



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

February 8, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6528 19

Parker-Northwest Paving Company, dba Canby Landscape Supply
c/o Nancy L. Traverso, Registered Agent
29322 S. Needy Road
Canby, OR 97013

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2023-517

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$15,755 for discharging wastes into waters of the state without a permit at the Canby Landscape supply facility plant located at 24420 S. Hwy 99, south of Canby, Oregon.

DEQ issued this penalty because your failure to obtain an industrial stormwater discharge permit posed a risk of pollution to waters of the state. On September 11, 2019, you transferred coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. 1200-A from your company to NW Aggregate Company but failed to obtain NPDES General Permit 1200-Z coverage for the remaining industrial activities at your facility. Furthermore, on February 1, 2023, DEQ observed your Facility discharging compost leachate from a PVC pipe directly to a wetland. The discharge of such wastes can degrade water quality and harm aquatic life by covering up food sources and smothering invertebrate organisms living in wetlands and creeks.

Permits require that registrants implement and maintain sufficient controls and best management practices to prevent the discharge of wastes that have been exposed to industrial activities from the site and into waters of the state. Wastewater and stormwater runoff from industrial sites are considered wastes that pose a risk of harm to beneficial uses of state waters, including the use of those waters as habitat for aquatic organisms.

DEQ appreciates your efforts to correct the violation by obtaining coverage under the NPDES 1200-Z Permit on December 12, 2023 and ceasing discharges from the PVC pipe to the wetland. DEQ considered these efforts when determining the amount of civil penalty.

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

Sincerely,



Becka Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Mike Kennedy, Northwest Region
Benjamin Benninghoff, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 PARKER-NORTHWEST PAVING)
5 COMPANY, DBA CANBY LANDSCAPE) NOTICE OF CIVIL PENALTY
6 SUPPLY, an Oregon corporation,) ASSESSMENT AND ORDER
7 Respondent.) CASE NO. : WQ/SW-NWR-2023-517

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

13 II. FINDINGS OF FACT

- 14 1. Respondent is the operator of the facility located at 24420 S Hwy 99E, in Canby,
15 Oregon (the Facility).
- 16 2. DEQ issued the National Pollutant Discharge Elimination System Industrial Stormwater
17 Discharge Permit Number 1200-Z (the Permit) for facilities that may discharge industrial stormwater to
18 surface waters or to conveyance systems that discharge to surface waters of the state and the
19 stormwater is associated with industrial activity identified in Table 1 of the Permit.
- 20 3. Since on or about September 11, 2019, Respondent has engaged in industrial activities at
21 the Facility that have a primary SIC Code of 2875.
- 22 4. On September 11, 2019, Respondent transferred coverage under the National Pollutant
23 Discharge Elimination System (NPDES) General Permit No. 1200-A to NW Aggregate Company, but
24 did not obtain 1200-Z Permit coverage for the remaining industrial activities at the Facility.
- 25 5. The Facility has the potential to discharge industrial stormwater to wetlands.
- 26 6. On February 1, 2023, Respondent discharged compost leachate from its compost pile via
27 a cut ditch and via a white PVC pipe directly to a wetland.
7. Wetlands are known habitat for invertebrates and aquatic species.
8. On or about December 12, 2023, Respondent was assigned coverage under the Permit.

1 III. CONCLUSIONS

2 From at least February 1, 2023, until on or about December 12, 2023, Respondent violated
3 ORS 468B.050(1)(a) and OAR 340-045-0033(6) by discharging wastes into waters of the state from an
4 industrial facility without coverage under a permit. Specifically, since on or about September 11, 2019,
5 Respondent engaged in industrial activities under the SIC code of 2875 at the Facility which have to the
6 potential to discharge industrial stormwater to surface waters or to conveyance systems that discharge
7 to surface waters of the state without a permit. In addition, on February 1, 2023, Respondent discharged
8 compost leachate into wetlands from compost stockpiles at its Facility. Compost leachate is considered
9 “wastes” pursuant to ORS 468B.005(9) as it results in alteration to the physical, chemical or biological
10 characteristics of waters of the state and may or tends to render those waters harmful to beneficial uses.
11 Wetlands are waters of the state as defined in ORS 468B.05(10). This is a Class I violation, according to
12 OAR 340-012-0055(1)(c). DEQ hereby assesses a \$15,755 civil penalty for this violation.

13 IV. ORDER TO PAY CIVIL PENALTY

14 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
15 hereby ORDERED TO: Pay a total civil penalty of \$15,755. The determinations of the civil penalty are
16 attached as Exhibit No. 1 and is incorporated as part of this Notice.

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

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

24 Pay by check or money order: Make checks payable to “Department of Environmental
25 Quality” and mail to the address on the enclosed payment slip. Please make sure to include the payment
26 slip with your check or money order.

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

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

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

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

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2/8/2024
Date

Rebecca J Puskas
Becka Puskas, Interim 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 No.1: Violating ORS 468B.050(1)(a) and OAR 340-045-0033(6) by discharging wastes into waters of the state from an industrial establishment 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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii), as Respondent has or should have applied for 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 no prior history.

"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 has engaged in qualifying industrial activities at the Facility since on or before September 11, 2019. Respondent required permit coverage from at least February 1, 2023, when it discharged wastes to a wetland, until December 12, 2023, when it was assigned permit coverage.

"M" is the mental state of Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent was reckless. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard

of care a reasonable person would observe in that situation. Respondent was previously assigned coverage under another NPDES General Permit, which it transferred to NW Aggregate Company on September 11, 2019. At that time DEQ informed Respondent of the need to maintain general permit coverage for any qualifying industrial activities. Respondent was therefore aware of the requirement to obtain coverage. In addition, Respondent constructed a pipe to intentionally direct wastewater from its compost stockpile to a wetland. In taking these actions, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate Oregon law prohibiting the discharge of wastes without a permit.

"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 made reasonable efforts to correct the violation by obtaining Permit coverage on December 12, 2023, and ceasing discharges of wastewater to the wetland.

"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 total value of \$8,155. This is the amount of economic benefit Respondent gained by avoiding the costs of: the Permit application and annual fees (\$2224 in 2019/2020, \$1348 in 2020/2021, \$1348 in 2021/2022), the costs of performing grab sample monitoring four times per monitoring year since the 2019/2020 monitoring through the 2021/2022 (\$780 x 3 monitoring years), avoiding the costs of inspections (\$1,474.80 for 10 months during the 2019/2020 monitoring year, \$1769.76 in 2020/2021, \$1769.76 in 2021/2022). In addition, for the 2022/2023 monitoring year, Respondent delayed spending \$1427 for the annual fee, \$9,000 in consulting costs, \$780 in grab sample monitoring costs, and \$1769 for inspections.

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 (0 + 0 + 4 + 8 + -3)] + \$8,155
= \$4,000 + (\$400 x 9) + \$8,155
= \$4,000 + \$3,600 + \$8,155
= \$15,755

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:	February 8, 2024
RESPONSE DATE :	April 18, 2024
TOTAL PENALTY:	\$15,755.00

Account Name:	CANBY LANDSCAPE SUPPLY		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400040
SubSystem ID:	213669	FIMS Acct. ID:	10699

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 15,755.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 15,755.00

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.	CPGFD2400040		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	April 18, 2024
FIMS ACCT. ID:	10699	TOTAL PENALTY DUE:	\$15755.00

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 0095000106993(CPGFD)240004000015755004



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
2/7/2024	2023-517 WQ-SW-NWR-2023-517	\$15,755.00

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 _____