



# 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 19, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 3609

Coast Wide Ready Mix Co.  
c/o Dennis Johnson, Registered Agent  
10 Elm Ave.  
Tillamook, OR 97141

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-NWR-2018-125

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$34,790 for violating conditions of the National Pollutant Discharge Elimination System (NPDES) General Permit number 1200-A and for placing wastes in a location where they are likely to enter waters of the state at your Coast Wide Ready Mix facility located at 10 Elm Ave., in Tillamook, Oregon. Specifically you have been conducting your concrete block manufacturing in an area of your Facility that is exposed to stormwater and uncontained, resulting in the unmitigated discharge of stormwater contaminated with concrete and concrete residues to a catchbasin that discharges to the Hoquarten Slough.

In addition, you are being cited and penalized for failing to prevent the discharge of significant amounts of sediment from your site into other catchbasins and onto neighboring streets. Coast Wide Ready Mix has had coverage under the NPDES 1200-A permit since 2004. The permit requires you to implement housekeeping and other best management practices to control the movement of sediment at your site.

Lastly you are being cited and penalized, for violating the Permit's monitoring requirements. The monitoring you performed during the 2017-2018 monitoring was incomplete as you did not monitor at all your outfalls or discharge points. In addition, you violated the quality assurance and quality control requirements prescribed by the Clean Water Act and mandated in Schedule F of the Permit (the latter violation was cited without penalty). Violating the "QA/QC" procedures renders your data invalid. If you repeat this violation in the future you may be referred for additional formal enforcement.

DEQ issued this penalty because concrete is highly caustic and may alter the chemical makeup of waters of the state. In addition, sediment coming off your site has the potential to entrain concrete residue and other pollutants and, if not controlled, will provide a vehicle for those pollutants to discharge to waters of the state. Compliance with Oregon law and the conditions of your Permit is necessary in order to protect waters from pollutants caused by industrial facilities such as yours.

Included in Section IV of the attached Notice of Civil Penalty Assessment and Order (the Notice) is an order requiring you to eliminate exposure of the concrete block manufacturing area to stormwater and construct a berm or other containment to prevent the discharge of stormwater from this area. You must

also submit a complete revision to the Stormwater Pollution Control Plan for the Facility that correctly identifies all the discharge points and where your stormwater monitoring will take place. You must submit documentation of your compliance efforts to Michael Kennedy at DEQ within 20 days of the Notice becoming final.

\$21,360 of the civil penalty represents the economic benefit you gained by failing to eliminate the exposure and discharges from the manufacturing area since DEQ first told you to do so in May 2017, and by avoiding costs associated with sweeping, catchbasin cleaning and inserts. If you complete these requirements, DEQ will consider recalculating some of 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.

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: Michael Kennedy, Northwest Region  
Julie Cheney, Accounting, DEQ  
John Koestler, WQ, DEQ



1           6. On or about May 25, 2017, DEQ sent Respondent a Warning Letter with Opportunity to  
2 Correct informing Respondent that the concrete block fabrication area must “be covered or otherwise  
3 segregated to prevent exposure to stormwater to potential pollutants” and to “prevent discharges from  
4 entering the adjacent catch basin.”

5           7. On or about July 25, 2018, DEQ conducted an inspection of the Facility. During the  
6 inspection DEQ observed the concrete block fabrication area was uncovered exposing the concrete  
7 block manufacturing process and the materials involved in that process to stormwater. In addition, there  
8 was no berm or curb to contain process wastewater or stormwater discharging from that area. DEQ  
9 observed a trail of milky, cloudy concrete residue from the fabrication area to a catch basin that  
10 discharges to Hoquarten Slough.

11           8. Schedule A, condition 6.a of the Permit states, in relevant part, that permit registrants  
12 must prevent the discharge of significant amounts of sediment to conveyance systems leading to  
13 surface waters. Conditions that describe significant amounts of sediment include: deposits of sediment  
14 at the site in areas that drain to unprotected stormwater inlets or catchbasins that discharge to surface  
15 waters, inlets and catchbasins with failing sediment controls due to lack of maintenance, and deposits  
16 of sediment from the site on any property including public and private streets outside of the permitted  
17 site.

