



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 27, 2021

CERTIFIED MAIL: 7017 0530 0000 7760 6445

High Quality Roofing & Pressure Washing LLC
c/o Amed Regalado Noriega, Registered Agent
18400 SW Boones Ferry Road, Apt. G206
Tigard, OR 97224

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/NP-NWR-2021-158

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 \$24,000 for discharging waste into Hedges Creek from a roofing project you conducted in Tualatin. Your unpermitted discharge of roof sealant waste violated the state water quality standards for copper.

DEQ issued this penalty because violating state water quality standards is a serious violation of Oregon environmental law. Water quality sampling in Hedges Creek showed levels of copper that exceeded both the chronic and acute freshwater criteria resulting from your discharge. Copper is a toxic substance that is harmful to aquatic life. Exposure to copper can lead to adverse effects on aquatic organisms' survival, growth, and reproduction as well as alterations of brain function, enzyme activity, blood chemistry, and metabolism. Acute exposure to copper can result in death of aquatic organisms.

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 by sending a check or money order to the above address.

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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 Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Hayden Ausland, City of Tualatin: hausland@tualatin.gov
Michael Babbitt, Oregon Department of Agriculture: Michael.J.BABBITT@oda.oregon.gov
Daria Gneckow, Portland Office, DEQ
Tiffany Yelton-Bram, Portland Office, DEQ
Accounting, DEQ

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

3 IN THE MATTER OF:)
4 HIGH QUALITY ROOFING &) NOTICE OF CIVIL PENALTY
5 PRESSURE WASHING LLC,) ASSESSMENT AND ORDER
6 an Oregon limited liability company,)
7 Respondent.) CASE NO. WQ/NP-NWR-2021-158

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 a roofing and maintenance business that is licensed by the
14 Construction Contractors Board as a residential general contractor.
- 15 2. On June 30, 2021, Respondent applied roof sealant to a home located at 10195 SW Alsea
16 Court in Tualatin, Washington County, Oregon (the Property).
- 17 3. The roof sealant, which is called CuSol-5, is a pesticide that is formulated for exterior wood
18 preservation.
- 19 4. After completing the roof project, Respondent disposed of approximately 35 gallons of
20 excess CuSol-5 solution into a municipal stormwater catch basin located in front of the Property.
- 21 5. The CuSol-5 solution flowed through the stormwater system and discharged into Hedges
22 Creek, which runs behind the Property.
- 23 6. On June 30, 2021 and July 1, 2021, Hedges Creek appeared orange from the discharge point
24 to a beaver dam located approximately 650 feet (200 meters) downstream.
- 25 7. CuSol-5 contains copper in the form of copper hydroxide.

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1 8. The water quality standards for copper, which is a toxic substance, are set forth in OAR
2 340-041-0033. OAR 340-041-0033(2) states: Levels of toxic substances in waters of the state may not
3 exceed the applicable aquatic life criteria as defined in Table 30 under OAR 340-041-8033.

4 9. According to OAR 340-041-8033, Table 30, the freshwater aquatic life water quality criteria
5 for copper are 1.4 µg/L (chronic) and 2.3 µg/L (acute).

6 10. Water quality sampling conducted in Hedges Creek on July 1, 2021 showed a concentration
7 of copper of 30 µg/L immediately downstream of the discharge, compared to a background level of
8 non-detect.

9 11. The CuSol-5 solution was a waste generated from Respondent's commercial roofing
10 operations.

11 12. Hedges Creek is "waters of the state" under ORS 468B.005(10).

12 13. CuSol-5 tends to cause "pollution" as defined in ORS 468B.005(5) by rendering waters of
13 the state harmful to fish and aquatic life, and is therefore a "waste" under ORS 468B.005(9).

14 14. Respondent does not have a waste discharge permit from DEQ.

