



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 9196

Kerr Contractors, Inc.
c/o Brent J. Kerr, Registered Agent
Shenandoah Lane NE
Woodburn, OR 97071

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-SW-NWR-2023-524

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$19,604 for engaging in mining and quarrying activities that have the potential to discharge to waters of the state without coverage under the National Pollutant Discharge Elimination System Industrial Stormwater General Permit No. 1200-A (the Permit) at the Goble Quarry located at 70075 Nicolai Road in Rainier, Oregon (the Site).

DEQ issued this penalty because the operation of the quarry without permit coverage presents a risk of harm to the environment. Sediment from an industrial site is considered waste that poses a risk of harm to beneficial uses of state waters, including to habitat for aquatic organisms. The discharge of sediment and placing fill in a wetland can degrade water quality and harm aquatic life by covering up food sources and smothering invertebrate organisms living in those waters of the state. The Permit requires that registrants implement and maintain sufficient erosion and sediment controls and best management practices to prevent the discharge of sediment from the site and into waters of the state.

Included in Section IV of the enclosed Notice is an order requiring you to submit an application for coverage under the Permit within 30 days of the Order becoming final. \$10,004 of the civil penalty represents the economic benefit you gained by failing to obtain coverage under the Permit. If you obtain Permit coverage and implement control measures, 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 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 Courtney Brown at 503-229-6839.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Lisa Reinhart, DOGAMI
Christine Svetkovich, 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	KERR CONTRACTORS, INC.)	ASSESSMENT AND ORDER
5	an Oregon corporation,)	
6)	
7	Respondent.)	CASE NO. WQ/SW-NWR-2023-524

8 I. AUTHORITY

9 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
10 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
11 ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
12 011, 012, and 045.

13 II. FINDINGS OF FACT

14 1. Respondent is the owner of the Goble Quarry (DOGAMI Permit ID 05-0031) located at
15 70075 Nicolai Road in Rainier, Oregon, legal description: T.6N, R.2W, Sec.11, TL 1502, 1503, and
16 900 (the Site).

17 2. The Site engages in industrial activities, including mining and quarrying, under the
18 Standard Industrial Classification (SIC) code 14.

19 3. On June 10, 2022, the Site was actively mining with excavation, processing, and
20 stockpiling aggregate material.

21 4. On or about June 10, 2022, turbid stormwater discharged from the Site’s driveway to a
22 roadside ditch that parallels Nicolai Road.

23 5. The roadside ditch discharges to a wetland, and ultimately to the Columbia River, waters
24 of the state.

25 6. The discharge from the roadside ditch is a point source discharge. A ditch is included in
26 the definition of “point source discharge” at Schedule D, condition 3.r in the National Pollutant
27 Discharge Elimination System (NPDES) Stormwater and Mine Dewatering Discharge General Permit
No.1200-A.

1 7. On June 10, 2022, a stockpile of crushed rock was in a wetland at the Site.

2 8. Stormwater runoff that has been exposed to Respondent’s mining and quarrying
3 activities carries sediment and is an industrial waste as it will or may alter the physical, chemical or
4 biological properties of waters of the state, and tends to render such waters harmful, detrimental or
5 injurious to beneficial uses, including aquatic life or habitat thereof by smothering insects and other
6 aquatic macroinvertebrates as well as vegetation. Industrial waste is included in the definition of
7 “wastes” at ORS 468B.005(9).

8 9. At all relevant times Respondent was not assigned coverage under a water discharge
9 permit issued pursuant to ORS 468B.050.

10 10. Wetlands, springs, streams and other bodies of surface and underground water that
11 combine or effect a junction with natural surface or underground waters, such as a roadside ditch, a
12 wetland and the Columbia River are considered “waters of the state” according to ORS 468B.005(10).

13 III. CONCLUSIONS

14 On or about June 10, 2022, through the present, Respondent violated ORS 468B.050(1)(d) and
15 OAR 340-045-0033(6) by operating an industrial activity that causes an increase in the discharge of
16 wastes into waters of the state without a permit. Specifically, the Site is engaged in mining and quarrying
17 activities that discharged “wastes” to “waters of the state,” as described in Section II, paragraphs 1-10
18 above. This is a Class I violation, according to OAR 340-012-0055(1)(d). DEQ hereby assesses a \$19,604
19 civil penalty for this violation.

20 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY:

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

23 1. Pay a total civil penalty of \$19,604. The determination of the civil penalty is attached as
24 Exhibit No.1 and is incorporated as part of this Notice.

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

27 ///

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

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

10 2. Submit a complete application for registration under the NPDES General Permit Number
11 1200-A, including appropriate fees and Stormwater Pollution Control Plan, to: the Department of
12 Geology and Mineral Industries, Attn: Lisa Reinhart, 229 Broadalbin St. SW, Albany, OR 97321
13 within 30 days of this Notice and Order becoming final.

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

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

1 authorized representative, as set forth in OAR 137-003-0555.

2 Active-duty Service members have a right to stay proceedings under the federal Service
3 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
4 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
5 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
6 Department does not have a toll free telephone number.

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

13
14
15 5/25/2023
16 Date


15 
16 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: Violating ORS 468B.050(1)(d) by operating an industrial activity without a 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)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii), as Respondent should have applied for 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 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 of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent began industrial activities at the Site on or before April 2009. On June 10, 2022, unpermitted stormwater discharge was observed discharging from the Site to a roadside ditch where it ultimately drains to a wetland and to the Columbia River. As of the date of this Notice and Order, Respondent has not applied for a Permit for the mining and quarrying activities at the Site, for a total of more than 28 days.

"M" is the mental state of Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. A principal in Respondent corporation is a principal in the corporation that owns the adjacent quarry pit and is a permittee under the Permit to discharge stormwater from its industrial activities. By

engaging in the same industrial activities at the Site that have the potential to discharge to surface waters of the state without obtaining permit coverage, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate state law requiring permits for discharges to waters of the state. The risk is of a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that 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). Respondent has not submitted a complete application for Permit coverage or an approvable SWPCP that meets the Permit requirements.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' 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 total value of \$10,004. Respondent gained this economic benefit by avoiding costs of an NPDES General Industrial Stormwater Permit application fee and annual fee (totaling \$2,731) as well as costs of an engineer to prepare a SWPCP (\$10,000) since June 17, 2022.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 4 + 8 + 2)] + \$10,004
= \$4,000 + (\$400 x 14) + \$10,004
= \$4,000 + \$5,600 + \$10,004
= \$19,604

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)

KERR CONTRACTORS, INC.
 70075 NICOLAI ROAD
 GOBLE, OR 97048

DATE:	May 25, 2023
RESPONSE DATE :	August 3, 2023
TOTAL PENALTY:	\$19,604.00

Account Name:	KERR CONTRACTORS, INC.		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300079
SubSystem ID:	368	FIMS Acct. ID:	12026

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 19,604.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 19,604.00

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



KERR CONTRACTORS, INC.
 70075 NICOLAI ROAD
 GOBLE, OR 97048

REFERENCE NO.	CPGFD2300079		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	August 3, 2023
FIMS ACCT. ID:	12026	TOTAL PENALTY DUE:	\$19604.00

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 0095000120263(CPGF)230007900019604008



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	2023-524 WQ-SW-NWR-2023-524	\$19,604.00

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 _____