



# GET TO KNOW ROTSCHY INC.



SHAME ON ROTSCHY FOR VIOLATING STATE  
LAW AND INJURING CHILDREN

## WHO IS ROTSCHY?

A non-union, Washington-based contractor with hundreds of violations and fines, responsible for the amputation of a 16-year-old workers' legs, and at least one other child injury.

**These unsafe working conditions are bad for workers and bad for business.**

## WHO WE ARE:

The International Union of Operating Engineers Local 701 represents nearly 4,000 workers in OR & SW WA. We are committed to fighting for safe and fair working conditions.

**You deserve the truth about who may be working in your community.**

## AN OVERVIEW:

- Cited by L&I for **over 200 violations**
- Was on L&I's "**Severe Violators List**"
- At least **2 children injured** on their job sites
- Fined by the Oregon DEQ for failing to follow permit requirements and causing **pollution**

## WHY WE ARE HERE:

The Industrial Rail Corridor Expansion Project (IRCE) will expand the existing rail line between the Port of Longview and the line connecting Portland and Seattle. Rotschy is the lowest bidder for general contractor of the IRCE Project.

Per Port regulations, the Port must award the project to the lowest bidder or put the project out for rebid.

**Though Rotschy seems to meet the Port's requirements to win the bid, the company's history of severe violations makes it unfit to work in our community.**

**FOR MORE INFORMATION CALL (503) 650-7701**



# GET TO KNOW **ROTSCHY** INC.



**SHAME ON ROTSCHY FOR VIOLATING STATE  
LAW AND INJURING CHILDREN**

## **WHAT YOU NEED TO KNOW ABOUT ROTSCHY:**

- **REPORTEDLY CITED FOR OVERWORKING CHILDREN OVER 230 TIMES, INCLUDING:**
  - allegedly overworking 15 minors more than 230 times. Fined **\$51,800, the second-highest fine** L&I has given for youth labor violations in the past decade
  - allowed children to operate on or near prohibited machines on at least **35** occasions
  - denied children meal breaks at least **45** times and worked children for more hours than state law allows and during school hours on more than **150** occasions
- **REPORTEDLY COMMITTED 20 HEALTH & SAFETY VIOLATIONS**
- **INVESTIGATED AND FINED FOR AT LEAST 2 INJURED CHILDREN ON ROTSCHY JOB SITES**
  - In June 2024, a 16-year-old's legs were amputated after being injured while operating a prohibited piece of equipment without supervision. **Fined \$156,259** ,
  - In June 2019, a child was injured under similar circumstances
- **REPORTEDLY RACKED UP OVER \$306K IN LABOR VIOLATION FINES**
- **FINED OVER \$116K IN 2019 BY DEQ FOR KNOWINGLY VIOLATING PERMIT REQUIREMENTS AND POLLUTING THE WILLAMETTE RIVER**

**FOR MORE INFORMATION CALL (503) 650-7701**

## INVESTIGATIONS

**'Beyond failure': WA teen loses legs at school-based work program**

Thousands of students enroll in work-for-credit programs, but a 16-year-old's case shows life-altering consequences of risky jobs and murky oversight.

by [Lizz Giordano](#) / October 22, 2024



*Derrick lost both his legs in June 2023, the summer after his sophomore year of high school, while working for a large construction company in southwestern Washington as part of a school program that allowed him to earn class credit for hours on the job. (Lizz Giordano/Cascade PBS)*

*Call Mom, thought Derrick as he lay alone in the tall grass, bleeding heavily from what remained of his legs. No answer on her phone. He dialed his boss, offsite at the time. The call cut out after a few seconds, so Derrick texted him a photo of the gruesome scene, and started screaming for help.*

The 16-year-old worker began the morning guiding a [walk-behind trenching machine through a field](#), cleaving a 6-inch-deep ditch for a new fence line. The trencher lurched and strained as the blade slashed through the loosely packed dirt. His two closest co-workers, both wearing ear protection, faced away from where he dug.

Derrick kept the trencher running as he stepped forward, alongside the machine, to check his progress. Then the ditch sidewall suddenly collapsed, pulling his legs into the churning blades.

"I do remember yelling for a while," he recalled later. "It could have been 10 seconds. Could have been five minutes."

