



# 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

TTY 711

September 12, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 3494

Rocky Mountain Construction, LLC  
c/o Jamie Jackson, Registered Agent  
4815 Tingley Lane #A  
Klamath Falls, OR 97603

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-ER-2018-081

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$26,197 for multiple violations of the industrial stormwater permit at your facility located at 2943 Laverne Avenue in Klamath Falls, Oregon. Specifically, you failed to implement control measures and practices described in your Stormwater Pollution Control Plan (SWPCP) and failed to maintain a current SWPCP that reflects site conditions. In addition, you failed to monitor your stormwater discharge at the facility's Edison Avenue outfall on sixteen occasions since you were assigned permit coverage in September 2014 and failed to conduct required facility inspections during the past three years. The Notice also cites you, without penalty, for failing to ensure that your vehicle and equipment washwater is managed as required by the permit, and for failing to conduct annual employee education in 2015, 2016 and 2017.

DEQ issued this penalty because the violations pose a risk to the environment. Specifically, the control measures and practices in your SWPCP and the inspections required by the permit are designed to reduce the pollutant loads in your stormwater discharge to the Klamath River. Therefore it is critical that you conduct the required inspections, implement the SWPCP, and maintain an updated document that reflects the activities, stormwater drainage patterns, and stormwater controls in place at your facility. In addition, the system that protects water quality in Oregon is highly dependent on permittees complying with the monitoring requirements of their permits. Without monitoring data, DEQ and the public cannot determine whether permittees are complying with pollutant limits or the pollutant loadings to the state's waterways.

Included in Section IV of the attached Notice is an order requiring you to take the following corrective actions:

- Within 30 days of the order becoming final by operation of law or on appeal:
  - Conduct daily monthly, and annual inspections as required by the permit and submit documentation to DEQ; and
  - Conduct employee education as required by the permit and submit documentation to DEQ.

- Implement the SWPCP, including but not limited to the requirements for housekeeping, controlling track-out, and spill prevention and submit documentation to DEQ. Following the initial submittal, submit monthly reports to DEQ for 11 months thereafter to demonstrate that track-out onto public roads is being controlled as required by the permit.
- Within 60 days of this order becoming final by operation of law or on appeal:
  - Submit an updated SWPCP to DEQ that complies with the permit and addresses the deficiencies identified in the Notice; and
  - Submit to DEQ a plan for approval, including timelines, to ensure that all washwater from vehicle and equipment cleaning operations drains to a closed-loop system or to the sanitary sewer and is not discharged to the stormwater drainage system.
- Within 6 months of the order becoming final by operation of law or on appeal, implement any changes identified in the washwater plan.

\$6,398 of the civil penalty represents the economic benefit you gained by avoiding the costs to conduct the studies necessary to understand the stormwater drainage patterns at your facility and to revise and update your SWPCP. If you complete these requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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.

Rocky Mountain Construction, LLC  
Case No. WQ/SW-ER-2018-081  
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If you have any questions, please contact Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Michael Kennedy, DEQ  
Krista Ratliff, DEQ

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

3 IN THE MATTER OF: )  
4 ROCKY MOUNTAIN CONSTRUCTION, ) NOTICE OF CIVIL PENALTY  
5 an Oregon limited liability company, ) ASSESSMENT AND ORDER  
6 Respondent. ) CASE NO. WQ/SW-ER-2018-081

7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

13 1. Respondent owns and operates a concrete batch plant and co-located road construction  
14 business, doing business as “Klamath Pacific Company” and located at 2943 Laverne Avenue in  
15 Klamath Falls, Oregon (the “Facility”).

16 2. The Facility is comprised of seven tax lots, all owned by Respondent, and known as Lots 4-  
17 10. Respondent’s road construction business, including the maintenance shop, is located in the  
18 northern Lots 4-6. The remainder of Respondent’s operations, including the fueling area, concrete  
19 batch plant and asphalt emulsion area, are located in the southern lots, 7-10.

20 3. On September 2, 2014, DEQ assigned Respondent coverage under National Pollutant  
21 Discharge Elimination System (NPDES) General Permit Number 1200-A (the “Permit”) for the  
22 Facility. The Permit was in effect at all material times.

