



Oregon

Tina Kotek, 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

February 2, 2023

CERTIFIED MAIL: 7018 1830 0001 6172 7189

American Gypsum Recycling - 1 LLC
c/o Gregory Dolinajec, Registered Agent
20650 NE Halsey St
Fairview OR 97024

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ-SW-WR-2022-099

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$5,100 for failing to report to DEQ on your solid waste activities as required by Oregon law.

To protect public health and the environment, and provide data on which to base regulatory decision making, the law requires solid waste sites, such as your material recovery facility in Turner, to collect and report information on amounts and types of solid waste collected, recycled, beneficially used, and disposed. DEQ issued this penalty because you did not respond to the Warning Letter with Opportunity to Correct these violations, sent in March 2022, and have yet to correct all the violations cited in the Pre-Enforcement Notice sent in July 2022 in follow up to the Warning Letter. Furthermore, you were previously cited in 2020 for failing to timely submit the beneficial use determination (BUD) report and fee.

Included in Section IV of the enclosed Notice is an order requiring you to submit the required material recovery survey reports from 2018-2021. DEQ appreciates your effort to correct the BUD reporting violation by submitting the report and fee after receiving the Pre-Enforcement Notice, and DEQ considered these efforts when determining the amount of civil penalty. Please also note that the 2022 material recovery survey, mailed to you earlier this year, is due to DEQ by February 28, 2023.

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.

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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 portion of the 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 Sarah Wheeler at 971-301-0622.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

Electronic cc: Craig Filip, DEQ
Robert Dickson, rdickson@dicksonlegal.com
Daniel Pizzaro, dpizarro@dicksonlegal.com

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	AMERICAN GYPSUM)	ASSESSMENT AND ORDER
5	RECYCLING – 1 LLC)	
	Respondent.)	CASE NO. LQ-SW-WR-2022-099

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 459.995, ORS Chapters 183 and 459A, and Oregon Administrative Rules (OAR) Chapter 340,
10 Divisions 011, 012, 093, 097, and 100.

11 II. FINDINGS OF FACT

12 1. Respondent operates a business processing new and used drywall (or
13 “wallboard”) from manufacturing scrap, new construction waste, and demolition/remodeling waste at
14 12451 Duck Flat Road in Turner, Oregon (the Facility).

15 2. On June 25, 2018, DEQ issued Respondent Solid Waste Disposal Site Permit: Material
16 Recovery Facility Number 1618 (the Permit) for the Facility.

17 3. On March 1, 2018, DEQ issued Respondent Beneficial Use Determination (BUD) Number
18 BUD-20180205-AGR. On October 16, 2020, DEQ issued Respondent BUD Modification Approval
19 Number 20200423 – Amended (Amended BUD).

20 4. OAR 340-093-0290(7) states: “At the request of the Department, a person managing solid
21 waste under this rule must...(d) Submit a report that confirms that the material characterization and
22 operating practices continue to comply with the beneficial use as approved.”

23 5. The Amended BUD requires Respondent to file an annual report (BUD report), and states:
24 “Annual Report – Every year, AGR must submit a report to DEQ identifying the amount of both
25 ‘clean’ and mixed clean and/or demolition wallboard received, the total amount of reclaimed gypsum
26 generated, the amount of ‘clean’ reclaimed paper backing generated, the amount of reclaimed gypsum
27 and reclaimed paper-gypsum blend transferred/sold to others for re-use, and to whom and for what

1 purpose. This report must also include monthly analytical data for asbestos. Per Oregon Administrative
2 Rule 340-097-0120(2)(f), AGR must include the \$250 reviewing fee with the annual report. The report
3 is due on Feb. 1 of each year.”

4 6. Respondent did not submit the 2021 annual BUD report to DEQ until July 22, 2022, and on or
5 Or about August 1, 2022, Respondent submitted the BUD reviewing fee for 2021 to DEQ.

6 7. OAR 340-090-0100(1) and (5) provide that privately operated material recovery facilities must
7 report to DEQ the type and corresponding weight of each category of material recycled, processed, or
8 used in a new product containing recycled content in a calendar year, as specified in the rule (the
9 Material Recovery Survey).

