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

May 2, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6530 90

Valmont Industries, Inc.
c/o CT Corporation System, Registered Agent
780 Commercial Street SE, Suite 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2023-588

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Valmont Industries, Inc. a civil penalty of $7,434 for violating the monitoring requirements set forth in the National Pollutant Discharge Elimination System (NPDES) 1200-Z General Permit for industrial stormwater discharges at the Valmont Coatings facility located in Tualatin, Oregon. Specifically, Valmont Industries, Inc. failed to monitor the stormwater discharge from the facility on two occasions during the 2022-2023 monitoring year.

DEQ issued this penalty because monitoring is an important condition of the 1200-Z Permit. Monitoring may reveal the presence of harmful levels of pollutants that pose a threat to waters of the state. In addition, monitoring allows permittees and DEQ to gauge the effectiveness of stormwater controls and best management practices implemented to reduce the levels of pollutants in discharges. Valmont Industries, Inc. has been the subject of at least one prior enforcement case involving stormwater monitoring violations (Case No. WQ/SW-NWR-2022-615).

$234 of the civil penalty represents the economic benefit Valmont Industries, Inc. gained by avoiding monitoring costs.

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 Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,

Rebecca R Puskas

Becka Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Mark Weller, Valmont Coatings (via email at mark.weller@valmont.com)
Alex Svendsen, Clean Water Services (via email at SvendsenA@CleanWaterServices.org)
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: VALMONT INDUSTRIES, INC. Respondent	)	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. WQ/SW-NWR-2023-588

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 owner and operator of the Valmont Coatings facility located at 9700 SW Herman Rd. in Tualatin, Oregon (the Facility).

2. The Facility has coverage under the National Pollutant Discharge Elimination System (NPDES) 1200-Z General Permit for industrial stormwater discharges (the Permit) under File No. 108675.

3. Pursuant to Schedule B, Table 5 of the Permit, Respondent is required to monitor four times per year for all applicable statewide benchmarks in Schedule A.9, any applicable sector-specific benchmarks in Schedule E, and any applicable impairment pollutants. Two samples must be taken at each discharge point between July 1 and December 31st, and two samples between January 1 and June 30th of each monitoring year.

4. The Facility has a single stormwater discharge point.

5. Between July 1 and December 31, 2022, Respondent did not collect either of the two required samples at its stormwater discharge point.

6. Pursuant to Schedule F, Section A1. of the Permit, failure to comply with any permit

condition is a violation of ORS 468B.025.

7. Pursuant to ORS 468B.025(2), no person shall violate the conditions of any waste discharge permit issued under ORS 468B.050.

III. CONCLUSIONS

1. Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to collect the minimum number of required stormwater samples at the Facility. Specifically, between July 1 and December 31, 2022, Respondent failed to collect either of the two required samples. These are Class I violations pursuant to OAR 340-012-0055(1)(o). DEQ hereby assesses a $7,434 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 civil penalty of $7,434. 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 reference 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 and note the case number on your check.

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.

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 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATIONS: Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to collect the minimum number of samples.

CLASSIFICATION: These are Class I violations 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: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"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 1200-Z General Permit.

"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 2 according to OAR 340-012-0145(2) because Respondent had one prior Class I water quality violation in Case No. WQ/SW-NWR-2022-615.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 two stormwater samples.

"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. Respondent has a copy of the permit that clearly sets forth the sampling requirements. Respondent has also previously been cited for the same violation.

"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 $234, by avoiding $300 in laboratory costs for one stormwater sample. Respondent completed an additional sampling event outside the required time period, during the second half of the 2022-2023 monitoring year, bringing the total number of sampling events conducted during the monitoring year to three. However, Respondent was required to conduct a total of four sampling events over the course of the 2022-2023 monitoring year. Thus, Respondent avoided spending laboratory costs for one stormwater sample. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $4,000 + [(0.1 x $4,000) x (2 + 0 + 2 + 4 + 0)] + $234
= $4,000 + [$400 x 8] + $234
= $4,000 + $3,200 +$234
= $7,434

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:	May 2, 2024
RESPONSE DATE :	July 11, 2024
TOTAL PENALTY:	$7,434.00

Account Name:	VALMONT COATINGS/PACIFIC STATES GALV		
Account Type:	Vendor/Organization/Company	Reference Number:	**CPGFD2400061**
SubSystem ID:	193638	FIMS Acct. ID:	1368

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
$ 7,434.00	$ 0.00	$ 0.00	$ 0.00	$ 7,434.00

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.	CPGFD2400061		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	July 11, 2024
FIMS ACCT. ID:	1368	TOTAL PENALTY DUE:	$7434.00

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 00950000013686CPGFD2400061000074340O2

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	2023-588 WQ-SW-NWR-2023-588	$7,434.00

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 _____