



# 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

December 13, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3923

Valley Milling & Lumber, LLC  
c/o James Youel, Registered Agent  
255 W J St  
Springfield OR 97477

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-WR-2022-516

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$8,750 for failing to perform all of the required grab sample monitoring during the 2020-2021 monitoring year as required under the NPDES 1200-Z Industrial Stormwater General Permit. During that monitoring year, Valley Milling & Lumber, LLC, was the registrant for coverage under the 1200-Z permit at the facility located at 90737 Link Road in Eugene.

DEQ issued this penalty because monitoring is an important condition of the Permit and this is a repeat violation. In 2019, DEQ issued you a civil penalty in an Expedited Enforcement Offer (EEO) for failing to conduct monitoring required by the permit in the 2017-2018 monitoring year.

Monitoring may reveal the presence of harmful levels of pollutants that pose a threat to waters of the state. In addition, monitoring allows permittees and DEQ to gauge the effectiveness of stormwater controls and best management practices at reducing levels of pollutants in discharges.

DEQ appreciates your efforts to return to compliance for the 2021-2022 monitoring year. DEQ considered these efforts when determining the amount of civil penalty.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

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.oregon.gov](mailto:DEQappeals@deq.oregon.gov)

Via fax – 503-229-6762

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.

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 your 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 Sarah Wheeler at 971-301-0622.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Jon Wilson, City of Eugene, [JWilson@eugene-or.gov](mailto:JWilson@eugene-or.gov)  
Zach Loboy, DEQ  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: )  
4 VALLEY MILLING & LUMBER, LLC, ) NOTICE OF CIVIL PENALTY  
an Oregon limited liability corporation, ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. WQ/SW-WR-2022-516

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,  
9 ORS Chapter 183, ORS Chapter 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions  
10 011, 012, and 045.

11 II. FINDINGS OF FACT

12 1. Respondent is registered under the National Pollutant Discharge Elimination System  
13 1200-Z Permit (the Permit) for the facility located at 90737 Link Road in Eugene, Oregon (the  
14 Facility).

15 2. Schedule B, Condition 2.a.i and f, and Table 5 of the Permit require permit registrants to  
16 monitor for statewide benchmarks four times per monitoring year (July 1 through June 30).

17 3. Respondent did not conduct one of the required monitoring events for the monitoring  
18 year 2020-2021.

19 III. CONCLUSIONS

20 Respondent has violated ORS 468B.025(2) and Schedule B, Condition 2 of the Permit by  
21 failing to perform one of the required instances of grab sample monitoring, at Outfall 001 and 002, during  
22 the 2020-2021 monitoring year. These are Class I violations pursuant to OAR 340-012-0055(1)(o). DEQ  
23 hereby assesses a \$8,750 civil penalty for these violations.

24 IV. ORDER TO PAY CIVIL PENALTY

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

27 ///



1 Pay a total civil penalty of \$8,750. The determination of the civil penalty is in the attached Exhibit  
2 and is incorporated as part of this Notice.

3 If you do not file a request for hearing as set forth in Section V below, please pay the penalty as  
4 follows:

5 Pay online with e-check (ACH) or credit card. Go to Your DEQ Online here:  
6 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account  
7 dashboard. Enter the reference number and Account ID included on the attached payment slip. Note: US  
8 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional  
9 charges, or

10 Pay by check or money order: Make check payable to "Department of Environmental Quality"  
11 and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with  
12 your check or money order and note the case number on your check.


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

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

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

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15 12 / 13 / 2022  
16 Date

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Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

## EXHIBIT

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

VIOLATION: Failing to perform all the required monitoring of statewide benchmark pollutants in the 2020-2021 monitoring year, in violation of Schedule B, Condition 2 and Table 5 of the Permit and ORS 468B.025(2).

CLASSIFICATION: These are Class I violations 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 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). Respondent accepted Expedited Enforcement Offer (EEO) Number WQ/SW-WR-2019-032, issued June 27, 2019, which cited Respondent for one Class I violation.

"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 were more than one but less than seven occurrences of the violation. Each missed sampling event at each outfall is a separate occurrence of the violation. The Permit requires Respondent to monitor stormwater discharges four times per monitoring year at each of two outfalls, and Respondent only conducted three of the required four samples at each outfall. Therefore, there were two occurrences of the violation.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent intentionally failed to act, with actual knowledge of the requirement. Respondent applied for coverage under the Permit and has a copy of the

Permit, which expressly requires Respondent to perform monitoring according to the frequency prescribed in the Permit. Additionally, Respondent has been cited and penalized for violating the Permit's monitoring requirements in a previous Expedited Enforcement Offer, issued June 27, 2019.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. Respondent conducted required monitoring for the 2021-2022 monitoring year.

"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 \$350. This is the amount Respondent gained by avoiding spending \$589 to conduct required stormwater monitoring on or before June 30, 2021. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$4,000 + [(0.1 \times \$4,000) \times (2 + 0 + 2 + 8 + (-1))]$  + \$350  
=  $\$4,000 + (\$400 \times 11)$  + \$350  
=  $\$4,000 + \$4,400$  + \$350  
= \$8,750

Oregon Department of Environmental Quality  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100



State of Oregon  
**Department of Environmental Quality**

Phone: 503-229-5437  
Fax: 503-229-5850

**CIVIL PENALTY - ORS 468.135(2)**

DATE:	December 13, 2022
RESPONSE DATE :	February 21, 2023
TOTAL PENALTY:	\$8,750.00

Account Name:	VALLEY MILLING & LUMBER, LLC <VALLEY MILLING & LUMBER, LLC> <108749>		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300036
SubSystem ID:	179564	FIMS Acct. ID:	4813

**Penalty Summary**

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 8,750.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 8,750.00

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit <https://ydo.oregon.gov> and select 'Register Account'



PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

REFERENCE NO.	CPGFD2300036		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	February 21, 2023
FIMS ACCT. ID:	4813	TOTAL PENALTY DUE:	\$8750.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

☐

Check this box if updated address information has been provided on the back of the form.

DEQ FINANCIAL SERVICES - LBX4244  
PO BOX 4244  
PORTLAND OR 97208-4244

00401 7400 10040 74001 0500 000000 0095000048137CPGFD230003600008750000





State of Oregon  
Department of  
Environmental  
Quality

## State of Oregon Department of Environmental Quality

**CIVIL PENALTY - ORS 468.135(2)**

700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
Phone: 503-229-5437  
Fax: 503-229-5850

### Penalty Detail

Transaction Date	Description	Amount
12/12/2022	2022-516 WQ-SW-WR-2022-516	\$8,750.00

### SFMS Agencies Use:

Trans Code	Treasury Fund	SFMS	Index	PCA (5)	Agency Object	Project #	Phase
723	00401	7400	10040	74001	0500	00000	00

### Address Changes

Please visit <https://ydo.oregon.gov> to update your mailing address online or provide the following information:

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_