



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
TTY 711

January 28, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3190

Covanta Marion, Inc.
c/o C T Corporation System, Registered Agent
780 Commercial Street SE, Suite 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/V-WR-2021-105

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$15,722 for violations of your Title V operating permit for your municipal waste combustor located at 4850 Brooklake Road NE in Brooks, Oregon. Specifically, during 2020, you exceeded a limit on non-emergency operating hours for a stationary emergency reciprocating internal combustion engine (RICE) fire pump. In addition, on May 22, 2021, you exceeded the carbon monoxide limit at one of your municipal waste combustor units during one four-hour block period as a result of loading a block of concrete into the unit which caused a plug and led to elevated carbon monoxide emissions. The attached Notice of Civil Penalty Assessment and Order also cites you, without penalty, for failing to timely report the excess carbon monoxide emissions to DEQ.

DEQ issued this penalty because the limit on non-emergency operating hours for the emergency RICE fire pump is derived from the National Emissions Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 63, subpart ZZZZ. The NESHAP standards were promulgated by the federal government and adopted by Oregon to ensure that emissions of hazardous air pollutants are kept to minimum levels to protect public health and the environment. The carbon monoxide limit in your Title V permit is derived from the U.S. EPA's Emissions Guidelines for existing municipal waste combustor units and has also been adopted by Oregon to protect public health and the environment. Higher levels of carbon monoxide associated with poor combustion can lead to the formation of air toxics which can cause adverse health effects.

DEQ appreciates your efforts to ensure that the emergency RICE violation would not be repeated by implementing alternative maintenance methods at the facility and initiating new procedures including daily recording of fire pump controller operating hours, monthly checks of the fire pump logbook, and refresher training for staff. 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 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. Alternatively, you can pay the penalty by sending a check or money order to the above address. Please include the case number on the check.

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 Becka Puskas at 503-979-5421.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Andrew Willis, Covanta Marion, Inc., 4850 Brooklake Road NE, Brooks, OR 97305
Kirk Little, Covanta Marion, Inc., 4850 Brooklake Road NE, Brooks, OR 97305
Mike Eisele, DEQ
Claudia Davis, DEQ
Accounting, DEQ
Donald Hendrix, AQ, DEQ
US EPA, Region 10, c/o Katie McClintock, 1200 Sixth Avenue, Seattle, WA 98101

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 COVANTA MARION, INC.,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. AQ-V-WR-2021-105

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9 ORS Chapter 468A, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
10 011, 012, 200, 214, 218 and 244.

11 II. FINDINGS OF FACT

12 1. Respondent owns and operates a waste incinerator at 4850 Brooklake Road NE in Brooks,
13 Oregon (Facility).

14 2. Respondent operates the Facility pursuant to Oregon Title V Operating Permit No. 24-5398-
15 TV-01 (Permit).

16 3. The Permit was in effect at all material times.

17 4. The Permit authorizes Respondent to discharge air contaminants from the Facility in
18 conformance with the requirements, limitations and conditions set forth in the Permit.

19 5. Respondent operates an emergency stationary reciprocating internal combustion engine
20 (RICE) fire pump (Fire Pump) at the Facility that is subject to the National Emission Standards for
21 Hazardous Air Pollutant (NESHAP) regulations in 40 Code of Federal Regulations (CFR) Part 63,
22 subpart ZZZZ, adopted and incorporated by reference in OAR 340-244-0220(1) for sources required to
23 have a Title V or ACDP permit (NESHAP subpart ZZZZ).

24 6. The NESHAP subpart ZZZZ operating limits for emergency RICE are incorporated in
25 Condition 32 of the Permit.

26 7. Condition 32.g of the Permit prohibits non-emergency operation of the Fire Pump in excess
27 of 50 hours per year.

1 8. In 2020, Respondent operated the Fire Pump for 275 hours. The operation of the Fire Pump
2 in 2020 included:

- 3 a. 30 hours for weekly preventative maintenance runs;
- 4 b. 75 hours for boiler refill and hydrostatic pressure testing; and
- 5 c. 170 hours for systems maintenance and emergency preparedness (e.g., service water
6 system repairs, annual fire protection system testing and preventative maintenance,
7 emergency ash discharger plug removal, miscellaneous plant maintenance, minor spill
8 cleanup and emergency drills).

9 9. Condition 24 of the Permit prohibits Respondent from emitting carbon monoxide (CO) from
10 each municipal waste combustor unit (MWC-1 and MWC-2) in excess of 100 parts per million (ppm)
11 corrected to 7 percent oxygen as a 4-hour block arithmetic average.

12 10. At approximately 3:45 a.m. on May 22, 2021, Respondent fed a large piece of concrete into
13 the feed chute of MWC-2, which caused a plug. Approximately six hours later, Respondent shut down
14 MWC-2 to remove the plug.

15 11. On May 22, 2021, Respondent's CO emissions from MWC-2 were 301 ppm, as an
16 arithmetic average for the four-hour block beginning at 4 a.m.

17 12. Condition 73.b of the Permit requires Respondent to submit a written report to DEQ within
18 15 days of the excess emissions event.

