



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
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Portland, OR 97204-1390
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TTY: 711

July 22, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5241

Central Washington Asphalt, Inc.
Northwest Registered Agency LLC
5305 River Road N, Suite B
Keizer OR 97303

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AC-ER-2016-102

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$412.50 for failing to submit your annual report required by your air contaminant discharge permit in a timely manner. Your permit requires that you submit a report by February 15 of each year. You submitted the report for 2015 on April 14, 2016. DEQ is particularly concerned about this late submittal since you also submitted your 2014 report late, on March 24, 2015.

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 at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below. 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 Susan Elworth, at (503) 229-5152. You may call toll-free within Oregon at 1-800-452-4011, extension 5152.

Sincerely,

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Tom Hack, Pendleton office
Cindy Troupe, AQ, HQ



1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 CENTRAL WASHINGTON ASPHALT, INC.) NOTICE OF CIVIL PENALTY
5 Respondent.) ASSESSMENT AND ORDER
CASE NO. AQ/AC-ER-2016-102

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and
8 Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS
9 Chapters 183 and 468A, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11, 12, and 216.

10 II. FINDINGS OF FACT

11 1. On June 24, 2014, Respondent was assigned coverage under the General Air Contaminant
12 Discharge Permit No. AQGP-007 (Permit) for its portable plant located outside of Milton-Freewater
13 Oregon. The Permit expires on October 1, 2017.

14 2. Section 7.3 of the Permit requires Respondent to submit to DEQ by February 15 of each
15 year, two copies of the information set forth in that section for the preceding year.

16 3. On April 4, 2016, DEQ received Respondent's report for 2015.

17 III. CONCLUSIONS

18 Respondent violated section 7.3 of the Permit by failing to timely submit its annual report.
19 This is a Class II violation, according to OAR 340-012-0054(2)(f). DEQ hereby assesses a \$412.50 civil
20 penalty for this violation.

21 IV. ORDER TO PAY CIVIL PENALTY

22 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
23 hereby ORDERED TO pay a civil penalty of \$412.50. The determination of the civil penalty is attached
24 as Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as set forth in
25 Section V below, your check or money order must be made payable to "**State Treasurer, State of**
26 **Oregon**" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**.
27 Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

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. You
3 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
4 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
5 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters
6 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
7 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
8 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
9 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the
10 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
11 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
12 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
13 association.

14 Active duty service-members have a right to stay proceedings under the federal Service
15 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
16 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
17 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
18 <http://legalassistance.law.af.mil/content/locator.php>.

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

25
26 July 22, 2016

27 Date

Leah K. Feldon

Leah K. Feldon, 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 1: Failing to timely submit an annual report, in violation of section 7.3 of Respondent's Permit.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(f).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and the Department finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. Respondent's failure to submit the report in a timely manner posed no more than a de minimis impact on the environment.

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 \$375 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(4)(a)(C). Respondent has registered under an 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 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 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation. The report was due on or before February 15, 2016.

"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. Negligence means that Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting a violation. In March 2015, DEQ issued to Respondent a letter for submitting its annual report for 2014 late. By failing to take steps to ensure submittal of a timely report for 2015, Respondent failed to take reasonable care to avoid committing this foreseeable violation.

"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 took reasonable affirmative efforts to minimize the effects of the violation. Respondent submitted its report.

"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 \$0 as DEQ is unable to make an estimate of any costs delayed or avoided.

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

$$\begin{aligned} &= \$375 + [(0.1 \times \$375) \times (0 + 0 + 0 + 4 - 3)] + \$0 \\ &= \$375 + [\$37.50 \times 1] + \$0 \\ &= \$375 + \$37.50 + \$0 \\ &= \$412.50 \end{aligned}$$