



Oregon

Tina Kotek, 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

March 21, 2023

CERTIFIED MAIL: 7018 1830 0001 6172 7424

Forklift Services of Oregon, Inc.
c/o C T Corporation System, Registered Agent
780 Commercial St. SE, Suite 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2022-622

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$9,182 for stormwater violations at your facility in Portland. You failed to collect one of the samples required under the National Pollutant Discharge Elimination System Stormwater Discharge General Permit Number 1200-Z (Permit) and failed to keep records of your maintenance activities. These are violations of your Permit and ORS 468B.025(2).

DEQ issued this penalty because permittees are required to monitor their stormwater discharge to ensure their discharges meet the water quality benchmarks in the Permit. Without this information, DEQ and the public are unable to evaluate the effectiveness of your stormwater controls in protecting water quality in the Columbia Slough.

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

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 DEQ Environmental Law Specialist Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jeff Cordick, Forklift Services of Oregon, Inc.: jcordick@forkliftsamerica.com
Bryce Mahon, Forklift Services of Oregon, Inc.: bmahon@forkliftsamerica.com
Mathew Dorfman, City of Portland, Bureau of Environmental Services
Blair Edwards, Portland Office, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF: FORKLIFT SERVICES OF OREGON, INC., a Washington corporation, Respondent.)))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. WQ/SW-NWR-2022-622
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I. AUTHORITY

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

II. FINDINGS OF FACT

1. Respondent operates an industrial facility located at 13805 Sandy Boulevard in Portland, Multnomah County, Oregon (the Facility).

2. On or about November 27, 2019, DEQ assigned coverage to Respondent under the National Pollutant Discharge Elimination System Industrial Stormwater Discharge Permit No. 1200-Z (the Permit). Respondent had coverage under the Permit at all material times.

3. The Permit authorizes Respondent to construct, install, modify, or operate stormwater treatment and control facilities, and to discharge stormwater to surface waters or to conveyance systems that discharge to the Columbia Slough in conformance with all the conditions in the Permit.

4. Schedule B of the Permit requires Respondent to monitor its stormwater through grab sampling for various parameters. Specifically, Schedule B, Condition 6 of the Permit requires Respondent to monitor for the statewide benchmark pollutants identified in Table 4, and for impairment pollutants specified in the permit assignment letter. Schedule B, Condition 7 of the Permit requires Respondent to monitor four times per year.

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1 5. For the 2021-2022 monitoring year, Respondent failed to collect and analyze one of the four
2 required samples for statewide benchmark pollutants and impairment pollutants.

3 6. Schedule B, Condition 16 of the Permit requires Respondent to record and maintain certain
4 records at the Facility for three years, and to provide the records to DEQ or its agent upon request.
5 Condition 16.d requires documentation of maintenance and repairs of control measures, treatment
6 systems and mass reduction measures.

7 7. On or about December 8, 2022, staff from the City of Portland Bureau of Environmental
8 Services (BES), DEQ's agent, inspected the Facility and reviewed Respondent's records. Respondent
9 did not have any records of its maintenance and repairs of control measures, treatment systems and
10 mass reduction measures, specifically catch basin cleaning, catch basin filter replacement, and swale
11 maintenance. Respondent did not provide such records to BES upon request.

12 III. CONCLUSIONS

13 1. Respondent has violated Schedule B, Condition 7 of the Permit and ORS 468B.025(2) by
14 failing to conduct required stormwater monitoring on one occasion at one monitoring point during the
15 2021-2022 monitoring period, as described in Section II, Paragraphs 1-5 above. According to OAR 340-
16 012-0055(1)(o), this is a Class I violation. DEQ hereby assesses a \$7,082 civil penalty for this violation.

17 2. Respondent has violated Schedule B, Condition 16.d of the Permit and ORS 468B.025(2) by
18 failing to record and maintain records of its maintenance and repair activities, as described in Section II,
19 Paragraphs 6-7 above. According to OAR 340-012-0052(2), this is a Class II violation. DEQ hereby
20 assesses a \$2,100 civil penalty for this violation.

21 IV. ORDER TO PAY CIVIL PENALTY

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

24 Pay a total civil penalty of \$9,182. The determination of the civil penalties is attached as Exhibit
25 No. 1 and 2, which are incorporated as part of this Notice.