23 4. The Permit authorizes Respondent to construct, install, modify, or operate stormwater  
24 treatment and control facilities, and to discharge stormwater from a point source to surface waters or  
25 conveyance systems that lead to surface waters in conformance with all the requirements, limitations,  
26 and conditions set forth in the Permit.

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1 Stormwater Pollution Control Plan (SWPCP)

2 5. Schedule A.1.a.ii of the Permit requires Respondent to implement one or more Best  
3 Management Practices (BMPs) to control sediment track-out onto public or private roads outside the  
4 Facility. According to Schedule A.1.a.ii, “[i]f the BMPs implemented on site are not controlling track-  
5 out, DEQ or Agent may require the permit registrant to use an exit wheel wash or other effective  
6 BMPs.”

7 6. Schedule A.1.b.iii of the Permit requires Respondent to “Store all hazardous substances (see  
8 Schedule D.3, Definitions) within berms or other secondary containment devices to prevent leaks and  
9 spills from contaminating stormwater...”

10 7. Schedule A.1.f of the Permit requires Respondent to “routinely clean all exposed areas that  
11 may contribute pollutants to stormwater ... using such measures as sweeping paved areas at regular  
12 intervals, litter pick-up, keeping materials orderly and labeled, prompt clean-up of spills and leaks,  
13 proper maintenance of vehicles and stowing materials in appropriate containers.”

14 8. Schedule A.1.b.v of the Permit requires Respondent to “Use drip pans or absorbents under  
15 or around leaking or leak-prone vehicles/equipment or store the vehicles or equipment indoors.”

16 9. Schedule A.1.b.vi of the Permit requires Respondent to “Clean up spills or leaks promptly  
17 using absorbents or other effective methods to prevent discharge of pollutants.”

18 10. Schedule A.1.f of the Permit requires Respondent to “routinely clean all exposed areas that  
19 may contribute pollutants to stormwater and mine dewatering water using such measures as sweeping  
20 paved areas at regular intervals, litter pick-up, keeping materials orderly and labeled, prompt clean up  
21 of spills and leaks, proper maintenance of vehicles and stowing materials in appropriate containers.”

22 11. Schedule A.1.h of the Permit requires Respondent to “regularly inspect, clean, maintain, and  
23 repair all industrial equipment and systems and materials handling and storage areas that are exposed to  
24 stormwater to avoid situations that may result in leaks, spills, and other releases of pollutants  
25 discharged to receiving waters. Clean, maintain and repair all control measures, including stormwater  
26 ...structures, catch basins, and treatment facilities to ensure effective operation and in a manner that  
27 prevents the discharge of pollution.”

1 12. Schedule A.7 through A.9 of the Permit require Respondent to prepare and implement a  
2 Stormwater Pollution Control Plan (SWPCP).

3 13. Schedule A.8.b.v of the Permit requires Respondent to include in the SWPCP a “description  
4 of BMPs installed and implemented to meet the technology and water quality based requirements and  
5 conditions A.1-A.6. Include in the description how the BMPs address potential pollutant sources from  
6 industrial activities and significant materials on-site, spills and leaks and authorized non-stormwater  
7 discharges.”

8 14. Schedule A.7.b.ii of the Permit requires Respondent to prepare a site map including (among  
9 other required elements) drainage patterns and discharge structures, an outline of the drainage area for  
10 each stormwater outfall, location of monitoring points, and the location of spill prevention and cleanup  
11 materials.

12 15. Schedule A.7.b.iv of the Permit requires Respondent to include in the SWPCP a description  
13 of the potential pollutant sources that could be present in stormwater, for each area of the site where a  
14 reasonable potential exists for contributing pollutants to stormwater runoff.

15 16. Schedule A.7.b.viii of the Permit requires Respondent to include in the SWPCP the  
16 identification of the discharge outfall(s) and the point(s) where monitoring will occur as required by  
17 Schedule B.2.c of the Permit.

18 17. Schedule A.7.e and A.9.a of the Permit require Respondent to keep the SWPCP current and  
19 updated as necessary to reflect any changes at the Facility. The SWPCP must be updated within 30  
20 days of making any changes at the Facility.

