



Oregon

Kate Brown, Governor

Department of Environmental Quality

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

January 29, 2016

CERTIFIED MAIL 7011 2000 0000 5122 8797

Storie & Associates, Inc.
c/o Susan Storie, Registered Agent
11611 SW Waldo Way
Sherwood, OR 97140

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/D-NWR-15-203

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$1,350 for failing to control airborne dust from vehicular traffic on the unpaved roadway at your concrete barrier rental business at 11611 SW Waldo Way in Sherwood.

DEQ issued this penalty because airborne dust decreases visibility and may be an irritant to those who suffer from asthma or other respiratory illness at the work site, or in nearby residential or commercial areas. Fine dust particles can be carried several hundred feet away and penetrate nearby homes and businesses.

DEQ appreciates your efforts to eventually correct the violation by laying down crushed asphalt on your unpaved roadway to prevent airborne dust. DEQ considered these efforts when determining the amount of civil penalty.

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. Further detail regarding SEPs may be found on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>.

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.



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If you have any questions, please contact DEQ Environmental Law Specialist Jenny Root, at (503) 229-5874.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Robert Vance, Northwest Region office, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	STORIE & ASSOCIATES, INC.)	ASSESSMENT AND ORDER
5	an Oregon corporation,)	
6)	NO. AQ/D-NWR-15-203
7	Respondent.)	

8 I. AUTHORITY

9 This Notice of Civil Penalty Assessment and Order is issued pursuant to Oregon Revised
10 Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and Oregon
11 Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 200 and 208.

12 II. FINDINGS OF FACT

13 1. Respondent owns and operates a concrete median barrier rental business at 11611
14 SW Waldo Way, Sherwood, Oregon (the Facility).

15 2. The Facility includes an unpaved roadway into and out of the Facility.

16 3. On July 25, 2013, a DEQ inspector visited the Facility in response to citizen
17 complaints of airborne dust generated from the Facility.

18 4. During the site visit, the DEQ inspector observed large dust clouds being
19 generated when vehicles were driven on the Facility's roadway. The dust was generated to such
20 an extent it migrated to neighboring properties. No dust suppression measures were being used at
21 that time.

22 5. By letter dated October 17, 2013, DEQ informed Respondent that Respondent
23 must implement measures at the Facility to prevent particulate matter (dust) from becoming
24 airborne.

25 6. On July 23, 2014, a DEQ inspector visited the Facility after DEQ continued to
26 receive complaints of dust generated at the site. During the site visit, the inspector noted that the
27 Facility roadway was dry and that dust continued to be generated when vehicles were driven on
the Facility's roadway.

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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.
3 You must ensure that DEQ receives the request for hearing **within 20 calendar days** from the
4 date you receive this Notice. If you have any affirmative defenses or wish to dispute any
5 allegations of fact in this Notice or attached exhibits, you must include them in your request for
6 hearing, as factual matters not denied will be considered admitted, and failure to raise a defense
7 will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests
8 for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and**
9 **Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-**
10 **5100**. An administrative law judge employed by the Office of Administrative Hearings will
11 conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR
12 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you
13 may represent yourself unless you are a corporation, agency or association.

14 Active duty service-members have a right to stay proceedings under the federal
15 Servicemembers Civil Relief Act. For more information, please call the Oregon State Bar at
16 1(800) 452-8260 or the Oregon Military Department at 1(800) 452-7500. Additional information
17 can be found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services
18 Locator website, <http://legalassistance.law.af.mil/content/locator.php>.

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

26 _____
27 Date

1/29/14

Leah K. Feldon, 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

- VIOLATION: Respondent violated OAR 340-208-0210(b) by causing or permitting a road to be used at Respondent's facility without taking reasonable precautions to prevent particulate matter from becoming airborne.
- CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0053(2).
- 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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(B).
- "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 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven documented occurrences of the violation. DEQ observed the violation on July 25, 2013, July 23, 2014, June 25, 2015, July 1, 2015, July 25, 2015 and September 28, 2015.
- "M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent consciously disregarded a substantial and unjustifiable risk that it would continue to permit its road to be used without taking reasonable precautions to prevent particulate emissions (dust) from becoming airborne by continuing its operations without employing adequate dust prevention measures. DEQ notified Respondent on October 17, 2013, July 23, 2014, July 31, 2014 and August 5, 2015, that Respondent was not taking adequate measures to prevent airborne dust from vehicular traffic at the Facility and that Respondent must take action to prevent dust

generation. On July 9, 2015, DEQ issued Respondent a Warning Letter with Opportunity to Correct. The letter requested that Respondent take immediate corrective action to prevent dust from becoming airborne and informed Respondent that failing to correct the violation or repeating it could result in DEQ assessing civil penalties. Given the period of time and multiple communications DEQ has provided Respondent, disregarding this risk constituted a gross deviation from the standard of care a reasonable person would observe under these circumstances.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to correct the violation by placing crushed asphalt on the roadway to prevent generation of airborne dust.

"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 \$0, as DEQ has determined that any economic benefit gained as a result of this violation is de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$750 + [(0.1 x \$750) x (0 + 0 + 2 + 8 - 2)] + \$0
= \$750 + [\$75 x 8] + \$0
= \$750 + \$600 + \$0
= \$1,350