



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 6, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6009 20

Wood Waste Management, LLC
c/o Cynthia Miguel, Registered Agent
P.O. Box 56180
Portland, OR 97238

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2023-544

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Wood Waste Management, LLC a civil penalty of \$11,320 for operating an industrial facility located at 7315 NE 47th Avenue in Portland, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state, without first obtaining coverage under the 1200-Z National Pollutant Discharge Elimination System (NPDES) Industrial Stormwater Discharge General Permit.

DEQ issued this penalty because improperly managed industrial stormwater can pick up pollutants and transport them directly to nearby waters, degrading water quality. Wood Waste Management's facility discharges stormwater from its driveway to stormwater catch basins and green street facilities on NE 47th Avenue that discharge to the Columbia Slough, a water of the state. Additionally, because the facility's stormwater detention pond is not designed to infiltrate but rather must be manually pumped to prevent an overflow event to the Columbia Slough, the facility has the potential to discharge stormwater from its detention pond.

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.state.or.us

Via fax – 503-229-5100

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. Alternatively, you can pay the penalty by sending a check or money order to the above address.

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 Erin Saylor at 971-808-7368 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Frank Hammond, Law Office of Frank Hammond LLC (via email: frank@frankhammondllc.com)
Shaunee Morgan, Oregon Dept. of Justice (via email: Shaunee.Morgan@doj.state.or.us)
Jess Aloisio, City of Portland (via email: Jess.Aloisio@portlandoregon.gov)
Stacy Hibbard, City of Portland (via email: Stacy.Hibbard@portlandoregon.gov)
Daria Gneckow, DEQ, Northwest Region
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 WOOD WASTE MANAGEMENT, LLC) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ/SW-NWR-2023-544

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 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
10 011, 012, and 045.

11 II. FINDINGS OF FACT

12 1. Respondent is the owner and operator of the Wood Waste Management facility located
13 at 7315 NE 47th Avenue in Portland, Oregon (the Facility).

14 2. The Facility accepts yard debris waste from the public and sells landscape products,
15 including compost products, bark, rock, and wood chips.

16 3. Vehicles, machinery, and equipment are stored outdoors at the Facility, as are stockpiles
17 of bark and wood waste. Additionally, Respondent conducts outdoor handling of materials at the
18 Facility.

19 4. The Facility is classified under Standard Industrial Classification (SIC) code 5093—
20 Scrap and Waste Materials.

21 5. The Facility routes most stormwater runoff from the property into a 175-ft long, 15-ft
22 wide, 6-ft deep stormwater detention pond along the Facility’s northern property boundary. The
23 stormwater detention pond is not designed to infiltrate, rather Respondent manually removes water
24 from the detention pond to prevent it from overflowing and either recycles it onsite or arranges for
25 transport to an offsite location.

26 6. Pursuant to Section 2.4.2.1 of the City of Portland’s 2020 Stormwater Management
27 Manual, Respondent’s detention pond must be equipped with an overflow pipe or underdrain.

1 7. The Facility currently has an overflow pipe installed in the detention pond that is
2 intended to route overflow stormwater to Ferrous Ditch. Ferrous Ditch flows along the southern
3 boundary of the Facility to the Columbia Slough, a water of the state.

4 8. On April 11, 2023, a representative of the City of Portland’s Bureau of Environmental
5 Services (BES) visited the Facility. At that time, the Facility’s detention pond was full nearly to the top
6 bank of the pond and in danger of overflowing.

7 9. If the detention pond were to overflow, the water may discharge via the overflow pipe in
8 the detention pond to Ferrous Ditch which discharges to the Columbia Slough or over the top of the
9 detention pond bank to Crystal Lane and to City-managed stormwater catch basins on NE 47th Avenue
10 which discharge to the Columbia Slough.

11 10. At the Facility’s driveway, stormwater flows around the edge of a berm constructed
12 across the driveway and out to NE 47th Avenue where it discharges to City-managed stormwater catch
13 basins or green street facilities that discharge to the Columbia Slough.

