 2<sup>nd</sup> year of Permit coverage (July 1, 2013 – June 30, 2014);
- Within 120 days of this order becoming final by operation of law or on appeal, install and implement any and all remaining Tier II stormwater treatment measures required by the



Permit, Schedule A, Condition 12.c and demonstrate the installation of the Tier II stormwater treatment measures by sending a report to the City of Eugene.

- Within 60 days of this order becoming final by operation of law or on appeal, make alterations to the exterior doorway of the building or other permanent changes to the facility to ensure that wash water does not exit the building.

\$26,571 of the civil penalty represents the economic benefit you gained by failing to complete the source control measures and install all of the Tier II treatment. If you complete these requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly. DEQ appreciates your efforts to correct the violation by completing part of the Tier II Plan and by implementing practices to regularly sweep paved surfaces and clean catch basins at the Facility, cleaning the Facility's roof gutters, and installing downspout filters. DEQ considered these efforts when determining the amount of civil penalty.

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](mailto: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 Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,



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

Oregon Ice Cream, LLC  
Case No. WQ/SW-WR-2017-082  
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Enclosures

cc: Jerry Rodriguez, Oregon Ice Cream, LLC, 885 Grant Street, Eugene, OR 97402  
Jon Wilson, City of Eugene  
Zach Loboy, DEQ, Eugene Office  
Shaumae Hall, Accounting, DEQ  
John Koestler, WQ, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF: )  
4 Oregon Ice Cream, LLC, ) NOTICE OF CIVIL PENALTY  
a Delaware limited liability corporation, ) ASSESSMENT AND ORDER  
Respondent. ) CASE NO. WQ/SW-WR-2017-082  
5

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 Chapters 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,  
10 and 045.

11 II. FINDINGS OF FACT

12 1. On September 4, 2012, DEQ assigned Respondent coverage under the National Pollutant  
13 Discharge Elimination System (NPDES) Stormwater Discharge General Permit Number 1200-Z  
14 (Permit) for its industrial facility located at 885 Grant Street in Eugene, Oregon (Facility).

15 2. The Permit authorizes Respondent to construct, install, modify, or operate stormwater  
16 treatment or control facilities, and to discharge stormwater and non-stormwater discharges specifically  
17 authorized by the Permit to public waters in conformance with all the requirements, limitations, and  
18 conditions set forth in the Permit.

19 3. The Permit was in effect at all material times.

20 4. The Facility discharges stormwater to the City of Eugene storm sewer system, which in turn  
21 discharges to Amazon Creek.

22 5. The Facility has one sampling point known as "Outfall No. 1".

23 6. The City of Eugene conducted an inspection of the Facility on January 25, 2017.

24 Tier II Treatment

25 7. Pursuant to Schedule A, Condition 12.a of the Permit, permit registrants are required to  
26 evaluate sampling results collected during the 2<sup>nd</sup> year of permit coverage (July 1, 2013 – June 30,  
27 2014) and determine if the geometric mean of the samples collected at each monitored outfall exceeds

1 any statewide benchmark. The permit registrant must report this information in a Discharge  
2 Monitoring Report (DMR) form for that monitoring year.

3 8. Pursuant to Schedule A, Condition 12.c.i of the Permit, if the geometric mean of the  
4 sampling results for any outfall monitored exceeds any statewide benchmark, permit registrants are  
5 required to carry out the following Tier II corrective actions:

- 6 a. Revise the Stormwater Pollution Control Plan (SWPCP) to include additional  
7 stormwater treatment measures, which may include a combination of source control and  
8 treatment measures, with the goal of achieving the statewide benchmarks in future  
9 discharges. The SWPCP revisions, also known as a “Tier II Plan”, must include the  
10 rationale for the selection of the measures, the projected reduction of pollutant  
11 concentration(s) and the schedule for implementing these measures;
- 12 b. Have a licensed professional engineer (PE) or certified engineering geologist (CEG)  
13 design and stamp the portion of the SWPCP that addresses the stormwater treatment  
14 measures; and
- 15 c. Submit the Tier II Plan to the City of Eugene by December 31<sup>st</sup> of the 3<sup>rd</sup> year of permit  
16 coverage (December 31<sup>st</sup>, 2014).

17 9. Pursuant to Schedule A, Condition 12.c.ii of the Permit, permit registrants are required to  
18 implement the Tier II additional stormwater treatment measures by June 30<sup>th</sup> of the 4<sup>th</sup> year of permit  
19 coverage (June 30, 2016).

