Oregon
Kate Brown, 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

May 2, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6530 83

S-C Paving Company
c/o Brian K Martindale, Registered Agent
10195 Trask River Road
Tillamook, OR 97141

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-SW-NWR-2023-525

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $6,405 for engaging in mining and quarrying activities that have the potential to discharge to waters of the state without permit coverage at the Lighthouse Pit located at 2995 Cape Meares Loop, in Tillamook, Oregon. DEQ also cited you without penalty for placing wastes in a location where they are likely to enter Larson Creek, waters of the state.

DEQ issued this penalty because sediment from industrial sites is considered waste that poses a risk of harm to beneficial uses of state waters, including to habitat for aquatic organisms. The discharge of sediment can degrade water quality and harm aquatic life by covering up food sources and smothering invertebrate organisms living in those waters of the state. The National Pollutant Discharge Elimination System Permit No. 1200-A, issued by DEQ and administered by the Oregon Department of Geology and Mineral Industries (DOGAMI), requires that registrants implement and maintain sufficient best management practices to prevent the discharge of sediment from non-metallic mines and quarries into waters of the state.

DEQ appreciates your efforts to ensure the violation would not be repeated by submitting a complete application for Permit coverage to DOGAMI on April 1, 2024.

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 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,

Rebecca K Puskas

Becka Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Lisa Reinhart, DOGAMI
Benjamin Benninghoff, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: S-C PAVING COMPANY, an Oregon corporation, Respondent.	)))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. WQ/SW-NWR-2023-525

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

II. FINDINGS OF FACT

1. Respondent is the operator of the Lighthouse Quarry located at 2995 Cape Meares Loop, in Tillamook, Oregon (the Site).

2. The Site engages in industrial activities, including mining and quarrying, under the Standard Industrial Classification (SIC) code 14.

3. The Site has the potential to discharge to Larson Creek, a surface water of the state.

4. Stormwater runoff that has been exposed to Respondent's mining and quarrying activities carries sediment, which impacts aquatic life and habitat by smothering insects and other aquatic macroinvertebrates as well as vegetation.

5. On April 19, 2023, turbid stormwater drained south approximately 225 feet from the Site and discharged towards Larson Creek.

6. At all relevant times Respondent was not assigned coverage under a waste water discharge permit issued pursuant to ORS 468B.050.

III. CONCLUSIONS

1. On or about April 19, 2023, until April 1, 2024, Respondent violated ORS 468B.050(1)(d) and OAR 340-045-0033(6) by operating an industrial activity that causes an increase in the discharge of

wastes into waters of the state without a permit. Specifically, the Site is engaged in mining and quarrying activities that discharged "wastes" to "waters of the state," as described in Section II, paragraphs 1-5 above. The sediment discharged from the Site is "industrial waste" which is within the definition of "wastes" according to ORS 468B.005(9) because it will or may cause pollution or tend to cause pollution of waters of the state. The wastes from the Site may cause pollution as defined in ORS 468B.005(5) by altering the physical, chemical or biological properties of waters of the state, including through a change in turbidity, and tends to render such waters harmful, detrimental or injurious to beneficial uses, including aquatic life or habitat. This is a Class I violation, according to OAR 340-012-0055(1)(d). DEQ hereby assesses a $6,405 civil penalty for this violation.

2. On or about April 19, 2023, Respondent violated ORS 468B.025(1) by placing wastes in a location where those wastes are likely to enter waters of the state by any means. Specifically, Respondent discharged turbid stormwater from its Site towards Larson Creek, waters of the state. Turbid stormwater is a "waste" that poses a risk of harm to beneficial uses of waters of the state and is therefore considered "pollution" according to ORS 468B.005(5). This is a Class II violation according to OAR 340-012-0055(2)(c). DEQ has not assessed a civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO: Pay a total civil penalty of $6,405. The determination of the civil penalty is attached as Exhibit No.1 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.

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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 **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. 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.

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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.

5/2/2024
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:	Violating ORS 468B.050(1)(d) and OAR 340-045-0033(6) by operating an industrial activity without a 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)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii), as Respondent 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. Respondent has been operating an industrial activity since on or before April 19, 2023 through at least April 1, 2024 when it submitted a complete application for Permit coverage.

"M" is the mental state of Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent reasonably should have known of the requirement to obtain a permit for its Facility. Given the proximity of Respondent's facility to waters of the state and the high potential for stormwater that has been exposed to its industrial activities to enter those waters of the state, common sense would dictate that an industrial facility would need prior authorization before discharging its wastes to state waters.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated by submitting a complete application for Permit coverage to DOGAMI on April 1, 2024.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' 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 $405. Respondent gained this economic benefit by delaying the costs of an NPDES General Industrial Stormwater Permit application fee and annual fee (totaling $2,815) as well as costs of an engineer to prepare a SWPCP ($10,000) from April 18, 2023 until April 1, 2024.

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 + 4 + 2 + -1)] + $405
= $4,000 + ($400 x 5) + $405
= $4,000 + $2,000 + $405
= $6,405

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:	May 2, 2024
RESPONSE DATE :	July 11, 2024
TOTAL PENALTY:	$6,405.00

Account Name:	S-C PAVING COMPANY		
Account Type:	Vendor/Organization/Company	Reference Number:	**CPGFD2400063**
SubSystem ID:	218600	FIMS Acct. ID:	17312

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
$ 6,405.00	$ 0.00	$ 0.00	$ 0.00	$ 6,405.00

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

DEQ

REFERENCE NO.	CPGFD2400063		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	July 11, 2024
FIMS ACCT. ID:	17312	TOTAL PENALTY DUE:	$6405.00

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 00950001731 28CPGFD2400063000006405005

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
5/2/2024	2023-525 WQ-SW-NWR-2023-525	$6,405.00

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 _____