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

December 5, 2023

CERTIFIED MAIL: 7014 2120 0001 8302 9699

Morgan Logistics LLC
c/o Joah Sapphire, Registered Agent
7098 N Marine Drive
Portland, OR 97203

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-SW-NWR-2022-604

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $6,290 for failing to monitor your industrial stormwater discharge as required under the NPDES Industrial Stormwater General Permit, No. 1200-Z (the Permit) for your transportation and warehousing facility located at 7098 Marine Drive in Portland, Oregon. Specifically, you failed to monitor on two occasions during the 2021-22 monitoring year and one occasion during the 2022-23 monitoring year for statewide benchmark pollutants.

DEQ issued this penalty because monitoring is an important requirement of the Permit. Monitoring may reveal the presence of harmful levels of pollutants that pose a threat to waters of the state. In addition, monitoring allows Permit registrants to gauge the effectiveness of stormwater controls and best management practices at reducing levels of pollutants in industrial stormwater 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 Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Mieke Vrijmoet, City of Portland Industrial Stormwater Program
(Mieke.Vrijmoet@portlandoregon.gov)
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: MORGAN LOGISTICS LLC, a Delaware limited liability company, Respondent.	))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. WQ-SW-NWR-2022-604

I. AUTHORITY

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

II. FINDINGS OF FACT

1. Respondent is registered under the National Pollutant Discharge Elimination System Industrial Stormwater General Permit No. 1200-Z (the Permit) for its transportation and warehousing facility located at 7098 Marine Drive in Portland, Oregon (the Facility).

2. Respondent's Facility discharges stormwater to Bybee Lake.

3. The Permit was in effect at all material times.

4. Schedule B.2 of the Permit requires Respondent to monitor for the benchmark pollutants identified in Table 4 of the Permit for the Columbia Slough Georegion: pH, Total Copper, Total Lead, Total Zinc, Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD5), Total Phosphorus, and E. coli.

5. Schedule B.7.f of the Permit requires registrants to monitor for benchmark pollutants at a frequency of four times per monitoring year (July 1 through June 30), with two samples between July 1 and December 31, and two samples between January 1 and June 30.

6. Schedule B.7.f.i of the Permit requires qualifying stormwater samples to be collected at least 14 days apart.

7. Respondent's Facility has one monitoring point, known as Monitoring Point 001 (MP-001).

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8. During the 2021-22 monitoring year, Respondent monitored the stormwater discharge at MP-001 on two occasions, on October 20, 2021 and November 11, 2021. Respondent did not monitor the stormwater discharge at MP-001 during the second half of the monitoring year (January 1 – June 30).

9. During the 2022-23 monitoring year, Respondent monitored the stormwater discharge at MP-001 on four occasions, on December 9, 2022, December 29, 2022, April 6, 2023 and April 11, 2023. April 6, 2023 and April 11, 2023 are less than 14 days apart.

III. CONCLUSIONS

1. Respondent violated ORS 468B.025(2) and Schedule B.7.f of the Permit by failing to collect monitoring data on three occasions during the 2021-22 and 2022-23 monitoring years, as described in Section II, Paragraphs 1-9 above. Specifically, Respondent failed to monitor for pH, Total Copper, Total Lead, Total Zinc, TSS, BOD, Total Phosphorus and E. coli at MP-001 two out of the required four occasions during the 2021-22 monitoring year, and one out of the required four occasions during the 2022-23 monitoring year. These are Class I violations according to OAR 340-012-0055(1)(o). DEQ hereby assesses a $6,290 civil penalty for these violations.

IV. ORDER TO PAY CIVIL PENALTY

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

1. Pay a total civil penalty of $6,290. The determination of the civil penalty is attached as Exhibit I and is incorporated as part of this Notice.

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

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

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

If you fail to file a timely request for hearing, the Notice will become a final order by default without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

12/5/2023
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 NO. 1 — Failing to collect monitoring data in violation of ORS 468B.025(2) and Schedule B.7.f of 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 x BP) x (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 a 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 initially 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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent failed to collect monitoring data on three occasions during the 2021-2022 and 2022-23 monitoring years.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. As a Permit registration, Respondent has constructive knowledge of the Permit's frequency requirements, including the requirement to monitor four times per year, and the requirement to collect samples 14 days apart.

"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 the violation or the effects of the violation could not be corrected or minimized.

"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 $690. This is the amount Respondent gained by avoiding spending $990 in laboratory costs associated with two missed samples for pH, Total Copper, Total Lead, Total Zinc, TSS, BOD, Total Phosphorus and E. coli during the 2021-2022 monitoring year. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model. No EB was included for the missed sample in the 2022-2023 monitoring year because Respondent paid for laboratory costs for four samples, but one sample was not a qualifying sample because it was taken less than 14 days apart from another sample.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $4,000 + [(0.1 x $4,000) x (0 + 0 + 2 +2 + 0)] + 690
= $4,000 + ($400 x 4) + $690
= $4,000 + $1,600 + $690
= $6,290

Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100

State of Oregon
DEQ Department of Environmental Quality

Phone: 503-229-5437
Fax: 503-229-5850

CIVIL PENALTY - ORS 468.135(2)

DATE:	December 5, 2023
RESPONSE DATE :	February 13, 2024
TOTAL PENALTY:	$6,290.00

Account Name:	MORGAN LOGISTICS LLC <MORGAN LOGISTICS> <122742>		
Account Type:	Vendor/Organization/Company	Reference Number:	**CPGFD2400025**
SubSystem ID:	191443	FIMS Acct. ID:	2630

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
$ 6,290.00	$ 0.00	$ 0.00	$ 0.00	$ 6,290.00

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.	CPGFD2400025		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	February 13, 2024
FIMS ACCT. ID:	2630	TOTAL PENALTY DUE:	$6290.00

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 0095000026304CPGFD2400025000006290007

State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

State of Oregon Department of Environmental Quality

700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
Phone: 503-229-5437
Fax: 503-229-5850

Penalty Detail

Transaction Date	Description	Amount
12/4/2023	2022-604 WQ-SW-NWR-2022-604	$6,290.00

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 _____