



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

May 25, 2023

CERTIFIED MAIL: 7016 2710 0000 4223 9189

Steve Elorriaga
ELO Leadbetter, Inc. dba Oregon Metal Services
7227 N Leadbetter Rd
Portland, OR 97203

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2022-633

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued ELO Leadbetter, Inc. dba Oregon Metal Services a civil penalty of \$16,015 for operating an industrial establishment that discharges stormwater to waters of the state without coverage under the National Pollutant Discharge Elimination System (NPDES) 1200-Z General Permit for industrial stormwater discharges at its facility located at 5235 N Marine Drive in Portland, Oregon.

DEQ issued this penalty because improperly managed stormwater at industrial facilities such as Oregon Metal Services can pick up pollutants and transport them directly to nearby waters, degrading water quality. The facility's uncovered rail unloading dock presents a particular risk for stormwater exposure to industrial materials.

Included in Section IV of the enclosed Notice is an order requiring ELO Leadbetter, Inc. to apply for 1200-Z permit coverage for the facility. \$6,415 of the civil penalty represents the economic benefit ELO Leadbetter, Inc. gained by failing to develop a Storm Water Pollution Control Plan (SWPCP) and apply for permit coverage. If ELO Leadbetter, Inc. completes these requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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 Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Mieke Vrijmoet, BES (via email: Mieke.Vrijmoet@portlandoregon.gov)
Accounting, DEQ

1 requirements in 40 C.F.R. §122.26 or §122.33, including . . . stormwater associated with industrial or
2 construction activity.”

3 8. Pursuant to 40 C.F.R. 122.26(b)(14), “storm water discharge associated with industrial
4 activity” means “the discharge from any conveyance that is used for collecting and conveying storm
5 water and that is directly related to manufacturing, processing or raw materials storage areas at an
6 industrial plant.” The definition specifies numerous industrial activities that are encompassed in the
7 definition, including storm water discharges from “immediate access roads and rail lines used or
8 traveled by carriers of raw materials,” “waste materials,” “material handling sites,” “refuse sites,” and
9 “shipping and receiving areas.”

10 9. Pursuant to OAR 340-045-0033(6), “[a]ny person operating a discharge source or
11 conducting an activity described in a general permit must apply for coverage under the general
12 permit....”

13 10. Pursuant to OAR 340-045-0033(6)(b), a “person who fails to submit an application
14 under the terms of the general permit . . . is not authorized to conduct the activity described in the
15 permit.”

16 11. On March 25, 2021, DEQ issued the NPDES 1200-Z Industrial Stormwater Discharge
17 General Permit (the Permit). The Permit is applicable to any facility categorized under the Standard
18 Industrial Classification (SIC) codes listed in the Permit that may discharge industrial stormwater to
19 surface waters or to conveyance systems that discharge to surface waters of the state.

20 12. The Facility is categorized under SIC Code 3499 – Fabricated Metal Products.
21 According to Table 1 of the Permit, facilities with primary SIC codes starting with 34 are covered
22 under the Permit.

23 13. To date, the Facility does not have—and has not applied for—coverage under the
24 Permit.

25 14. Pursuant to ORS 468B.050(1)(d), no person may construct, install, operate or conduct
26 any industrial, commercial, . . . or other establishment . . . the operation of which would cause an
27 increase in the discharge of wastes into waters of the state, without holding a permit that specifies

1 applicable effluent limitations.

2 III. CONCLUSIONS

3 1. Respondent violated ORS 468B.050(1)(d) and OAR 340-045-0015(2) by operating an
4 industrial establishment that discharges stormwater to waters of the state without first obtaining coverage
5 under the Permit. Specifically, Respondent's facility discharges stormwater associated with industrial
6 activity to the City of Portland's MS4 system which discharges to waters of the state. Specific activities at
7 the Facility that require coverage include the rail unloading activities, uncovered scrap material piles, and
8 uncovered waste receptacles. Respondent's facility is categorized under an SIC code covered by the
9 Permit, thus, Respondent has a legal obligation to obtain coverage under the Permit. This is a Class I
10 violation pursuant to OAR 340-012-0055(1)(d). DEQ hereby assesses a \$16,015 civil penalty for this
11 violation.

12 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

- 15 1. Pay a civil penalty of \$16,015. The determination of the civil penalty is attached as Exhibit 1 and is
16 incorporated as part of this Notice.

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

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

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

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27 ///

1 2. Within 30 days of this Order becoming final by operation of law or on appeal:

- 2 a. Submit an application for coverage under the National Pollutant Discharge Elimination
3 System General Permit Number 1200-Z for Industrial Stormwater.

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

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

19 Active-duty Service members have a right to stay proceedings under the federal Service
20 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
21 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
22 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
23 Department does not have a toll-free telephone number.

24 If you fail to file a timely request for hearing, the Notice will become a final order by default
25 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
26 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
27

1 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
2 the relevant portions of its files, including information submitted by you, as the record for purposes of
3 proving a prima facie case.
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7 5/25/2023

8 Date

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10 Kieran O'Donnell, Manager
11 Office of Compliance and Enforcement
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EXHIBIT 1

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

VIOLATION: Respondent violated ORS 468B.050(1)(d) and OAR 340-045-0015(2) by operating an industrial establishment that discharges stormwater to waters of the state without first obtaining coverage under the 1200-Z General NPDES Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(d).

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 should have applied for coverage under the 1200-Z General Permit.

"P" is whether Respondent has any prior significant actions (PSAs), 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 0 according to OAR 340-012-0145(2) because Respondent has 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 of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Respondent has known since at least August 31, 2022, that the Facility was required to apply for 1200-Z Permit coverage. Each day the Respondent failed to submit an application is a separate 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 failed to act intentionally with actual knowledge of the requirement. Respondent was informed on August 31, 2022, and again on November 7, 2022, that permit coverage was required for the Facility, yet Respondent failed to submit an application.

"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 the Respondent has not addressed the violation.

"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 \$6,415. By failing to hire a consultant to develop a Stormwater Pollution Control Plan (SWPCP), Respondent avoided spending an estimated \$5,000. Respondent saved an additional \$2,734 by avoiding the necessary application fees. 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 x \$4,000) x (0 + 0 + 4 + 8 + 2)] + \$6,415
= \$4,000 + [\$400 x 14] + \$6,415
= \$4,000 + \$5,600 + \$6,415
= \$16,015

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:	May 25, 2023
RESPONSE DATE :	August 3, 2023
TOTAL PENALTY:	\$16,015.00

Account Name:	ELO LEADBETTER, INC DBA OREGON METAL SERVICES		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300077
SubSystem ID:	214431	FIMS Acct. ID:	12024

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 16,015.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 16,015.00

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.	CPGFD2300077		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	August 3, 2023
FIMS ACCT. ID:	12024	TOTAL PENALTY DUE:	\$16015.00

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 0095000120249CPGFD230007700016015008



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
5/24/2023	2022-633 WQ-SW-NWR-2022-633	\$16,015.00

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 _____