



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5382
FAX (503) 229-5787
TTY 711

July 10, 2020

CERTIFIED MAIL No. 7017 1450 0000 8310 3527

High Desert Aggregate & Paving, Inc.
c/o Michael T. Moore, Registered Agent
PO Box 1929
Redmond, OR 97756

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-ER-2019-279

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 DEQ has issued you a \$20,325 civil penalty for exceeding the federal grain loading particulate matter emission limit in your Air Contaminant Discharge Permit. The violation occurred during the April 30 and May 1, 2019, emission tests of your asphalt plant at 60831 McAlister Road, La Grande, Oregon. In addition, the emission tests showed your plant also exceeded the state grain loading total particulate matter emission limit.

DEQ issued this penalty because these emissions limits are set to ensure that air contaminant sources maintain optimum efficiency of pollution controls to protect air quality and to ensure that national air quality health standards are met. Particulate matter, when emitted in excess, can contribute to respiratory distress in members of the public. Once inhaled, particulate matter can affect the heart and lungs, causing serious health problems such as decreased lung function, irregular heartbeat and chronic bronchitis.

Included in Section IV of the attached Notice is an order requiring you to demonstrate compliance with the grain loading permit limit, via emission testing, by September 30, 2020, and to submit the emission test results to DEQ within 45 days of conducting the test. The order also requires you to submit a corrective action plan within 30 days of submitting the test results if the results show that the asphalt plant fails to demonstrate compliance with the permit limit.

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:

High Desert Aggregate & Paving, Inc.
Case No. AQ/ACDP-ER-2019-279
Page 2

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232
Via email – 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 portion of your 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 Jenny Root at 503-229-5874 or toll free in Oregon at 800-452-4011, extension 5874.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

cc: Tom Hack, Eastern Region, Pendleton office, DEQ
Mark Bailey, Eastern Region, Bend office, DEQ
Don Hendrix, AQ, HQ, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	HIGH DESERT AGGREGATE &)	ASSESSMENT AND ORDER
5	PAVING, INC.,)	
6	an Oregon corporation,)	CASE NO. AQ/ACDP-ER-2019-279
7	Respondent.)	

8 I. AUTHORITY

9 This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126
10 through 468.140, ORS Chapters 183 and 468A, and Oregon Administrative Rules (OAR) Chapter 340,
11 Divisions 011, 012, 200, 216 and 238.

12 II. FINDINGS OF FACT

13 1. Respondent owns and operates a portable drum-mix asphaltic paving plant at 60831
14 McAlister Road, La Grande, OR (the Asphalt Plant).

15 2. The Asphalt Plant was modified or reconstructed after June 11, 1973, but prior to April
16 16, 2015.

17 3. On March 21, 2018, the Department of Environmental Quality (DEQ) assigned
18 Respondent's Asphalt Plant to General Air Contaminant Discharge Permit AQGP-007 (the Permit),
19 issued November 29, 2017, as source number: 37-0666-07-01. The Permit was in effect at all material
20 times.

21 4. The Permit authorizes Respondent to discharge air contaminants from processes and
22 activities related to the Asphalt Plant in conformance with the requirements, limitations and conditions
23 set forth in the Permit.

24 5. Condition 2.4 of the Permit prohibits Respondent from emitting filterable particulate
25 matter from the Asphalt Plant in excess of 0.04 grains per dry standard cubic foot (gr/dscf), as
26 measured by EPA Method 5.

27 6. Prior to April 16, 2015, all representative compliance source test results of Respondent's
Asphalt Plant demonstrate total particulate matter emissions no greater than 0.080 grains per dry

////

1 standard cubic foot (gr/dscf). Therefore, Condition 2.2.b.i of the Permit prohibits Respondent from
2 emitting total particulate matter from the Asphalt Plant in excess of 0.10 gr/dscf, as measured by DEQ
3 Method 5 (filterable plus condensable particulate matter).

4 7. On April 30, 2019, Respondent conducted an EPA Method 5 emissions test on the
5 Asphalt Plant to measure filterable particulate matter emissions from the plant. The test showed the
6 Asphalt Plant's filterable particulate matter emissions were 0.12 gr/dscf.

7 8. On May 1, 2019, Respondent conducted a DEQ Method 5 emissions test on the Asphalt
8 Plant to measure total particulate matter emissions from the plant. The test showed the Asphalt Plant's
9 total particulate matter emissions were 0.12 gr/dscf.