20 10. Pursuant to Schedule A, Condition 6.c of the Permit, a permit registrant’s “[f]ailure to  
21 implement any of the control measures or practices described in the SWPCP is a violation of the  
22 permit.”

23 11. According to Respondent’s DMR for the 2<sup>nd</sup> year of Permit coverage (July 1, 2013 – June  
24 30, 2014) submitted to the City of Eugene the geometric mean of stormwater samples collected at the  
25 Facility’s Outfall No. 1 was:

- 26 a. 0.87 milligrams per liter (mg/L) for Total Zinc, exceeding the statewide benchmark of  
27 0.12 mg/L;

- b. 0.025 mg/L for Total Copper, exceeding the statewide benchmark of 0.020 mg/L; and
- c. 109 mg/L for Total Suspended Solids (TSS), exceeding the statewide benchmark of 100 mg/L.

12. On January 30, 2015, Respondent submitted to the City of Eugene a Tier II Corrective Action Plan (Tier II Plan), supplementing the Facility's SWPCP and proposing source control and treatment measures. More specifically:

- a. Respondent's Tier II Plan describes "Second Year Sampling Results" for Copper and Zinc based on six sampling dates between 1/31/2013 and 11/3/2014 (Tier II Plan, Table 1, p. 3). None of the sampling dates described in the Tier II Plan are consistent with the sampling dates in Respondent's 2013-2014 DMR, described in Paragraph 11, above.
- b. Based on the sampling information described in Paragraph 12(a), above, Respondent's Tier II Plan reports a geometric mean 0.0204 mg/L for Copper and 0.5991 mg/L for Zinc. These values are lower than the geometric mean values reported in Respondent's 2013-2014 DMR, described in Paragraph 11, above.
- c. Respondent's Tier II Plan does not address the 2<sup>nd</sup> year geometric mean exceedance of the statewide benchmark for TSS reported in Respondent's DMR and described in Paragraph 11(c), above.
- d. Respondent's Tier II Plan proposes the following source control measures to reduce Total Zinc and Total Copper concentrations in the Facility's stormwater discharge:
  - i. street sweeping of paved surfaces,
  - ii. cleaning of catch basins, and
  - iii. cleaning of roof gutters, and
  - iv. painting galvanized roofing and equipment.
- e. Respondent's Tier II Plan proposes the following treatment measures to reduce Total Zinc and Total Copper concentrations in the Facility's stormwater discharge:
  - i. flow-through filter inserts, and
  - ii. downspout filters.

1 13. On February 11, 2015, the City of Eugene sent Respondent a letter noting that TSS was not  
2 addressed in Respondent's Tier II Plan and requesting additional information and clarification.

3 14. Respondent's Tier II Plan includes a proposed implementation schedule, including a "finish  
4 date" to install treatment measures by December 31, 2015. The Tier II Plan further states that "This  
5 schedule will ensure the measures are in place by June 30, 2016 as specified in Section 12.c.ii of the  
6 1200-Z permit."

7 15. As of the date of this Notice, Respondent has implemented practices to regularly sweep  
8 paved surfaces and clean catch basins at the Facility, cleaned the Facility's roof gutters, and installed  
9 downspout filters.

10 16. As of the date of this Notice, Respondent has not installed the flow-through filter inserts  
11 described in Paragraph 12(e)(i), above, or painted the galvanized roofing and equipment as described in  
12 Paragraph 12(d)(iv), above.

### 13 Tier I Corrective Actions

14 17. When stormwater sampling results exceed any of the statewide benchmarks in Schedule A.9  
15 of the Permit or any applicable sector specific benchmarks in Schedule E of the Permit, Respondent is  
16 required by Schedule A, Condition 10.a of the Permit to: i) investigate the cause of the elevated  
17 pollutant levels, ii) review the control measures in the SWPCP to ensure compliance with the Permit,  
18 make any revisions warranted by the review, and submit revised pages to DEQ, including a schedule  
19 for implementation, and iii) summarize the results of the investigation, corrective actions and  
20 completion dates in a Tier I report to be retained on site and submitted to DEQ upon request. Schedule  
21 A, Condition 10.b of the Permit requires that the corrective actions identified in the Tier I investigation  
22 be implemented "before the next storm event if possible or as soon as practicable."

23 18. Schedule A, Condition 10.c of the Permit exempts Respondent from the Tier I requirements  
24 described in Section II, Paragraph 18, above, for exceedances of benchmark parameters otherwise  
25 addressed by the Permit's Tier II requirements, Schedule A, Conditions 11 and 12.

26 19. Respondent's DMRs demonstrate that Respondent's stormwater discharge exceeded the  
27 reference concentration of 0.0021 mg/L for arsenic on November 3, 2014 and January 12, 2016.