10 8. As of the date of this Notice, Respondent has not submitted Material Recovery Surveys for
11 2019, 2020, or 2021.

12 III. CONCLUSIONS

13 1. Respondent violated OAR 340-093-0050(6)(d), OAR 340-093-0290(7)(d), OAR 340-097-
14 0120(2)(f), Permit Condition 1.3, and the Amended BUD condition requiring submittal of an annual report
15 to DEQ along with the \$250 reviewing fee by failing to timely submit the 2021 BUD report and fee to
16 DEQ on February 1, 2022. This is a Class II violation, according to OAR 340-012-0053(2). DEQ hereby
17 assesses a \$5,100 civil penalty for this violation.

18 2. Respondent violated OAR 340-090-0100(1) and (5), and OAR 340-093-0050(6)(d) by failing
19 to submit Material Recovery Survey Reports to DEQ by February 28 of each year. Specifically, as of the
20 date of this Notice, Respondent has not submitted Material Recovery Survey Reports to DEQ for 2019,
21 2020, or 2021. These are Class II violations, according to OAR 340-012-0065(2)(b). DEQ has not assessed
22 a civil penalty for these violations.

23 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

26 1. Pay a total civil penalty of \$5,100. The determination of the civil penalty is attached as Exhibit
27 1 and is incorporated as part of this Notice.

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

4 2. Within 30 days of this order becoming final by operation of law or on appeal, mail
5 complete, accurate, and signed Material Recovery Survey Reports for the Facility's activities in 2018,
6 2019, 2020, and 2021 to the attention of Michelle Shepperd at the address above, or email them to
7 recovery.info@deq.state.or.us.

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

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

23 Active duty Service members have a right to stay proceedings under the federal Service
24 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
25 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
26 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
27 Department does not have a toll free telephone number.

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

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10 2/2/2023
11 Date



12 Kieran O'Donnell, Manager
13 Office of Compliance and Enforcement
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EXHIBIT 1

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

VIOLATION NO. 1 Failing to timely submit the BUD annual report and fee, in violation of OAR 340-093-0050(6)(d), OAR 340-093-0290(7)(d), OAR 340-097-0120(2)(f), and the Amended BUD.

CLASSIFICATION: This is a Class II violation 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 \$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)(Q)(i) because Respondent has a solid waste disposal 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 1 according to OAR 340-012-0145(2)(a)(B), because Respondent had one Class II violation in prior significant action LQ/SW-WR-2020-124, issued on October 30, 2020.

"H" is Respondent's history of correcting prior significant actions, and receives an initial value of -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all prior violations cited as prior significant actions. According to OAR 340-012-0145(3)(d), this value is increased to 0 because Respondent did not take extraordinary efforts to correct or minimize the effects of all prior significant actions, and therefore the sum of the "P" and "H" factors may not be less than one.

"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 did not timely submit the BUD report and BUD report review fee for the 2021 reporting year on February 1, 2022.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent failed to act intentionally, with actual knowledge of the requirement. Both the original 2018 BUD and the 2020 Amended BUD expressly required Respondent to submit an annual report and pay the review fee by February 1 of each year.

DEQ sent Respondent a Pre-Enforcement Notice and Notice of Civil Penalty Assessment and Order citing the BUD report and fee violation in 2020. Additionally, DEQ sent Respondent a Warning Letter with Opportunity to Correct (WLOC) on March 23, 2022, citing the current BUD reporting violation and requesting Respondent submit the report. Respondent did not respond to the 2022 WLOC, and DEQ sent Respondent a Pre-Enforcement Notice again citing the violation on July 20, 2022.

"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 minimize the effects of the violation. In July of 2022, Respondent submitted the BUD annual report and fee for 2021, after receiving the Pre-Enforcement Notice.

"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 DEQ does not have sufficient information on which to base an estimate of the benefit Respondent gained as a result of these violations.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$3,000 + [(0.1 \times \$3,000) \times (1 + 0 + 0 + 8 + (-2))] + \0
 $= \$3,000 + (\$300 \times 7) + \$0$
 $= \$3,000 + \$2,100 + \$0$
 $= \$5,100$