



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 26, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 3398

J. R. Simplot Company
c/o Corporation Service Company, Registered Agent
1127 Broadway Street NE
Suite 310
Salem OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2019-289

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 \$10,091 for failing to perform monitoring of benchmark and impairment pollutants at Outfall #1 at the Facility located at 14003 North Rivergate Boulevard, in Portland, Oregon as required under the NPDES Stormwater Discharge General Permit No. 1200-Z (the Permit) during the 2018-2019 monitoring year.

DEQ issued this penalty because monitoring is an important condition of the Permit and this is the second time in the last three years that J.R. Simplot has failed to comply with NPDES Permit requirements for pollutant monitoring. In addition, the City of Portland sent J.R. Simplot a warning letter with an opportunity to correct in May 2018, notifying it of the need to either collect samples from Outfall #1 or submit adequate information demonstrating a monitoring variance is warranted. J.R. Simplot has done neither. Monitoring may reveal the presence of harmful levels of pollutants that pose a threat to waters of the state. In addition, monitoring allows permittees and DEQ to gauge the effectiveness of stormwater controls and best management practices at reducing levels of pollutants in discharges.

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 Anzie St. Clair at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Angelica Greene, City of Portland Bureau of Environmental Services
Stacy Hibbard, City of Portland Bureau of Environmental Services
Christine Svetkovich, DEQ, Stormwater
Rob Hood, DEQ, Cleanup
Accounting, DEQ
Ryan McLane, Ryan.McLane@Simplot.com

1 Permit requires Respondent to monitor its discharge for the impairment pollutants identified in DEQ's
2 or its agent's Permit assignment letter. Each discharge point must be sampled (with limited exceptions
3 not applicable here), and each sample must be representative of Respondent's discharge. (Permit,
4 Schedule B, condition 2.b.i. and 2.c.)

5 5. Schedule B, condition 2.f. of the Permit requires Respondent to monitor at each discharge
6 point for benchmark and impairment pollutants four times per monitoring year (July 1 through June
7 30), with two samples taken on or before December 31 and two samples taken after December 31.

8 6. Schedule B, condition 3.a. of the Permit allows Respondent to request a monitoring variance
9 for missed samples due to no storm events sufficient to produce run-off during regular business hours
10 of operation and safe conditions. The request must include supporting data and analysis demonstrating
11 why monitoring did not occur.

12 7. DEQ's agent, the City of Portland, implements and administers the NPDES General Permit
13 Number 1200-Z for facilities within the city at all material times.

14 8. On August 30, 2017, DEQ sent correspondence to Respondent informing it that DEQ had
15 issued Respondent renewal coverage under the Permit, that the City of Portland would be providing
16 additional monitoring information by letter including identifying impairment pollutants, and that
17 Respondent was able to access a complete copy of the Permit through DEQ's website.

18 9. On September 5, 2017, the City of Portland sent correspondence to Respondent identifying
19 impairment pollutants and describing the required monitoring frequency for benchmark and impairment
20 pollutants. The letter identified required discharge monitoring for the following impairment pollutants:
21 aldrin, chlordane, dissolved copper, total cyanide, DDT metabolite (DDE), DDT, dieldrin,
22 hexachlorobenzene, total iron, dissolved lead, total mercury, PCBs, and twelve parameters of
23 polynuclear aromatic hydrocarbons.

24 10. During the 2018-2019 monitoring year, Facility stormwater discharged from Outfall #1 to
25 the Willamette River and has historically done so, even after Respondent installed the bioswale in
26 2001. For example, on at least December 11, 2002, October 9, 2003, November 3, 2005, and

27 ///

1 November 6, 2006, Respondent was able to collect and analyze Facility stormwater discharge from
2 Outfall #1.

3 11. Respondent did not monitor and collect samples from Outfall #1 during the 2018-2019
4 monitoring year.

5 12. On May 15, 2019, Respondent requested a monitoring variance for Outfall #1 for February
6 12, 2019 and April 5, 2019. On August 7, 2019, Respondent revised its monitoring variance
7 application to cover the January 1 through June 30, 2019 sampling period. The City of Portland denied
8 Respondent's monitoring variance request. Respondent did not request a monitoring variance for the
9 July 1 through December 31, 2018 sampling period.

10 III. CONCLUSIONS

11 1. Respondent has violated ORS 468B.025(2) and Schedule B, conditions 1 and 2 of the
12 Permit by failing to monitor Outfall #1 during the 2018-2019 monitoring year, as described in Section
13 II, paragraphs 1 through 12 above. Specifically, Respondent failed to collect four stormwater samples
14 at Outfall #1 in the 2018-2019 monitoring year, with two samples taken on or before December 31,
15 2018 and two after that date, and analyze those samples for pollutants. These are Class I violations
16 pursuant to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$10,091 civil penalty for these violations.

17 IV. ORDER TO PAY CIVIL PENALTY

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

20 1. Pay a total civil penalty of \$10,091. The determination of the civil penalty is attached as
21 Exhibit 1 and is incorporated as part of this Notice.

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

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

26 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
27 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If

1 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
2 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
3 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
4 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
5 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
6 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge
7 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
8 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
9 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
10 you may represent yourself. If you are a corporation, partnership, limited liability company,
11 unincorporated association, trust or government body, you must be represented by an attorney or a duly
12 authorized representative, as set forth in OAR 137-003-0555.

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

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

24
25
26 6/26/2020
27 Date


Kieran O'Donnell, Manager
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 Violating ORS 468B.025(2) by violating Schedule B, conditions 1 and 2 of the Permit by failing to monitor at Outfall #1 for benchmark and impairment pollutants in the 2018-2019 monitoring year.

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

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 an initial value of 2 according to OAR 340-012-0145(2)(a)(C), because Respondent has one Class I violation in case no. WQ/SW-HQ-2015-141, issued on October 14, 2015. According to OAR 340-012-0145(2)(d)(A)(i), this amount is reduced by 2 because all the formal enforcement actions in which prior significant actions were cited were issued more than three years before the date the current violation occurred. The P value is therefore 0.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 was more than one but less than seven occurrences of the violation. Each missed monitoring event constitutes a separate violation. Specifically, as described in Section II, paragraphs 1 through 12 of the Notice, Respondent failed to perform four instances of benchmark and impairment pollutant monitoring at Outfall #1 during the 2018-2019 monitoring year. This amounts to a total of at least four occurrences.

"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 applied to renew coverage under the Permit and was provided a copy of the Permit, which expressly requires Respondent to perform monitoring of benchmark and impairment pollutants four times per monitoring year. On September 5, 2017, the City of Portland sent Respondent a letter describing Permit monitoring requirements. On May 23, 2018, the City of Portland sent a Warning Letter with an Opportunity to Correct to Respondent stating that Respondent was required to sample Outfall #1 or submit a monitoring variance application with adequate documentation. Respondent did not submit a monitoring variance application until the City of Portland inquired as to Respondent's status in April 2019. Respondent's monitoring variance only sought a variance for monitoring events between January 1, 2019 and June 30, 2019. The City of Portland denied Respondent's monitoring variance application for lack of adequate documentation.

"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 the violation or the effects of the violation could not be corrected or minimized.

"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 \$3,691. This is the amount Respondent gained by avoiding spending \$4,692 to sample and analyze its discharge from Outfall #1 at the required frequency and for the parameters described in Section II, paragraphs 4 and 9 of the Notice. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 2 + 4 + 0)] + \$3,691$
 $= \$4,000 + (\$400 \times 6) + \$3,691$
 $= \$4,000 + \$2,400 + \$3,691$
 $= \$10,091$