



# 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

June 27, 2016

CERTIFIED MAIL No. 7011 2000 0000 5122 8896

Miller & Sons Welding Inc.  
c/o Ryan L. Miller, Registered Agent  
PO Box 650  
Heppner, OR 97836

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/AC-ER-16-080

This letter is to inform you that DEQ has issued you a civil penalty of \$1,181 for crushing 25,000 tons or more per year of material without first applying for and being assigned to the General Air Contaminant Discharge Permit (ACDP) for crushers. The Basic ACDP you were operating under at that time expressly required that you upgrade to the General ACDP if you crushed 25,000 tons or more of rock, concrete, or asphalt annually.

DEQ issued this penalty because the amount of material crushed directly relates to the amount of particulate emissions produced. Particulate matter is a pollutant that can contribute to respiratory distress in members of the public and create nuisance conditions in the surrounding area. A General ACDP contains more restrictive operating conditions and DEQ oversight to ensure particulate emissions do not become an environmental or public health concern.

DEQ appreciates your efforts to promptly address the violation by applying for assignment to the General ACDP once notified by DEQ. DEQ considered these efforts when determining the amount of civil penalty.

If you wish to appeal this matter, you have 20 calendar days from receipt of this letter to request a contested case hearing. This hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6<sup>th</sup> 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 written hearing request from you within 20 days, 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 Jenny Root at (503) 229-5874.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc:

Bonnie Hough, Bend Office, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 MILLER & SONS WELDING INC., ) ASSESSMENT AND ORDER  
5 an Oregon corporation doing business as )  
6 MILLER & SONS EXCAVATING, ) NO. AQ/AC-ER-16-080  
7 an assumed business name, )  
8 Respondent. )

9 I. AUTHORITY

10 This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and  
11 468.126 through 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR)  
12 Chapter 340, Divisions 011, 012, 200, and 216.

13 II. FINDINGS OF FACT

14 1. Respondent, Miller & Sons Welding Inc., an Oregon corporation, operates a rock  
15 crusher (crusher) in Oregon as "Miller & Sons Excavating."

16 2. On May 4, 2011, the Department of Environmental Quality (DEQ) issued  
17 Respondent Basic Air Contaminant Discharge Permit No. 37-0530-BS-01 (Permit). The Permit  
18 was in effect at all material times.

19 3. The Permit authorized Respondent to discharge air contaminants from the crusher  
20 in conformance with the requirements, limitations and conditions set forth in the Permit.

21 4. Condition 2.1 of the Permit prohibited Respondent from increasing production or  
22 throughput of crushed rock, crusher or asphalt (material) to 25,000 tons or more per year without  
23 first applying for and being assigned to General Air Contaminant Discharge Permit AQGP-008  
24 (General ACDP).

25 5. Condition 3.2 of the Permit required Respondent to submit an annual report to  
26 DEQ by February 15<sup>th</sup> of each year that includes the amount of material crushed during the  
27 previous calendar year.

6. On January 21, 2014, Respondent submitted its 2013 annual report to DEQ.  
According to the report, Respondent crushed 32,148 tons of material in 2013.



1 for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and**  
2 **Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-**  
3 **5100**. An administrative law judge employed by the Office of Administrative Hearings will  
4 conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR  
5 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you  
6 may represent yourself unless you are a corporation, agency or association.

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

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

19 June 27, 2016  
20 Date

21 Leah K. Feldon  
22 Leah K. Feldon, Manager  
23 Office of Compliance and Enforcement  
24  
25  
26  
27

EXHIBIT NO. 1

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

VIOLATION: Crushing 25,000 tons of material or more per year without applying for and being assigned to the General ACDP, in violation of Condition 2.1 of Respondent's Basic ACDP.

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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(C).

"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 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. In accordance with OAR 340-012-0145(4), each day of violation with a duration of more than one day is a separate occurrence. Respondent exceeded its annual limit and needed to apply for and receive assignment to the General Permit from operating year 2013 until April 23, 2015.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent reasonably should have known of the requirement to apply for and receive assignment to the General Permit. Condition 2.1 of Respondent's Permit expressly prohibited Respondent from crushing 25,000 tons or more of material per year unless Respondent applied for and received assignment to the General ACDP.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c), because Respondent made reasonable efforts to correct the violation by applying to DEQ for assignment under the General ACDP on April 23, 2015.

"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 \$206. This is the amount Respondent gained by delaying payment of the \$1,550 initial permitting fee from January 1, 2013 until April 23, 2015 for assignment to the General ACDP. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$750 + [(0.1 \times \$750) \times (0 + 0 + 4 + 2 + -3)] + \$206$   
 $= \$750 + (75 \times 3) + \$206$   
 $= \$750 + \$225 + \$206$   
 $= \$1,181$