



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

October 12, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 9485

Sysco Portland, Inc.
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-2021-121

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 <https://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 the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$48,540 for failing to implement the Stormwater Pollution Control Plan (SWPCP) as required under your National Pollutant Discharge Elimination System Stormwater Discharge General Permit Number 1200-Z (the Permit). You failed to implement essential elements of the SWPCP at your facility in Wilsonville, including regular sweeping, maintaining stormwater infrastructure, and source controls. This is a violation of your Permit and ORS 468B.025(2). You were also cited, without penalty, for three additional violations of the Permit: failing to conduct monthly inspections, failing to identify at least four discharge points in the SWPCP, and discharging truck wash water to the stormwater drainage system.

DEQ issued this penalty because implementing the SWPCP is essential to protecting water quality. Specifically, the SWPCP includes site-specific pollution control measures and best practices that prevent and mitigate the discharge of industrial pollutants to surface waters. Industrial pollutants can harm aquatic life and impact beneficial uses of surface waters. By failing to substantially implement the SWPCP, you created a risk of harm to water quality.

Included in Section IV of the enclosed Notice is an order requiring you to immediately begin conducting monthly sweeping, regular maintenance and housekeeping, and monthly inspections at the facility, and to submit a revised SWPCP to DEQ within 30 days of the order becoming final.

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 via check, money order, or e-check (ACH) by following the instructions on the attached invoice and logging in to Your DEQ Online here: <https://ordeq-edms-public.govonlinesaas.com/pub/login>. Payments sent by mail must be sent to the address on the invoice.

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 DEQ Environmental Law Specialist Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Bryce White, Sysco Portland, Inc., 26250 SW Parkway Center Drive, Wilsonville, OR
97070
Michael Kennedy, Portland Office, DEQ
Christine Svetkovich, Portland Office, 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 SYSCO PORTLAND, INC.,) ASSESSMENT AND ORDER
a Delaware corporation,)
5 Respondent.) CASE NO. WQ/SW-NWR-2021-121

6
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 and 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 operates an industrial facility located at 26250 SW Parkway Center Drive in
14 Wilsonville, Clackamas County, Oregon (the Facility).

15 2. On or about April 29, 2019, DEQ assigned coverage to Respondent under the National
16 Pollutant Discharge Elimination System Stormwater Discharge General Permit No. 1200-Z (the
17 Permit). Respondent had coverage under the Permit at all material times.

18 3. Schedule A, Condition 6.d of the Permit requires Respondent to implement the stormwater
19 pollution control plan (SWPCP) and any revisions to the plan.

20 4. Respondent's SWPCP, dated February 27, 2020, contains the following elements:

21 a. Catch basins are equipped with filter fabric inserts to keep debris out of the stormwater
22 system. Catch basins are pumped out periodically by a third party. Section 3.5. Catch
23 basin inserts are replaced annually/as needed. Catch basins are cleaned annually to
24 remove sediment and oils that have accumulated in the sumps. Section 3.9.

25 b. Preventative maintenance includes monthly inspections of the stormwater management
26 system, including the pollution-control measures and treatment system. Section 3.9.
27

- 1 c. To the extent practicable, materials and products that are stored outside the buildings are
2 stored under cover (e.g., lean-to roofs, shipping containers, tarps). Section 3.1.
- 3 d. Housekeeping practices include pavement sweeping to remove solids, fluids, and debris
4 from paved surfaces. Section 3.7. Pavement sweeping is conducted monthly and as
5 needed to maintain sediment- and debris-free surfaces. Section 3.9.
- 6 e. Upon discovery, debris and litter are picked up and placed in an appropriate disposal
7 container. Section 3.5. Housekeeping practices include keeping the facility neat and
8 orderly. Section 3.7.
- 9 f. Leaks and spills are cleaned promptly, using dry methods, to minimize the potential for
10 impacts to stormwater. Section 3.1.
- 11 g. Nonhazardous solid waste, including domestic waste, boxes, packaging materials, and
12 other nonindustrial waste generated at the site, is accumulated in trash cans or dumpsters
13 equipped with lids. Section 3.3.
- 14 5. DEQ inspected the Facility on July 2, 2021. At the time of the inspection:
- 15 a. Most of the catch basins at the Facility were clogged with sediment and debris and in
16 need of cleaning. The filter fabric inserts needed to be maintained or replaced.
- 17 b. The stormwater retention ponds appeared unmaintained, with overgrown vegetation and
18 accumulated trash. Monitoring Point 003, which is in the western retention pond, could
19 not be located due to overgrown vegetation.
- 20 c. There were hundreds of wood pallets stored outside, uncovered.
- 21 d. Dirt and debris was accumulated on the pavement throughout the Facility;
- 22 e. There was trash scattered throughout the Facility. Some of the trash had accumulated
23 sediment on top of it, indicating that it had been in place for several months or longer.
- 24 f. There was a spill of hydraulic oil on the pavement near the cardboard compactor that
25 occurred at least two weeks prior and had not been cleaned up.
- 26 g. There were several dumpsters without lids.
- 27

1 6. Schedule A, Condition 7.b.x of the Permit requires identification of each discharge point.
2 Discharge points excluded from monitoring must include a description and the data or analysis
3 supporting that the discharge point(s) are substantially similar.

4 7. The SWPCP identified three discharge points at the Facility: DP001-DP003.

5 8. There are several additional discharge points at the Facility that are not identified in the
6 SWPCP: three discharge points that discharge into a swale on the western perimeter of the paved
7 portion of the Facility, and an unidentified retention basin in the southwest corner with at least one
8 discharge point.

9 9. Schedule B, Condition 7 of the Permit requires Respondent to conduct monthly inspections
10 at the Facility.