1 20. Respondent's DMRs demonstrate that Respondent's stormwater discharge exceeded the  
2 statewide benchmark concentration of 0.12 mg/L for Total Zinc on November 3, 2014, November 21,  
3 2014, February 2, 2015 and February 27, 2015.

4 21. During its inspection of the Facility on January 25, 2017, the City of Eugene requested a  
5 copy of all Tier I reports maintained on site at the Facility.

6 22. As of the date of this Notice, Respondent has not provided the City of Eugene a copy of Tier  
7 I reports for the benchmark exceedances described in Paragraphs 19 and 20, above.

8 Facility Inspections

9 23. Schedule B, Condition 7.a of the Permit requires Respondent to conduct monthly  
10 inspections when the Facility is in operation of areas where industrial materials or activities are  
11 exposed to stormwater and areas where stormwater control measures, structures, catch basins and  
12 treatment facilities are located. Schedule B, Condition 7.a.i further details specific items that must be  
13 inspected.

14 24. Schedule B, Condition 7.b of the Permit requires Respondent to complete an inspection  
15 report that is retained on site and submitted to DEQ or Agent upon request. The inspection report must  
16 include: i) the inspection date and time; ii) control measures needing cleaning, replacement,  
17 maintenance, reconditioning or repair; iii) the condition of the drainage/conveyance system and need  
18 for maintenance; iv) previously unidentified sources of pollutants; and v) stormwater discharge  
19 observations and whether discharge contained floating solids (associated with industrial activity), foam,  
20 visible oil sheen, and was discolored.

21 25. During the City of Eugene's inspection of the Facility on January 25, 2017, the City  
22 requested inspection records from Respondent. Respondent provided the City with inspection records  
23 from November 2016 through January 2017.

24 26. Following the January 25, 2017 inspection, Respondent provided the City of Eugene with  
25 inspection records for February 2017.

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1 27. As of the date of this Notice, Respondent has not provided records to the City of Eugene  
2 demonstrating that monthly facility inspections were conducted between February 2014 and October  
3 2016.

4 Employee Education

5 28. Schedule A, Condition 1.j of the Permit requires Respondent to conduct employee education  
6 as follows: “Develop and maintain an employee orientation and education program to inform personnel  
7 on the components and goals of the SWPCP. Train all employees who work in areas where industrial  
8 materials or activities are exposed to stormwater, or who are responsible for implementing activities  
9 necessary to meet the conditions of this permit (e.g., inspectors, maintenance personnel). Training must  
10 cover both the specific control measures used to achieve the narrative technology based effluent limits  
11 such as spill response procedures and good housekeeping practices, and the monitoring, inspection,  
12 reporting and documentation requirements in the permit. The education and training must occur within  
13 30 calendar days of hiring an employee who works in areas where stormwater is exposed to industrial  
14 activities or conducts duties related to the implementation of the SWPCP, and annually thereafter.”

15 29. Respondent conducted employee education as required by the Permit on January 31,  
16 February 1 and February 2, 2017.

17 30. As of the date of this Notice, Respondent has not provided documentation to the City of  
18 Eugene demonstrating that conducted employee education as required by the Permit in 2015 or in 2016.

19 Secondary Containment

20 31. Schedule A, Condition 1.a.iii of the Permit requires that all hazardous substances, as defined  
21 in Schedule D.3, be stored within berms or other secondary containment devices to prevent leaks and  
22 spills from contaminating stormwater.

23 32. During the City of Eugene’s inspection on January 25, 2017, there were several drums of  
24 hazardous substances, including sulfuric acid, stored at the Facility without secondary containment.

25 33. Respondent provided secondary containment for the hazardous substances at the Facility  
26 later that same day on January 25, 2017.

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1 Wash Water Discharge

2 34. On January 25, 2017, a representative of the City of Eugene observed staining from interior  
3 wash water that had been discharged via an exterior door and onto the sidewalk outside the Facility.

4 35. The wash water described in Paragraph 34, above, contained milk fat and soap.

5 36. The staining described in Paragraph 34, above, was on a sidewalk adjacent to the Facility  
6 that drains to a storm drain; the storm drain discharges directly into Amazon Creek.

7 III. CONCLUSIONS

8 Tier II Treatment

9 1. Respondent violated ORS 468B.025(2) and Schedule A, Conditions 6.c and 12.c of the  
10 Permit by failing to install all of the Tier II additional stormwater treatment measures described in its  
11 Tier II Plan no later than June 30, 2016, as described above in Section II, Paragraphs 7-16. This is a  
12 Class I violation, according to OAR 340-012-0055(1)(r). DEQ hereby assesses a \$32,971 civil penalty  
13 for this violation.

