



# 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

July 19, 2017

CERTIFIED MAIL: 7016 2140 0000 2420 4812

Tri-County Metropolitan Transportation District of Oregon  
c/o Shelley Devine, Tri-Met Legal Department  
1800 SW First Avenue, Suite 300  
Portland, OR 97201

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-NWR-2017-001

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the Tri-County Metropolitan Transportation District of Oregon (Tri-Met) a civil penalty of \$10,400 for violating the NPDES 1200-Z Stormwater General Permit (the Permit) at its facility located at 9499 SW Barbur St., in Wilsonville (the Facility). Specifically, Tri-Met failed to monitor its industrial stormwater discharge at the required frequency during the 2015-2016 monitoring year.

DEQ issued this penalty because monitoring stormwater discharge at the proper frequency is essential to DEQ's evaluation of the effectiveness of Tri-Met's narrative technology based effluent limits. In addition, without properly collected monitoring data, DEQ cannot analyze potential harmful environmental consequences from Tri-Met's stormwater discharge.

Included in Section IV of the attached Notice of Civil Penalty Assessment and Order (Notice) is an order requiring Tri-Met to either remove or coat the uncoated galvanized walkways and ladders at the Facility. DEQ included this condition of the Notice because Tri-Met must improve its actions to address benchmark exceedances at the Facility through Tier II treatment measures. Benchmark exceedances indicate the presence of harmful levels of industrial pollutants that could enter the stormwater system and pose a risk of harm to aquatic life and other beneficial uses of public waters.

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 Kieran O'Donnell at 503-229-5012 or toll free in Oregon at 800-452-4011, extension 5012.

Sincerely,



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

Enclosures

cc: E. Jay Murphy, NWR, DEQ  
Christine Svetkovich, NWR, DEQ  
Shaumae Hall, Accounting, DEQ  
John Koestler, WQ, DEQ



1 7. Respondent's second year geometric mean of sampling at the Facility exceeded statewide  
2 benchmark levels for Total Zinc at outfall #1.

3 8. In March, 2015, Respondent submitted a revised SWPCP with additional Tier II treatment  
4 measures for the statewide benchmark for Total Zinc at outfall #1.

5 9. Respondent's SWPCP includes a plan to install a MetalZorb insert and to remove or coat  
6 uncoated galvanized walkways and ladders at the Facility.

7 10. As of the date of this Notice, Respondent has not removed or coated the uncoated  
8 galvanized metal walkways and ladders.

9 11. During the 2015-2016 monitoring year, Respondent monitored its stormwater discharge for  
10 Total Zinc five times, all after January 1, 2016, and did not monitor before December 31, 2015.

### 11 III. CONCLUSIONS

12 Respondent has violated ORS 468B.025(2) and Schedule B, Conditions 1 and 3 of the Permit  
13 by failing to conduct industrial stormwater monitoring at least four times per year, with two samples  
14 taken on or before December 31, and two samples taken after January 1 of the monitoring year, as  
15 described in Section II above. Specifically, during the 2015-2016 stormwater monitoring year,  
16 Respondent took five samples of its stormwater discharge after January 1, but failed to take any  
17 samples of its stormwater discharge on or before December 31. This is a Class I violation pursuant to  
18 OAR 340-012-0055(1)(o). DEQ hereby assesses a \$10,400 civil penalty for this violation.

### 19 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

22 1. Pay a total civil penalty of \$10,400. The determination of the civil penalties are attached as  
23 Exhibit No. 1 and is incorporated as part of this Notice.

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

1           2. By no later than 90 days after this Notice becomes a Final Order, comply with Oregon law  
2 and the Permit by either removing or coating the uncoated galvanized ladders and walkways at the  
3 Facility.

4           3. Documentation demonstrating compliance with Section IV, paragraph 2 above must be sent  
5 to:

6                   Oregon Department of Environmental Quality  
7                   c/o E. Jay Murphy, Water Quality Specialist  
8                   700 NE Multnomah St., Ste. 600  
9                   Portland, OR 97232

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

11           You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
12 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
13 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or the  
14 attached exhibit, you must do so in your request for hearing, as factual matters not denied will be  
15 considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-  
16 0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office**  
17 **of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,**  
18 fax it to **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. An administrative law judge  
19 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
20 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
21 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
22 you may represent yourself. If you are a corporation, partnership, limited liability company,  
23 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
24 authorized representative, as set forth in OAR 137-003-0555.

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

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

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July 19, 2017  
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Date

*Sarah Wheeler*  
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Sarah G. Wheeler, Acting Manager  
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 No 1: Failing to conduct industrial stormwater monitoring at least four times per year, with two samples taken on or before December 31 and two samples taken after January 1 of the monitoring year, in violation of ORS 468B.025(2) and Schedule B, Conditions 1 and 3 of the 1200-Z NPDES General Permit.

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 the 1200-Z 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 12 according to OAR 340-012-0145(2)(a) and (b) because Respondent has 9 Class I violations in Case No. WQ/SW-NWR-10-037 and two Class I violations in Case No. WQ/UIC-NWR-15-213. According to OAR 340-012-0145(2)(b), this amount is reduced to 10 because the value of P may not exceed 10.

"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 day of violation constitutes a separate offense. The Respondent failed to monitor its industrial stormwater discharge on two days before December 31, 2015. Therefore, there were 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. The Permit expressly requires the Respondent to monitor its industrial stormwater discharge four times per monitoring year with two samples taken before December 31 and two samples taken after January 1. Respondent has been cited and penalized by DEQ for the same or similar monitoring violations in two previous cases, WQ/SW-NWR-10-037 and WQ/UIC-NWR-15-213. Therefore, Respondent's failure to conduct the required industrial stormwater monitoring constitutes a failure 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 0 according to OAR 340-012-0145(6)(f) because the violation is not correctable. Respondent cannot retroactively monitor its stormwater discharge pursuant to the required schedule.

"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 the economic benefit is likely de minimis.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (10 + 0 + 2 + 4 + 0)] + \$0 \\ &= \$4,000 + (\$400 \times 16) + \$0 \\ &= \$4,000 + \$6,400 + \$0 \\ &= \$10,400 \end{aligned}$$