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**Next:** [Bob Ferguson talks challenges ahead as Washington's next governor](#)

Alerted by their boss, workers rushed to Derrik's aid and called 911. Derrik's mom, who had stepped away from her phone to fold laundry, called him back just as the paramedics arrived.

"He told me he got hurt," Derrik's mom recalled.

"I told Mom not to get angry ... upset," he interrupted, then paused. "What did I say?"

They could not recollect the exact wording. But Derrik does remember his mom panicking.

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**Next:** [ArtSEA: Historic Cornish building reborn as community arts hub](#)

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"I cut my legs off. Then, of course, she yells at me."

Sitting in the family's living room a few miles outside Battle Ground, Wash., Derrik's memory of his injury remains fuzzy. As he recently recounted that day in June 2023, his parents filled in gaps: a helicopter lifeflight to a Portland hospital; fits of thirst and exhaustion from the blood loss; a room full of loved ones waiting for him after emergency surgery; and waking up with both legs amputated — one above the knee, the other below.

Derrik had worked at [Rotschy](#), a large construction company in southwestern Washington, for about nine months prior to his injury, and had recently joined a school program that allowed him to earn class credit for hours on the job. Cascade PBS has agreed to identify him by first name only to help protect his privacy as a minor.

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*This story is part of Cascade PBS's [WA Workplace Watch](#), an investigative project covering worker safety and labor in Washington state.*

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Washington youth labor laws aim to provide overlapping layers of protection for both working minors and the thousands of students participating in work-based learning programs each school year. A Cascade PBS investigation — reviewing program records, case files and interviews with those involved — found that public officials and the company disregarded or misinterpreted guidelines at multiple levels ahead of Derrik's injury.

Rotschy, which routinely hired teenage workers amid recent labor shortages, violated the law when supervisors assigned tasks known to be dangerous and prohibited for minors to perform. The Battle Ground School District, where Derrik attended, did not conduct an initial site inspection as required by the program. The state Department of Labor & Industries and school district officials disagree on who bears responsibility for ongoing safety monitoring.

L&I later issued significant fines against Rotschy for the incident, but has for years approved special "variances" for the company to hire minors despite its history of serious safety violations. And local school officials continued to promote the company's work program — including after Derrik's injury.

The system put in place to protect youth workers failed, said Mary Miller, a retired L&I youth labor specialist and nurse.

"A kid loses two legs, this is a huge failure," she said. "This is beyond failure. I don't even have words for how tragic and how completely preventable it was. It's just infuriating to me."

Rotschy declined multiple requests for comment on this story. For their part, Derrik and his parents say they do not hold Rotschy responsible. It was a fluke, an unlucky break — not the company being neglectful, they said. They hope officials can learn lessons from what happened, but that the school program does not end.

"I don't think Rotschy failed my son in any way," Derrik's dad said. "All these events culminated into this accident."





*Derrik rolls through the tiny home his parents had built to ADA standards behind their house after he lost his legs. (Lizz Giordano/Cascade PBS)*

## Student labor

Rotschy handles some of the biggest projects in southwestern Washington. The state Department of Transportation hired the company for a [\\$28 million project](#) to widen State Route 14 through parts of Vancouver in 2022. Before that, the City of Vancouver awarded Rotschy a [\\$12 million contract](#) to update Grant Street Pier.

At least as far back as the 2018–2019 school year, the company began hiring students enrolled in work-based learning programs. In the fall of 2023, about 21 students worked for Rotschy, according to public statements that the company has made. The Battle Ground School District declined to confirm what years Rotschy has hired students enrolled in their school's work-based learning, and the state does not track that data.

Several activities fall under work-based learning — apprenticeships, job shadowing, health care clinicals and paid jobs. The state's Office of the Superintendent of Public Instructions certifies and monitors the school program that offers students the opportunity to explore career options before graduating through real-life work experiences. The latest Washington data shows more than 6,000 students around the state enroll in this program.

Companies participating in the school work program can also apply to L&I for “variances” that allow students to work longer hours or perform otherwise prohibited tasks as long as these periods are intermittent and closely supervised. Rotschy has received both types of variances.

Public statements from Rotschy managers show they viewed the worksite learning program as a way to tap into a new pipeline of enthusiastic workers. On a [bi-monthly podcast](#) with Battle Ground School District superintendent Denny Waters, Rotschy manager Nick Massie said the program helped the company target a stream of workers at a time there were more jobs than people to fill them.