19 13. On August 10, 2021, Respondent submitted a written report to DEQ regarding the May 22,
20 2021 event described in Section II, Paragraphs 10-11 above.

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1 III. CONCLUSIONS

2 1. In 2020, Respondent violated Condition 32.g of the Permit by operating a stationary
3 emergency RICE for more than 50 hours per year in a non-emergency situation, as described in Section
4 II, Paragraphs 5-8, above. According to the definition of emergency stationary RICE, examples of
5 emergency situations include “stationary RICE used to produce power for critical networks or
6 equipment (including power supplied to portions of a facility) when electric power from the local utility
7 (or the normal power source, if the facility runs on its own power production) is interrupted, or
8 stationary RICE used to pump water in the case of fire or flood, etc.” 40 CFR 63.6675. Respondent’s
9 operation of the Fire Pump for preventative maintenance, refilling boilers, hydrostatic pressure testing,
10 systems maintenance and emergency preparedness do not qualify as operation in an emergency
11 situation because these uses are not equivalent to use of the emergency RICE to provide back-up power
12 when utility power is interrupted or to respond to a fire or flood. Further, emergency preparedness is
13 not the same as responding to an actual emergency. This is a Class I violation according to OAR 340-
14 012-0054(1)(i). DEQ hereby assesses a \$10,922 civil penalty for this violation.

15 2. On May 22, 2021, Respondent violated Condition 24 of the Permit by emitting CO from
16 municipal waste combustor unit MWC-2 in excess of 100 ppm corrected to 7 percent oxygen as a 4-
17 hour block arithmetic average, as described in Section II, Paragraphs 9-11, above. Specifically,
18 Respondent’s CO emissions from MWC-2 exceeded 100 ppm during the four-hour block beginning at
19 4:00 a.m. on May 22, 2021. This is a Class II violation according to OAR 340-012-0054(2)(b). DEQ
20 hereby assesses a \$4,800 civil penalty for this violation.

21 3. Respondent violated Condition 73.b of the Permit by failing to timely submit the written excess
22 emissions report for the May 22, 2021 excess emissions event to DEQ, as described in Section II,
23 Paragraphs 10-13, above. This is a Class II violation, according to OAR 340-012-0054(2)(g). DEQ has
24 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:

4 Pay a total civil penalty of \$15,722. The determination of the civil penalties are attached as
5 Exhibits 1 and 2 and are incorporated as part of this Notice.

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

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. If
12 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
13 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
14 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
15 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
16 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
17 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
18 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
19 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
20 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
21 you may represent yourself. If you are a corporation, partnership, limited liability company,
22 unincorporated association, trust or government body, you must be represented by an attorney or a duly
23 authorized representative, as set forth in OAR 137-003-0555.

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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.

1/28/2022
Date



Kieran O'Donnell, 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 NO. 1 Operating a stationary emergency RICE for more than 50 hours per year in a non-emergency situation, in violation of Condition 32.g of the Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(i).

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(A) because Respondent has a Title V 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 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. Respondent exceeded the annual limit for operating the emergency stationary RICE in 2020.

"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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. As a Permittee, Respondent is expected understand and comply with the requirements of the Permit, including the Condition 32.g requirement to limit the non-emergency operation of the Fire Pump to 50 hours per year or less. By using the Fire Pump in non-emergency situations to support Facility operations and maintenance without establishing procedures to prevent the Fire Pump from being operated for more than 50 hours per year, Respondent failed to take

reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation of Permit Condition 32.g.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. Respondent initiated new procedures to prevent the violation from being repeated including daily recording of Fire Pump controller operating hours, monthly checks of the Fire Pump logbook, and refresher training for staff. Respondent has also implemented alternative maintenance methods at the Facility.

"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 \$3,122. This is the amount Respondent gained by avoiding spending approximately \$4,000 in calendar year 2020 to rent a portable high pressure water pump for non-emergency use. These costs should have been incurred on or before December 31, 2020. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$600) \times (0 + 0 + 0 + 4 + -1)] + \$3,122 \\ &= \$6,000 + (\$600 \times 3) + \$3,122 \\ &= \$6,000 + \$1,800 + \$3,122 \\ &= \$10,922 \end{aligned}$$

EXHIBIT 2

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

VIOLATION NO. 2 Emitting CO from municipal waste combustor unit MWC-2 in excess of 100 ppm corrected to 7 percent oxygen as a 4-hour block arithmetic average, in violation of Condition 24 of the Permit.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(b).

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 \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(A) because Respondent has a Title V 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 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. Respondent exceeded the Condition 42 CO limit on one occasion on May 22, 2021.

"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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. As a Permittee, Respondent is expected understand and comply with the requirements of the Permit, including the Condition 24 requirement to limit CO emissions from the municipal waste combustor units to 100 ppm. By loading a large piece of concrete into MWC-2, which plugged the feed chute and caused high CO emissions, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation of Permit Condition 24.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under (6)(f).

"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 because any economic benefit that Respondent gained as a result of the violation is de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 0 + 4 + 2)] + \$0 \\ &= \$3,000 + (\$300 \times 6) + \$0 \\ &= \$3,000 + \$1,800 + \$0 \\ &= \$4,800 \end{aligned}$$