



# 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

December 11, 2020

CERTIFIED MAIL No. 7018 1830 0000 8294 1695

Alsea Quarries I, LLC  
c/o George Foster, Registered Agent  
PO Box 265  
Alsea, OR 97324

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/ACDP-WR-2020-157

*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 DEQ has issued you a civil penalty of \$4,000 for failing to submit your 2019 annual report to DEQ as required by your Air Contaminant Discharge Permit.

DEQ issued this penalty because annual reports are an important mechanism for DEQ to determine whether sources of air contaminants are operating within the conditions and limits of permits. Without the report, DEQ is unable to determine the compliance status of your rock crusher or to ensure emissions are within levels that do not pose harm to the public's health or the environment.

Included in Section IV of the attached Notice is an order requiring you to submit your 2019 annual report 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](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 portion of the 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 Jenny Root at 503-229-5874 or toll free in Oregon at 800-452-4011, extension 5874.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc:     Shane Cossel, Western Region, Salem Office, DEQ  
          Claudia Davis, Western Region, Salem Office, DEQ  
          Donald Hendrix, AQ, 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 ALSEA QUARRIES I, LLC, ) ASSESSMENT AND ORDER  
5 an Oregon limited liability company, )  
Respondent. ) NO. AQ/ACDP-WR-2020-157

6 I. AUTHORITY

7 This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and  
8 468.126 through 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR)  
9 Chapter 340, Divisions 011, 012, 200, 214 and 216.

10 II. FINDINGS OF FACT

11 1. Respondent, operates a rock crusher at 19331 South Fork Road, Alsea, Oregon  
12 (the Facility).

13 2. On January 31, 2018, the Department of Environmental Quality (DEQ) assigned  
14 Respondent's Facility to General Air Contaminant Discharge Permit AQGP-08 (Permit) as  
15 source number 02-0016. The Permit was in effect at all material times.

16 3. The Permit authorizes Respondent to discharge air contaminants from activities  
17 and processes at the Facility in accordance with the requirements, limitations and conditions in  
18 the Permit.

19 4. Condition 7.2 of the Permit requires Respondent to submit an annual report to  
20 DEQ by February 15<sup>th</sup> of each year that includes specific production, maintenance and pollutant  
21 emission information for the previous calendar year of operation at the Facility.

22 5. On June 2, 2020, DEQ issued Respondent a Warning Letter with Opportunity to  
23 Correct requesting that Respondent submit its 2019 annual report to DEQ by June 10, 2020.

24 6. On August 5, 2020, DEQ issued Respondent a Pre-Enforcement Notice requesting  
25 that Respondent submit its 2019 annual report to DEQ by August 24, 2020.

26 7. To date, Respondent has not submitted its 2019 annual report to DEQ.

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### III. CONCLUSION

Respondent violated Condition 7.2 of the Permit and OAR 340-214-0114(1) and (2), adopted pursuant to ORS 468A.050(1), by failing to submit its 2019 annual report to DEQ by February 15, 2020, as further described in Section II, Paragraph 7 above. This is a Class II violation according to OAR 340-012-0054(2)(f). DEQ has assessed a \$4,000 civil penalty for this violation.

#### IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

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

1. Pay a total civil penalty of \$4,000. The determination of the civil penalty is attached as Exhibit 1 and is incorporated as part of this Notice.

2. Within 30 days of this order becoming final by operation of law or on appeal,,  
submit a complete 2019 annual report to DEQ to: **Shane Cossel, DEQ Western Region, 4026**  
**Fairview Industrial Drive SE, Salem, OR 97302.**

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

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

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

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

8 Active duty service members have a right to stay proceedings under the federal Service  
9 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
10 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
11 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
12 Department does not have a toll-free telephone number.

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

19  
20 12/ 11/ 2020  
21 Date

22   
23 Kieran O'Donnell, Manager  
24 Office of Compliance and Enforcement  
25  
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## EXHIBIT 1

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

VIOLATION: Failing to timely submit a 2019 annual report to DEQ in violation of Condition 7.2 of Respondent's Air Contaminant Discharge Permit and OAR 340-214-0114(1) and (2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(f).

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)(A) because Respondent operates the Facility under a General Air Contaminant Discharge 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 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 0 according to OAR 340-012-0145(4)(a), because there was one occurrence of the violation. Respondent was late submitting one (2019) annual report.

"M" is the mental state of the Respondent and receives a value of 8 pursuant to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. Respondent's Permit expressly requires Respondent to submit an annual report by February 15<sup>th</sup> of each year. On June 6, 2019, DEQ issued Respondent a Warning Letter with Opportunity to Correct for failing to submit the 2018 annual report to DEQ by the February 15, 2019 due date. On June 2, 2020, DEQ issued Respondent a Warning Letter with Opportunity to Correct for failing to submit the 2019 annual report to DEQ. On August 5, 2020, DEQ issued Respondent a Pre-Enforcement Notice and requested that Respondent submit the 2019 annual report to DEQ

by August 24, 2020. By failing to submit the 2019 report to DEQ after repeatedly being asked to do so, Respondent has consciously disregarded a substantial and unjustifiable risk that it would continue to violate the reporting requirements of the Permit and Oregon's air quality regulations. Given DEQ's previous and ongoing communication with Respondent regarding the missing 2019 annual report, continuing to disregard this risk constitutes a gross deviation from the standard of care a reasonable person would observe in this 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 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 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 as there is insufficient information on which to base a finding.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 8 + 2)] + \$0 \\ &= \$2,000 + (200 \times 10) + \$0 \\ &= \$2,000 + \$2,000 + \$0 \\ &= \$4,000 \end{aligned}$$