Oregon
Kate Brown, Governor

Department of Environmental Quality
Office of the Director
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5343
FAX (503) 229-5100
TTY: 711

July 13, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 2641

Eagle Star Rock Products, LLC
c/o James Bruce, Registered Agent
7420 S.W. Bridgeport Road, Suite 101
Portland, OR 97224

Re: Notice of Civil Penalty Assessment and Order
Case No.: WQ/SW-NWR-2016-073

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $9,890 for causing pollution to waters of the state. Specifically, on or about March 9-11th, 2016, turbid water discharged from your facility located at 35365 Hankey Road in St. Helens, Oregon to Milton Creek, waters of the state. DEQ also cited you for violating a condition of your NPDES 1200-A General Permit but has not assessed a penalty for that violation.

DEQ issued this penalty because turbidity in the water column and deposition of sediments can degrade water quality and may harm aquatic life by covering up food sources, abrading fish gills, and smothering fish eggs and invertebrate organisms living in the river. Milton Creek is habitat for endangered species of aquatic life, including Lower Columbia coho salmon and steelhead, as well as other "sensitive" aquatic life such as Pacific lamprey and coastal cutthroat trout. Turbidity is included in the definition of "pollution" under Oregon environmental law. Causing pollution to waters of the state is a Class I violation of Oregon environmental law.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204
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 it 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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at http://www.deq.state.or.us/programs/enforcement/SEP.htm, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at http://www.deq.state.or.us/regulations/rules.htm, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Courtney Brown, at (503) 229-6839. You may call toll-free within Oregon at 1-800-452-4011, extension 6839.

Sincerely,

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Vaughn Balzer, DOGAMI, 229 Broadalbin Street SW, Albany, OR 97321-2246
John Koestler, DEQ, WQ, HQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: EAGLE STAR ROCK PRODUCTS, LLC an Oregon limited liability corporation, Respondent.	)))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. WQ/SW-NWR-2016-073

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

II. FINDINGS OF FACT

1. Respondent owns and operates the facility located at 35365 Hankey Road in St. Helens, Oregon (the "Facility").

2. The Facility is registered under the National Pollutant Discharge Elimination System General Permit Number 1200-A (the "Permit").

3. On or about March 9, 2016, through on or about March 11, 2016, turbid water discharged from the Facility to Milton Creek, waters of the state.

4. Milton Creek is habitat for aquatic life including Lower Columbia Coho salmon, Lower Columbia steelhead, Pacific Lamprey and coastal cutthroat trout.

5. On or about March 11, 2016, staff from the Oregon Department of Geology and Mineral Industries (DOGAMI) inspected the Facility and observed that sediment control best management practices (BMPs) were failing due to lack of maintenance.

6. On or about March 11, 2016, staff from DOGAMI observed deposits of clay, silt and other sediments from the Facility outside of the permitted site on the road in the ditch along Hankey Road, and in the riparian buffer to Milton Creek.

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7. Schedule A, condition 6 of the Permit states that the permit registrant must prevent the discharge of significant amounts of sediment to surface waters or conveyance systems leading to surface waters. The conditions referred to in paragraphs 5 and 6, above, are conditions which describe significant amounts of sediment.

III. CONCLUSIONS

1. Respondent has violated ORS 468B.025(1)(a) by causing pollution to waters of the state, on or about March 9, 2016, through on or about March 11, 2016. Specifically, Respondent discharged turbid water from its Facility to Milton Creek. Milton Creek is habitat for aquatic species and the turbid water discharges are considered pollution according to ORS 468B.005(5) because turbidity will or tends to render such waters harmful to aquatic life or the habitat thereof. This is a Class I violation according to OAR 340-012-0055(1)(a). DEQ hereby assesses a $9,890 civil penalty for this violation.

2. Respondent has violated ORS 468B.025(2) by violating Schedule A, condition 6 of the Permit. Specifically, on or about March 9, 2016, through March 11, 2016, Respondent failed to prevent conditions at the Facility which result in the discharge of significant amounts of sediment to Milton Creek and conveyance systems leading to Milton Creek. This is a Class II violation according to OAR 340-012-0053(2). DEQ has not assessed a 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 $9,890. 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, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

V. 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. You must ensure that DEQ receives the 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(s), you must include them 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 mail the request for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-5100**. 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, or you may represent yourself unless you are a corporation, agency or association.

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

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

July 13, 2016
Date

Susan Meeker for
Leah K. Feldon, 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 1: Causing pollution to Milton Creek, waters of the state, on or about March 9, 2016, through on or about March 11, 2016 in violation of ORS 468B.025(1)(a).

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

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).

"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 was more than one but less than seven occurrences of the violation. Pollution-causing turbid water discharges were observed on March 9, 2016, and March 11, 2016, thus the discharges likely spanned the course of three days. Each day of violation is a separate occurrence according to OAR 340-012-0145(4).

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent is registered under the NPDES 1200-A General Permit. As such Respondent is presumed to have knowledge of its conditions including Schedule A, condition 6 requiring permit registrants to prevent the discharge of significant amounts of sediment to surface waters or conveyance systems leading to surface waters. Additionally, Respondent was informed by DOGAMI in November of 2014, of the need to perform maintenance on stormwater Best Management Practices (BMPs) during the dry season. By failing to install and perform maintenance of

BMPs, Respondent consciously disregarded a substantial and unjustifiable risk that the Facility would discharge significant amounts of sediment to surface waters or conveyance systems leading to surface waters and cause pollution of those waters.

"C" 0 according to OAR 340-012-0145(6)(a)(D), 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 $1,890. This is the amount Respondent gained by avoiding spending $2,976.50 on fuel, erosion control grass seed, labor, rock to perform necessary maintenance, excavation, and construction on the stormwater conveyance ditches, settling basins, and road side ditches at the Facility. 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 x BP) x (P + H + O + M + C)] + EB
= $4,000 + [(0.1 x $4,000) x (0 + 0 + 2 + 8 + 0)] + $1,890
= $4,000 + [$400 x 10] + $1,890
= $4,000 + $4,000 + $1,890
= $9,890