



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

November 21, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4377

Coulee Concrete Designs, LLC
c/o Benjamin Cunin
6800 NE 59th Place
Portland, OR 97218

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/NP-NWR-2023-112

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Coulee Concrete Designs, LLC a civil penalty of \$9,000 for discharging waste without a permit into a water of the state. Specifically, on multiple occasions Coulee Concrete Designs, LLC discharged process wastewater from its Facility located at 6800 NE 59th Place in Portland into a storm drain that flows to the Columbia Slough.

DEQ issued this penalty because the unpermitted discharge of wastes into waters of the state can have a significant negative impact on water quality. The process wastewater discharged by the Facility contained residual uncured concrete, which is known to increase the pH of water to the detriment of aquatic life.

DEQ appreciates your efforts to create a water disposal plan for the Facility and to train your employees to ensure the violations do not happen again. DEQ considered these efforts in calculating the civil penalty.

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. 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 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,

A handwritten signature in black ink, appearing to read 'Kieran O'Donnell', written in a cursive style.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Mark Bentz, DEQ NWR
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 COULEE CONCRETE DESIGNS, LLC) NOTICE OF CIVIL PENALTY
5 Respondent.) ASSESSMENT AND ORDER
6) CASE NO. WQ/NP-NWR-2023-112

7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

13 1. Respondent operates a facility located at 6800 NE 59th Place in Portland, Oregon (the
14 Facility).

15 2. On May 12, 2023, a representative from the City of Portland’s Bureau of Environmental
16 Services inspected the Facility. At the time of the inspection, a hose was exiting the Facility building
17 into the adjacent parking lot. Dried, residual concrete was evident in a clear path from the hose to a
18 nearby storm drain.

19 3. The storm drain where the discharge was routed flows directly to the Columbia Slough,
20 a water of the state pursuant to ORS 468B.005(10).

21 4. On May 22, 2023, a DEQ inspector spoke with a representative of the Respondent over
22 the phone. The representative acknowledged that an untrained employee had routed process wastewater
23 from the Facility to the storm drain “a few times.”

24 5. Respondent has since developed a “Water Disposal Procedure” for the Facility and
25 informed its employees that water may not be discharged to the parking lot or storm drain.

26 6. “Wastes” is defined in ORS 468B.005(9) as “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 7. “Pollution” is defined in ORS 468B.005(5) as “such alteration of the physical, chemical,
3 or biological properties of any waters of the state, including change in temperature, taste, color,
4 turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other
5 substance into any waters of the state, which will or tends to, either by itself or in connection with any
6 other substance, create a public nuisance or which will or tends to render such waters harmful,
7 detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial,
8 agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other
9 aquatic life or the habitat thereof.”

10 8. Pursuant to ORS 468B.050(1)(a), no person may discharge any wastes into the waters of
11 the state from any industrial or commercial establishment or activity or any disposal system without a
12 permit.

13 III. CONCLUSIONS

14 1. Respondent violated ORS 468B.050(1)(a) by discharging wastes into a water of the state
15 without a permit, as described in Section II, Paragraphs 2–4 above. This is a Class I violation pursuant
16 to OAR 340-012-0055(1)(c). DEQ hereby assesses a \$9,000 civil penalty for this violation.

17 IV. ORDER TO PAY CIVIL PENALTY

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

20 1. Pay a total civil penalty of \$9,000. The determination of the civil penalty is attached as Exhibit
21 1 and is incorporated as part of this Notice.

22 If you do not file a request for hearing as set forth in Section V below, your check or money
23 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
24 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

26 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
27 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If

1 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
2 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
3 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
4 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
5 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
6 it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge
7 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
8 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
9 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
10 you may represent yourself. If you are a corporation, partnership, limited liability company,
11 unincorporated association, trust or government body, you must be represented by an attorney or a duly
12 authorized representative, as set forth in OAR 137-003-0555.

13 Active duty Service members have a right to stay proceedings under the federal Service
14 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
15 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
16 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
17 Department does not have a toll free telephone number.

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

24
25
26 11/21/2023
Date


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: Respondent violated ORS 468B.050(1)(a) by discharging wastes into a water of the state without a permit.

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

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(D) because Respondent violated ORS 468B.050(1)(a).

"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 the Respondent has no PSAs.

"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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent acknowledged that process wastewater was discharged from the facility to the storm drain "a few times."

"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. By failing to train its employees on proper wastewater disposal, Respondent failed to take reasonable care to avoid a foreseeable risk that a violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(f) because Respondent made reasonable efforts to ensure the violation would not be repeated by developing a "Water Disposal Procedure" and informing its employees that water may not be discharged to the parking lot or storm drain.

"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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 2 + 4 + -1)] + \$0
= \$6,000 + (\$600 x 5) + \$0
= \$6,000 + \$3,000 + \$0
= \$9,000