14 11. ORS 468B.050(1)(d) prohibits any person from operating an industrial or commercial
15 facility, the operation or conduct of which would cause an increase in the discharge of wastes into the
16 waters of the state without a permit.

17 12. ORS 468B.035 authorizes the Environmental Quality Commission (EQC) to take
18 actions necessary to implement the Clean Water Act, 33 U.S.C. §§ 1251 et seq and its implementing
19 federal regulations in Oregon.

20 13. Pursuant to OAR 340-045-0015(2), a person must obtain “a valid NPDES permit before
21 that person discharges stormwater subject to permit requirements in 40 C.F.R. 122.26 or 122.33,
22 including stormwater from large, medium, and regulated small municipal separate storm sewer systems
23 and stormwater associated with industrial or construction activity.”

24 14. Oregon DEQ’s National Pollutant Discharge Elimination System Industrial Stormwater
25 Discharge General Permit No. 1200-Z (the 1200-Z Permit)—adopted by the EQC by reference in OAR
26 340-045-0033(11)(g)—provides that sources covered under the Permit include “[a] facility that may
27 discharge industrial stormwater to surface waters or to conveyance systems that discharge to surface

1 | waters of the state”

2 | 15. “Stormwater” is defined in OAR 340-045-0010(28) as “stormwater runoff, snow melt
3 | runoff, and surface runoff and drainage.”

4 | 16. OAR 345-045-0033(6) requires any person operating a discharge source or conducting
5 | an activity described in a general permit to apply for coverage under that general permit.

6 | 17. Pursuant to OAR 340-045-0010(5), “discharge” means “placing wastes into public
7 | waters, on land, or otherwise into the environment in a manner than affects or may tend to affect the
8 | quality of public waters.”

9 | 18. Pursuant to ORS 468B.005(9) and OAR 340-045-0010(31), “wastes” means “sewage,
10 | industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances which will or may
11 | cause pollution to tend to cause pollution of any waters of the state.”

12 | 19. “Pollution” is defined in ORS 468B.005(5) to mean “such alteration of the physical,
13 | chemical or biological properties of any waters of the state, including change in temperature, taste,
14 | color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or
15 | other substance into any waters of the state, which will or tends to, either by itself or in connection with
16 | any other substance, create a public nuisance or which will or tends to render such waters harmful,
17 | detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial,
18 | agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other
19 | aquatic life or the habitat thereof.”

20 | 20. “Discharge Point” is defined in the 1200-Z Permit as “the location where stormwater
21 | flows leave the facility and enters waters of the state directly or indirectly through a separate storm
22 | sewer system, including the location where any sheet flow leaves a facility.”

23 | 21. Table 1 of the 1200-Z Permit, OAR 340-045-0033(11)(g), indicates that facilities with
24 | the primary SIC code “5093 Scrap and Waste Materials” are covered under the permit. Table 2 of the
25 | 1200-Z Permit further specifies that discharges to the Columbia Slough from industrial activities
26 | involving materials storage and waste handling are covered under the permit.

27 | ///

1 22. BES administers the 1200-Z Permit on behalf of DEQ for industrial activities that
2 discharge or may discharge stormwater to the City of Portland's municipal storm sewer system and to
3 surface waters within the City's jurisdiction.

4 23. On April 29, 2021, BES notified Respondent that coverage under the 1200-Z Permit was
5 required for the Facility and that an application must be submitted by June 14, 2021.

6 24. On June 18, 2021, DEQ sent Respondent a Pre-Enforcement Notice that, in part,
7 directed Respondent to apply for coverage under the 1200-Z Permit.

8 25. On June 29, 2021, BES sent Respondent a Warning Letter with Opportunity to Correct,
9 reiterating Respondent's obligation to apply for coverage under the 1200-Z Permit. The letter required
10 submission of an application by July 13, 2021.

11 26. On August 17, 2021, BES sent Respondent a Pre-Enforcement Referral for operating
12 without a permit in violation of ORS 468B.050(1)(d) and OAR 340-045-0033(6). The Pre-Enforcement
13 Referral notified Respondent that Respondent's failure to apply for 1200-Z permit coverage was being
14 referred to DEQ and required Respondent to immediately submit a complete permit application packet
15 to BES.

