



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

November 20, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 3012

CFMW, LLC
Thomas A. Leaptrott, Registered Agent
8524 North Crawford Street
Portland OR 97203

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2018-165

This letter is to inform you that DEQ has issued you a civil penalty of \$7,862 for failing to comply with the NPDES 1200-Z permit. You have coverage under the permit for your facility located at 8524 N. Crawford Street in Portland. During the 2017/2018 sampling year, you only collected and analyzed one sample from your four outfalls from January 1 through June 30, 2018. Additionally, you failed to analyze samples collected on December 19, 2017 for total suspended solids. DEQ issued this penalty because you were assessed a penalty in 2017 for missed sampling in the 2016/2017 sampling year.

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.

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>.

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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 Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Laura Johnson, City of Portland BES, 6543 N. Burlington Avenue, Building 217, Portland OR 97203

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 CFMW, LLC,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ/SW-NWR-2018-165

6 I. AUTHORITY

7 DEQ issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon
8 Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468B, Oregon
9 Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 045.

10 II. FINDINGS OF FACT

11 1. On January 6, 2017, DEQ assigned Respondent coverage under the National Pollutant
12 Discharge Elimination System Stormwater Discharge General Permit Number 1200-Z (the Permit),
13 which authorizes Respondent to discharge stormwater from its facility located 8524 N. Crawford Street
14 in Portland, only in conformance with the Permit. The Permit was renewed on August 1, 2017 and is
15 effective through July 31, 2022.

16 2. Schedule B, condition 2.f and Table 5 of the Permit requires Respondent to monitor its
17 stormwater discharge for pollutants. Specifically, the Permit requires that two samples be collected and
18 analyzed between January 1 and June 30, and again between July 1 and December 31 of each year.

19 3. The City of Portland, acting as DEQ’s agent, received a discharge monitoring report from
20 Respondent on October 4, 2018 for the 2017/2018 monitoring year.

21 4. According to that report, Respondent collected samples from its four discharge points on
22 November 26, 2017, December 19, 2017 and June 9, 2018.

23 5. On December 19, 2017, Respondent did not have the samples it collected analyzed for total
24 suspended solids, as required by Schedule B of the Permit.

25 III. CONCLUSIONS

26 1. Respondent violated ORS 468B.025(2) and Schedule B, condition 2.f and Table 5 of the
27 Permit by failing to monitor its stormwater discharge. Specifically, Respondent failed to monitor for

1 total suspended solids on December 19, 2017. Additionally, Respondent collected only one sample
2 between January 1 and June 30, 2018. These are Class I violations according to OAR 340-012-
3 0055(1)(o). DEQ hereby assesses a \$7,862 civil penalty for these violations.

4 IV. ORDER TO PAY CIVIL PENALTY

5 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
6 hereby ORDERED TO pay a total civil penalty of \$7,862. The determination of the civil penalty is
7 attached as Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as
8 set forth in Section V below, your check or money order must be made payable to "**State Treasurer,**
9 **State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600,**
10 **Portland, Oregon 97232**. Once you pay the penalty, the Notice becomes final.

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

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

26 Active duty service-members have a right to stay proceedings under the federal Service
27 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-

1 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
2 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
3 <http://legalassistance.law.af.mil/content/locator.php>.

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

10
11
12
13 11/20/18
14 Date


13 
14 Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION 1: Failing to monitor its stormwater discharge, in violation of ORS 468B.025(2) and Schedule B, condition 2.f and Table 5 of the Permit.

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). 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 2 according to OAR 340-012-0145(2)(a)(C) because Respondent has one Class I violation in case no. WQ/SW-NWR-2017-191.

"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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent failed to collect one sample from four separate outfalls on one occasion between January 1 and June 30, 2018. Additionally, Respondent failed to analyze for total suspended solids from the sample collected on December 19, 2017.

"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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. When Respondent did not collect and analyze samples as required by the Permit, it failed to take reasonable care to avoid a foreseeable risk that it 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 violation or the effects of the violation could not be corrected or minimized. Respondent cannot now sample its stormwater discharge.

"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 \$662. This is the amount Respondent gained by avoiding spending \$1,106 to monitor its stormwater discharge. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (2 + 0 + 2 + 4 + 0)] + \$662 \\ &= \$4,000 + (\$400 \times 8) + \$662 \\ &= \$4,000 + \$3,200 + \$662 \\ &= \$7,862 \end{aligned}$$