10 III. CONCLUSIONS

11 1. Respondent violated ORS 468A.045(2), Condition 2.4 of the Permit, and 40 CFR Part
12 60, Subpart I, adopted and incorporated by reference at OAR 340-238-0060(1), by exceeding the 0.04
13 gr/dscf filterable particulate matter emission limit in the Permit as further described in Section II,
14 paragraph 7 above. This is a Class I violation, according to OAR 340-012-0054(1)(i). DEQ hereby
15 assesses a \$20,325 civil penalty for this violation.

16 2. Respondent violated ORS 468A.045(2) and Condition 2.2.b.i of the Permit by exceeding
17 the 0.10 gr/dscf total particulate matter emission limit in the Permit as further described in Section II,
18 paragraph 8 above. This is a Class II violation according to OAR 340-012-0054(2)(b). DEQ has not
19 assessed a civil penalty for this violation.

20 IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

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

23 1. Pay a total civil penalty of \$20,325. The determination of the civil penalty is attached as
24 Exhibit No. 1 and is incorporated as part of this Notice.

25 2. By September 30, 2020, demonstrate compliance with the particulate matter emission
26 limits in Conditions 2.4 and 2.2.b.i of the Permit. Compliance with the limits must be demonstrated,
27 using the procedures in Condition 6 of the Permit, as follows:

1 a. By conducting EPA Methods 1-5 emissions testing with valid results showing
2 that the Asphalt Plant is emitting no more than 0.04 gr/dscf filterable particulate matter; and

3 b. By conducting DEQ Methods 1-5 or EPA Methods 1-5 and 202 emission testing
4 with valid results showing that the Asphalt Plant is emitting no more than 0.10 gr/dscf total particulate
5 matter.

6 3. Submit emission test results to DEQ within 45 days of testing. Send the test results to:
7 **Mark Ludwiczak, Source Test Coordinator, DEQ, 221 Stewart Avenue, Suite 201, Medford, OR**
8 **97501.**

9 4. In the event the emission test results from the test required in Section IV, Paragraph 2
10 above fail to demonstrate compliance with the particulate matter emission limits in Conditions 2.4 and
11 2.2.b.i of the Permit, within 30 days of submitting the source test report, submit a corrective action plan
12 (CAP) to DEQ for approval that includes interim operating limitations and specific dates for corrective
13 actions to the Asphalt Plant, and a schedule for conducting an additional emissions test to demonstrate
14 compliance with Conditions 2.4 and 2.2.b.i of the Permit; and

15 5. Comply with the CAP upon approval from DEQ.

16 If you do not file a request for hearing as set forth in Section V below, your check or money order
17 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
18 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

20 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
21 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
22 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
23 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
24 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
25 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
26 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
27 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge

1 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
2 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
3 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
4 you may represent yourself. If you are a corporation, partnership, limited liability company,
5 unincorporated association, trust or government body, you must be represented by an attorney or a duly
6 authorized representative, as set forth in OAR 137-003-0555.

7 Active duty service members have a right to stay proceedings under the federal Service
8 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
9 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
10 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
11 Department does not have a toll-free telephone number.

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

18
19 7/10/2020
20 Date

21
22 
23 _____
24 Kieran O'Donnell, 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 NO. 1: Exceeding the 0.04 gr/dscf particulate matter emission limit in violation of Condition 2.4 of the Permit, ORS 468A.045(2), and 40 CFR Part 60, Subpart I, adopted and incorporated by reference at 340-238-0060(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(i) because the filterable particulate matter emission limit in Condition 2.4 of the Permit is a federal New Source Performance Standard (40 CFR Part 60, Subpart I) under OAR 340, division 238.

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 \$4,000 for a Class I, 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)(A) because Respondent operates the facility under a General Air Contaminant Discharge 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 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" 0 according to OAR 340-012-0145(4)(a) because there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).

"M" is the mental state and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent had constructive knowledge (reasonably should have known) of the requirement to limit its particulate matter emissions. Condition 2.4 of the Permit expressly limits Respondent's filterable particulate matter emissions to 0.04 gr/dscf.

"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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of 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 \$15,525. This is the amount of economic benefit Respondent gained by delaying spending approximately \$145,000 from April 30, 2019 to April 30, 2020, to transport and install a baghouse on the Asphalt Plant to control particulate matter emissions. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 0 + 2 + 0)] + \$15,525 \\ &= \$4,000 + (400 \times 2) + \$15,525 \\ &= \$4,000 + \$800 + \$15,525 \\ &= \$20,325 \end{aligned}$$