21 18. Schedule A.9.b of the Permit requires Respondent to submit certain SWPCP revisions to  
22 DEQ within 30 days of making the revisions. These include:

- 23 a. “Changes to the site or control measures that may significantly change the nature  
24 of pollutants present in stormwater ... or significantly increase the pollutant(s) levels,  
25 discharge frequency, or discharge volume or flow rate”; and  
26 b. “Changes to the monitoring locations or outfalls”.

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1 19. According to Schedule A.9.d of the Permit, "Review of the revisions by DEQ ... prior to  
2 implementation is not required, except revision to location of monitoring locations."

3 20. On November 17, 2014, Respondent submitted a SWPCP for the Facility to DEQ.

4 21. Respondent's SWPCP includes the following control measures or practices:

5 a. **"Double Containment:** The materials stored onsite are listed above. Double  
6 containment storage on the sit consists of concrete wall impoundments and spill pallets.  
7 Storage of materials on double containment will minimize contact with stormwater. All  
8 hazardous substances must have proper secondary containment." (pages 3-4);

9 b. **"Oil and Grease:** Oils from leaking equipment, drips and spills will be cleaned  
10 up immediately to prevent stormwater contamination. Vehicle maintenance is not  
11 conducted on site." (page 4);

12 c. **"Erosion and Sediment Control:** A water truck and/or sweeper will be used to  
13 clean the pavement and help to prevent sediment from entering the storm drain." (page  
14 4);

15 d. **"Debris Control:** Housekeeping practices at the site will be used to eliminate  
16 and (sic) garbage, debris or other objects from entering the storm drain." (page 4);

17 e. **"Housekeeping:** Good housekeeping practices will be employed on a daily  
18 basis. The majority of the activities occur outdoors at this facility and good  
19 housekeeping will be included in the routine day-to-day responsibilities of each  
20 foreman. Good Housekeeping shall include but not be limited to the following:

- 21 • Use drip pans whenever emergency vehicle maintenance is taking place
- 22 • Keep machinery in good working condition
- 23 • Address spills quickly
- 24 • Regular cleaning of vehicles and all paved areas
- 25 • Prevent tracking of material ... (page 4)"

26 f. "Spill prevention is addressed by storing all hazardous materials in secondary  
27 containment or indoors. (page 5)"

1 22. The SWPCP states, on page 5, that the monitoring point for the Facility is located near the  
2 middle of the south property line (near Laverne Avenue), where a single discharge pipe enters a storm  
3 ditch (the "Laverne Ave. Outfall"). The SWPCP states that the storm ditch discharges to a drainage  
4 ditch that discharges to the Klamath River.

5 23. On October 3, 2014, DEQ inspected the Facility. On the day of the inspection, the Laverne  
6 Ave. Outfall was capped. On the day of the inspection, DEQ observed the "Edison Ave. Outfall", a  
7 piped outfall and sampling access point at the northern boundary of the Facility along Edison Ave.,  
8 described in greater detail in Paragraphs 24.g and 24.h, below.

9 24. On April 17, 2018, DEQ inspected the Facility. On the day of the inspection:

10 a. There was accumulated sediment on the paved areas throughout the Facility.

11 b. There was track-out of sediment from the Facility onto Laverne Avenue  
12 including the accumulation of sediment along the lip of the curb,

13 c. There were oil stains on the pavement near the location where Respondent's  
14 trucks were stored at the Facility.

15 d. There was evidence of fueling spills at and around the fueling depot at the  
16 Facility, and there were no spill kits located in the vicinity of the fueling depot.

17 e. Inside the Facility's maintenance shop, there were significant materials that were  
18 not stored within secondary containment, there were no spill kits located within the maintenance shop,  
19 and there was evidence of spills that had not been cleaned up including spilled fluids under a vehicle  
20 that had been raised up to work on. The spill underneath the raised vehicle was located near the garage  
21 door of the maintenance shop with no berm, drain or other means to prevent the spilled liquid from  
22 escaping out underneath the garage door to the pavement outside the maintenance shop.

23 f. There was a containment system composed of four concrete washout basins; the  
24 southernmost basin was plumbed to overflow to the South Suburban Sewer District.

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1 g. There was a catch basin located in the northern part of the Facility that receives  
2 stormwater from a large portion of the Facility. The catch basin is piped to a discharge point on the  
3 northern boundary of the Facility along Edison Avenue (the "Edison Ave. Outfall"). Near the Edison  
4 Ave. outfall there was a sampling access point.

