



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

September 8, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5130

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-2022-503

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$6,800 for failing to perform the required monitoring of your industrial stormwater discharge during the 2020-2021 monitoring year as required under the NPDES Industrial Stormwater Discharge General Permit No. 1200-Z issued for the facility located at 14003 North Rivergate Boulevard, in Portland, Oregon.

DEQ issued this penalty because monitoring is an important condition of the Permit and adhering to the required test procedures, including detection limits, ensures the receipt of good data. Without valid data, permittees and DEQ are unable to gauge the effectiveness of stormwater controls and best management practices at reducing levels of pollutants in discharges.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

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

JR Simplot Company
WQ/SW-NWR-2022-503

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.

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/administrative-rules.aspx> or by calling the number below.

If you have any questions, please contact Courtney Brown at 503-229-6839 or toll free in Oregon at 800-452-4011, extension 6839.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Ellen Dorsey, BES, City of Portland, via ellen.dorsey@portlandoregon.gov
Christine Svetkovich, DEQ, Northwest Region
John Koestler, WQ, DEQ
Accounting, DEQ
Ryan McLane, JR Simplot, 14003 N Rivergate Blvd., Portland, OR 97203

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 J.R.SIMPLOT COMPANY,) ASSESSMENT AND ORDER
5 a foreign corporation,)
Respondent.) CASE NO. WQ/SW-NWR-2022-503

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9 ORS Chapter 183, ORS Chapter 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions
10 011, 012, and 045.

11 II. FINDINGS OF FACT

12 1. Respondent is registered under the National Pollutant Discharge Elimination System
13 Industrial Stormwater Discharge General Permit No. 1200-Z Permit (the Permit) for the facility located
14 at 14003 North Rivergate Boulevard in Portland, Oregon (the Facility). The Permit expired on July 1,
15 2021, and was revised and reissued by DEQ on July 1, 2021. The Permit was in effect at all material
16 times.

17 2. Schedule B, condition 6(b) of the Permit requires permittees to monitor for impairment
18 pollutants. Schedule B, condition 7, Table 6 of the Permit requires impairment pollutants be monitored
19 four times per year.

20 3. Schedule F, condition C3 of the Permit requires monitoring to be conducted according to
21 test procedures approved under 40 CFR part 136.

22 4. Respondent's discharge monitoring reports (DMRs) for the grab sample monitoring
23 performed on November 30, 2020, December 20, 2020, and January 12, 2021, indicate "ND" (non-
24 detect) for cyanide above the reference concentration indicating that the incorrect detection limit was
25 used in the analysis of cyanide.

26 5. Respondent's grab sample monitoring for cyanide on November 30, 2020, December 20,
27 2020, and January 12, 2021, is invalid.

1 III. CONCLUSIONS

2 Respondent has violated ORS 468B.025(2) and Schedule B, conditions 6(b) and 7 and Schedule
3 F, condition C3 of the Permit by failing to perform monitoring for cyanide three out of the four required
4 times during the 2020-2021 monitoring year. Specifically, Respondent’s analytical results for cyanide were
5 invalid because the lab analysis used a detection limit below the reference concentration rendering the
6 results invalid. These are Class I violations pursuant to OAR 340-012-0055(1)(o). DEQ hereby assesses a
7 \$6,800 civil penalty for this violation.

8 IV. ORDER TO PAY CIVIL PENALTY

9 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
10 hereby ORDERED TO: Pay a total civil penalty of \$6,800. The determination of the civil penalty is
11 attached as Exhibit 1 and is incorporated as part of this Notice.

12 If you do not file a request for hearing as set forth in Section V below, please pay the penalty as
13 follows:

14 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:
15 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account
16 dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US
17 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional
18 charges.

19 Pay by check or money order: Make checks payable to “Department of Environmental
20 Quality” and mail to the address on the enclosed payment slip. Please make sure to include the payment
21 slip with your check or money order.

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


23 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
24 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
25 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
26 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
27 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for

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

10 Active duty Service members have a right to stay proceedings under the federal Service
11 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
12 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
13 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
14 Department does not have a toll free telephone number.

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

21
22
23
24 9/8/2022
Date


Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT

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

VIOLATION: Violating ORS 468B.025(2) and Schedule B, condition 1(b) and (7) of the Permit by failing to monitor for cyanide during the 2020-2021 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 a value of 5 according to OAR 340-012-0145(2)(a)(C),(D) because Respondent has one prior significant action, case No: WQ/SW-NWR-2019-289, that included four class I violations.

"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 were three occurrences of the violation. Each occurrence is a separate violation. Incorrect detection limits were used in the analysis of cyanide from the samples taken on November 30, 2020, December 20, 2020, and January 12, 2021.

"M" is the mental state of the Respondent and receives a value of 0 according to OAR 340-012-0145(5)(a), because there is insufficient information on which to base a finding under paragraphs (5)(b) through (5)(d).

"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. Respondent gained no economic benefit from this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$4,000 + [(0.1 \times \$4,000) \times (5 + 0 + 2 + 0 + 0)] + \0
 $= \$4,000 + (\$400 \times 7) + \$0$
 $= \$4,000 + \$2,800 + \$0$
 $= \$6,800$

Oregon Department of Environmental Quality
 700 NE Multnomah Street, Suite 600
 Portland, OR 97232-4100



State of Oregon
Department of Environmental Quality

Phone: 503-229-5437
 Fax: 503-229-5850

CIVIL PENALTY - ORS 468.135(2)

DATE:	September 8, 2022
RESPONSE DATE :	November 10, 2022
TOTAL PENALTY:	\$6,800.00

Account Name:	J. R. SIMPLOT COMPANY <J. R. SIMPLOT COMPANY - RIVERGATE TERMINAL> <100415>		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300020
SubSystem ID:	179502	FIMS Acct. ID:	4758

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 6,800.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 6,800.00

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit <https://ydo.oregon.gov> and select 'Register Account'



 PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



REFERENCE NO.	CPGFD2300020		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	November 10, 2022
FIMS ACCT. ID:	4758	TOTAL PENALTY DUE:	\$6800.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

DEQ FINANCIAL SERVICES - LBX4244
PO BOX 4244
PORTLAND OR 97208-4244

Check this box if updated address information has been provided on the back of the form.

00401 7400 10040 74001 0500 000000 0095000047586CPGFD2300020000006800006



State of Oregon
Department of
Environmental
Quality

State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
Phone: 503-229-5437
Fax: 503-229-5850

Penalty Detail

Transaction Date	Description	Amount
9/7/2022	2022-503 WQ/SW-NWR-2022-503	\$6,800.00

SFMS Agencies Use:

Trans Code	Treasury Fund	SFMS	Index	PCA (5)	Agency Object	Project #	Phase
723	00401	7400	10040	74001	0500	00000	00

Address Changes

Please visit <https://ydo.oregon.gov> to update your mailing address online or provide the following information:

Name _____
Address _____
City, State, Zip _____