



# 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

May 24, 2017

CERTIFIED MAIL No. 70131710000011156451

S&K Rock, LLC  
c/o Eugene D. Stanley, Registered Agent  
2022 Riley Road  
Eagle Point, OR 97524

Re: Notice of Civil Penalty Assessment and Order  
No. WQ/I-WR-2017-047

This letter is to inform you that DEQ has issued you a civil penalty of \$7,800 for a water quality violation at your surface mining facility (Facility) in Eagle Point. On December 6, 2016, Brotherton Pipeline Inc. dumped bentonite slurry over the side of a slope at the Facility, which flowed into the headwaters of an unnamed seasonal creek, then downstream into a pond on neighboring property. This is a violation of ORS 468B.050(1)(a).

DEQ issued this penalty because discharging wastes into waters of the state without a discharge permit is a serious violation of Oregon environmental law. The introduction of turbid wastewater into surface waters can harm aquatic life and impact beneficial uses of those waters. The seasonal creek that was impacted provides drinking water for cattle on a neighboring property. The bentonite slurry was a waste derived from drilling operations, and can contain elevated levels of metals and petroleum products that are harmful to water quality.

DEQ appreciates your efforts to minimize the impacts of the violation by removing the bentonite from the creek, placing straw bales in the creek to stabilize the bentonite in the channel, and capping the exposed bentonite on the slope with clean fill. 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.



S&K Rock, LLC  
No. WQ/I-WR-2017-047  
Page 2

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 Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,



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

cc: Bill Meyers, Western Region, DEQ  
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: ) NOTICE OF CIVIL PENALTY  
4 S&K ROCK, LLC, ) ASSESSMENT AND ORDER  
an Oregon limited liability company, )  
5 Respondent. ) CASE NO. WQ/I-WR-2017-047

6  
7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

13 1. Respondent owns the property located at 6540 Highway 140 in Eagle Point, Jackson  
14 County, Oregon (the Facility).

15 2. At all material times, Respondent held an operating permit from the Department of Geology  
16 and Mineral Industries (Permit No. 15-0153) for the industrial surface mining operation at the Facility,  
17 which prohibits Respondent from discharging stormwater offsite. Respondent was not authorized to  
18 receive fill at the Facility.

19 3. On or about December 6, 2016, Brotherton Pipeline Inc. dumped at least two partially filled  
20 3,000-gallon tanker trucks of bentonite slurry over the side of a slope at the Facility, which flowed into  
21 the headwaters of an unnamed seasonal creek, then downstream into a pond on neighboring property.

22 4. Bentonite slurry tends to cause pollution of waters of the state, and is therefore a "waste"  
23 under ORS 468B.005(9).

24 5. The seasonal creek is "waters of the state" under ORS 468B.005(10).

25 6. Respondent does not have a waste discharge permit from DEQ.

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27 ///

1 III. CONCLUSION

2 Respondent has violated ORS 468B.050(1)(a) by discharging wastes into waters of the state from  
3 an industrial or commercial activity without holding a permit from DEQ, as described in Section II,  
4 Paragraphs 1-6 above. According to OAR 340-012-0055(1)(c), this is a Class I violation. DEQ hereby  
5 assesses a \$7,800 civil penalty for this violation.

6 IV. ORDER TO PAY CIVIL PENALTY

7 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSION, Respondent is hereby  
8 ORDERED TO:

9 Pay a civil penalty of \$7,800. The determination of the civil penalty is attached as Exhibit No. 1  
10 and incorporated as part of this Notice.

11 If you do not file a request for hearing as set forth in Section V below, your check or money order  
12 must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business Office,**  
13 **700 NE Multnomah Street, Suite #600, Portland, Oregon 97232.** Once you pay the penalty, the  
14 Findings of Fact, Conclusions and Order become final.

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

16 You have a right to a contested case hearing on this Notice, if you request one in writing. You  
17 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you  
18 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in  
19 this Notice or attached exhibit, you must include them in your request for hearing, as factual matters  
20 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
21 (See OAR 340-011-0530 for further information about requests for hearing.) You must send the request  
22 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, either via mail to 700 NE**  
23 **Multnomah Street, Suite #600, Portland, Oregon 97232,** or via e-mail to  
24 **DEQappeals@deq.state.or.us,** or via fax to **503-229-5100.** An administrative law judge employed by  
25 the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR  
26 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
27

1 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or  
2 association.

3 Active duty service-members have a right to stay proceedings under the federal Service  
4 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
5 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
6 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
7 <http://legalassistance.law.af.mil/content/locator.php>.

8 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
9 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
10 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
11 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
12 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
13 information submitted by you, as the record for purposes of proving a prima facie case.

14  
15  
16 May 24, 2017  
17 Date

16 Sarah Wheeler  
17 Sarah G. Wheeler, Acting Manager  
18 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 1: Discharging wastes into waters of the state from an industrial or commercial activity without holding a permit from DEQ, 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 \$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 violated ORS 468B.050(1)(a) and does not hold a National Pollutant Discharge Elimination System 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 2 according to OAR 340-012-0145(4)(b), because there were more than one but less than seven occurrences of the violation. By accepting at least two truckloads of bentonite slurry on or about December 6, 2016, Respondent had two 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. Respondent holds a DOGAMI permit for the surface mining operation on its property, and is aware that it is not permitted accept fill or to discharge stormwater off-site. By accepting material for disposal that resulted in the discharge of wastes to waters of the state, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate the 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 took reasonable affirmative efforts to minimize the effects of the violation by removing the bentonite from the creek and placing straw bales in the creek to stabilize the bentonite in the channel. Respondent also capped the exposed bentonite on the slope with clean fill.

