



Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah Street, Suite 600

Portland, OR 97232

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TTY 711

September 27, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 2732

Crabtree Rock Company, Inc.
c/o Caroline Crabtree-Osborne
4300 NE Robin Court
Newberg, OR 97132

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-WR-2018-133

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Crabtree Rock Company, Inc. a civil penalty of \$9,655 for failing to perform any of the grab sample monitoring required by the 1200-A stormwater general permit starting from January 2014 to the present. Crabtree Rock Company, Inc. operates the Crabtree Pit, located on Neiderberger Road in Dundee, Oregon.

DEQ issued this penalty because monitoring is an important condition of the permit. Monitoring may reveal the presence of harmful levels of pollutants that pose a threat to waters of the state. In addition, monitoring allows permittees and DEQ to gauge the effectiveness of stormwater controls and best management practices at reducing levels of pollutants in discharges.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail – 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232

Via fax – 503-229-5100

Via email – DEQappeals@deq.state.or.us

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 it 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>.

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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 Jane Hickman at 503-229-5692 or toll free in Oregon at 800-452-4011, extension 5692.

Sincerely,

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

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Lisa Reinhart, DOGAMI
John Koestler, DEQ, WQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 CRABTREE ROCK COMPANY, INC.,) ASSESSMENT AND ORDER
5 A domestic business corporation,)
6 Respondent.) CASE NO. WQ/SW-WR-2018-133

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 Chapter 183, ORS Chapter 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions
11 011, 012, and 045.

12 II. FINDINGS OF FACT

13 1. On or about December 19, 2013, DEQ approved Respondent's application for
14 registration under the the National Pollutant Discharge Elimination System 1200-A Permit issued on
15 December 4, 2012 (the Permit) to discharge stormwater from the Crabtree Pit, located on Neiderberger
16 Road in Dundee, Oregon (the Facility).

17 2. The Permit authorizes Respondent to construct, install, modify, or operate stormwater
18 treatment or control facilities, and to discharge stormwater, mine dewatering water, and non-stormwater
19 discharges specifically authorized by the Permit to waters of the state only in conformance with all the
20 requirements, limitations and conditions set forth in the Permit.

21 3. Respondent applied for renewal of its registration before the Permit expired on
22 December 3, 2017 and therefore has been registered under the Permit at all material times.

23 4. Schedule B, condition 1.a of the Permit requires Respondent to take grab samples for
24 four benchmark parameters four times per year.

25 5. Schedule B, condition 8.a of the Permit requires Respondent to submit to DEQ or the
26 Department of Geology and Mineral Industries (DOGAMI) a Discharge Monitoring Report (DMR)

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1 by July 31st of each year that identifies the sampling results for the previous monitoring year (July 1-
2 June 30) and includes the laboratory results from the testing laboratory.

3 6. Respondent submitted a DMR for each monitoring year since being registered under the
4 Permit, but Respondent has not included any grab sample monitoring results with the DMRs.

5 7. Neither DEQ nor DOGAMI has granted Respondent a monitoring waiver while
6 Respondent has been registered under the Permit.

7 III. CONCLUSIONS

8 1. Respondent has violated ORS 468B.025(2) and Schedule B, conditions 1.a and 8.a of
9 the Permit, by failing to conduct grab sample monitoring during the last half of the 2013-2014 monitoring
10 year, and the entire 2014-2015, 2015-2016, and 2016-2017 monitoring years. These are Class I violations
11 pursuant to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$9,655 civil penalty for these violations.

12 IV. ORDER TO PAY CIVIL PENALTY

13 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
14 hereby ORDERED TO: Pay a total civil penalty of \$9,655. The determination of the civil penalty is
15 attached as Exhibit 1 and is incorporated as part of this Notice.

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

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

21 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
22 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
23 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
24 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
25 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
26 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
27 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax

1 it to **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
2 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
3 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
4 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
5 you may represent yourself. If you are a corporation, partnership, limited liability company,
6 unincorporated association, trust or government body, you must be represented by an attorney or a duly
7 authorized representative, as set forth in OAR 137-003-0555.

8 Active duty service members have a right to stay proceedings under the federal Service
9 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
10 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
11 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
12 <http://legalassistance.law.af.mil/cbtebt/locator.php>.

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

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22 9/27/18

23 Date

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25 Kieran O'Donnell, Manager
26 Office of Compliance and Enforcement
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EXHIBIT 1

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

VIOLATION: Violating ORS 468B.025(2) by violating Schedule B, conditions 1.a. and 8.a of the Permit by failing to monitor for benchmarks during the last half of the 2013-2014 monitoring year and the 2014-2015, 2015-2016, 2016-2017 and 2017-2018 monitoring years.

CLASSIFICATION: These are Class I violations 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 0 according to OAR 340-012-0145(2)(a)(A), because Respondent has 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. Respondent failed to perform grab sample monitoring of the required parameters twice during the monitoring year 2013-2014 and four times during the 2014-2015, 2015-2016, 2016-2017 and 2017-2018 monitoring years, for a total of 18 missed occurrences.

"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 has been registered under the 1200-A general NPDES permit since 2001. On August 16, 2017, DOGAMI sent Respondent a Warning Letter with Opportunity to Correct for failing to submit sampling results, yet Respondent again submitted a discharge monitoring report without sampling results in 2018. By failing to ensure that the monitoring was performed, Respondent failed to take reasonable care to avoid a foreseeable risk Respondent 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 violations or the effects of the violations 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 \$2,855. This is the amount Respondent gained by avoiding spending \$100 on a pH meter which should have been purchased by January 1, 2014; and \$3,528 on labor and lab costs for grab sample monitoring twice during the monitoring year 2013-2014 and four times during the 2014-2015, 2015-2016, 2016-2017 and 2017-2018 monitoring years. 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)] + \$2,855
= \$4,000 + (\$400 x 7) + \$2,855
= \$4,000 + \$2,800 + \$2,855
= \$9,655