



# 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

August 4, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 2795

Boise Cascade Wood Products, LLC  
c/o CT Corporation System  
388 State Street, Suite 420  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/I-ER-2016-047

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$15,906 for violating your wastewater disposal permit by constructing and modifying wastewater facilities at your facility in Elgin without first submitting plans and obtaining approval from DEQ. DEQ requires that permittees first submit plans and obtain approval before constructing or modifying wastewater facilities to ensure that such changes do not jeopardize water quality.

DEQ appreciates your efforts to correct the violation by submitting plans after the fact. DEQ considered these efforts when determining the amount of civil penalty.

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. 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 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 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.

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.



Boise Cascade Wood Products, LLC

Case No. WQ/I-ER-2016-047

Page 2

If you have any questions, please contact Jeff Bachman at (503) 229-5950. You may call toll-free within Oregon at 1-800-452-4011, extension 5950.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Carl Nadler, Eastern Region, The Dalles Office, DEQ  
John Koestler, WQ, DEQ HQ  
Brian King, Schwabe Williamson and Wyatt, 1211 SW 5th Ave #1900, Portland, OR 97204

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:	)	
4	BOISE CASCADE WOOD PRODUCTS,	)	NOTICE OF CIVIL PENALTY
	LLC, a Delaware limited liability company,	)	ASSESSMENT AND ORDER
5		)	
6	Respondent.	)	CASE NO. WQ/I-ER-2016-047

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
9 and Order (Notice) to Respondent, Boise Cascade Wood Products, LLC, a Delaware limited liability  
10 company, pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS  
11 Chapters 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012 and 045.

12 II. FINDINGS OF FACT

13 1. Respondent operates a stud mill and plywood manufacturing facility (the facility) at 90  
14 S. 21<sup>st</sup> Street in Elgin, Oregon.

15 2. Respondent manages and disposes of stormwater and wastewater generated at the  
16 facility pursuant to Water Pollution Control Facilities Permit No. 103020 (the permit) issued to  
17 Respondent by DEQ.

18 3. The permit authorizes Respondent to construct, install, modify or operate a wastewater  
19 collection, treatment and disposal system in conformance with the requirements, limitations and  
20 conditions set forth in the permit.

21 4. The permit was in effect at all material times.

22 5. Schedule D, Condition 1 of the permit states that "Prior to constructing or modifying  
23 wastewater management, treatment, discharge or disposal facilities, detailed plans and specifications  
24 must be submitted to and approved in writing by the Department [of Environmental Quality]."

25 6. On or about February 19, 2016, Respondent commenced construction of a wastewater  
26 storage pond at the facility without first submitting detailed plans and specifications for the pond to  
27 DEQ and obtaining DEQ approval.

///



1 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request  
2 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**  
3 **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the  
4 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR  
5 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
6 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or  
7 association.

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

13 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
14 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
15 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
16 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
17 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
18 information submitted by you, as the record for purposes of proving a prima facie case.  
19  
20  
21

22 August 4, 2016

23 Date

22 Sarah Wheeler for

23 Leah K. Feldon, Manager

24 Office of Compliance and Enforcement  
25  
26  
27

## EXHIBIT 1

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

VIOLATION 1: Violating Schedule D, Condition 1 of the permit by constructing a wastewater storage pond without prior plan approval by the DEQ in violation of ORS 468B.025(2).

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

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)(ii).

"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). Respondent has one prior significant action consisting of one Class I violation for an initial P value of 2, stemming from Case No. WQ/I-ER-10-186, pursuant to OAR 340-012-0145(2)(a). This value is reduced to 0 pursuant to OAR 340-012-0145(2)(d)(A)(ii) and -0145(e) because the prior significant action is more than five years old.

"H" is Respondent's history of correcting prior significant actions and receives a value of 1 pursuant to OAR 340-012-0145(3)(d) as Respondent did not or could not take extraordinary efforts to correct or minimize the effects of its prior violation.

"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.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent acted intentionally with actual knowledge of the requirement. Respondent had several conversations with DEQ staff in which it expressed its intent to construct the pond and was advised by DEQ that construction required prior plan approval.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to minimize the effects of the violation. Respondent has submitted plans to DEQ post-construction.

"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 \$2,306. This is the amount Respondent gained by avoiding the cost of obtaining and complying with a stormwater discharge permit that would have avoided the need to construct additional storage. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$4,000 + [(0.1 x \$4,000) x (0 + 1 + 0 + 8 + (-2))] + \$2,306  
= \$4,000 + [\$400 x 7] + \$2,306  
= \$4,000 + \$2,800 + \$2,306  
= \$9,106

## EXHIBIT 2

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

VIOLATION 2: Violating Schedule D, Condition 1 of the permit by modifying its wastewater emergency bypass system without prior plan approval by the DEQ in violation of ORS 468B.025(2).

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

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)(ii).

"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). Respondent has one prior significant action consisting of one Class I violation for an initial P value of 2, stemming from Case No. WQ/I-ER-10-186, pursuant to OAR 340-012-0145(2)(a). This value is reduced to 0 pursuant to OAR 340-012-0145(2)(d)(A)(ii) and -0145(e) because the prior significant action is more than five years old.

"H" is Respondent's history of correcting prior significant actions and receives a value of 1 pursuant to OAR 340-012-0145(3)(d) as Respondent did not or could not take extraordinary efforts to correct or minimize the effects of its prior violation.

"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.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent acted intentionally with actual knowledge of the requirement. Respondent had several conversations with DEQ staff in which it expressed its intent to construct additions and modifications to its wastewater treatment system and was advised by DEQ that modifications required prior plan approval.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to minimize the effects of the violation. Respondent has submitted plans to DEQ post-construction.

"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 the EB for this violation is reflected in the EB for Violation 1.

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 + 1 + 0 + 8 + (-)2)] + \$0  
= \$4,000 + [\$400 x 7] + \$0  
= \$4,000 + \$2,800 + \$0  
= \$6,800