“There’s a drastic shortage of workers in the workforce. Right, right. So if we can grab onto these students a little bit earlier. No. 1, they can learn life skills as they’re working with us. And perhaps ...,” Massie said in the podcast, trailing off before he got to his second point.

Massie also told Waters the company was initially nervous about hiring minors because of the perceived rules and regulations, but the student learner variance eased those concerns.

The school district hosted the [39-minute podcast](#), which also included interviews with the district's work-based learning program coordinators, less than five months after Derrik's injury in June 2023 yet made no mention of the incident.

The district declined to make Waters available for an interview and did not respond to questions about the podcast.

Massie reiterated Rotschy's interest in student workers a few months later during an interview with a L&I investigator conducting a child labor investigation.

"He states that he supports the minors learning the work as he needs workers," the investigator wrote in their notes dated February 2024.



*With his new truck, Derrik can load and unload his wheelchair independently. He often switches to his wheelchair at night to give his thighs a break from the prosthetics. (Lizz Giordano/Cascade PBS)*

## A history of violations

In the hours after his emergency surgery, Derrik would awake briefly in his hospital room at Legacy Emanuel Medical Center unable to speak. He would flash a smile and offer a thumbs-up, his parents recalled. Often he'd then make a waving motion down toward his knees.

At those times, his mother would have to tell him again they had not been able to save his legs.

"Then he would be upset," she said. "That happened again and again."

**L&I later determined** Rotschy not only allowed Derrik to use a machine prohibited for minors to use — even with a variance — but that the company also did not properly train him on it or closely supervise him. The agency issued the company a **\$156,259 fine and one willful serious violation.**



"We believe Rotschy knew better, they had been in this program a while," Bryan Templeton, program manager for L&I's employment standards division, said in an interview with Cascade PBS. "They should have known that they were not supposed to put that worker on that piece of machinery to dig that trench."

A broader follow-up [L&I youth labor standards investigation](#) found that at least 35 times during the yearlong investigation period, the company had allowed seven minors, including Derrik, to operate or work in close proximity to machines minors are never allowed to use.

The agency also cited Rotschy for overworking 15 minors more than 230 times. This included allowing a 14-year-old to work more than 40 hours in a week during a school break and working minors during school hours. The \$51,800 fine for these citations marked the second-highest fine L&I has given for youth labor violations in the past decade. The company has already paid this fine.

Most of these violations were not new to Rotschy or Massie. In 2019, [a different L&I child labor specialist explained](#) the same youth labor laws to Massie. Another underage worker had sustained minor injuries while working near a prohibited machine. In that investigation, L&I found the company was also working students longer hours than allowed. Based on those citations, the agency issued a \$25,950 fine, also one of the largest in agency history for violating youth labor standards.

Rotschy has racked up another \$305,863 in additional safety fines across both Oregon and Washington for more than 20 health and safety violations in the past decade. Most recently, in 2024 Oregon fined the company \$13,834 following a worker injury. And in 2023, L&I issued Rotschy a \$59,400 fine for not following safety laws for confined spaces when workers entered underground storm drain systems. Both are being appealed by the company.

In 2019, L&I temporarily placed Rotschy on the [severe violator list, reserved for companies that are "resistant or indifferent" to safety regulations](#), after L&I fined the company for not following safety rules for working in trenches, [one of the most dangerous jobs in construction](#). The company challenged those violations through the appeals process and the agency later reduced the citations and removed the company from the list.



*"For Sale" signs line the street in the new subdivision Lockwood Meadows in La Center, Wash. Derrik had been digging a trench for a new fence line when he was severely hurt on the job as part of a school work-based learning program. (Lizz Giordano/Cascade PBS)*

## Variance standards

Like a typical teen in their last year of high school, Derrik is rarely home. He spends most evenings out with his friends. Derrik said he applied for a job at Rotschy because friends and his older brother worked there.

"I enjoy working in the field, working with the guys, working with my hands," he said. "It was fun. I really enjoyed it. I still do enjoy it."

Debbie Berkowitz, a worker safety policy expert and advocate, said pre-apprenticeship programs like this work-based learning program should not be allowed in jobs with high injury and death rates, like construction or roofing.