5 h. The Edison Ave. Outfall discharges to a ditch that drains from east to west along  
6 the northern boundary of the Facility, parallel to Edison Avenue (the "Edison Ave. Ditch"). The  
7 Edison Ave. Ditch drains to the City of Klamath Falls storm sewer system, which discharges to the  
8 Klamath River.

9 i. The pipe from the catch basin described in Paragraph 24.g above, where it  
10 daylights at the Edison Ave. Outfall, contained sediment and garbage.

11 j. The Edison Ave. Ditch was wet downgradient from the Edison Ave. Outfall and  
12 was dry upgradient from the Edison Ave. Outfall.

13 25. On April 17, 2018, the SWPCP did not reflect the activities and control measures on site  
14 because:

15 a. The SWPCP does not include any of the industrial activity or stormwater  
16 infrastructure in the Facility's three northern lots Nos. 4-6. Instead, the SWPCP's site map and  
17 narrative are limited to the southern lots, Nos. 7-10.

18 b. The SWPCP does not describe the Edison Ave. Outfall and the associated  
19 monitoring point.

20 c. The SWPCP does not accurately describe drainage patterns or drainage and  
21 discharge structures throughout the Facility.

22 d. The SWPCP does not describe the wash station, described below in Paragraph 29,  
23 or how the wastewater from the wash station is managed.

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1 Wash Station

2 26. Condition 6.a of the Permit authorizes certain non-stormwater discharges, subject to the  
3 terms and conditions of the Permit, including “Pavement wash waters where no detergents or hot water  
4 are used, no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has  
5 been removed), and surfaces are swept before washing” and “Vehicle washing that does not use  
6 detergents or hot water unless the 1700-A NPDES permit is required for discharge.”

7 27. According to Condition 6.c of the Permit, “Any other wastewater discharge or disposal,  
8 including stormwater mixed with wastewater, must be authorized by a separate permit, unless the  
9 wastewater is reused or recycled without discharge or disposal, or discharged to the sanitary sewer with  
10 approval from the sanitary sewer system operator.”

11 28. Schedule A.1.b.iv of the Permit requires respondent to “Perform all cleaning operations  
12 indoors, under cover or in bermed areas that prevent runoff and run-on and captures overspray. Ensure  
13 that all washwater drains to a proper collection system such a closed-loop system or sanitary sewer and  
14 is not discharged to the stormwater...system.”

15 29. On April 17, 2018, the day of DEQ’s inspection:

16 a. There was a wash station located to the south of the Facility’s maintenance  
17 building, where Respondent uses detergents and degreasers to wash trucks and equipment.

18 b. There was a buildup of sediment and soapy water from the wash station  
19 described in Paragraph 29.a, above, around a catch basin located to the east of the wash station and  
20 close to the Facility’s eastern property line. On the day of the inspection, Respondent did not know the  
21 destination of water that flows into the catch basin.

22 c. There was a buildup of sediment and debris along the eastern property line of the  
23 Facility where stormwater and wastewater from the wash station described in Paragraph 29.a, above  
24 pools up before draining offsite.

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1 Stormwater Monitoring

2 30. Schedule B.1 and B.2 of the Permit require Respondent to monitor the Facility's stormwater  
3 discharge at each outfall for the "statewide benchmark" pollutants pH, Total Suspended Solids (TSS),  
4 Settleable Solids and Total Oil & Grease four times per year, with two samples taken between July 1  
5 and December 31, and two samples taken between January 1 and June 30.

6 31. Schedule B.8 requires Respondent to submit each year's monitoring results to DEQ by July  
7 31 on a Discharge Monitoring Report (DMR) form.

8 32. Schedule B.3.b of the permit states that "permit registrants may request a monitoring  
9 variance for missed samples due to no discharge from the site if one of the following criteria is met:

- 10 a. State or federal authorities declared the year a drought year;
- 11 b. Demonstrate that rainfall in the area where the permit registrant's facility is  
12 located was 20% or more below the three-year average rainfall for that area; [or]
- 13 c. Demonstrate to the satisfaction of DEQ or Agent that discharge did not occur  
14 due to the following reasons:

- 15 1) There were infrequent storm events of sufficient magnitude to produce run-off  
16 during normal business hours under safe conditions;
- 17 2) An on-site retention or treatment system or treatment system was used to prevent  
18 any discharge; [or]
- 19 3) Stormwater or mine dewatering discharge was controlled by pumps or valves  
20 and was contained on-site in ponds.

