



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

July 19, 2017

CERTIFIED MAIL: 7016 2140 0000 2420 4942

East Side Plating, Inc.

David J. Zarosinski, Registered Agent

520 SW Sixth Ave, Suite 1200

Portland, OR 97204

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2017-101

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$169,303 for failing to implement stormwater treatment measures at your facility located at 8400 SE 26th Place in Portland, and known as "East Side Plating Plants #1-3". Specifically, you failed to install the treatment measures required to address elevated levels of zinc and copper in the stormwater discharge at your facility by the June 30, 2016 deadline established in your industrial stormwater permit.

DEQ issued this penalty because the violations pose a risk to human health and the environment. The stormwater discharges from your facility have exceeded statewide benchmark pollutant concentrations for Total Zinc and Total Copper. In order to reduce the concentrations of these pollutants in your stormwater discharges and to comply with your stormwater discharge permit, you were required to complete "Tier II" treatment by June 30, 2016. By failing to implement Tier II treatment, you have failed to adequately address the pollutant levels in your stormwater discharge. Benchmark exceedances for Total Zinc and Total Copper indicate the presence of harmful levels of these pollutants in your stormwater that, without adequate treatment, could pose a risk of harm to aquatic life and beneficial uses of Johnson Creek.

Included in Section IV is an order requiring you to, within 120 days of this order becoming final by operation of law or on appeal, install and implement all Tier II stormwater treatment measures required by the permit, Schedule A, Condition 12.c and the Tier II Plan and demonstrate the installation of the Tier II stormwater treatment measures by sending a report to the City of Portland.

\$161,303 of the civil penalty represents the economic benefit you gained by failing to install and implement Tier II treatment. If you complete these requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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.

DEQ is aware that the City of Portland issued you a Pre-Enforcement Notice on June 22, 2017, regarding a violation of the industrial stormwater permit for your Plant #5, located at 1300/1304 SE 2nd Ave in Portland. DEQ is currently evaluating the information related to that Notice and any formal enforcement action regarding Plant #5 will be issued as a separate case.

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: Scott Henriksen, East Side Plating, Inc., 8400 SE 26th Place, Portland, OR 97202
Matthew Poole, City of Portland
Laura Johnson, City of Portland
Christine Svetkovich, DEQ
Shaumae Hall, Accounting, DEQ
John Koestler, WQ, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	
4	East Side Plating, Inc.,)	NOTICE OF CIVIL PENALTY
5	a domestic business corporation,)	ASSESSMENT AND ORDER
6	Respondent.)	CASE NO. WQ/SW-NWR-2017-101

6 I. AUTHORITY

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

11 II. FINDINGS OF FACT

12 1. On August 14, 2012, DEQ assigned Respondent coverage under the National Pollutant
13 Discharge Elimination System (NPDES) Stormwater Discharge General Permit Number 1200-Z
14 (Permit) for its industrial facility located at 8400 SE 26th Place in Portland, Oregon and known as “East
15 Side Plating – Plants #1-3” (Facility).

16 2. The Permit authorizes Respondent to construct, install, modify, or operate stormwater
17 treatment or control facilities, and to discharge stormwater and non-stormwater discharges specifically
18 authorized by the Permit to public waters in conformance with all the requirements, limitations, and
19 conditions set forth in the Permit.

20 3. The Permit was in effect at all material times.

21 4. The Facility discharges stormwater to Johnson Creek.

22 5. The Facility has one sampling point known as “Outfall No. 1”.

23 6. Pursuant to Schedule A, Condition 12.a of the Permit, permit registrants are required to
24 evaluate sampling results collected during the 2nd year of permit coverage (July 1, 2013 – June 30,
25 2014) and determine if the geometric mean of the samples collected at each monitored outfall exceeds
26 any statewide benchmark. The permit registrant must report this information in a Discharge
27 Monitoring Report (DMR) form for that monitoring year.

1 7. Pursuant to Schedule A, Condition 12.c.i of the Permit, if the geometric mean of the
2 sampling results for any outfall monitored exceeds any statewide benchmark, permit registrants are
3 required to carry out the following Tier II corrective actions:

- 4 a. Revise the Stormwater Pollution Control Plan (SWPCP) to include additional
5 stormwater treatment measures, which may include a combination of source control and
6 treatment measures, with the goal of achieving the statewide benchmarks in future
7 discharges. The SWPCP revisions, also known as a “Tier II Plan”, must include the
8 rationale for the selection of the measures, the projected reduction of pollutant
9 concentration(s) and the schedule for implementing these measures;
- 10 b. Have a licensed professional engineer or certified engineering geologist design and
11 stamp the portion of the SWPCP that addresses the stormwater treatment measures; and
- 12 c. Submit the Tier II Plan to the City of Portland by December 31st of the 3rd year of permit
13 coverage (December 31st, 2014).

14 8. Pursuant to Schedule A, Condition 12.c.ii of the Permit, permit registrants are required to
15 implement the Tier II additional stormwater treatment measures by June 30th of the 4th year of permit
16 coverage (June 30, 2016).

17 9. Pursuant to Schedule A, Condition 6.c of the Permit, a permit registrant’s “[f]ailure to
18 implement any of the control measures or practices described in the SWPCP is a violation of the
19 permit.”

