



Oregon

Kate Brown, 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

July 7, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 9362

Zenith Energy Terminals Holdings LLC
c/o C.T. Corporation System, Registered Agent
780 Commercial Street SE, Suite 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2021-041

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 the Oregon Department of Environmental Quality (DEQ) has issued Zenith Energy Terminals Holdings LLC (Zenith) a civil penalty of \$23,598 for engaging in construction activities prior to obtaining registration under the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit No. 1200-C (the Permit) at taxlots 400 and 500 at 5501 NW Front Ave, in Portland, Oregon (the Site). Specifically, Zenith graded, grubbed, and brought stockpiles of fill to the Site, all of which are construction activities capable of resulting in the discharge of sediment to the Willamette River.

DEQ issued this penalty because Zenith's construction activities took place for at least eight months without required coverage under the Permit. Sediment carried in stormwater runoff from construction activities is considered a waste that poses a risk of harm to beneficial uses of waters of the state, including the use of those waters as habitat for aquatic organisms. The discharge of sediment can degrade water quality and harm aquatic life by covering up food sources and smothering invertebrate organisms. The Permit requires registrants to implement and maintain sufficient erosion and sediment controls and best management practices to prevent the discharge of sediment from construction activities and into waters of the state. Zenith's failure to obtain coverage under the Permit and employ sediment controls posed a risk of harm to the Willamette River.

In addition, DEQ is concerned by the flagrant nature of Zenith's conduct. In May of 2020, Zenith applied for coverage under the Permit. However, on July 16, 2020, DEQ informed Zenith that its application did not include a sufficient Land Use Compatibility Statement and requested additional

information from Zenith to approve its application. Despite DEQ's clear response to the permit application, Zenith began construction activities at the Site without permit coverage.

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

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 Courtney Brown at 503-229-6839 or toll free in Oregon at 800-452-4011, extension 6839.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Michael Kennedy, Northwest Region, DEQ
Christine Svetkovich, Northwest Region, DEQ
Accounting, DEQ
Aaron Courtney, Stoel Rives LLP, 760 SW Ninth Ave., Suite 3000, Portland, OR 97205

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
ZENITH ENERGY TERMINALS)
HOLDINGS LLC,)
a foreign limited liability corporation,)
Respondent.)

NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER

CASE NO. WQ/SW-NWR-2021-041

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 045.

II. FINDINGS OF FACT

1. Respondent is the operator of taxlot 400 and taxlot 500 located at 5501 NW Front Ave., in Portland, Oregon (the Site).

2. The Site has the potential to discharge to the Willamette River, waters of the state, or to a conveyance system that leads to the Willamette River via a stormwater access point at the Site.

3. On or about May 11, 2020, Respondent submitted an application to DEQ for coverage under the National Pollutant Discharge Elimination System Construction Stormwater Discharge Permit Number 1200-C (the Permit) for construction activities on 14.5 acres of taxlots 400 and 500 at the Site.

4. On July 16, 2021, DEQ determined that Respondent's permit application did not include a valid Land Use Compatibility Statement (LUCS) and requested information regarding the LUCS from Zenith.

5. At all relevant times, Zenith did not have coverage under the Permit.

6. On or before August 2020, Respondent:

- a. Grubbed the Site, cutting down nine (9) trees or shrubs;
- b. Placed stockpiles of structural fill at the Site; and
- c. Graded or disturbed a total of 14.5 acres of Site.

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

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

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

25 ///

26 ///

27 ///

1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

3
4
5
6 7/7/2021
7 Date

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT No.1

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

- VIOLATION: Violating ORS 468B.050(1)(d) and OAR 340-045-0033(6) by engaging in construction activity without a permit.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii), as Respondent has applied for coverage under an NPDES General Permit for a construction site that disturbed 14.5 acres.

"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 of violation is a separate occurrence. Respondent engaged in construction activities for approximately eight months. It began construction activities on or before August 2020 and stopped the activities on or about April 22, 2021, after it ceased grubbing and grading and appropriately stabilized the stockpiles of fill material to prevent a discharge of sediment. As of the date of this Notice, DEQ has not granted Respondent permit coverage.

"M" is the mental state of Respondent, and receives a value of 10 according to OAR 340-012-0145(5)(e) because Respondent acted flagrantly. On or about May 11, 2020, Zenith submitted to DEQ an application for coverage under the Permit. On July 16, 2020, DEQ determined that Zenith's permit application was incomplete and requested additional

information from Zenith concerning the Land Use Compatibility Statement (LUCS). A valid LUCS is a requirement for permit application approval. Therefore, Respondent had actual knowledge that engaging in construction activities at the Site without a permit would be unlawful. Nonetheless, Respondent consciously set out to commit the violation by engaging in construction activities at the Site without permit coverage when it began, grubbing, grading, and stockpiling fill materials at the Site on or before August, 2020.

"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 the Respondents' 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 total value of \$13,998. Respondent gained an economic benefit in the amount of \$13,376 by avoiding the costs of performing 92 visual monitoring events since it applied for Permit coverage (\$9,200), and the costs of implementing best management practices described in Respondent's revised Erosion and Sediment Control Plan since January 29, 2021 (\$6,939). In addition, Respondent gained an economic benefit of \$622 as a result of delaying since January 12, 2021, until April 22, 2021 the costs of stabilizing the stockpiles located at the Site (\$77,391).

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 4 + 10 + 0)] + \$13,998
= \$4,000 + (\$400 x 14) + \$13,998
= \$4,000 + \$5,600 + \$13,998
= \$23,598