



Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah Street, Suite 600

Portland, OR 97232

(503) 229-5382

FAX (503) 229-5787

TTY 711

August 18, 2021

CERTIFIED MAIL No. 7018 1830 0001 5903 8815

4-R Equipment, LLC
c/o Brix Law Service Company LLC, Registered Agent
Attn: Kyle D. Wuepper
15 SW Colorado Ave., Suite 3
Bend, OR 97702

Re: Notice of Civil Penalty Assessment and Order
No. WQ/SW-WR-2021-108

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 <http://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 DEQ has issued you a civil penalty of \$12,800 for causing pollution of waters of the state. On June 8-9, 2021, you discharged highly turbid wastewater from Rickard Rock Quarry into the Marys River. This is a violation of ORS 468B.025(1)(a). You also violated the state water quality for turbidity set forth in OAR 340-041-0036.

DEQ issued this penalty because causing pollution of waters of the state is a serious violation of Oregon environmental law. The discharge caused a two-mile-long plume that greatly increased turbidity in the Marys River and reached the Willamette River. Turbidity is a pollutant that can harm aquatic life and impact beneficial uses of the river, including drinking water sources. Due to the high turbidity, the City of Philomath's water treatment plant had to shut down its intake system on the Marys River and connect to the City of Corvallis for its water supply.

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

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Ryan Clark, 4-R Equipment, LLC, PO Box 7527, Bend, OR 97708
Lisa Reinhart, DOGAMI
Zach Loboy, Eugene Office, DEQ
Accounting, DEQ
John Koestler, WQ, DEQ

6. The discharge described in Paragraphs 4 and 5 above continued through June 9, 2021, at a decreasing volume and rate of flow.

7. Water quality sampling conducted in the Marys River on June 9, 2021 measured a turbidity level of 8.26 NTU directly downstream from the discharge, compared to 4.36 NTU directly upstream from the discharge. This is an increase of approximately 89%.

8. On or about June 11, 2021, the turbid plume described in Paragraph 5 above entered the Willamette River approximately 25 miles downstream.

9. The Marys River is a natural surface water, and is “waters of the state” under ORS 468B.005(10).

III. CONCLUSIONS

1. On June 8 and 9, 2021, Respondent violated ORS 468B.025(1)(a) by causing pollution of waters of the state, as described in Section II above. Specifically, Respondent discharged highly turbid stormwater that altered the physical, chemical or biological properties of the Marys River by changing the color and turbidity of the river. This is a Class I violation according to OAR 340-012-0055(1)(a). DEQ hereby assesses a \$12,800 civil penalty for this violation.

2. Respondent violated ORS 468B.025(1)(b) and OAR 340-041-0036 by discharging wastes into waters of the state such that the discharge reduced the quality of the waters below water quality standards established by the Environmental Quality Commission. Specifically, on June 8 and June 9, 2021, Respondent's stormwater discharge caused more than a 10% cumulative increase in natural stream turbidity to the Marys River, as described in Section II, paragraphs 4 through 7 above. This is a Class I violation according to OAR 340-012-0055(1)(b). 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 civil penalty of \$12,800. The determination of the civil penalty is attached as Exhibit No. 1 and incorporated as part of this Notice.

1 If you do not file a request for hearing as set forth in Section V below, your check or money order
2 must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business Office,**
3 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

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

19 Active duty Service members have a right to stay proceedings under the federal Service
20 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
21 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
22 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
23 Department does not have a toll free telephone number.

24 If you fail to file a timely request for hearing, the Notice will become a final order by default
25 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
26 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
27 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.
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5 8/18/21

6 Date

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8 Kieran O'Donnell, Manager
9 Office of Compliance and Enforcement
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EXHIBIT NO. 1

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

- VIOLATION: Causing pollution of waters of the state, 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 major pursuant to OAR 340-012-0130(3) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had a significant adverse impact on human health or the environment. In making this finding, DEQ considered the following information: Respondent's highly turbid discharge caused the Marys River to turn brown and opaque from bank to bank. The day after the discharge began, turbidity in the Mary's River was 89% higher than background levels. The high turbidity caused the City of Philomath's water intake to shut down, and as a result the city had to connect to another water supply. Additionally, the turbid plume reached the Willamette River approximately three days after the initial discharge.
- 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 \$8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent has coverage under the NPDES 1200-A 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 2 according to OAR 340-012-0145(4)(b), because there were more than one but less than seven occurrences of the violation. The discharge was ongoing for at least two days, June 8 and 9, 2021. Each day of violation is a separate occurrence.
- "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 1200-A

Permit, which specifically prohibits the release of turbid stormwater that is not filtered or settled to remove sediments and turbidity. The unpermitted discharge resulted from Respondent's blasting activity above a stormwater retention pond that was full of highly turbid water. By failing to empty the stormwater retention pond or take other measures to ensure that the blasting would not result in a failure of the retention pond, Respondent failed to take reasonable care to avoid a foreseeable risk that it would discharge highly turbid stormwater from the facility and cause pollution of state waters.

"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 \$0 because DEQ has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 2 + 4 + 0)] + \$0 \\ &= \$8,000 + [\$800 \times 6] + \$0 \\ &= \$8,000 + \$4,800 + \$0 \\ &= \$12,800 \end{aligned}$$