14 Tier I Corrective Actions

15 2. Respondent violated ORS 468B.025(2) and Schedule A, Condition 10 of the Permit by  
16 failing to complete Tier I corrective actions on 6 occasions, as described in Section II, Paragraphs 17-  
17 22, above. These are Class II violations, according to OAR 340-012-0053(2). DEQ has not assessed a  
18 civil penalty for these violations.

19 Facility Inspections

20 3. Respondent violated ORS 468B.025(2) and Schedule B, Condition 7 of the Permit by failing  
21 to conduct monthly facility inspections on 33 occasions, as described in Section II, Paragraphs 23-27,  
22 above. This is a Class II violation, according to OAR 340-012-0053(2). DEQ has not assessed a civil  
23 penalty for these violations.

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1 Employee Education

2 4. Respondent violated ORS 468B.025(2) and Schedule A, Condition 1.j of the Permit by  
3 failing to conduct an annual employee education program in 2015 and 2016, as described in Section II,  
4 Paragraphs 28-30, above. This is a Class II violation, according to OAR 340-012-0053(2). DEQ has  
5 not assessed a civil penalty for these violations.

6 Secondary Containment

7 5. On or before January 25, 2017, Respondent violated ORS 468B.025(2) and Schedule A,  
8 Condition 1.a.iii of the Permit by failing to provide secondary containment for all of the hazardous  
9 materials stored at the Facility, as described in Section II, Paragraphs 31-33, above. This is a Class II  
10 violation, according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for these  
11 violations.

12 Wash Water Discharge

13 6. Respondent violated ORS 468B.025(1)(a) by placing wastes in a location where such wastes  
14 are likely to escape or be carried into waters of the state by any means. The wash water generated at the  
15 Facility, described in Section II, Paragraphs 34-36, above, is "waste" according to ORS 468B.005(9).  
16 Respondent caused this wash water to be placed was on a sidewalk adjacent to the Facility that drains to  
17 a storm drain, that in turn discharges directly to Amazon Creek. Amazon Creek is a "waters of the  
18 state" according to ORS 468B.005(10). This is a Class II violation, according to OAR 340-012-  
19 0055(2)(c). DEQ hereby assesses a \$3,200 civil penalty for this violation.

20 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

23 1. Pay a total civil penalty of \$36,171. The determination of the civil penalties are attached as  
24 Exhibits 1 and 2 and are incorporated as part of this Notice.

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

1 the Findings of Fact, Conclusions and Order become final.

2 2. Comply with Oregon law and the Permit by doing the following:

- 3 a. Within 60 days of this order becoming final by operation of law or on appeal, submit to  
4 the City of Eugene revisions to the Tier II Plan addressing the 2<sup>nd</sup> year geometric mean  
5 exceedances for Total Zinc, Total Copper and TSS reported to the City of Eugene in  
6 Respondent's Discharge Monitoring Report (DMR) for the 2<sup>nd</sup> year of Permit coverage  
7 (July 1, 2013 – June 30, 2014) and described in Section II, Paragraph 11, above, as  
8 required by the Permit Schedule A, Conditions 12.c.i.1 and 12.c.i.2.
- 9 b. Within 120 days of this order becoming final by operation of law or on appeal, install  
10 and implement any and all remaining Tier II stormwater treatment measures required by  
11 the Permit, the Tier II plan, and Schedule A, Condition 12.c and demonstrate the  
12 installation of the Tier II stormwater treatment measures by sending a report to the City  
13 of Eugene.
- 14 c. Within 60 days of this order becoming final by operation of law or on appeal, make  
15 alterations to the exterior doorway of the building described in Section II, Paragraph 34,  
16 above, or other permanent changes to the Facility to ensure that wash water does not exit  
17 the building. Demonstrate compliance by sending a written description and a  
18 photograph of the completed alterations to the City of Eugene.

19 Correspondence demonstrating compliance with the above requirements of Section IV,  
20 Paragraph 2 should be sent to: City of Eugene, Public Works Wastewater, Attn: Jon Wilson, 410 River  
21 Ave, Eugene, OR 97404.

## 22 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

23 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
24 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
25 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
26 exhibit(s), you must do so in your request for hearing, as factual matters not denied will be considered  
27 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for

1 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
2 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
3 it to **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. An administrative law judge  
4 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
5 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
6 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
7 you may represent yourself. If you are a corporation, partnership, limited liability company,  
8 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
9 authorized representative, as set forth in OAR 137-003-0555.