16 27. On June 14, 2022, DEQ sent Respondent a Notice of Civil Penalty Assessment and
17 Order for water quality violations including failure to apply for 1200-Z Permit coverage. Respondent
18 did not timely request a contested case hearing or appeal the Order and it became final by operation of
19 law.

20 28. To date, Respondent has not applied for coverage under the 1200-Z Permit.

21 III. CONCLUSIONS

22 1. Respondent violated ORS 468B.050(1)(d), OAR 340-045-0015(2) and OAR 340-045-
23 0033(11)(g) by operating an industrial facility, the operation or conduct of which would cause an increase
24 in the discharge of wastes into the waters of the state without first obtaining coverage under the 1200-Z
25 Permit. Specifically, the Facility discharges industrial stormwater via its driveway to City stormwater catch
26 basins and green street facilities on NE 47th Avenue that flow to the Columbia Slough, a water of the state
27 under ORS 468B.005(10). Additionally, because the Facility's detention pond is not designed to infiltrate,

1 but rather must be manually pumped to prevent an overflow event to the Columbia Slough, Respondent
2 has the potential to discharge stormwater from its detention pond. This is a Class I violation pursuant to
3 OAR 340-012-0055(1)(d). DEQ hereby assesses a \$11,320 civil penalty for this violation.

4 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

7 1. Pay a civil penalty of \$11,320. The determination of the civil penalty is attached as Exhibit
8 No. 1 and is incorporated as part of this Notice.

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

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

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

18 2. Within 30 days of this order becoming final by operation of law or on appeal, submit an
19 application for coverage under the National Pollutant Discharge Elimination System General Permit
20 Number 1200-Z. The application should be submitted to Jess Aloisio at
21 Jessica.Aloisio@portlandoregon.gov.

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

23 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
24 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
25 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
26 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
27 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for

1 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
2 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
3 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge
4 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
5 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
6 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
7 you may represent yourself. If you are a corporation, partnership, limited liability company,
8 unincorporated association, trust or government body, you must be represented by an attorney or a duly
9 authorized representative, as set forth in OAR 137-003-0555.

10 Active duty Service members have a right to stay proceedings under the federal Service
11 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
12 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
13 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
14 Department does not have a toll-free telephone number.

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

21
22
23
24 7/6/2023
Date

Kieran O'Donnell
Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION 1: Respondent violated ORS 468B.050(1)(d) by operating an industrial facility, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state without first obtaining coverage under the 1200-Z 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)(a)(E)(iii), as Respondent should have applied for coverage under the NPDES 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 2 according to OAR 340-012-0145(2)(a)(C) because Respondent had one prior Class I water quality violation in Case No. WQ/SW-NWR-2021-518.

"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. Since June 14, 2022, Respondent has continued to operate the Facility without 1200-Z Permit coverage.

"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. Both the City and DEQ have informed Respondent numerous times in writing that it must apply for coverage under the 1200-Z Permit.

"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 has failed to apply for coverage under the 1200-Z Permit despite being directed to do so multiple times.

"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 \$920 according to OAR 340-012-0150(1) because since June 14, 2022, Respondent avoided spending \$1,386 for the 2022 annual permit fee.

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 (2 + 0 + 4 + 8 + 2)] + \$920
= \$4,000 + (400 x 16) + \$920
= \$4,000 + \$6,400 + \$920
= \$11,320

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 6, 2023
RESPONSE DATE :	September 14, 2023
TOTAL PENALTY:	\$11,320.00

Account Name:	WOOD WASTE MANAGMENT		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300087
SubSystem ID:	206546	FIMS Acct. ID:	7972

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 11,320.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 11,320.00

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.	CPGFD2300087		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	September 14,
FIMS ACCT. ID:	7972	TOTAL PENALTY DUE:	\$11320.00

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 0095000079722CPGFD230008700011320007



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
7/5/2023	2023-544 WQ-SW-NWR-2023-544	\$11,320.00

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 _____