"You need a certain degree of maturity to understand the dangers of the jobs. You also need a certain maturity to be able to say to a boss, 'This is not safe and I cannot do this,'" Berkowitz said. "There's no reason these companies can't just try and bring on someone who's 18."

Companies ultimately hire minors because they want to pay them less, she argued: "It's really about corporate greed. Why can't they wait till they're 18?"

There are no established requirements a company must meet to hire minors or participate in the work-based learning program, according to L&I. When applying for variances, companies just need to explain how a student would benefit from being able to work longer hours or use prohibitive machines.

Officials said a company's history of labor and safety violations is not typically considered when they apply for a minor work permit, nor when companies apply for a variance or schools screen a company's worksites for hazards before a student is placed. L&I is working to change that, according to agency officials.

Companies that [want to hire workers under 18](#) have to first obtain a minor work permit, approval of which is automatic once paperwork is submitted, and have families sign a parent authorization form.

This then qualifies them to hire students in a work-based school program and [receive a variance](#), as long as a company does not list tools that are always prohibited for those under age on its application. School districts determine what companies and students participate in work-based learning programs, according to OSPI documents.

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Find tools and resources in Cascade PBS's [Check Your Work guide](#) to search workplace safety records and complaints for businesses in your community.

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Miller, the former L&I youth specialist, said it makes sense to have a process that involves checking a company's history of injuries, child labor violations and health and safety citations before authorizing variances.

"This is a school-sanctioned activity. A variety of things need to be happening to check whether this is an appropriate place for a kid," Miller said. "One could also argue that minor work permits are being provided to employers who really have no business hiring kids."

L&I did revoke Rotschy's student learner variance a few weeks after Derrik's injury, and the company has not received one since. Rotschy [never lost its minor work permit](#), which allows the company to hire students through a school's work-based learning programs.



In the past few months, L&I started working on creating a set of standards for companies that want to receive student variances for prohibited work or longer hours.

“The way that the statute was written, it left so much wiggle room for approval and denial that really it would be almost impossible, without internal guidance, to maintain consistency of application of those statutes,” Templeton said.

L&I indicated the new internal guidance will include examining a company’s history of workers’ compensation claims, minor injuries, safety citations and labor violations. Those standards could go into effect by mid-December.

Suzanne Dover, a child labor specialist who conducted the 2024 youth labor investigation into Rotschy, said school districts bear some responsibility for keeping kids safe at work-based learning sites, but ultimately it is the employer’s duty to keep their workers safe on the job.

“We can’t go to every site, because we don’t just have the people to do that,” Dover said of L&I. “But OSPI does, and because the schools do that oversight role.”



*Workers continue to build houses in the subdivision Lockwood Meadows as families move into the newly completed homes. (Lizz Giordano/Cascade PBS)*

## School district responsibility

Minors make up a growing part of the workforce, according to Bureau of Labor Statistics data. In Washington, youth employment grew 46% among 16-19-year-olds over the past decade, and with that came a rise in companies found to have violated youth labor laws, [a previous Cascade PBS investigation found](#).

The latest data from the state Office of the Superintendent of Public Instruction also shows an increase in participation in work-based learning and other career-oriented education programs in schools. In the 2021-2022 school year, 6,308 students enrolled in one of these programs.

A [guidebook created by OSPI](#) for the work-based learning program outlines that school districts are supposed to screen worksites — checking for hazards, making sure employers follow youth labor laws and minor workers receive safety training: “The district is responsible for ensuring that safety, liability, and risk for students is addressed when they participate in [work site learning].”

OSPI spokesperson Katy Payne disputed L&I's assessment that OSPI has a safety oversight role in the program. She said that OSPI does not have the staff to monitor worksites, but pointed to [a state law](#) mandating that school district learning coordinators bear responsibility for ensuring that companies follow labor standards as well as health and safety laws.

School district program coordinators must make an initial site visit and follow up with regular visits. OSPI recommends two per semester. The guide does not set out any responsibilities for L&I in the program, but does for employers who “must provide a safe and healthy workplace.”

The school is responsible for the safety on site, Templeton said.

“They’re the ones who are supposed to engage in the agreements with the employers,” he explained. “They’re the ones that are supposed to coordinate the minor workers, ... do the inspections and ensure that the work that the students are doing is commensurate with the program that they’re involved in.”

