



# 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

June 16, 2022

CERTIFIED MAIL: 7018 1830 0001 6172 5956

Cooper Mountain Vineyards, LLC  
c/o Eric J. Wieland, Registered Agent  
111 SW 5TH Ave., #3800  
Portland, OR 97204

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/I-NWR-2021-177

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$5,640 for discharging wastewater from your winery operations in Beaverton, Oregon, to an unnamed tributary of McKernan Creek in violation of Oregon law that prohibits the discharge of wastes to waters of the state without a permit. Wastewater from winery operations can harm water quality and aquatic life because it has low pH, and contains nitrogen, total dissolved solids, and other pollutants that create biochemical oxygen demand.

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](mailto: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. 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.

Cooper Mountain Vineyards, LLC  
Case No. WQ/I-NWR-2021-177  
Page 2

If you have any questions, please contact Jeff Bachman at 503-229-5950 or toll free in Oregon at 800-452-4011, extension 5950.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Tim Ruby, DEQ  
Tiffany Yelton-Bram, DEQ  
Elizabeth Howard, Schwabe Williamson & Wyatt PC, 1211 SW 5th Ave, Ste 1900,  
Portland, OR 97204  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: )  
4 COPPER MOUNTAIN VINEYARDS, LLC, ) NOTICE OF CIVIL PENALTY  
an Oregon limited liability company, ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. WQ/I-NWR-2021-177

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 and  
10 012.

11 II. FINDINGS OF FACT

12 1. On May 21, 2018, DEQ assigned Respondent coverage under Water Pollution Control  
13 Facilities General Permit 1400-B (the Permit) for its winery located at 9440 SW Grabhorn Road,  
14 Beaverton, Oregon.

15 2. The Permit authorizes Respondent to construct, install, modify or operate a process  
16 wastewater collection, treatment, control and disposal system in conformance with the requirements,  
17 limitations, and conditions of the Permit.

18 3. The Permit does not authorize discharge of wastes to waters of the state.

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

20 5. On or about October 28, 2021, Respondent discharged wastewater from winery  
21 operations to an unnamed creek that flows into McKernan Creek.

22 6. Wastewater from winery operations has low pH, and contains nitrogen, total dissolved  
23 solids, and pollutants that create biochemical oxygen demand.

24 7. Schedule B of the Permit requires Respondent to monitor annually: a) the days the land  
25 application system was in operation, b) daily observations of the land application system, c) a  
26 description of any failures in the collection or land application system, d) daily volume of process  
27 wastewater land applied and application location, and e) the type and volume of any screenings or

1 solids land applied and the application location.

2 8. Respondent did not collect the monitoring data described in Section II, Paragraph 7  
3 above in 2019, 2020, or 2021.

4 9. Schedule D, Condition 1 of the Permit requires Respondent to prepare a Wastewater  
5 Management Plan, keep a copy of the plan on site, and make the plan available to DEQ upon request.

6 10. As of October 28, 2021, Respondent did not prepare a Wastewater Management Plan.

7 11. Schedule D, Condition 2 of the Permit requires Respondent to prepare an Irrigation Site  
8 Evaluation, keep a copy of the evaluation on site, and make the plan available to DEQ upon request.

9 12. As of October 28, 2021, Respondent did not prepare an Irrigation Site Evaluation.

10 III. CONCLUSIONS

11 1. Respondent violated ORS 468B.050(1) by discharging wastes to waters of the state  
12 without a permit authorizing such discharge. Specifically, on October 28, 2021, Respondent  
13 discharged wastewater from winery operations, a waste pursuant to ORS 468B.005(9), to an unnamed  
14 tributary of McKernan Creek, a water of the state pursuant to ORS 468B.005(10), without a permit  
15 authorizing such discharge. This is a Class I violation pursuant to OAR 340-012-0055(1)(c). DEQ  
16 assesses a \$5,640 civil penalty for this violation.

17 2. Respondent violated ORS 468B.025(2) by violating conditions of its Permit. Specifically,  
18 Respondent violated Schedule B of the Permit by failing to conduct the annual monitoring detailed in  
19 Section II, Paragraph 7, above, in 2019, 2020 and 2021. These are Class I violations pursuant to OAR  
20 340-012-0055(1)(o). DEQ does not assess a civil penalty for these violations.

21 3. Respondent violated ORS 468B.025(2) by violating conditions of its Permit. Specifically,  
22 Respondent violated Schedule D, Conditions 1 and 2 of the Permit by failing, as of October 28, 2021, to  
23 prepare a Wastewater Management Plan and Irrigation Site Evaluation. These are Class II violations  
24 pursuant to OAR 340-012-0055(2)(b). DEQ does not assess a civil penalty for these violations.

25 ///

26 ///

27 ///

1 IV. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
3 hereby ORDERED TO: Pay a total civil penalty of \$5,640. The determination of the civil penalty is  
4 attached as Exhibit 1 and is/are incorporated as part of this Notice.

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

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 exhibit, 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](mailto: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 6/16/2022

11 Date

11 

12 Kieran O'Donnell, Manager  
13 Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION NO. 1 Discharging wastes to waters of the state without a permit authorizing such discharge in violation of ORS 468B.050(1)(a).

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 a WPCF 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 documented occurrence of the violation, on October 26, 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. Respondent's Permit expressly prohibits discharge of wastes to waters of the state. By failing to take the action necessary to prevent discharge of process wastewater to a water of the state, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"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 the violation would not be repeated by constructing improvements to its wastewater management system.

"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 \$440. This is the amount Respondent gained by delaying spending \$23,774 in improvements to its wastewater management system. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 0 + 4 + (-1))] + \$440 \\ &= \$4,000 + (\$400 \times 3) + \$440 \\ &= \$4,000 + \$1,200 + \$440 \\ &= \$5,640 \end{aligned}$$