21 For each missed sample due to the above reasons, report in the DMR form that no discharge occurred  
22 and include supporting data and analysis demonstrating why the monitoring did not occur."

23 33. Respondent submitted a DMR for the 2014-2015 monitoring year (July 1, 2014 – June 30,  
24 2015) to DEQ on December 24, 2015. The 2014-2015 DMR did not include any sampling data for the  
25 Facility and did not provide any data and analysis demonstrating why monitoring did not occur.

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1 34. There was sufficient rainfall to generate at least four discharges at the Edison Ave. Outfall  
2 during the 2014-2015 monitoring year, with two discharges before December 31, 2014 and two  
3 discharges after January 1, 2015.

4 35. Respondent submitted a DMR for the 2015-2016 monitoring year (July 1, 2015 – June 30,  
5 2016) to DEQ on July 27, 2016. The 2015-2016 DMR did not include any sampling data for the  
6 Facility and did not provide any data and analysis demonstrating why monitoring did not occur.

7 36. There was sufficient rainfall to generate at least four discharges at the Edison Ave. Outfall  
8 during the 2015-2016 monitoring year, with two discharges before December 31, 2015 and two  
9 discharges after January 1, 2016.

10 37. As of the date of this Notice, Respondent has not submitted a DMR for the 2016-2017  
11 monitoring year (July 1, 2016 – June 30, 2017) to DEQ.

12 38. There was sufficient rainfall to generate at least four discharges at the Edison Ave. Outfall  
13 during the 2016-2017 monitoring year, with two discharges before December 31, 2016 and two  
14 discharges after January 1, 2017.

15 39. As of the date of this Notice, Respondent has not submitted a DMR for the 2017-2018  
16 monitoring year (July 1, 2017 – June 30, 2018) to DEQ.

17 40. There was sufficient rainfall to generate at least four discharges at the Edison Ave. Outfall  
18 during the 2017-2018 monitoring year, with two discharges before December 31, 2017 and two  
19 discharges after January 1, 2018.

20 Facility Inspections

21 41. Schedule B.7.a of the Permit requires Respondent to conduct inspections of certain areas at  
22 the Facility, while it is active, according to the frequency in Schedule B.7.a, Table 6. Specifically,  
23 Table 6 requires Respondent to conduct:

24 a. daily inspections of dikes, containment system and pond freeboard while  
25 operating, unless the site is inaccessible due to adverse weather conditions;

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1           b.       monthly inspections of areas of the site where industrial activities are exposed to  
2 stormwater, including locations of BMPs, material storage and stockpiling areas, vehicle entrance and  
3 exit areas;

4           c.       monthly inspections of monitoring points, while discharging, for the presence of  
5 floating solids (associated with mining or batch plant activities), foam, visible oil sheen, and  
6 discoloration of the discharge; and

7           d.       annual inspections of stormwater control facilities and drainage systems before  
8 the wet weather season (before October 1<sup>st</sup>).

9           42. The inspections required by Schedule B.7.a of the Permit must be documented in an  
10 inspection report, according to Schedule B.7.c of the Permit, and must be retained on-site for at least 3  
11 years, according to Schedule B.9 of the Permit.

12           43. On April 17, 2018, DEQ requested to review Respondent's inspection reports retained on-  
13 site. Respondent did not have any inspection reports on-site at the Facility.

14           44. As of the date of this Notice, Respondent has not provided any inspection reports to DEQ.

15 Employee Education

16           45. Schedule A.1.j of the Permit requires Respondent to develop and maintain an employee  
17 orientation and education program to inform personnel on the components and goals of the SWPCP.  
18 Respondent must train all employees who work in areas where the industrial materials or activities are  
19 exposed to stormwater ... or who are responsible for implementing activities necessary to meet the  
20 conditions of the Permit. Respondent must conduct the employee education and training of new  
21 employees within 30 days of hire, and annually thereafter.