The Battle Ground School District laid out a different view of program requirements.

“Enforcement of workplace conditions and safety is managed by the Department of Labor and Industries,” wrote Amanda Richter, a spokesperson for the district.

Richter said program coordinators conduct an initial site visit to verify that employers have a valid minor work permit and that student workers receive training on workplace safety rules.

Though, according to L&I, that didn’t happen in Derrik’s case.

On that same podcast that featured Massie of Rotschy, two program coordinators for the Battle Ground School District said they conduct roughly 1,200 job site visits a year. The coordinators also said the program has grown significantly over the past decade, from 98 students and 80 jobsites to 300 students and 230 jobsites just in the Battle Ground School District.

“Our intent is to enrich students’ on-the-job experiences by helping them earn school credit, providing training on their rights and employer responsibilities and facilitating skills needed for future employment success,” Richter wrote.



*After his injury, Derrik set out a list of accomplishments he wanted to prove he could still do without his legs – rock-climb, ski and scuba-dive – all of which he has accomplished. (Lizz Giordano/Cascade PBS)*

## Moving forward

In the early days of his recovery, Derrik set out a list of accomplishments he wanted to prove he could still do without his legs; rock-climb, ski and scuba-dive. He's proud he has already done all three while also building for his future. This year he started his senior year in the Running Start program at Clark College with plans to study engineering.

He also gained a bit of independence earlier than most high schoolers, moving into a tiny home built to ADA specs behind his parents' house.

The family can now laugh about the socks his mom was sorting the morning Derrik called her from underneath the trencher.

"I was all proud of myself, folding all these socks," his mom said. "The joke is that he doesn't need his socks anymore. And I did all these socks."

Derrik said he thought because of his participation in Running Start, an OSPI program that allows high school students to take college classes, he would be considered an adult and able to work 40 hours a week and perform pretty much any job.

"I was also told that there were nearly no restrictions with machines either," Derrik added. "I wasn't told 'You can't use these. You can't use those.'"

He said he does not remember if the school or a supervisor at work told him that. He also does not recall creating a safety plan with a program coordinator from school. But he said he did turn in weekly pay stubs for the two weeks he participated in the program before his injury. (The school district said that they do not collect timecards.)



Nina Mast, an analyst at the left-leaning think tank Economic Policy Institute, said that while ultimately the employer is responsible for making sure they are following the rules, these programs can create confusion about who is accountable for the safety of the student worker.

"It really raises concerns about how these programs exist, and like whether they really need to be reformed or eliminated to begin with," Mast said. "You're having more children being driven to the labor market to fill the so-called labor shortage. You see employers violating the law because they're treated like adults, but they're not adults."

Rotschy kept Derrik on salary throughout his recovery. He eventually returned to working at the construction company in the office, putting together estimates. And he remains there today.

Derrik still has the picture of his bloody legs he texted his boss. He said he pulls it up on his phone to look at it once in a while, a reminder of sorts of how far he has come. He wants to be able to eventually look at the picture without getting sad or scared.

"I'm kind of fighting my way through it and getting more accustomed to it," he said. "I don't like that it happened, but I've come to terms with it, accepted it. That photo kind of helps me."

*Updated: This story has been updated to include a response from OSPI disputing it has staffing to monitor worksites.*



*A fence protects a greenspace in the new subdivision Lockwood Meadows in La Center, Wash. Derrik has not returned here since he lost both his legs after being caught in a trencher. (Lizz Giordano/Cascade PBS)*

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ARTICLE CONTINUES BELOW

## Related Stories

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**NORTHWEST  
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WORKER SAFETY

## Vancouver firm fined in grisly accident is repeat child labor offender

□ Apr 4, 2024 | ByMallory Gruben



The accident scene in La Center, and the machine a minor should never have been allowed to operate. Photo courtesy Washington Department of Labor and Industries

After a 16-year-old boy lost both legs last June in a preventable workplace accident in La Center, a follow-up investigation by Washington Department of Labor and Industries (L&I) found that his employer Rotschy LLC has committed dozens of child labor law violations.