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

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

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

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

10 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
11 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
12 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
13 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
14 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
15 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
16 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
17 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
18 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
19 Chapter 183, OAR Chapter 340, Division 011, and OAR 137-003-0501 to 0700. You have a right to be
20 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
21 you may represent yourself. If you are a corporation, partnership, limited liability company,
22 unincorporated association, trust, or government body, you must be represented by an attorney or a
23 duly authorized representative, as set forth in OAR 137-003-0555.

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

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

3/21/2023
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: Failure to conduct monitoring in violation of Schedule B, Condition 7 of NPDES Permit No. 1200-Z and ORS 468B.025(2).

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), 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 3 according to OAR 340-012-0145(2)(a)(C) and (D) because Respondent had one Class I violation in EEO No. WQ/SW-NWR-2021-024 and one Class I violation in Case No. WQ/SW-NWR-2021-531.

"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 (4)(b) through (4)(d).

"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. During the 2021-2022 monitoring period, Respondent failed to conduct required monitoring of its stormwater discharge on one occasion at one outfall.

"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 holds an NPDES 1200-Z Permit, which specifically requires that it collect and analyze stormwater samples according to the conditions in Schedule B. Additionally, Respondent received a penalty for the same violation for the two previous monitoring years. However, Respondent's compliance with sampling requirements for the 2021-2022 monitoring year showed improvement over the previous two years. When Respondent failed to collect one of the required stormwater samples during the 2021-2022 monitoring year, it failed to take

reasonable care to avoid a foreseeable risk that it would violate the Permit and 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)(a)(D), 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 \$282. This is the amount Respondent gained by avoiding spending \$343 to collect and analyze one stormwater sample. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (3 + 0 + 0 + 4 + 0)] + \$282 \\ &= \$4,000 + [\$400 \times 7] + \$282 \\ &= \$4,000 + \$2,800 + \$282 \\ &= \$7,082 \end{aligned}$$

EXHIBIT NO. 2

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

VIOLATION: Failure to record and maintain documentation of maintenance and repairs of control measures, treatment systems and mass reduction measures in violation of Schedule B, Condition 16.d of NPDES Permit No. 1200-Z and ORS 468B.025(2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. Failing to keep records of maintenance activities, in and of itself, did not result in or pose a threat of adverse impact on human health or the environment.

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 \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iii) 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 3 according to OAR 340-012-0145(2)(a)(C) and (D) because Respondent had one Class I violation in EEO No. WQ/SW-NWR-2021-024 and one Class I violation in Case No. WQ/SW-NWR-2021-531.

"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 (4)(b) through (4)(d).

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Respondent did not keep records of its maintenance activities for at least one year.

"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 holds an NPDES 1200-Z Permit, which specifically requires that it keep records of its maintenance activities.

Additionally, BES previously warned Respondent that it was failing to meet this requirement on three occasions. When Respondent failed to record and maintain documentation of maintenance activities on its stormwater infrastructure during the 2021-2022 monitoring year, it failed to take reasonable care to avoid a foreseeable risk that it would violate the Permit and 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)(a)(D), 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 finds that Respondent's economic benefit from failing to keep records was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,000 + [(0.1 x \$1,000) x (3 + 0 + 4 + 4 + 0)] + \$0
= \$1,000 + [\$100 x 11] + \$0
= \$1,000 + \$1,100 + \$0
= \$2,100

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:	March 21, 2023
RESPONSE DATE :	May 30, 2023
TOTAL PENALTY:	\$9,182.00

Account Name:	FORKLIFT SERVICES OF OREGON, INC. <FORKLIFT SERVICES OF OREGON> <126625>		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300058
SubSystem ID:	N/A	FIMS Acct. ID:	3756

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 9,182.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 9,182.00

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.	CPGFD2300058		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	May 30, 2023
FIMS ACCT. ID:	3756	TOTAL PENALTY DUE:	\$9182.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

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

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

00401 7400 10040 74001 0500 000000 0095000037565(CPGFD)230005800009182002



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
3/20/2023	2022-622 WQ-SW-NWR-2022-622	\$9,182.00

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 _____