15 III. CONCLUSIONS

16 1. Respondent violated ORS 468B.025(1)(b) by discharging wastes into waters of the state,
17 thereby reducing the quality of such waters below the water quality standards established by rule for such
18 waters by the Environmental Quality Commission. Specifically, Respondent's discharge of CuSol-5
19 solution into Hedges Creek, waters of the state, violated the acute and chronic freshwater criteria for
20 copper set forth in OAR 340-041-0033(2) and OAR 340-041-8033 (Table 30), as measured on July 1,
21 2021. According to OAR 340-012-0055(1)(b), this is a Class I violation. DEQ hereby assesses a \$24,000
22 civil penalty for this violation.

23 2. On June 30, 2021, Respondent violated ORS 468B.050(1)(a) by discharging CuSol-5 solution,
24 which is waste from its commercial roof maintenance activity, into Hedges Creek, waters of the state,
25 without holding a permit from DEQ. According to OAR 340-012-0055(1)(c), this is a Class I violation.
26 DEQ has not assessed a civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY

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

4 Pay a civil penalty of \$24,000. The determination of the civil penalty is attached as Exhibit No. 1
5 and 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 order
7 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
8 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.** Once you pay the penalty, the
9 Findings of Fact, Conclusions and Order become final.

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. You
12 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
13 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
14 this Notice or attached exhibit, you must include them in your request for hearing, as factual matters
15 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
16 (See OAR 340-011-0530 for further information about requests for hearing.) You must send the request
17 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, either via mail to 700 NE**
18 **Multnomah Street, Suite 600, Portland, Oregon 97232,** or via e-mail to
19 **DEQappeals@deq.state.or.us,** or via fax to **503-229-5100.** An administrative law judge employed by
20 the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
21 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
22 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
23 association.

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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 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 request for hearing in writing within 20 calendar days of receipt of the
7 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
8 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
9 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
10 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
11 information submitted by you, as the record for purposes of proving a prima facie case.

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13
14 10/27/2021
15 Date


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15 Kieran O'Donnell, Manager
16 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: Discharging wastes into waters of the state, thereby reducing the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission, in violation of ORS 468B.025(1)(b). Respondent violated the aquatic life numeric criteria for copper set forth in OAR 340-041-0033(2) and OAR 340-041-8033 (Table 30).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012- 0055(1)(b).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0130(3) because DEQ finds that the violation had a significant adverse impact on human health or the environment. In making this finding, DEQ considered the following reasonably available information: water sampling conducted in Hedges Creek the day after the discharge showed extremely high levels of copper resulting from the discharge, more than ten times the concentration of the acute freshwater aquatic life water quality criteria for copper.
- 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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(D) because Respondent violated ORS 468B.025(1)(b) and does not hold a National Pollutant Discharge Elimination System 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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Respondent discharged waste, excess CuSol-5 roof sealant that contained copper, into Hedges Creek on June 30, 2021.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. Respondent is a CCB-licensed contractor and should know how to properly dispose of chemicals and wastes from its business. CCB training materials address the proper handling and disposal of hazardous waste, specifically wood preservatives and pesticides, which are categories that CuSol-5 falls into. Additionally, the package for CuSol-5 includes the following warning: "ENVIRONMENTAL HAZARDS: This product is toxic to fish and aquatic invertebrates. Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans or other waters unless in conformance with a [NPDES] permit and the permitting authority has been notified in writing prior to discharge. Do not discharge effluent containing this product to sewer systems without previously notifying the sewage treatment plant authority." When Respondent disposed of excess Cu-Sol-5 into the stormwater system, despite readily available information about proper disposal, it consciously disregarded a substantial and unjustifiable risk that the toxic material would enter waters of the state and violate water quality standards. This risk was of such a nature and degree that disregarding it constituted a gross deviation from the standard of care a reasonable contractor would observe in that situation.

"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 findings do not support a finding under paragraph (6)(f). The City of Tualatin, EPA and DEQ responded to the incident and pumped and treated the contaminated water, but Respondent did not have any involvement in these efforts.

"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 has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
= \$12,000 + [(0.1 x \$12,000) x (0 + 0 + 0 + 8 + 2)] + \$0
= \$12,000 + [\$1,200 x 10] + \$0
= \$12,000 + \$12,000 + \$0
= \$24,000