



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah St Ste 600

Portland, OR 97232-4100

(503) 229-5696

FAX (503) 229-5100

TTY: 711

June 22, 2017

CERTIFIED MAIL: 7016 2140 0000 2420 4911

Konell Construction & Demolition Corporation  
Jerry Lawson, Registered Agent  
15397 S. Redland Rd.  
Oregon City, OR 97045

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/AC-NWR-2017-028

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Konell Construction & Demolition Corporation a civil penalty of \$5,708 for operating rock crushing equipment between October 18, 2016 and January 10, 2017 to process 47,779 tons of material without holding a General Air Contaminant Discharge Permit (ACDP) from DEQ. The rock crushing operations took place at a construction site located at 16400 Main Street in Oregon City.

DEQ issued this penalty because rock crushing at the Oregon City construction site could have released particulate matter into the air and exposed workers and the public to this respiratory hazard. To protect the public from exposure, DEQ requires certain work practices, such as water sprays or other controls, to prevent particulate matter resulting from rock crushing operations from becoming airborne. DEQ also requires the control of fugitive dust emissions, for example by treating storage piles and controlling vehicular traffic at the construction site. These work practices and fugitive emission requirements are included in the General ACDP for rock crushing that you should have obtained prior to commencing crushing operations.

\$2,108 of the civil penalty represents the economic benefit you gained by avoiding the cost of permit fees associated with obtaining a General ACDP to operate the rock crusher at the Oregon City construction site between October 18, 2016 and January 10, 2017.

Please note that if you plan to use rock crushing equipment to process more than 5,000 tons of material per year, a Basic ACDP is required; operations that process more than 25,000 tons of material per year require coverage under the General ACDP.

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.state.or.us](mailto: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 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 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,



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

Enclosures

cc: Jeff Konell, Konell Construction & Demolition Corporation, 36000 SE Industrial Way, Sandy, OR 97055  
Khara Hills, Konell Construction & Demolition Corporation, 36000 SE Industrial Way, Sandy, OR 97055  
Dan DeFehr, DEQ Portland Office  
Micheal Orman, DEQ Portland Office  
Shaumae Hall, Accounting, DEQ  
Donald Hendrix, AQ, DEQ

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

3 IN THE MATTER OF: )  
4 Konell Construction & Demolition ) NOTICE OF CIVIL PENALTY  
5 Corporation, ) ASSESSMENT AND ORDER  
6 Respondent. ) CASE NO. AQ/AC-NWR-2017-028

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, ORS 468.126 through 468.140,  
10 ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 216.

11 II. FINDINGS OF FACT

12 1. Respondent is a construction and demolition contractor registered to conduct business in  
13 Oregon.

14 2. OAR 340-216-0020(3) states, in part, that no person may construct, install, establish,  
15 develop or operate any air contaminant source listed in OAR 340-216-8010 without first obtaining an  
16 Air Contaminant Discharge Permit (ACDP) from DEQ. OAR 340-216-8010 Table 1, Part B(70)  
17 requires a General ACDP for rock, concrete or asphalt crushers, both portable and stationary, that  
18 process 25,000 tons or more per year of crushed rock.

19 3. From at least October 18, 2016 to January 10, 2017, Respondent operated a Powerscreen  
20 Premiertrak 400 rock crusher (Rock Crusher) at a construction site located at 16400 Main Street,  
21 Oregon City, Oregon (Site).

22 4. Between October 18, 2016 and January 10, 2017, the Rock Crusher processed 47,779 tons  
23 of material.

24 5. Between October 18, 2016 and January 10, 2017, Respondent did not hold an ACDP from  
25 DEQ to operate the Rock Crusher.

26 III. CONCLUSIONS

27 Respondent has violated OAR 340-216-0020(3) by operating a rock crusher at the Site  
between October 18, 2016 and January 10, 2017 to process more than 25,000 tons of material without

1 holding a General ACDP from DEQ. This is a Class II violation, according to OAR 340-012-  
2 0054(2)(a). DEQ hereby assesses a \$5,708 civil penalty for this violation.

#### 3 IV. ORDER TO PAY CIVIL PENALTY

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

6 Pay a total civil penalty of \$5,708. The determination of the civil penalty is attached as Exhibit 1  
7 and is incorporated as part of this Notice.

8 If you do not file a request for hearing as set forth in Section V below, your check or money order  
9 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**  
10 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.** Once you pay the penalty, the  
11 Findings of Fact, Conclusions and Order become final.

#### 12 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

13 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
14 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
15 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
16 exhibit(s), you must do so in your request for hearing, as factual matters not denied will be considered  
17 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
18 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
19 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,** fax  
20 it to **503-229-5100,** or email it to **DEQappeals@deq.state.or.us.** An administrative law judge  
21 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
22 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
23 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
24 you may represent yourself. If you are a corporation, partnership, limited liability company,  
25 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
26 authorized representative, as set forth in OAR 137-003-0555.

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1 Active duty service-members have a right to stay proceedings under the federal Service  
2 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
3 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
4 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
5 <http://legalassistance.law.af.mil/content/locator.php>.

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

12  
13  
14 June 22, 2017

15  
16 Date

Sarah Wheeler

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18 Sarah G. Wheeler, Acting Manager  
19 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: Operating a rock crusher between October 18, 2016 and January 10, 2017 to process more than 25,000 tons of material without holding a General ACDP from DEQ, in violation of OAR 340-216-0020(3).

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

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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(A).

"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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day constitutes a separate occurrence of the violation, pursuant to ORS 468.140(2) and OAR 340-012-0145(4). Respondent operated the Rock Crusher without a General ACDP between October 18, 2016 and January 10, 2017. Therefore, there were more than 28 days or 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 that Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent is a construction and demolition contractor doing business in Oregon. Respondent has two other rock crushers with General ACDP permits (Permit Nos. 37-0072-08 and 37-0656-08), including one rock crusher that was operating at the same

construction site as the unpermitted rock crusher. Thus, Respondent had actual knowledge of the requirement that rock crushers processing more than 25,000 tons of material must have a General ACDP from DEQ. By failing to obtain a General ACDP to operate the Rock Crusher, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a 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)(f) because the violation or the effects of the violation could not be corrected or minimized. Respondent ceased operations with the unpermitted Rock Crusher on January 10, 2017.

"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 \$2,108. This is the amount Respondent gained by avoiding spending \$2,995 in fees to obtain a General ACDP for the Rock Crusher. 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 x \$2,000) x (0 + 0 + 4 + 4 + 0)] + \$2,108  
= \$2,000 + (\$200 x 8) + \$2,108  
= \$2,000 + \$1,600 + \$2,108  
= \$5,708