18           9. During the July 25, 2018 inspection DEQ observed track-out from the Facility onto  
19 Front and 1<sup>st</sup> streets and to catchbasins that were dirty and clogged with sediment. Respondent told  
20 DEQ that it did not sweep paved areas of its Facility.

21           10. During the July 25, 2018, inspection DEQ observed a person washing out a concrete  
22 truck using detergent and hosing down concrete laden track-out from the Facility into a catchbasin in  
23 the northeast corner of the property that discharges to the Hoquarten Slough.

24           11. Schedule B, condition 1.a and 2.e of the Permit require permit registrants to monitor  
25 stormwater associated with industrial activity for the benchmarks identified in the Permit four times per  
26 year.

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1 Hoquarten Slough is a “waters of the state,” according to ORS 468B.005(10). This is a Class II  
2 violation, according to OAR 340-012-0055(2)(c). DEQ hereby assesses a \$10,144 civil penalty for this  
3 violation.

4 2. On or about July 25, 2018, Respondent has violated Schedule A, condition 6.a of the  
5 Permit and ORS 468B.025(2) by failing to prevent the discharge of significant amounts of sediment from  
6 the Facility. Specifically, there was residue and sediment in and around catchbasins at the Facility that  
7 were either unprotected or clogged and needing maintenance and significant amount of track out was  
8 observed leading from the Facility to adjacent streets. This is a Class II violation according to OAR 340-  
9 012-0053(2). DEQ hereby assesses a \$15,616 civil penalty for this violation.

10 3. On or before July 26, 2018, Respondent violated ORS 468B.025(2) by violating Schedule  
11 B, condition 2.c of the Permit by failing to monitor each discharge point at the Facility. Specifically, the  
12 Facility has seven catchbasins that are likely discharge points and that are not monitored. The SWPCP  
13 doesn’t include a determination, or any information to support a determination, that the seven catchbasins  
14 are substantially similar to the two discharge points at which Respondent performs its monitoring. This is a  
15 Class I violation according to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$9,030 civil penalty for  
16 this violation.

17 4. On or about July 25, 2018, Respondent violated ORS 468B.025(1)(a) by placing wastes in  
18 a location where they are likely to enter waters of the state by any means. Specifically, Respondent  
19 allowed concrete trucks to be washed at the Facility where the detergent and concrete laden washwater  
20 entered a catchbasin that discharges to Hoquarten Slough, waters of the state. This is a Class II violation  
21 according to OAR 340-0055(2)(c). DEQ has not assessed a civil penalty for this violation.

22 5. On or before July 26, 2018, Respondent violated ORS 468B.025(2) by violating Schedule  
23 B, condition 1.a of the Permit by failing to monitor for pH. Specifically, the samples collected during the  
24 2017-2018 monitoring year were analyzed for pH after the 15 minute hold time mandated in Schedule F,  
25 Section C, paragraph 3, rendering those samples invalid. These are Class I violations according to OAR  
26 340-012-0055(1)(o). DEQ has not assessed a civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY AND TO COOMPLY

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

4 1. Pay a total civil penalty of \$34,790. The determinations of the civil penalties are attached as  
5 Exhibits No.1, No.2, and No.3 and are incorporated as part of this Notice.

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

10 2. Eliminate exposure of the concrete block manufacturing area to stormwater and construct a  
11 berm or other containment to prevent the discharge of stormwater from this area to the adjacent  
12 catchbasin.

13 3. Submit a revised SWPCP that complies with the Permit to DEQ for approval. Specifically,  
14 the plan must correctly identify all discharge points from the Facility and where monitoring will be  
15 conducted.

16 4. Within 20 days of this order becoming final by operation of law or on appeal, written  
17 documentation demonstrating Respondent's compliance must be sent to: DEQ, attn.: Michael Kennedy,  
18 700 NE Multnomah Ave., Portland, OR 97232.