11 10. Respondent was required to conduct 26 monthly inspections from April 29, 2019 through
12 July 2, 2019.

13 11. Respondent conducted only six monthly inspections from April 29, 2019 through July 2,
14 2019.

15 12. Schedule A, Condition 1.a.viii of the Permit requires Respondent to ensure that all wash
16 water is managed indoors or in bermed areas, disposed into sanitary sewer or drains to a proper
17 collection system such as a closed-loop system or vegetated area and does not discharge into the
18 stormwater drainage system unless allowed under Condition 8, authorized non-stormwater discharge.

19 13. Truck washing at the Facility uses detergents and therefore the discharge of the wash water
20 is not authorized under Condition 8.

21 14. On July 2, 2021, there was liquid and staining on the pavement leading to two catch basins
22 in the truck wash area, indicating that truck wash water had been discharged to catch basins that
23 discharge to the stormwater drainage system at the Facility.

24 III. CONCLUSIONS

25 1. Respondent has violated Schedule A, Condition 6.d of the Permit and ORS 468B.025(2) by
26 failing to implement the SWPCP as described in Section II, Paragraphs 1-5 above. Specifically,
27 Respondent failed to properly maintain catch basins, stormwater retention ponds and one of its discharge

1 points, implement housekeeping practices, promptly clean up a spill and properly manage solid waste at
2 the Site. According to OAR 340-012-0055(1)(r), this is a Class I violation. DEQ hereby assesses a
3 \$48,540 civil penalty for this violation.

4 2. Respondent has violated Schedule A, Condition 7.b.x of the Permit and ORS 468B.025(2) by
5 failing to identify each discharge point at the Facility on the SWPCP as described in Section II, Paragraphs
6 6-8 above. Specifically, the Respondent failed to identify in the SWPCP three discharge points at a
7 swale on the western perimeter of the paved portion of the Facility and one discharge point at an
8 unidentified retention basin in the southwest corner of the Facility. According to OAR 340-012-0053(2),
9 this is a Class II violation. DEQ has not assessed a civil penalty for this violation.

10 3. Respondent has violated Schedule B, Condition 7 of the Permit and ORS 468B.025(2) by
11 failing to conduct monthly inspections as described in Section II, Paragraphs 9-11 above. Specifically,
12 Respondent failed to conduct twenty monthly inspections from April 29, 2019 through July 2, 2019.
13 According to OAR 340-012-0053(2), this is a Class II violation. DEQ has not assessed a civil penalty for
14 this violation.

15 3. Respondent has violated Schedule A, Condition 1.a.viii of the Permit and ORS 468B.025(2)
16 by failing to manage truck wash water at the Facility as described in Section II, Paragraphs 12-14 above.
17 Specifically, Respondent discharged truck wash water containing detergents to the Facility's stormwater
18 drainage system. According to OAR 340-012-0053(2), this is a Class II violation. DEQ has not assessed a
19 civil penalty for this violation.

20 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

23 1. Pay a civil penalty of \$48,540. The determination of the civil penalty is attached as Exhibit No.
24 1, and incorporated as part of this Notice.

25 If you do not file a request for hearing as set forth in Section V below, please pay the penalty
26 via check, money order, or e-check (ACH) by following the instructions on the attached invoice and
27

1 logging in to Your DEQ Online here: <https://ordeq-edms-public.govonlinesaas.com/pub/login>. Payments
2 sent by mail must be sent to the address on the invoice.

3 2. Comply with your Permit and Oregon law by taking the take the following actions:

4 a. Immediately begin conducting monthly sweeping, regular maintenance and
5 housekeeping, and monthly inspections at the Facility; and

6 b. Within 30 days after this Order becomes final by operation of law or on appeal,
7 submit a revised SWPCP to DEQ that accurately describes and maps all discharge points, stormwater
8 features, and connections to sanitary sewer at the Facility. The SWPCP must include a reevaluation of
9 the monitoring locations at the Facility and incorporate any additional discharge points. Connections to
10 sanitary sewer must include documentation of the City of Wilsonville's approval of the discharge.

11 Submit the documents to Water Quality Specialist Michael Kennedy at mike.kennedy@deq.state.or.us.

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

13 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
14 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
15 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
16 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
17 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
18 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
19 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
20 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge
21 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
22 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
23 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
24 you may 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 a duly
26 authorized representative, as set forth in OAR 137-003-0555.
27

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 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.

12
13
14
15 10/12/2021
16 Date

15 
16 Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT NO. 1

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

VIOLATION 1: Failing to implement the Stormwater Pollution Control Plan (SWPCP), in violation of Schedule A, Condition 6.d of the NPDES Stormwater Discharge General Permit No. 1200-Z (the Permit) and ORS 468B.025(2).

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 violated a water quality statute, rule or permit and 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 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 violation constitutes a separate occurrence. Respondent failed to substantially implement the plan from April 29, 2019 through at least July 2, 2021, which was more than 28 days.

"M" is the mental state of the Respondent and receives a 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The 1200-Z Permit and the SWPCP prepared by Respondent's consultant require implementation of best management practices in order to minimize the discharge of industrial pollutants from the Site. By failing to implement many of the key measures included in the SWPCP, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate its 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 \$40,540. This is the amount Respondent gained by avoiding spending \$37,570 for a company to sweep the site monthly and \$17,227 for two employees to perform regular maintenance and housekeeping. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 4 + 2)] + \$40,540 \\ &= \$4,000 + [\$400 \times 10] + \$40,540 \\ &= \$4,000 + \$4,000 + \$40,540 \\ &= \$48,540 \end{aligned}$$