22           46. Schedule B.9 of the Permit requires Respondent to record employee education activities and  
23 retain records on-site at the Facility for at least three years.

24           47. On April 17, 2018, DEQ requested to review Respondent's employee education records.  
25 Respondent did not have any employee education records on-site at the Facility.

26           48. As of the date of this Notice, Respondent has not provided any employee education records  
27 to DEQ.

1 III. CONCLUSIONS

2 Stormwater Pollution Control Plan (SWPCP)

3 1. On or before April 17, 2018, Respondent violated ORS 468B.025(2) and Schedule A.7.d of the  
4 Permit by failing to implement the control measures or practices described in the SWPCP, as described  
5 above in Paragraphs 5-25 of Section II. Specifically, Respondent: failed to store all hazardous substances  
6 in proper secondary containment; failed to immediately clean up drips and spills of oil and grease to  
7 prevent stormwater contamination; failed to clean the pavement to prevent tracking of material and to  
8 help to prevent sediment from entering the storm drain; and failed to use housekeeping practices to  
9 eliminate garbage, debris or other objects from entering the storm drain. This is a Class I violation,  
10 according to OAR 340-012-0055(1)(r). DEQ hereby assesses an \$8,000 civil penalty for this violation.

11 2. On or before April 17, 2018, Respondent violated ORS 468B.025(2) and Schedule A.7.e of the  
12 Permit by failing to maintain a current and updated SWPCP that reflects site conditions, as described  
13 above in Paragraphs 5-25 of Section II. Specifically, the SWPCP: does not include the northern part of the  
14 Facility (Lots 4-6); does not include the Edison Ave. Outfall or the associated monitoring location; does  
15 not describe drainage patterns or drainage and discharge structures throughout the Facility; and does not  
16 describe the wash station or how the wastewater from the wash station is managed. This is a Class II  
17 violation, according to OAR 340-012-0053(2). DEQ hereby assesses a \$6,398 civil penalty for this  
18 violation.

19 Wash Station

20 3. Respondent violated ORS 468B.025(2) and Schedule A.1.b.iv of the Permit by failing to  
21 ensure that all washwater from cleaning operations drains to a closed-loop system or sanitary sewer and is  
22 not discharged to the stormwater drainage system, as described above in Paragraphs 26-29 of Section II.  
23 Specifically, on April 17, 2018, Respondent's wash station, where Respondent uses soap and degreasers to  
24 clean trucks and equipment, drained to a catch basin with an unknown destination and also drained offsite  
25 at the eastern boundary of the Facility. This is a Class II violation, according to OAR 340-012-0053(2).  
26 DEQ has not assessed a civil penalty for this violation.

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1 Stormwater Monitoring

2 4. Respondent violated ORS 468B.025(2) and Schedule B.1 and B.2 of the Permit by failing to  
3 monitor for pH, Total Suspended Solids (TSS), Settleable Solids and Total Oil & Grease at the Edison  
4 Ave. Outfall on sixteen occasions between September 2, 2014 (when Respondent was assigned Permit  
5 coverage) and June 30, 2018, as described above in Paragraphs 30-40 of Section II. These are Class I  
6 violations, according to OAR 340-012-0055(1)(o). DEQ hereby assesses an \$8,508 civil penalty for these  
7 violations.

8 Facility Inspections

9 5. Respondent violated ORS 468B.025(2) by failing to conduct Facility inspections as required by  
10 Schedule B.7.a of the Permit, as described above in Paragraphs 41-44 of Section II. Specifically, between  
11 April 17, 2015 and April 17, 2018, Respondent failed to conduct 754 daily inspections of the Facility's  
12 containment system; failed to conduct 36 monthly inspections of the Facility's monitoring points and areas  
13 of the Facility where industrial activities are exposed to stormwater; and failed to conduct three annual  
14 inspections of stormwater control facilities and drainage systems before the wet weather season (before  
15 October 1<sup>st</sup>). These are Class II violations, according to OAR 340-012-0053(2). DEQ hereby assesses a  
16 \$3,291 civil penalty for these violations.

17 Employee Education

18 6. Respondent violated ORS 468B.025(2) and Schedule A.1.j of the Permit by failing conduct  
19 annual employee education in 2015, 2016 and 2017, as described above in Paragraphs 45-48 of Section II.  
20 These are Class II violations, according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty  
21 for these violations.