Rotschy is a non-union construction excavation company based in Southwest Washington. In December, L&I fined the company more than \$156,000 — the maximum penalty — for allowing a minor to operate equipment without appropriate training or experience. The boy was dragged beneath the blade of a walk-behind trencher he was using to dig a channel for fence posts — while participating in a work-based learning program that allows students to earn class credit for jobs outside the classroom. His injuries were so severe that both legs had to be amputated.

Rotschy appealed the fine. The decision on whether to overturn the fine lies with the Board of Industrial Insurance Appeals, which has set a mediation conference for April 8. If the conference does not result in a settlement, the board will forward the case to a hearings judge for a trial.

On March 19, L&I issued an additional \$51,800 in fines because a follow-up workplace investigation revealed that Rotschy let seven minors use dangerous heavy equipment on at least 35 occasions.

“There are some jobs that state law says minor workers just can’t do, for their own safety. But the law can only prevent tragic injuries like this when they’re followed,” L&I Employment Standards Program Manager Bryan Templeton said in a prepared statement. “Rotschy knew the rules, but still put seven different teenage workers in harm’s way nearly three dozen times.”

The investigation also found that Rotschy denied 11 minor workers meal breaks required under state law at least 45 times, and it worked eight teenage workers for more hours than state law allows on more than 150 occasions. In one incident, the company started a teen’s workday before 5 a.m.

Rotschy declined an interview with the Labor Press. In an article by the Columbian in Vancouver, it denied the other child labor law violations.

“We do not make our employees work later than necessary. We have never not given them meal breaks,” a company representative told the Columbian.

At the time of the accident in June, Rotschy had a minor work permit, which allowed it to hire young workers, and a student learner exemption, which let minors use some power tools, including circular saws and metal-forming machines, that are otherwise prohibited by state law. On a podcast with the Battle Ground School District in

November, Rotschy manager Nick Massie said the company was “kind of nervous about hiring minors because of the perceived rules and regulations that got put in with it,” but the exemption eased some restrictions on what student workers could do.



“When this came in, we started hiring more and more minors,” Massie said in the school district podcast. Massie is also a member of the board of Workforce Southwest Washington, a federally funded nonprofit that oversees the disbursement of public workforce training dollars for Clark, Cowlitz, and Wahkiakum counties.

However, Rotschy’s exemption does not allow the use of heavy machinery, like a walk-behind trencher. L&I suspended Rotschy’s exemption in December as part of the penalty for the accident.

The company still has permission to hire minors in other roles. Rotschy told KATU in January that the boy who lost his legs returned to work for the company in an office role.

Issue April 5, 2024

<https://lni.wa.gov/>

## ***L&I adds child labor violations to safety citations against Vancouver construction company where teen worker lost his legs***

MARCH 19, 2024

#24-03

**TUMWATER – Rotschy LLC, of Vancouver, Wash., is facing additional fines for child labor law violations after an investigation stemming from the catastrophic injury of a 16-year old worker on a construction site last summer.**

The teenage boy was using a walk-behind trencher when he was dragged underneath the blade, causing injuries so severe he lost both his legs. The Washington State Department of Labor & Industries (<http://www.lni.wa.gov/>) (L&I) safety and health inspection resulted in a \$156,259 fine for letting workers operate equipment without training or experience.

Now, L&I has issued \$51,800 in fines for violations of laws designed to protect minor workers.

“There are some jobs that state law says minor workers just can’t do, for their own safety” said Bryan Templeton, manager of L&I’s Employment Standards Program. “But the law can only prevent tragic injuries like this when they’re followed. Rotschy knew the rules, but still put seven different teenage workers in harm’s way nearly three dozen times.”

### ***Minors using prohibited equipment on the job***

L&I investigators found that Rotschy allowed seven different minors to operate earth-moving machines or heavy equipment or work so close to the machines that they could be injured by them on 35 different occasions.

They also denied 11 minor workers meal breaks they are due under law 45 times, and worked eight young workers for more hours than state law allows during a school day more than 150 times. On one occasion, Rotschy started a teen’s work day before 5 a.m.

These new citations are on top of L&I citing the company for a “willful serious” workplace safety and health violation in December for the same incident. L&I also issued an order of immediate restraint suspending Rotschy’s student learner exemption.

L&I issued the latest citation on Feb. 22, and the company paid it on March 12. They have already appealed the safety and health citation.

See ~~L&I’s teen workers website~~ (<http://www.lni.wa.gov/TeenWorkers>) for work requirements involving teens on a job site.

