



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW 6th Ave
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

May 5, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 3051

Environmental Fibers International, Inc.
c/o BH Service Co., Inc., Registered Agent
805 SW Broadway, Ste. 1900
Portland, OR 97205

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-16-041

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Environmental Fibers International, Inc., (Environmental Fibers) a civil penalty of \$5,419 for failing to implement stormwater maintenance activities.

DEQ issued this penalty because the failure to implement stormwater maintenance activities outlined in a Stormwater Pollution Control Plan (SWPCP) may result in increased pollution concentrations in industrial stormwater discharge. Elevated levels of pollutants in stormwater discharge may pose a risk of harm to aquatic life and other beneficial uses of public waters.

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. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.



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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.

If you have any questions, please contact DEQ Environmental Law Specialist Kieran O'Donnell, at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Laura Johnson, City of Portland, Bureau of Environmental Services
John Koestler, DEQ, HQ
Christine Svetkovich, DEQ, NWR

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 ENVIRONMENTAL FIBERS) ASSESSMENT AND ORDER
5 INTERNATIONAL, INC.)
Respondent.) CASE NO. WQ/SW-NWR-16-041

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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 and 468.126 through 468.140,
10 ORS Chapters 183 and 468B, Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and
11 045.

12 II. FINDINGS OF FACT

13 1. Respondent operates an industrial facility located at 4325 N Commerce Street, Portland, OR
14 97217 (the Facility).

15 2. On or about August 28, 2012, DEQ assigned Respondent coverage under the National
16 Pollutant Discharge Elimination System (NPDES) Stormwater General Permit Number 1200-Z (the
17 Permit), which authorizes Respondent to discharge stormwater from its Facility only in conformance
18 with the requirements, limitations, and conditions set forth in the Permit.

19 3. DEQ issued the Permit on July 1, 2012, pursuant to ORS 468B.050 and the Federal Clean
20 Water Act.

21 4. The Permit was in effect at all material times.

22 5. Pursuant to Schedule A, Condition 6(c), "permit registrants must implement the
23 [Stormwater Pollution Control Plan (SWPCP)] and any revisions to the plan. Failure to implement any
24 of the control measures or practices described in the SWPCP is a violation of the permit."

25 6. Table 2 Supplement of Respondent's SWPCP requires Respondent to do the following:

- 26 a. Catch basin cleaning during the following months: January, February, March, April,
27 May, July, September, October, November, and December; and

1 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
2 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
3 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
4 **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the
5 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
6 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
7 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
8 association.

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

14 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
15 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
16 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
17 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
18 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
19 information submitted by you, as the record for purposes of proving a prima facie case.
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21
22

23 May 5, 2016

24 Date

23 Saman Wheeler for

24 Leah K. Feldon, 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: Failing to implement maintenance practices required by a Stormwater Pollution Control Plan, in violation of ORS 468B.025(2) and Schedule A, Condition 6(c) of the 1200Z NPDES General Permit.

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0055(2)(d).

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)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii).

"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 3 according to OAR 340-012-0145(2)(a), because Respondent has one Class I violation in Case No. WQ/SW-NWR-11-042 and one Class I violation in Case No. WQ/SW-NWR-13-152.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 was more than one but less than seven occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondent failed to clean its catch basins on at least one day in each of the following months March, May, and September, and it failed pump its storm filter vaults on at least one day in September. Therefore, there were four occurrences of the violation.

"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. On October 21, 2014, the City of Portland, Bureau of Environmental Services sent Respondent a Warning Notice, detailing Respondent's failure to implement the SWPCP's stormwater system maintenance schedule

during November 2013 and March 2014. In addition, DEQ penalized Respondent twice in the last five years for violations of the Permit. Therefore, by failing to implement the SWPCP, Respondent consciously disregarded a substantial and unjustifiable risk that its failure to act would result 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)(a)(D), because the violation or the effects of the violation could not be corrected or minimized.

"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 \$819. This is the amount Respondent gained by avoiding spending approximately \$1,280 to implement maintenance activities required by Respondent's stormwater pollution control plan. 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 (3 + 0 + 2 + 8 + 0)] + \$819
= \$2,000 + [\$200 x 13] + \$819
= \$2,000 + \$2,600 + \$819
= \$5,419