



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

August 15, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4131

Morse Bros., Inc., DBA Knife River NW
c/o Jeff Steyaert
32260 Highway 34
Tangent, OR 97389

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-SW-WR-2023-535

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$5,200 for discharging stormwater from your mining facility, located at 41819 Stayton-Scio Road, Stayton Oregon (the Facility), directly into surface waters of the state without an appropriate water quality permit.

DEQ issued this penalty because the unpermitted discharges of stormwater from mining facilities pose a risk of harm to water quality. Proper permit coverage allows both DEQ and permit registrants to assess and effectively manage the pollutants that enter waters of the state. The Facility is permitted to dispose of wastewater and stormwater only by recirculation, evaporation, or controlled seepage. But it is prohibited from discharging stormwater to surface waters. By discharging stormwater to waters of the state without the appropriate permit, you create a risk of harm to public health and the environment.

DEQ appreciates your efforts to correct the violation by immediately raising temporary berms to prevent the discharge of stormwater into state waters. DEQ considered these efforts when determining the amount of the civil penalty. Included in Section IV of the enclosed Notice is an order requiring you to seed and mulch the temporary berms constructed at the facility to prevent future illicit discharges.

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 Courtney Brown at (503) 229-6839.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Lisa Reinhart, Lisa.reinhart@dogami.oregon.gov
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:

4 MORSE BROS INC.
5 DBA KNIFE RIVER NW

Respondent.

) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER

) CASE NO. WQ-SW-WR-2023-535
)

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 468B.450(1), ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
10 011, 012, and 045.

11 II. FINDINGS OF FACT

12 1. On May 7, 2008, Respondent was assigned coverage under the Water Pollution Control
13 Facilities 1000 General Wastewater Disposal Permit (DEQ file number 61743, DOGAMI number 22-
14 0044) (WPCF Permit) for the management and disposal of waste from Respondent’s facility located at
15 41816 Stayton-Scio Road in Stayton, Oregon (the Facility). The WPCF Permit expired on October 31,
16 2017.

17 2. Pursuant to Schedule A, Condition 1.f and Condition 2 of the WPCF Permit, permit
18 registrants may manage and dispose of wastewater through recirculation, evaporation, or controlled
19 seepage, but may not discharge wastewater to surface waters. All wastewater under the WPCF Permit
20 must be controlled by settling, recirculation, seepage, irrigation, or use for dust control.

21 3. Respondent does not have coverage under the 1200-A National Pollutant Discharge
22 Elimination Stormwater and Mine Dewatering Discharging General Permit (1200-A Permit).

23 4. A violation of ORS 468B.050(1)(a) occurs when a person, without holding a permit
24 from the Director of DEQ or the State Department of Agriculture, discharges waste into the waters of
25 the state from any industrial or commercial establishment or activity or any disposal system.

26 5. According to ORS 468B.005(9), “waste” means sewage, industrial wastes, and all other
27 liquid, gaseous, solid, radioactive or other substances which will or may cause pollution or tend to

1 cause pollution of any waters of the state.

2 6. According to ORS 468B.005(10), wetlands, springs, streams, and other bodies of surface
3 and underground water that combine or effect a junction with a natural surface or underground waters
4 are considered “waters of the state.”

5 7. On April 12, 2023, the Department of Geology and Mineral Industries performed an
6 inspection of the Facility. At the time of the inspection:

7 a. there was stormwater discharging from the Facility’s northern stockpile area into the
8 North Santiam River, and

9 b. there was stormwater discharging from the southern boundary of the Facility to an
10 unnamed irrigation ditch.

11 8. Stormwater is considered “waste” pursuant to ORS 468B.005(9).

12 9. The North Santiam River and the unnamed irrigation ditch are considered “waters of the
13 state” pursuant to ORS468B.0055(10).

14 III. CONCLUSIONS

15 1. On or about April 12, 2023, Respondent violated ORS 468B.050(1)(a) by, without coverage
16 under the 1200-A Permit, discharging stormwater from the Facility into the North Santiam River and
17 the unnamed irrigation ditch, as described in Section II above. These are Class I violations according to
18 OAR 340-012-0055(1)(c). DEQ hereby assesses a \$5,200 civil penalty for these violations.

19 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

22 1. Pay a total civil penalty of \$5,200. The determination of the civil penalty is attached as Exhibit
23 No. 1 and is incorporated as part of this Notice.

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

26 Pay online with e-check (ACH) or credit card. Go to Your DEQ Online here:

27 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account

1 dashboard. Enter the reference number and Account ID included on the attached payment slip. Note: US
2 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional
3 charges.

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

7 2. Within 30 days of this order becoming final, Respondent must seed and mulch the berms
8 constructed along the Facility’s northern stockpile and southern boundary so that they are effective as
9 erosion control measures. Please submit documentation showing that the berms have been seeded and
10 mulched to: the Department of Geology and Mineral Studies, Lisa Reinhart,
11 lisa.reinhart@dogami.oregob.gov.

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

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

27 ///

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

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

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8/15/2023
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: Respondent violated ORS 468B.050(1)(a) by, without coverage under the 1200-A Permit, discharging stormwater from the Facility into the North Santiam River and an unnamed irrigation ditch on April 12, 2023.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-055(1)(c).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude 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 the WPCF Permit and should have applied for coverage under the 1200-A Permit before discharging stormwater from the Facility.
- "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)(a)(A), 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 Respondent has no prior history.
- "O" is whether the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Specifically, Respondent discharged stormwater to waters of the state from two separate locations, from the Facility's northern stockpile area into the North Santiam River and from the Facility's southern boundary into an unnamed irrigation ditch. Therefore, there were two occurrences of the violation.
- "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, negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent has a copy of the WPCF Permit that sets forth its conditions, and Respondent is aware that they do not have coverage for the Facility under the 1200-A Permit. Schedule A, Condition 1.f and Condition 2 of the WPCF Permit states that stormwater may not be discharged to surface waters. Therefore, it was negligent of Respondent to maintain the Facility in a way that allowed stormwater to discharge to surface waters.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c), because Respondent took immediate action on the date of the inspection to berm the affected areas and prevent further stormwater discharges to waters of the state.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance, as provided in OAR 340-012-0150. 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 the EB Respondent gained from this violation is de minimis.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 2 + 4 + (-3))] + \$0 \\ &= \$4,000 + (\$400 \times 3) + \$0 \\ &= \$4,000 + \$1,200 + \$0 \\ &= \$5,200 \end{aligned}$$

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:	August 15, 2023
RESPONSE DATE :	October 24, 2023
TOTAL PENALTY:	\$5,200.00

Account Name:	SDS - MORSE BROS., INC., DBA KNIFE RIVER AN MDU RESOURCES COMPANY		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400006
SubSystem ID:	209420	FIMS Acct. ID:	13352

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 5,200.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 5,200.00

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.	CPGFD2400006		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	October 24, 2023
FIMS ACCT. ID:	13352	TOTAL PENALTY DUE:	\$5200.00

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 0095000133525(CPGF)240000600005200006



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
8/14/2023	2023-535 WQ-SW-WR-2023-535	\$5,200.00

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 _____