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# 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

June 19, 2019

CERTIFIED MAIL: 7016 2140 0000 2409 5113

Rotschy, Inc.  
c/o Pat Dooney, Registered Agent  
500 Century Tower  
1201 SW 12<sup>th</sup> Ave.  
Portland, OR 97205

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-NWR-2018-243

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$116,213 for violating conditions of the National Pollutant Discharge Elimination System (NPDES) No. 1200-C General Permits (the Permit) assigned to your Madelynn Place and Jennings Lodge developments in Gresham and Milwaukie, Oregon, respectively, and for causing pollution to the Willamette River as a result of discharges from the Jennings Lodge development.

DEQ issued this penalty because the Permit requires permit registrants to implement the erosion and sediment control plan (ESCP) that was developed and submitted as part of the Permit application for the proposed activities at the site. The ESCP developed for the Jennings Lodge Site included erosion and sediment controls which were not implemented. The Permit also requires that permittees perform visual monitoring daily when stormwater runoff is occurring to ensure its erosion and sediment controls are effective. Despite having received a Warning Letter (dated October 23, 2018) from DEQ reminding you of the visual monitoring requirement, you failed to perform visual monitoring as the Permit requires. In addition to the above violations of your Permit, DEQ received a complaint with photos and a video documenting that the Jennings Lodge Site discharged sediment-laden stormwater that caused pollution to the Willamette River. The discharge of sediment can degrade water quality and may harm aquatic life by covering up food sources and smothering invertebrate organisms.

\$96,703 of the civil penalty represents the economic benefit you gained by failing to comply with the Permit and Oregon law by avoiding the costs of implementing sufficient erosion and sediment controls at the Jennings Lodge site.

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

Rotschy, Inc.

Case No. WQ/SW-NWR-2018-243

Via email – [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us)

Via fax – 503-229-5100

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 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,

A handwritten signature in blue ink, appearing to read 'Kieran O'Donnell', is written over a horizontal line.

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Michael Kennedy, Northwest Region  
Christine Svetkovich, DEQ  
Accounting, DEQ  
John Koestler, WQ, DEQ



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:	)	NOTICE OF CIVIL PENALTY
ROTSCHY, INC.	)	ASSESSMENT AND ORDER
an Washington corporation,	)	
Respondent.	)	CASE NO. WQ/SW-NWR-2018-243

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 a site known as "Madelynn Place" located at 2500 SE Palmbled Road in Gresham, Oregon (the Madelynn Site).
2. The Madelynn Site is 8.85 acres.
3. Respondent was assigned coverage under the National Pollutant Discharge Elimination System General Permit Number 1200-C (the "Permit") for the Madelynn Site on March 28, 2018.
4. Construction activity began at the Madelynn Site on June 19, 2018.
5. Schedule B, condition 1 of the Permit requires that permit registrants perform visual monitoring of all areas of an active site disturbed by construction activity daily when stormwater runoff is occurring.
6. National Oceanic & Atmospheric Administration rain gauge data from Gresham, Oregon (Lat: 45.4803° N, Long:-122.4663° W) indicates that there was rainfall sufficient to generate stormwater runoff at the Madelynn Place Site on the following week days: October 25, October 29, October 31, November 2, November 23, November 27, November 28, November 30, 2018.
7. Respondent did not perform any visual monitoring on any of the days listed in Section II, Paragraph 6 above.

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1 8. Respondent is the operator of a site known as the "Jennings Lodge Estates" located at  
2 18121 SE River Road in Portland, Oregon (the "Jennings Lodge Site").

3 9. The Jennings Lodge Site is 17.42 acres.

4 10. Respondent was assigned coverage under the National Pollutant Discharge Elimination  
5 System General Permit Number 1200-C (the "Permit") for the Jennings Lodge Site on February 13,  
6 2017.

7 11. Schedule A, condition 12.a of the Permit requires Respondent to ensure that an erosion  
8 and sediment control plan (ESCP) is prepared and revised as necessary to reflect site conditions for the  
9 construction activity regulated by the Permit. The design, installation, and maintenance of erosion and  
10 sediment controls must be adequate to address factors such as the amount, frequency, intensity and  
11 duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics.