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

20 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
21 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
22 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
23 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
24 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
25 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
26 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
27 it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge

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

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

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

18  
19  
20  
21 10/19/18

22 Date

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22 Kieran O'Donnell, Manager  
23 Office of Compliance and Enforcement  
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EXHIBIT No.1

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

VIOLATION No.1: Placing wastes in a location where they are likely to enter waters of the state by any means in violation of ORS 468B.025(1)(a). Specifically, placing concrete washwater and residue that result from the concrete block manufacturing process in an area that drains to a catchbasin that drains to the Hoquarten Slough.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(c).

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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii).

"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). Respondent has 3 Class I violations in case no. WQ/SW-NWR-09-028 for an initial value of 4. However, according to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because the formal enforcement action in which the prior significant actions were cited was issued more than five years before the date the current violation occurred, bringing the total value of P to 0.

"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 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. The violation was first observed by DEQ on May 5, 2017. Despite DEQ asking for the violation to be corrected after the May 5, 2017, inspection, DEQ again observed the violation on July 25, 2018. Therefore, the violation occurred for more than 28 days.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. DEQ informed Respondent in a Warning Letter dated May 22, 2017, subsequent to the May 5, 2017, inspection that it needed to enclose the cement block manufacturing area to prevent its exposure to stormwater and that it needed to contain contaminated stormwater runoff so as to protect adjacent catchbasins from contaminated stormwater runoff from that area. Respondent failed to take any of DEQ's requested corrective action.

"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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 \$5,744. This is the amount Respondent gained by avoiding spending an estimated \$8,142 on a canopy, \$648 on 24 hours of labor and \$95 on building materials to install a canopy and containment berm at the Facility. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$2,000 + [(0.1 x \$2,000) x (0 + 0 + 4 + 8 + 0)] + \$5,744  
= \$2,000 + (\$200 x 12) + \$5,744  
= \$2,000 + \$2,400 + \$5,744  
= \$10,144

EXHIBIT No.2

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

VIOLATION No.2: Violating Schedule A, condition 6.a of the Permit and ORS 468B.025(2) by failing to prevent the discharge of significant amounts of sediment from the Facility as a result of unprotected or clogged catch basins and track-out.

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

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.

Under OAR-012-0150(4), the Department elects to assess only the economic benefit Respondent gained through noncompliance and not a gravity-based civil penalty.

"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 \$15,616. This is the amount Respondent gained by avoiding spending an estimated \$19,440 on sweeping twice a week since May 5, 2017, \$1,800 on catchbasin cleaning, and \$2,912 on catchbasin inserts at the Facility. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$0 + [(0.1 \times \$0) \times (0 + 0 + 0 + 0 + 0)] + \$15,616 \\ &= \$0 + [(\$0) \times (0)] + \$15,616 \\ &= \$15,616 \end{aligned}$$

EXHIBIT No.3

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

VIOLATION No.3: Violating ORS 468B.025(2) by violating Schedule B, condition 2.c of the Permit by failing to monitor at each discharge point at the Facility during the 2017-2018 monitoring years.

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 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). Respondent has 3 Class I violations in case no. WQ/SW-NWR-09-028 for an initial value of 4. However, according to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because the formal enforcement action in which the prior significant actions were cited was issued more than five years before the date the current violation occurred, bringing the total value of P to 0.

"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 3 according to OAR 340-012-0145(4)(c) because there were seven to 28 occurrences of the violation. Respondent failed to perform grab sample monitoring of benchmark pollutants four times at 5 outfalls for a total of twenty missed occurrences.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. DEQ informed Respondent in a Warning Letter dated May 22, 2017 subsequent to the May 5, 2017 inspection that the permit requires registrants to monitor each

outfall and that only 2 of the potential outfalls were being monitored. Respondent failed to take any of DEQ's requested corrective action and monitor at its discharge points or provide justification for why no monitoring was needed.

"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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 \$630. This is the amount Respondent gained by failing to spend an estimated \$210 to perform grab sampling and analysis of four samples (for a total of \$840) by the end of the monitoring year.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 3 + 8 + 0)] + \$630$   
 $= \$4,000 + (\$400 \times 11) + \$630$   
 $= \$4,000 + \$4,400 + \$630$   
 $= \$9,030$