



# Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah Street, Suite 600

Portland, OR 97232

(503) 229-5382

FAX (503) 229-5787

TTY 711

November 7, 2018

CERTIFIED MAIL No. 70160750000034703166

K. F. Jacobsen & Co., Inc.  
c/o Ankur H. Doshi, Registered Agent  
6605 SE Lake Road  
Portland, OR 97222

Re: Notice of Civil Penalty Assessment and Order  
No. WQ/SW-NWR-2018-136

This letter is to inform you that DEQ has issued you a civil penalty of \$12,000 for discharging industrial process wastewater into the Willamette River from your asphalt and paving materials manufacturing facility in Portland. On April 30, 2018, you discharged wastewater from a containment area over a berm and into the Willamette River. This is a violation of ORS 468B.050(1)(a).

DEQ issued this penalty because discharging wastes without a permit is a serious violation of Oregon environmental law. The introduction of industrial pollutants into surface waters can harm aquatic life and impact beneficial uses of those waters. The Willamette River provides important habitat for a variety of fish and aquatic organisms, which can be negatively impacted by industrial pollutants including oil and grease and metals, and concrete wash water, which can be caustic and corrosive.

Included in Section IV of the attached Notice of Civil Penalty Assessment and Order (the Notice) is an order requiring you to immediately cease all discharges of process wastewater, and to submit a plan detailing how the facility will manage its industrial processes to prevent the discharge of process wastewater. You must submit the plan to DEQ by December 14, 2018.

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 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: Charles Hicks, K. F. Jacobsen & Co., Inc., PO Box 82245, Portland, OR 97282  
Daria Gneckow, Portland Office, DEQ  
Joshua Ernst, City of Portland, Bureau of Environmental Services  
Shaumae Hall, Accounting, DEQ  
John Koestler, WQ, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:	)	NOTICE OF CIVIL PENALTY
4	K.F. JACOBSEN & CO., INC.,	)	ASSESSMENT AND ORDER
	an Oregon corporation,	)	
5		)	CASE NO. WQ/SW-NWR-2018-136
	Respondent.	)	

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 asphalt and paving materials manufacturing facility located at 1208  
14 North River Street in Portland, Multnomah County, Oregon (the Facility).

15 2. Respondent has coverage under National Pollutant Discharge Elimination System Waste  
16 Discharge Permit No. 1200-A (the Permit) (DEQ File No. 105307).

17 3. The Permit authorizes Respondent to construct, install, modify or operate stormwater  
18 treatment and/or control facilities, and to discharge stormwater to the Willamette River or to  
19 conveyance systems that discharge the Willamette River in conformance with all the conditions in the  
20 Permit.

21 4. The Permit does not allow Respondent to discharge process wastewater.

22 5. Respondent does not hold a permit that authorizes it to discharge process wastewater.

23 6. On April 30, 2018, staff from the City of Portland Bureau of Environmental Services (BES)  
24 inspected the Facility and observed the discharge of process wastewater from a tertiary storage area  
25 over the containment barrier and to the Willamette River.

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1 7. On April 30, 2018, BES staff also observed signs of past seepage and overflow of process  
2 wastewater on the bank of the Willamette River adjacent to the Facility.

3 8. The process wastewater contains wastes from industrial activities at the Facility, including  
4 truck washing, rinsing of concrete mixer barrels, and water leaking or draining from the concrete tower.

5 9. The Willamette River is "waters of the state" under ORS 468B.005(10).

6 III. CONCLUSION

7 On April 30, 2018, Respondent violated ORS 468B.050(1)(a) by discharging wastewater from its  
8 industrial Facility to the Willamette River, waters of the state, without a permit, as described in Section II,  
9 Paragraphs 1-9 above. According to OAR 340-012-0055(1)(c), this is a Class I violation. DEQ hereby  
10 assesses a \$12,000 civil penalty for this violation.

11 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

12 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSION, Respondent is hereby  
13 ORDERED TO:

14 1. Pay a civil penalty of \$12,000. The determination of the civil penalty is attached as Exhibit  
15 No. 1 and 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 order  
17 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**  
18 **700 NE Multnomah Street, Suite #600, Portland, Oregon 97232.** Once you pay the penalty, the  
19 Findings of Fact, Conclusions and Order become final.

20 2. Comply with Oregon law by taking the following actions:

- 21 a. Immediately cease all discharges of process wastewater; and  
22 b. By December 14, 2018, prepare a plan detailing how the Facility will manage its  
23 industrial processes to prevent the discharge of process wastewater and submit it to  
24 Daria Gneckow, DEQ Water Quality Specialist, via email at:  
25 Gneckow.Daria@deq.state.or.us.

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

2 You have a right to a contested case hearing on this Notice, if you request one in writing. You  
3 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you  
4 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in  
5 this Notice or attached exhibit, you must include them in your request for hearing, as factual matters  
6 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
7 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request  
8 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 700 NE Multnomah**  
9 **Street, Suite #600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to  
10 **DEQappeals@deq.state.or.us**. An administrative law judge employed by the Office of Administrative  
11 Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and  
12 OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you  
13 may represent yourself unless you are a corporation, agency or association.

14 Active duty service-members have a right to stay proceedings under the federal Service  
15 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
16 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
17 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
18 <http://legalassistance.law.af.mil/content/locator.php>.

19 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
20 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
21 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
22 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
23 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
24 information submitted by you, as the record for purposes of proving a prima facie case.

25  
26 11 / 7 / 18  
27 Date


  
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: Discharging wastes into waters of the state from an industrial or commercial establishment or activity or a disposal system without a permit issued by DEQ, in violation ORS 468B.050(1)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D), because Respondent violated ORS 468B.050(1)(a) and does not have an NPDES permit authorizing non-stormwater discharges.

"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 6. Respondent had 18 Class I violations in Case No. WQ/SW-NWR-2011-016, which receives a value of 20 according to OAR 340-012-0145(2)(a)(C) and (D). The value is reduced to 10 according to OAR 340-012-0145(2)(c). The value is further reduced by 4 according to OAR 340-012-0145(2)(d)(A)(ii), because all the FEAs in which PSAs were cited were issued more than 5 years before the date the current violation occurred.

"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 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation. Staff from the City of Portland Bureau of Environmental Services documented the violation on April 30, 2018.

"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 coverage under the NPDES 1200-A stormwater permit, so it is aware that discharges from its Facility are

subject to regulation. When Respondent discharged process wastewater from its Facility without a permit authorizing such discharge, it failed to take reasonable care to avoid a foreseeable risk that it would violate Oregon environmental law.

"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 \$0 because DEQ has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (6 + 0 + 0 + 4 + 0)] + \$0 \\ &= \$6,000 + [\$600 \times 10] + \$0 \\ &= \$6,000 + \$6,000 + \$0 \\ &= \$12,000 \end{aligned}$$