20 10. According to Respondent’s DMR for the 2nd year of Permit coverage (July 1, 2013 – June
21 30, 2014) submitted to the City of Portland the geometric mean of stormwater samples collected at the
22 Facility’s Outfall No. 1 was:

- 23 a. 0.78 milligrams per liter (mg/L) for Total Zinc, exceeding the statewide benchmark of
24 0.12 mg/L; and
- 25 b. 0.039 mg/L for Total Copper, exceeding the statewide benchmark of 0.020 mg/L.

26 11. On December 30, 2014, Respondent submitted to the City of Portland a Tier II Revised
27 Stormwater Pollution Control Plan, supplementing the Facility’s SWPCP and proposing source control

1 and treatment measures to address the elevated levels of Total Zinc and Total Copper described in
2 Section I, Paragraph 10, above.

3 12. On April 21, 2015, Respondent submitted a revised Tier II Plan to the City of Portland.

4 13. On April 22, 2015, the City of Portland accepted Respondent's revised Tier II Plan
5 (hereinafter the "Tier II Plan").

6 14. Respondent's Tier II Plan proposes that the following stormwater treatment measures be
7 installed or implemented by October 14, 2015:

- 8 a. Four of the Facility's outfalls will be reconveyed to a single outfall to facilitate
9 stormwater treatment;
- 10 b. Respondent will construct a new manhole and stormwater conveyance from four facility
11 catch basins;
- 12 c. A new detention tank and plumbing to contain and treat a design storm flow of 1.29
13 inches of rainfall in a 24-hour period; and
- 14 d. An "Enpurion" electrocoagulation stormwater treatment system followed by a sand filter
15 to remove residual solids.

16 15. Respondent's Tier II Plan further states that "PLANTS 1-3 are required to have their
17 stormwater treatment system in operation by June 30th, 2016."

18 16. As of the date of this Notice, Respondent has not installed any of the stormwater treatment
19 measures described in its Tier II Plan.

20 III. CONCLUSIONS

21 Respondent violated ORS 468B.025(2) and Schedule A, Conditions 6.c and 12.c of the
22 Permit by failing to install the Tier II stormwater treatment measures described in its Tier II Plan no
23 later than June 30, 2016, as described above in Section II, Paragraphs 6-16. This is a Class I violation,
24 according to OAR 340-012-0055(1)(r). DEQ hereby assesses a \$169,303 civil penalty for this violation.

25 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

1 1. Pay a total civil penalty of \$169,303. The determination of the civil penalty is attached as
2 Exhibit 1 and is incorporated as part of this Notice.

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

7 2. Within 120 days of this order becoming final by operation of law or on appeal, install and
8 implement all Tier II stormwater treatment measures required by the Permit, Schedule A, Condition
9 12.c and the Tier II Plan and demonstrate the installation of the Tier II stormwater treatment measures
10 by sending a report to the City of Portland, Bureau of Environmental Services, Attn: Matthew Poole,
11 6543 N Burlington Ave, Portland, OR 97203 or Matthew.Poole@portlandoregon.gov.

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.

27 Active duty service-members have a right to stay proceedings under the federal Service

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

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

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July 19, 2017
Date

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

EXHIBIT 1

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

VIOLATION No. 1: Failing to install Tier II stormwater treatment measures described in its Tier II Plan no later than June 30, 2016, in violation of ORS 468B.025(2) and Schedule A, Conditions 6.c and 12.c of the Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(r).

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)(E)(iii) because Respondent has coverage under the 1200-Z NPDES industrial stormwater discharge General 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 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 constitutes a separate occurrence. The violation began on June 30, 2016. As of the date of this Notice, the violation continues. Therefore, there are more than 28 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 the Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. The requirement to implement Tier II stormwater treatment measures by June 30, 2016 is an express condition of the Permit. Respondent submitted a Tier II Plan to the City of Portland on December 30, 2014 and submitted a revised Tier II Plan to the City on

April 21, 2015, proposing treatment measures to remove Total Copper and Total Zinc from its stormwater discharge. Respondent's Tier II Plan was accepted by the City of Portland on April 22, 2017. Respondent's Tier II Plan includes a proposed implementation schedule, including a completion date of October 14, 2015. Respondent's Tier II Plan further states that "PLANTS 1-3 are required to have their stormwater treatment system in operation by June 30th, 2016." Despite its awareness of its Tier II obligations and the deadline for implementation required by the Permit, Respondent failed to install the proposed Tier II stormwater treatment measures by June 30, 2016. Therefore, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate the Permit.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not provided any documentation to the City of Portland or to DEQ demonstrating that it has installed any of the treatment measures included in its Tier II Plan.

"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 \$161,303. This is the amount Respondent gained by avoiding spending \$228,615 to install the treatment measures described in Respondent's Tier II Plan (\$236,000 minus \$7,385 that Respondent spent on retention tanks and a backflush tank in August 2016). This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 4 + 2)] + \$161,303 \\ &= \$4,000 + (\$400 \times 10) + \$161,303 \\ &= \$4,000 + \$4,000 + \$161,303 \\ &= \$169,303 \end{aligned}$$