



# 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

September 1, 2022

CERTIFIED MAIL No. 7020 2450 0000 3349 5093

Alsea Quarries I, LLC  
c/o George Foster, Registered Agent  
PO Box 265  
Alsea, OR 97324

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/ACDP-WR-2022-047

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a \$1,700 civil for failing to timely submit your 2021 annual report to DEQ, as required by your Air Contaminant Discharge Permit. A complete 2021 annual report was due for your rock crusher by no later than February 15, 2022.

DEQ issued this penalty because annual reports are an important mechanism for DEQ to determine whether sources of air contaminants are operating within the conditions and limits of permits. Without the report, DEQ is unable to determine the compliance status of your crusher to ensure emissions are within levels that do not pose harm to the public's health or the environment. DEQ is especially concerned about this violation because DEQ previously assessed you a civil penalty in 2020 for late submittal of your 2019 annual report.

DEQ appreciates your effort to eventually correct the violation by submitting your 2021 annual report on April 11, 2022. DEQ considered this effort 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.

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 portion of the 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 DEQ Environmental Law Specialist Jenny Root at 503-229-5874 or toll free in Oregon at 800-452-4011, extension 5874.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell".

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Sarah Gallino, Western Region, Salem Office, DEQ  
Keith Andersen, Western Region, Eugene Office, DEQ  
Donald Hendrix, AQ, DEQ  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 ALSEA QUARRIES I, LLC, ) ASSESSMENT AND ORDER  
5 an Oregon limited liability company, )  
6 Respondent. ) NO. AQ/ACDP-WR-2022-047

7 I. AUTHORITY

8 This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and  
9 468.126 through 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR)  
10 Chapter 340, Divisions 011, 012, 200, 214 and 216.

11 II. FINDINGS OF FACT

12 1. Respondent operates a rock crusher at 19331 South Fork Road, Alsea, Oregon  
(the Facility).

13 2. On January 31, 2018, the Department of Environmental Quality (DEQ) assigned  
14 Respondent's Facility to General Air Contaminant Discharge Permit AQGP-08 (the Permit) as  
15 source number 02-0016. The Permit was in effect at all material times.

16 3. The Permit authorizes Respondent to discharge air contaminants from activities  
17 and processes at the Facility in accordance with the requirements, limitations, and conditions in  
18 the Permit.

19 4. Condition 7.2 of the Permit requires Respondent to submit an annual report to  
20 DEQ by February 15<sup>th</sup> of each year that includes specific production, maintenance, and pollutant  
21 emission information for the previous calendar year of operation at the Facility.

22 5. Respondent submitted its 2021 annual report to DEQ on April 11, 2022.

23 III. CONCLUSION

24 Respondent violated Condition 7.2 of the Permit and OAR 340-214-0114(1) and (2),  
25 adopted pursuant to ORS 468A.050(1), by failing to submit its 2021 annual report to DEQ by  
26 February 15, 2022, as further described in Section II, Paragraphs 4 and 5 above. This is a Class II

1 violation according to OAR 340-012-0054(2)(f). DEQ has assessed a \$1,700 civil penalty for this  
2 violation.

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

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

6 Pay a total civil penalty of \$1,700. The determination of the civil penalty is attached as  
7 Exhibit 1 and is 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  
9 money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ,**  
10 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

#### 11 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

12 You have a right to a contested case hearing on this Notice, if you request one in writing.  
13 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive  
14 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this  
15 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not  
16 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
17 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your  
18 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**  
19 **600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to  
20 [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov). An administrative law judge employed by the Office of  
21 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
22 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
23 attorney at the hearing, however you are not required to be. If you are an individual, you may  
24 represent yourself. If you are a corporation, partnership, limited liability company,  
25 unincorporated association, trust or government body, you must be represented by an attorney or  
26 a duly authorized representative, as set forth in OAR 137-003-0555.

1 Active-duty service members have a right to stay proceedings under the federal Service  
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
5 Department does not have a toll-free telephone number.

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

12  
13 9 / 1 / 2022

14 Date


13   
14 Kieran O'Donnell, Manager  
15 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: Failing to timely submit a 2021 annual report to DEQ in violation of Condition 7.2 of Respondent's Air Contaminant Discharge Permit and OAR 340-214-0114(1) and (2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(f).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation, by itself, had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or the environment. In making this finding, DEQ considered the following reasonably available information: once Respondent submitted the annual report, DEQ was able to determine Respondent operated in compliance with its permit limits during the 2021 operating year.

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 \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent operates the Facility under a General Air Contaminant Discharge 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 Respondent and receives a value of 1 according to OAR 340-012-0145(2)(a)(B), because Respondent had one Class II violation in Case No. AQ/ACDP-WR-2020-157 issued December 11, 2020.

"H" is Respondent's history of correcting prior significant actions and receives an initial value of -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited as prior significant actions. According to OAR 340-012-0145(3)(d), this value is increased to 0 because the sum of the "P" and "H" factors may not be less than 1 unless Respondent took extraordinary efforts to correct or minimize the effects of all PSAs. Respondent took reasonable but not extraordinary efforts to correct or minimize the effects of the prior significant action.

"O" is whether the violation was repeated or ongoing and receives a value 0 according to OAR 340-012-0145(4)(a), because there was one occurrence of the violation. Respondent was late submitting one (2022) annual report.

"M" is the mental state of the Respondent and receives a value of 8 pursuant to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. Respondent's Permit expressly requires Respondent to submit an annual report by February 15<sup>th</sup> of each year. On June 6, 2019, DEQ issued Respondent a Warning Letter with Opportunity to Correct for failing to submit the 2018 annual report to DEQ by the February 15, 2019, due date. On December 11, 2020, DEQ assessed Respondent a civil penalty for failing to timely submit the 2019 annual report. On November 30, 2021, DEQ sent Respondent a reminder letter that 2021 annual reports were due by February 15, 2022. By failing to submit the 2021 annual report to DEQ timely after previously receiving a warning letter and civil penalty for late reporting, and after receiving a reminder letter that 2021 annual reports were due February 15, 2022, Respondent consciously disregarded a substantial and unjustifiable risk that it would continue to violate the reporting requirements of the Permit and Oregon's air quality regulations. Given DEQ's previous and ongoing communication with Respondent regarding late annual reports, continuing to disregard this risk constitutes a gross deviation from the standard of care a reasonable person would observe in this situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to correct the violation by submitting the report on April 11, 2022.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of 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 as any economic benefit derived is likely to be de minimis.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$1,000 + [(0.1 \times \$1,000) \times (1 + 0 + 0 + 8 + -2)] + \$0$   
 $= \$1,000 + (100 \times 7) + \$0$   
 $= \$1,000 + \$700 + \$0$   
 $= \$1,700$