10 Active duty service-members have a right to stay proceedings under the federal Service  
11 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
12 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
13 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
14 <http://legalassistance.law.af.mil/content/locator.php>.

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

21  
22  
23  
24 June 9, 2017

25 Date

24 Sarah Wheeler

25 Sarah G. Wheeler, Acting Manager  
26 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 No 1: Failing to implement Tier II additional stormwater treatment measures, in violation of ORS 468B.025(2) and Schedule A, Conditions 6.c and 12.c.ii of the 1200-Z NPDES industrial stormwater discharge General Permit.

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 the 1200-Z NPDES industrial stormwater discharge 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 occurrence. The violation began on June 30, 2016. As of the date of this Notice, the violation continues. Therefore, there are more than 28 occurrences of the violation.

"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. Negligent means the Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. The requirement to implement Tier II additional stormwater treatment measures by June 30, 2016 is an express condition of the Permit. Respondent submitted a Tier II Corrective Action Plan to the City of Eugene on January 30, 2015, proposing

treatment measures to remove Total Copper and Total Zinc from its stormwater discharge. Respondent's Tier II Plan includes a proposed implementation schedule, including a "finish date" to install treatment measures by December 31, 2015. The Tier II Plan further states that "This schedule will ensure the measures are in place by June 30, 2016 as specified in Section 12.c.ii of the 1200-Z permit." On February 11, 2015, the City of Eugene informed Respondent that its Tier II Plan must also address TSS. Despite its awareness of its Tier II obligations and the deadline for implementation required by the Permit, Respondent failed to implement all of the proposed Tier II stormwater treatment measures by June 30, 2016. The deadline for Tier II implementation and the need to promptly implement Tier II treatment measures was also discussed during the City's January 25, 2017 inspection at the Facility and in subsequent correspondence with Respondent. Nevertheless, as of the date of this Notice, Respondent has not installed and implemented all of the Tier II stormwater treatment measures included in its Tier II Plan. Therefore, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate the Permit.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to correct the violation. Specifically, as of the date of this Notice, Respondent has completed part of the Tier II Plan by implementing practices to regularly sweep paved surfaces and clean catch basins at the Facility, cleaning the Facility's roof gutters, and installing downspout filters.

"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 \$26,571. Of this total, \$26,486 is the amount Respondent gained by avoiding spending \$1,500 on inlet filters and \$42,957 for roof painting by June 30, 2016. \$85 of the total is the amount Respondent gained by delaying spending \$2,250 on gutter cleaning and \$2,400 on downspout filters from June 30, 2016 until February 13, 2017. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 4 + 4 + -2)] + \$26,571  
= \$4,000 + (\$400 x 6) + \$26,571  
= \$4,000 + \$2,400 + \$26,571  
= \$32,971

EXHIBIT 2

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

VIOLATION No 6: Placing wastes in a location where such wastes are likely to escape or be carried into waters of the state by any means, in violation of 468B.025(1)(a).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent has coverage under the 1200-Z NPDES industrial stormwater discharge 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 at least one documented occurrence of the violation. Each day of violation constitutes a separate occurrence. On January 25, 2017, the City of Eugene observed evidence of the discharge of wash water to the sidewalk outside the Facility where it is likely to be carried by rainwater into Amazon Creek.

"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. Negligent means the Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent's 1200-Z NPDES industrial stormwater Permit, General Condition 7(c) expressly states that any wastewater discharge not listed as an authorized stormwater discharge in General Condition 7 of the Permit "including stormwater mixed with wastewater, must be permitted in a separate permit, unless the wastewater is reused or



recycled without discharge or disposal, or discharged to the sanitary sewer with approval from the sanitary sewer system operator.” In addition, Respondent has previously been notified by the City of Eugene in a Warning Letter with Opportunity to Correct dated May 14, 2014, that non-stormwater discharges not expressly authorized by the Permit are violations of Oregon law. Therefore, by allowing its wash water to exit the building onto the adjacent sidewalk, Respondent failed to take reasonable care to avoid a foreseeable risk that it would discharge wash water to a location where it is likely to be carried by rainwater into Amazon Creek.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not provided documentation to the City of Eugene demonstrating that it has taken steps to ensure that wash water remains inside the building at the Facility.

"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 because DEQ has insufficient information available to calculate an economic benefit.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 4 + 2)] + \$0 \\ &= \$2,000 + (\$200 \times 6) + \$0 \\ &= \$2,000 + \$1,200 + \$0 \\ &= \$3,200 \end{aligned}$$