



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

July 18, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6006 92

Vanport Manufacturing, Inc.
c/o, Martin Hertrich, Registered Agent
28590 SE Wally Rd.
Boring, OR 97009

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-SW-NWR-2022-605

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$13,200 for failing to implement your Stormwater Pollution Control Plan (SWPCP) and failing to perform inspections in accordance with the National Pollutant Discharge Elimination System Industrial Stormwater General Permit No.1200-Z (the Permit) issued for the facility located at 28590 SW Wally Road, in Boring, Oregon. In addition, DEQ has cited you without civil penalty, for placing wastes in a location where they are likely to enter waters of the state by any means.

DEQ issued this penalty because the failure to comply with the Permit poses a risk of harm to the quality of state waters. It is essential for permit registrants to implement the SWPCP, including all the required maintenance, to ensure reduced pollutant concentrations in industrial stormwater discharge. Compliance with other conditions of the permit, such as inspections and monitoring, allow permit registrants to gauge the effectiveness of their stormwater controls to ensure that pollutants are not allowed to discharge off-site where they can enter waters of the state.

Included in Section IV of the enclosed Notice is an order requiring you to revise and submit a SWPCP that meets the permit requirements to DEQ for approval immediately. If you complete 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 and note the case number on your check.

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 or toll free in Oregon at 800-452-4011, extension 6839.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Mike Kennedy, DEQ
Blair Edwards, 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 | VANPORT MANUFACTURING, INC, an |) | ASSESSMENT AND ORDER |
| 5 | Oregon corporation, |) | |
| 6 | |) | |
| 7 | Respondent. |) | CASE NO. WQ/SW-NWR-2022-605 |

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 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,
12 and 045.

13 II. FINDINGS OF FACT

14 1. On December 23, 1997, Respondent was assigned coverage under the National Pollutant
15 Discharge Elimination System Industrial Stormwater General Permit No. 1200-Z (the Permit) for
16 stormwater discharges from the facility located at 28590 SE Wally Road, in Boring, Oregon (the
17 Facility). The Permit expired on July 1, 2021, and was revised and reissued by DEQ becoming
18 effective on July 1, 2021. The Permit was in effect at all material times.

19 2. The Facility’s stormwater discharges to outfalls that discharge to the N. Fork of Deep Creek.
20 Failing to Implement the Stormwater Pollution Control Plan (SPWCP)

21 3. Schedule A, condition 10.b.i.12 of the Permit requires that the SWPCP contain a site map that
22 clearly labels the general location of surface waters, conveyances and discharge structures such as
23 piping and ditches, exact location of all monitoring points labelled with a unique three-digit identifying
24 number starting with 001, 002, etc, paved areas and buildings, locations of discharge points if different
25 from monitoring points, location of springs and other surface waterbodies; and locations of vehicle
26 cleaning areas.

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1 4. Schedule A, condition 8.d of the Permit requires Respondents to implement its Stormwater
2 Pollution Control Plan (SWPCP).

3 5. Schedule A, condition 8.f of the Permit requires permit registrants to keep the SWPCP current
4 and revise it as necessary to reflect site conditions and changes to the site.

5 6. On October 12, 2022, Respondent's SWPCP did not describe the following features that were
6 present at the Facility: the layout of the buildings, internal access roads, culverts, ditches, catchbasins,
7 discharge points, an unnamed stream.

8 7. On October 12, 2022, Respondent had not implemented at the Facility the following conditions
9 described in its SWPCP: there was no vehicle wash station on Site, no secondary containment of
10 significant materials and quarterly sweeping had not occurred (except for one time in March 2020), and
11 waste bins were not covered. The SWPCP labelled discharge points 008H, 009I, 011K and 004D with a
12 letter at the end.

13 Failing to perform inspections:

14 8. Schedule B condition 12.a of the Permit requires permit registrants to inspect areas where
15 industrial materials or activities are exposed to stormwater and areas where stormwater control
16 measures, including infiltration devices, mass reduction measures, conveyance structures, catch basins,
17 and treatment facilities are located.

18 9. The Permit requires that the permit registrant inspect the entire Facility covered by the permit
19 on a monthly basis. Specifically, Schedule B, condition 12.a of the Permit requires the permit registrant
20 inspect areas where industrial materials or activities are exposed to stormwater and areas where
21 stormwater control measures are located. Inspections must include an evaluation of control measures
22 consistent with the SWPCP requirements.

23 10. Respondent conducted 19 partial inspections of the Facility where it only inspected catchbasins
24 and outfalls and not the entire Facility. Respondent did not perform any monthly inspections during the
25 following months: November, December, February, May, and June 2019, July and December 2020,
26 January, March, May and June 2021, July, March, May, June, July, October 2022.

27 ///

1 Placing wastes

2 11. On or before October 13, 2022, there was wood debris, wood shavings, sawdust and material
3 that had been cleaned out of stormwater detention ponds and catch basins and dumped on the banks of
4 the N. Fork of Deep Creek. The wood debris, wood shavings, sawdust and material that had been
5 cleaned out of stormwater detention ponds and catch basins are “wastes” as they are industrial wastes
6 that came from Respondent’s milling and other industrial activities.

7 12. North Fork of Deep Creek is considered “Waters of the state” according to ORS 468B.005(10).

