



Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah Street, Suite 600

Portland, OR 97232

(503) 229-5382

FAX (503) 229-5787

TTY 711

May 18, 2018

CERTIFIED MAIL No. 7014 2870 0001 3373 5883

Umpqua Aggregate Resources, LLC
c/o Kelly J. Guido, Registered Agent
640 Shady Drive
Roseburg, OR 97471

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AC-WR-2018-005

This letter is to inform you that DEQ has issued you a \$4,800 civil penalty for exceeding the grain loading particulate matter emission limit in your Air Contaminant Discharge Permit. The violation occurred during the August 10, 2017, emission tests of your asphalt plant at 410 Del Rio Road, in Roseburg, Oregon.

DEQ issued this penalty because this limit, known as a new source performance standard (NSPS), was promulgated by the federal government and adopted by Oregon to ensure that air contaminant sources maintain optimum efficiency of pollution controls to protect air quality and to ensure that national air quality health standards are met. Particulate matter, when emitted in excess, can contribute to respiratory distress in members of the public. Once inhaled, particulate matter can affect the heart and lungs, causing serious health problems such as decreased lung function, irregular heartbeat and chronic bronchitis.

Included in Section IV is an order requiring you to demonstrate compliance with the NSPS grain loading permit limit, via emission testing, by July 31, 2018, and to submit the emission test results to DEQ within 45 days of conducting the test.

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 – 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232

Via email – 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 it and refer to it when discussing this case with DEQ.

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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 DEQ Environmental Law Specialist Jenny Root at (503) 229-5874.

Sincerely,



Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement
Enclosures

cc: Wayne Kauzlarich, Western Region, Medford office, DEQ
Claudia Davis, Western Region, Salem office, DEQ
Don Hendrix, AQ, HQ, DEQ

1 III. CONCLUSION

2 Respondent violated ORS 468A.045(2), Condition 2.2c of the Permit, and 40 CFR Part
3 60, Subpart I, adopted and incorporated by reference at OAR 340-238-0060(1), by exceeding the
4 0.04 gr/dscf particulate matter emission limit. This is a Class I violation, according to OAR 340-
5 012-0054(1)(d). DEQ hereby assesses a \$4,800 civil penalty for this violation.

6 IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

7 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
8 hereby ORDERED TO:

9 1. Pay a total civil penalty of \$4,800. The determination of the civil penalty is attached
10 as Exhibit No. 1 and is incorporated as part of this Notice.

11 2. By July 31, 2018, demonstrate compliance with the 0.04 gr/dscf particulate matter
12 emission limit. Compliance with the limit must be demonstrated by conducting emission testing,
13 using the procedures in Section 14 of the Permit, with valid results showing that the asphalt plant
14 is emitting no more than 0.04 gr/dscf.

15 3. Submit emission test results to DEQ within 45 days of testing. Send the test
16 results to: Mark Ludwiczak, Source Test Coordinator, DEQ, 221 Stewart Avenue, Suite 201,
17 Medford, OR 97501.

18 If you do not file a request for hearing as set forth in Section V below, your check or money
19 order must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business**
20 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the
21 penalty, the Findings of Fact, Conclusions and Order become final.

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

23 You have a right to a contested case hearing on this Notice, if you request one in writing.
24 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this
25 Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice
26 or attached exhibit(s), you must do so in your request for hearing, as factual matters not denied will
27 be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR

1 340-011-0530 for further information about requests for hearing.) You must send your request to:
2 **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland,**
3 **Oregon 97232**, fax it to **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. An
4 administrative law judge employed by the Office of Administrative Hearings will conduct the
5 hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501
6 to 0700. You have a right to be represented by an attorney at the hearing, however you are not
7 required to be. If you are an individual, you may represent yourself. If you are a corporation,
8 partnership, limited liability company, unincorporated association, trust or government body, you
9 must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-
10 003-0555.

11 Active duty service-members have a right to stay proceedings under the federal Service
12 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
13 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be
14 found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator
15 website <http://legalassistance.law.af.mil/content/locator.php>.

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

22
23 May 18, 2018

24 Date

23 Sarah Wheeler

24 Sarah G. Wheeler, Acting Manager
25 Office of Compliance and Enforcement
26
27

EXHIBIT NO. 1

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

VIOLATION NO. 1: Exceeding the 0.04 gr/dscf particulate matter emission limit in violation of Condition 2.2c of the Permit, ORS 468A.045(2), and 40 CFR Part 60, Subpart I, adopted and incorporated by reference at 340-238-0060(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(d) because the particulate matter limit is a federal New Source Performance Standard under OAR 340 division 238.

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)(A) because Respondent operates the facility under a General Air Contaminant Discharge 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 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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation.

"M" is the mental state and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent had constructive knowledge (reasonably should have known) of the requirement to limit its PM emissions. Condition 2.2c of the Permit expressly limits Respondent's PM emissions to 0.04 gr/dscf.

"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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of Collins' 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 there is insufficient information on which to base a finding.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 0 + 2 + 0)] + \0
 $= \$4,000 + (400 \times 2) + \0
 $= \$4,000 + \$800 + \$0$
 $= \$4,800$