12 12. Schedule A, condition 12.c of the Permit requires that the ESCP must be accurate and  
13 reflect site conditions.

14 13. Schedule A, condition 8.a of the Permit states that permit registrants must implement the  
15 ESCP.

16 14. Schedule A, condition 7.e of the Permit requires the permit registrant to minimize the  
17 exposure of trash to precipitation and to stormwater.

18 15. On October 26, 2018, DEQ staff performed an inspection of the Jennings Lodge Site and  
19 observed:

- 20 a. The ESCP was not current and did not reflect that concrete crushing was  
21 occurring on site. The ESCP did not identify a construction entrance that had  
22 been installed on SE Jennings Road. Stockpiles at the site were not located where  
23 they were identified in the ESCP, were larger than described in the ESCP, and  
24 did not have any of the erosion and sediment controls called for in the ESCP.
- 25 b. Trash, including Styrofoam, garbage and old pizza boxes, were uncontained and  
26 strewn about the Jennings Lodge Site.

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16. On February 11, 2019, sediment-laden stormwater discharged from the Jennings Lodge Site to the Willamette River, waters of the state according to ORS 468B.005(10).

17. Turbidity is included in the definition of “pollution” at ORS 468B.005(5).

18. Aquatic life and habitat is a designated beneficial use of the Willamette River.

19. Turbidity tends to render waters of the state harmful to aquatic life or the habitat thereof.

### III. CONCLUSIONS

1. Respondent violated ORS 468B.025(2) by violating Schedule B, condition 1 of the Permit by failing to perform visual monitoring at the Madelynn Place Site on days when stormwater runoff is occurring, in accordance with the Permit as described in Section II. This is a Class I violation according to OAR 340-012-0055(1)(o). DEQ hereby assesses an \$8,710 civil penalty for this violation.

2. From on or before October 26, 2018, through November 20, 2018, Respondent has violated ORS 468B.025(2) by violating Schedule A, conditions 8 and 12 of the Permit by failing to develop, implement and keep current an ESCP that was accurate and reflected current conditions at the Jennings Lodge Site. This is a Class I violation according to OAR 340-012-0055(1)(r). DEQ hereby assesses a \$102,303 civil penalty for this violation.

3. On or about February 11, 2019, through on or about February 12, 2019, Respondent violated ORS 468B.025(1)(a) by causing pollution to waters of the state. Specifically, the Jennings Lodge Site discharged turbid stormwater to the Willamette River, waters of the state according to ORS 468B.005(10). DEQ hereby assesses a \$5,200 civil penalty for this violation.

4. On or about October 26, 2018, Respondent violated ORS 468B.025(2) by violating Schedule A, condition 7.e of the Permit by failing to implement and maintain pollution prevention measures to minimize trash at the Jennings Lodge Site. This is a Class II violation according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
3 hereby ORDERED TO: Pay a total civil penalty of \$116,213. The determinations of the civil penalties are  
4 attached as Exhibits No.1, No.2, and No.3 and are incorporated as part of this Notice.

5 If you do not file a request for hearing as set forth in Section V below, your check or money  
6 order must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business**  
7 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty,  
8 the Notice becomes final.

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

10 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
11 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice.  
12 To contest DEQ's revocation of permit coverage you must ensure that DEQ receives the request for  
13 hearing **within 60 calendar days** from the date you receive this Notice and Order. See OAR 340-045-  
14 0060(2)(b). If you have any affirmative defenses or wish to dispute any allegations of fact in this  
15 Notice or attached exhibits, you must do so in your request for hearing, as factual matters not denied  
16 will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR  
17 340-011-0530 for further information about requests for hearing.) You must send your request to:  
18 **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland,**  
19 **Oregon 97232**, fax it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative  
20 law judge employed by the Office of Administrative Hearings will conduct the hearing, according to  
21 ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right  
22 to be represented by an attorney at the hearing, however you are not required to be. If you are an  
23 individual, you may represent yourself. If you are a corporation, partnership, limited liability company,  
24 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
25 authorized representative, as set forth in OAR 137-003-0555.

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1 Active duty Service members have a right to stay proceedings under the federal Service  
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
5 Department does not have a toll free telephone number.

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

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15 6/19/2019  
16 Date

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Kieran O'Donnell  
Kieran O'Donnell, Manager  
Office of Compliance and Enforcement