



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

January 14, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5043

Daimler Trucks North America LLC
CT Corporation System, Registered Agent
388 State Street, Suite 420
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-15-175

This letter is to inform you that the Department of Environmental Quality (DEQ) has issued you a civil penalty of \$3,620 for violating ORS 468B.025(2) and conditions of your National Pollutant Discharge Elimination System Permit by failing to monitor stormwater discharge at your facility located at 5400 N. Basin Avenue in Portland.

DEQ issued this penalty because proper monitoring and reporting of stormwater discharge are essential elements of your Permit. Without accurate and timely monitoring data, DEQ cannot evaluate the effectiveness of your narrative technology based effluent limits.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

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 it 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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.



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DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Susan Elworth, at (503) 229-5152. You may call toll-free within Oregon at 1-800-452-4011, extension 5152.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Laura Johnson, BES, 6543 N. Burlington Avenue, Building 217, Portland OR 97203
John Koestler, WQ, HQ, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 DAIMLER TRUCKS NORTH AMERICA,) ASSESSMENT AND ORDER
5 LLC,)
6 Respondent.) CASE NO. WQ/SW-NWR-15-175

7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

13 1. On October 8, 2012, DEQ assigned Respondent coverage under the National Pollutant
14 Discharge Elimination System Stormwater Discharge General Permit Number 1200-Z (the Permit),
15 which is effective from July 1, 2012 to June 30, 2017.

16 2. The Permit authorizes Respondent to discharge stormwater from Respondent's facility
17 located at 5400 N. Basin Avenue in Portland, Oregon, only in conformance with the requirements,
18 limitations and conditions set forth in the Permit.

19 3. Schedule B of the Permit requires Respondent to collect and analyze its stormwater
20 discharge from discharge points for the pollutants identified in both Schedule A and the permit
21 assignment letter (impairment pollutants).

22 4. Table 4 of the Permit requires Respondent to monitor for impairment pollutants at least
23 twice per monitoring year, once on or before December 31 and once on or after January 1.

24 5. According to Respondent's discharge monitoring report (DMR) for monitoring year 2014-
25 2015, Respondent collected samples of its stormwater discharge as follows:

26

East Manhole	West Manhole
11/6/14	11/6/14

27

11/21/14	11/21/14
2/6/15	2/6/15
3/31/15	3/31/15
5/12/15	5/12/15

6. According to its DMR, Respondent only analyzed the samples collected on May 12, 2015 for iron, an impairment pollutant, and did not analyze the other samples for iron.

III. CONCLUSIONS

Respondent violated ORS 468B.025(2) and Schedule B, condition 1 of its Permit by failing to monitor its stormwater discharge for impairment pollutants (iron) at least two times per year. These are Class I violations, according to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$3,620 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 pay a total civil penalty of \$3,620. The determination of the civil penalty is attached as Exhibit 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, your check or money order must be made payable to "State Treasurer, State of Oregon" and sent to the DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

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. You must ensure that DEQ receives the 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(s), you must include them 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 mail the request for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**

1 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the
2 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
3 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
4 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
5 association.

6 Active duty service-members have a right to stay proceedings under the federal Service
7 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
8 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
9 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
10 <http://legalassistance.law.af.mil/content/locator.php>.

11 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
12 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
13 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
14 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
15 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
16 information submitted by you, as the record for purposes of proving a prima facie case.

17
18
19
20 _____
21 Date

1/14/14

22 _____
23 Leah K. Feldon, Manager
24 Office of Compliance and Enforcement
25
26
27

EXHIBIT 1

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

VIOLATION 1: Failing to monitor its stormwater discharge for impairment pollutants (iron) at least two times per year, in violation of ORS 468B.025(2) and Schedule B, condition 1 of the Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0-0055(1)(o).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and the Department finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. The prior four samples collected by Respondent which were analyzed for iron were at concentrations less than the reference concentration in the Permit. Additionally, a sample collected on May 12, 2015 and analyzed for iron was also at a concentration less than the reference concentration in the Permit. Thus, Respondent's failure to analyze samples for iron between July and December posed no more than a de minimis threat to human health or the environment.

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 \$2,000 for a Class I, minor 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). Respondent has 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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent has one Class I equivalent in case no. WQ/SW-NWR-14-079.

"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 analyze a sample for iron from two discharge points

between July 1 and December 31, 2014, thus there are 2 separate occurrences of the violation.

"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. Negligent means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct resulting in a violation. Although Respondent applied for and received a sampling waiver for most impairment parameters in May 2014, Respondent did not receive a sampling waiver for iron until May 2015. When Respondent failed to analyze iron, it failed to take reasonable care to avoid the 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)(a)(D), 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 \$20. This is the amount Respondent gained by avoiding spending \$34 to analyze two samples for iron prior to December 31, 2014. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$2,000 + [(0.1 \times \$2,000) \times (2 + 0 + 2 + 4 + 0)] + \20
= $\$2,000 + [\$200 \times 8] + \$20$
= $\$2,000 + \$1,600 + \$20$
= $\$3,620$