"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 evidence on which to base a finding that Respondent received an economic benefit from the 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 x \$6,000) x (0 + 0 + 2 + 4 - 3)] + \$0  
= \$6,000 + [\$600 x 3] + \$0  
= \$6,000 + \$1,800 + \$0  
= \$7,800



# 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

May 24, 2017

CERTIFIED MAIL No. 70131710000011156468

Brotherton Pipeline, Inc.  
c/o Michael Cantrell, Registered Agent  
11 Frontage Road  
Gold Hill, OR 97525

Re: Notice of Civil Penalty Assessment and Order  
No. WQ/I-WR-2017-046

This letter is to inform you that DEQ has issued you a civil penalty of \$7,800 for discharging wastes into waters of the state at a surface mining facility (Facility) in Eagle Point. On December 6, 2016, you dumped bentonite slurry over the side of a slope at the Facility, which flowed into the headwaters of an unnamed seasonal creek, then downstream into a pond on neighboring property. This is a violation of ORS 468B.050(1)(a).

DEQ issued this penalty because discharging wastes into waters of the state without a discharge permit is a serious violation of Oregon environmental law. The introduction of turbid wastewater into surface waters can harm aquatic life and impact beneficial uses of those waters. The seasonal creek that was impacted provides drinking water for cattle on a neighboring property. The bentonite slurry was a waste derived from drilling operations, and can contain elevated levels of metals and petroleum products that are harmful to water quality.

DEQ appreciates your efforts to minimize the impacts of the violation by removing the bentonite from the creek and placing straw bales in the creek to stabilize the bentonite in the channel. 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.





Brotherton Pipeline, Inc.  
No. WQ/I-WR-2017-046  
Page 2

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 Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,



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

cc: Bill Meyers, Western Region, DEQ  
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: ) NOTICE OF CIVIL PENALTY  
4 BROTHERTON PIPELINE, INC., ) ASSESSMENT AND ORDER  
a California corporation, )  
5 Respondent. ) CASE NO. WQ/I-WR-2017-046

6  
7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

- 13 1. Respondent owns and operates a drilling company that is licensed by the Construction  
14 Contractors Board.
- 15 2. On or about December 6, 2016, Respondent dumped at least two partially filled 3,000-  
16 gallon tanker trucks of bentonite slurry over the side of a slope at a surface mining facility located at  
17 6540 Highway 140 in Eagle Point, Jackson County, Oregon (the Facility).
- 18 3. The bentonite slurry was a waste generated from Respondent's industrial drilling operations.
- 19 4. The bentonite slurry flowed into the headwaters of an unnamed seasonal creek, then  
20 downstream into a pond on neighboring property.
- 21 5. Bentonite slurry tends to cause pollution of waters of the state, and is therefore a "waste"  
22 under ORS 468B.005(9).
- 23 6. The seasonal creek is "waters of the state" under ORS 468B.005(10).
- 24 7. Respondent does not have a waste discharge permit from DEQ.

25 III. CONCLUSION

26 Respondent has violated ORS 468B.050(1)(a) by discharging wastes into waters of the state from  
27 an industrial or commercial activity without holding a permit from DEQ, as described in Section II,

1 Paragraphs 1-7 above. According to OAR 340-012-0055(1)(c), this is a Class I violation. DEQ hereby  
2 assesses a \$7,800 civil penalty for this violation.

#### 3 IV. ORDER TO PAY CIVIL PENALTY

4 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSION, Respondent is hereby  
5 ORDERED TO:

6 Pay a civil penalty of \$7,800. The determination of the civil penalty is attached as Exhibit No. 1  
7 and incorporated as part of this Notice.

8 If you do not file a request for hearing as set forth in Section V below, your check or money order  
9 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**  
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11 Findings of Fact, Conclusions and Order become final.

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15 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in  
16 this Notice or attached exhibit, you must include them in your request for hearing, as factual matters  
17 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
18 (See OAR 340-011-0530 for further information about requests for hearing.) You must send the request  
19 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, either via mail to 700 NE**  
20 **Multnomah Street, Suite #600, Portland, Oregon 97232,** or via e-mail to  
21 **DEQappeals@deq.state.or.us,** or via fax to **503-229-5100.** An administrative law judge employed by  
22 the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR  
23 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
24 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or  
25 association.

26 Active duty service-members have a right to stay proceedings under the federal Service  
27 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-

1 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
2 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
3 <http://legalassistance.law.af.mil/content/locator.php>.

4 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
5 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
6 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
7 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
8 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
9 information submitted by you, as the record for purposes of proving a prima facie case.  
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12 May 24, 2017

13 Date

12 Sarah Wheeler

13 Sarah G. Wheeler, Acting Manager  
14 Office of Compliance and Enforcement  
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EXHIBIT NO. 1

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PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

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"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 2 according to OAR 340-012-0145(4)(b), because there were more than one but less than seven occurrences of the violation. By dumping at least two truckloads of bentonite slurry on or about December 6, 2016, Respondent had two 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. Respondent did not have express permission from the property owner or Facility operator to dump bentonite slurry in the location it did. When Respondent disposed of bentonite slurry over the side of a slope, it failed to take reasonable care to avoid a foreseeable risk that the waste would reach waters of the state.

"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 took reasonable affirmative efforts to minimize the effects of the violation by removing the bentonite from the creek and placing straw bales in the creek to stabilize the bentonite in the channel.

"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 evidence on which to base a finding that Respondent received an economic benefit from the violation.

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 $= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 2 + 4 - 3)] + \$0$   
 $= \$6,000 + [\$600 \times 3] + \$0$   
 $= \$6,000 + \$1,800 + \$0$   
 $= \$7,800$