22 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

25 1. Pay a total civil penalty of \$26,197. The determination of the civil penalties are attached as  
26 Exhibits 1-4 and are incorporated as part of this Notice.

27 If you do not file a request for hearing as set forth in Section V below, your check or money

1 order must be made payable to "State Treasurer, State of Oregon" and sent to the DEQ, Business  
2 Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232. Once you pay the penalty,  
3 the Findings of Fact, Conclusions and Order become final.

- 4 2. Within 30 days of this order becoming final by operation of law or on appeal:
  - 5 a. Conduct daily monthly, and annual inspections as required by Schedule B.7.a of the
  - 6 Permit and submit inspection records, completed according to Schedule B.7.c of the
  - 7 Permit, to DEQ; and
  - 8 b. Conduct employee education as required by Schedule A.1.j of the Permit, for all
  - 9 employees who work in areas where the industrial materials or activities are exposed to
  - 10 stormwater or who are responsible for implementing activities necessary to meet the
  - 11 conditions of the Permit, and submit written documentation to DEQ.
  - 12 c. Implement the control measures and practices described in the SWPCP and in Paragraph
  - 13 21 of the Notice and submit documentation, including photographs, to DEQ. Following
  - 14 the initial submittal, submit monthly reports to DEQ for 11 months demonstrating that
  - 15 BMPs are routinely being implemented to control sediment track-out onto public roads
  - 16 in compliance with Schedule A.1.a.ii of the permit. Monthly reports must be submitted
  - 17 to DEQ by no later than five business days following the end of the previous month.
- 18 3. Within 60 days of this order becoming final by operation of law or on appeal:
  - 19 a. Submit an updated SWPCP that complies with Schedule A.8 of the Permit to DEQ.
  - 20 Among other required elements, both the narrative and the site map in the updated
  - 21 SWPCP must: include the entire Facility (Lots Nos. 4-10); describe the Edison Ave.
  - 22 Outfall and the associated monitoring location; describe drainage patterns at the Facility;
  - 23 and describe drainage and discharge structures throughout the Facility and where they
  - 24 terminate.

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1           b. Submit to DEQ a plan for approval, including timelines, to ensure that all washwater from  
2           vehicle and equipment cleaning operations drains to a closed-loop system or to the sanitary  
3           sewer and is not discharged to the stormwater drainage system, in compliance with  
4           Schedule A.1.b.iv of the Permit.

5           4. Within 6 months of this order becoming final by operation of law or on appeal, implement any  
6           proposed changes at the Facility identified in the plan described in Section IV, Paragraph 3.b.

7           Written documentation demonstrating compliance with Section IV, Paragraphs 2-4 above  
8           must be submitted to: Michael Kennedy, Oregon Department of Environmental Quality, 700 NE  
9           Multnomah Street Suite 600, Portland, OR 97232 or [Kennedy.Michael@deq.state.or.us](mailto:Kennedy.Michael@deq.state.or.us).

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 attached  
14           exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
15           admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
16           further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
17           **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
18           it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto: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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15 9/12/18

16 Date

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Kieran O'Donnell, 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 No. 1: Failing to implement the control measures or practices described in the SWPCP, in violation of ORS 468B.025(2) and Schedule A.7.d of the Permit.

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

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 a 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 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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of the violation is a separate occurrence. On April 17, 2018, the date of DEQ's inspection, Respondent failed to implement the SWPCP because Respondent failed to store all hazardous substances in proper secondary containment; failed to immediately clean up drips and spills of oil and grease to prevent stormwater contamination; failed to clean the pavement to prevent tracking of material and to help to prevent sediment from entering the storm drain; and failed to use housekeeping practices to eliminate garbage, debris or other objects from entering the storm drain. As of the date of this Notice, DEQ has not received any documentation from Respondent demonstrating that these issues have been corrected at the Facility. Thus, there are more than 28 days or 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. Negligent means that Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent is a registrant under the Permit and is therefore presumed to have knowledge of the Permit's requirements, including the requirement under Schedule A.7.d of the Permit to implement the control measures or practices described in the SWPCP. As described in Paragraph 21 of the Notice, Respondent's SWPCP includes a number of control measures or practices related to the storage of hazardous substances, spill prevention and response, and housekeeping. On April 17, 2018, DEQ observed that these control measures and practices were not being implemented at the Facility, and as of the date of this Notice, Respondent has not submitted any documentation to DEQ demonstrating that these issues have been corrected. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation of the Permit.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"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 does not have sufficient information to calculate an economic benefit for this violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 4 + 2)] + \$0$   
 $= \$4,000 + (\$400 \times 10) + \$0$   
 $= \$4,000 + \$4,000 + \$0$   
 $= \$8,000$