8 III. CONCLUSIONS

9 1. Respondent has violated ORS 468B.025(2) and Schedule A, condition 8.d of the Permit by
10 failing to implement its SWPCP. Specifically, there were features at the Facility that were not described
11 in the SWPCP and there were features described in the SWPCP that did not exist at the Facility, as
12 described in Section II, paragraphs 3 -7, above. This is a Class I violation according to OAR 340-012-
13 0055(1)(r). DEQ hereby assesses a \$7,200 civil penalty for this violation.

14 2. Respondent has violated ORS 468B.025(2) and Schedule B, condition 12.a of the Permit by
15 failing to perform inspections as required in the Permit. Specifically, Respondent failed to perform
16 inspections of its entire facility and failed to perform visual observations of its stormwater discharge, as
17 described in Section II, paragraphs 8-10, above. This is a class I violation according to OAR 340-012-
18 0055(1)(o). DEQ hereby assesses a \$6,000 civil penalty for these violations.

19 3. On or before October 13, 2022, Respondent has violated ORS 468B.025(1)(a) by placing wastes
20 in a location where they are likely to enter waters of the state by any means. Specifically, Respondent
21 violated numerous conditions of the Permit, as described in Section II, paragraphs 3-18, above, and
22 discharged industrial wastes from its Facility to the banks of the North Fork of Deep Creek, as described in
23 Section II, paragraphs 11-12. Industrial wastes such as wood debris, shavings, sawdust and material
24 excavated from stormwater detention ponds and catch basins will or tends to cause pollution to waters of
25 the state. This is a class II violation according to OAR 340-012-0055(2)(c). DEQ has not assessed a
26 penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

- 4 1. Pay a total civil penalty of \$13,200. The determinations of the civil penalties are attached as
5 Exhibits No.1, and No.2 and are incorporated as part of this Notice.
- 6 2. Immediately revise and submit to DEQ for approval the SWPCP to accurately depict the Facility
7 and its activities and discharge and monitoring points. Please submit the revised SWPCP to
8 mike.kennedy@deq.oregon.gov

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

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

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

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

20 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
21 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
22 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
23 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
24 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
25 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
26 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
27 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge

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

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

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

18
19
20 7/18/2023
21 Date


20 
21 Kieran O'Donnell, Manager
22 Office of Compliance and Enforcement
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EXHIBIT No.1

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

VIOLATION No.1: Respondent has violated ORS 468B.025(2) and Schedule A, condition 8.d of the Permit by failing to implement the SWPCP developed for the Facility.

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

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 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 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 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 failed to implement its SWPCP on or before October 13, 2022. As of the date of this Notice and Order Respondent has not submitted a revised SWPCP that matches its Facility.

"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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. The Permit plainly requires registrants to implement the SWPCP and keep it updated to reflect current activities at the Facility. By failing to implement substantial elements of its SWPCP, Respondent

failed to take reasonable care to avoid a foreseeable risk that it would violate its SWPCP and its Permit.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e) or (6)(g).

"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. The economic benefit Respondent gained is too speculative to estimate.

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 (0 + 0 + 4 + 4 + 0)] + \0
 $= \$4,000 + (\$400 \times 8) + \$0$
 $= \$4,000 + \$3,200 + \$0$
 $= \$7,200$

EXHIBIT No.2

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

VIOLATION No.2: Violating ORS 468B.025(2) by violating Schedule B, condition 12.a of the Permit by failing to perform monthly inspections of the entire Facility in accordance with the Permit.

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 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 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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Respondent violated the Permit's monthly inspection requirements on 36 months.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent reasonably should have known of the requirement. Respondent applied for coverage under the Permit and has a copy of the Permit, which expressly requires Respondent to perform comprehensive monthly inspections of its entire Facility. Respondent reasonably should have known it was required to inspect all facets of its Facility, not just catchbasins and outfalls.

"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 has made reasonable efforts to

ensure the violation would not be repeated by conducting inspections in accordance with the Permit.

"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. The amount of economic benefit Respondent gained through this violation is too speculative for DEQ to estimate.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 2 + -1)] + \$0 \\ &= \$4,000 + (\$400 \times 5) + \$0 \\ &= \$4,000 + \$2,000 + \$0 \\ &= \$6,000 \end{aligned}$$

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: | July 18, 2023 |
| RESPONSE DATE : | September 26, 2023 |
| TOTAL PENALTY: | \$13,200.00 |

| | | | |
|----------------------|---|--------------------------|--------------|
| Account Name: | VANPORT MANUFACTURING, INC. <VANPORT MANUFACTURING, INC.> <92680> | | |
| Account Type: | Vendor/Organization/Company | Reference Number: | CPGFD2300092 |
| SubSystem ID: | 179782 | FIMS Acct. ID: | 4963 |

Penalty Summary

| Penalty Amount | Interest | Adjustment | Amount Paid | Total Penalty |
|----------------|----------|------------|-------------|---------------|
| \$ 13,200.00 | \$ 0.00 | \$ 0.00 | \$ 0.00 | \$ 13,200.00 |

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. | CPGFD2300092 | | |
| PAYCODE: | 00401 7400 10040 74001 0500 000000 00 | | |
| FEE PROGRAM ID: | 950 | RESPONSE DATE: | September 26, |
| FIMS ACCT. ID: | 4963 | TOTAL PENALTY DUE: | \$13200.00 |

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 0095000049631CPGFD230009200013200002



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 |
|------------------|-----------------------------|-------------|
| 7/17/2023 | 2022-605 WQ-SW-NWR-2022-605 | \$13,200.00 |

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 _____