EXHIBIT 2

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

VIOLATION No. 2: Failing to maintain a current and updated SWPCP that reflects site conditions, in violation of ORS 468B.025(2) and Schedule A.7.e of the Permit.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

**Pursuant to OAR 340-012-0150(4), DEQ elects to assess a penalty for this violation only for the amount of economic benefit realized by the Respondent.**

"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 \$6,398. This is the amount Respondent gained by avoiding spending \$4,000 in consulting fees to conduct a survey and dye testing to evaluate stormwater drainage patterns and confirm the destination of the Facility's various catch basins and \$4,500 in consulting fees to use the survey and other information to revise and update the SWPCP. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$   
=  $\$0 + [(0.1 \times \$0) \times (0 + 0 + 0 + 0 + 0)] + \$6,398$   
=  $\$0 + (\$0 \times 0) + \$6,398$   
=  $\$0 + \$0 + \$6,398$   
=  $\$6,398$

EXHIBIT 3

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

VIOLATION No. 4: Failing to monitor for pH, Total Suspended Solids (TSS), Settleable Solids and Total Oil & Grease at the Edison Ave. Outfall in violation of ORS 468B.025(2) and Schedule B.1 and B.2 of the 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 a 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 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 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. The Edison Ave. Outfall has been in place at the Facility since at least October 3, 2014. Respondent has not submitted any sampling results to DEQ for stormwater monitoring years 2014-2015, 2015-2016, 2016-2017 and 2017-2018. Schedule B.1 and B.2 of the permit require four samples per monitoring year, with one sample taken before December 31 and one sample after January 1. Therefore, Respondent failed to monitor on sixteen occasions between September 2, 2014 (when Respondent was assigned Permit coverage) and June 30, 2018 (the end of the 2017-18 monitoring year).

"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. Negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting

in a violation. The requirement to monitor the stormwater discharge from the Facility is an express condition of the permit, and as a registrant Respondent is presumed to have knowledge of this condition. The Edison Ave. Outfall, including the sampling access point, was constructed on or before October 3, 2014, with a piped drainage that carries stormwater from large portions of the Facility to the Edison Ave. Ditch. Despite knowledge of the requirement to monitor its stormwater discharge and the obvious discharge point from the Facility, Respondent failed to sample its stormwater discharge for four successive monitoring years. Therefore, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

"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 \$1,708. This is the amount Respondent gained by avoiding spending \$3,630 in sampling and analysis costs for four samples per year from the 2014-2015 monitoring year through the 2017-2018 monitoring year. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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 x \$4,000) x (0 + 0 + 3 + 4 + 0)] + \$1,708  
= \$4,000 + (\$400 x 7) + \$1,708  
= \$4,000 + \$2,800 + \$1,708  
= \$8,508

EXHIBIT 4

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

VIOLATION No. 5: Failing to conduct Facility inspections, in violation of ORS 468B.025(2) and Schedule B.7.a of the Permit.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

**Pursuant to OAR 340-012-0150(4), DEQ elects to assess a penalty for this violation only for the amount of economic benefit realized by the Respondent.**

"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 \$3,291. This is the amount Respondent gained by avoiding spending \$6,458 in labor costs between April 17, 2015 and April 17, 2018 for 754 daily inspections of the Facility's containment system, 36 monthly inspections of the Facility's monitoring points and areas of the Facility where industrial activities are exposed to stormwater; and 3 annual inspections of stormwater control facilities and drainage systems. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$   
=  $\$0 + [(0.1 \times \$0) \times (0 + 0 + 0 + 0 + 0)] + \$3,291$   
=  $\$0 + (\$0 \times 0) + \$3,291$   
=  $\$0 + \$0 + \$3,291$   
=  $\$3,291$