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 29, 2016

CERTIFIED MAIL No. 70142870000133736231

American Rock Products, Inc.
c/o Brien Deatley, Registered Agent
81830 US Highway 395
Hermiston, OR 97838

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AC-ER-2016-117

This letter is to inform you that DEQ has issued you a civil penalty of $1,322 for producing 25,000 cubic yards or more of concrete during the 2015 operating year without first applying for and being assigned to the General Air Contaminant Discharge Permit (ACDP) for concrete ready-mix plants. The Basic ACDP you were operating under at that time expressly required that you upgrade to the General ACDP if you produced 25,000 tons or more of concrete annually.

DEQ issued this penalty because concrete output directly relates to the amount of particulate emissions produced. Particulate matter is a pollutant that can contribute to respiratory distress in members of the public and create nuisance conditions in the surrounding area. A General ACDP contains more restrictive operating conditions and DEQ oversight to ensure particulate emissions do not become an environmental or public health concern.

DEQ appreciates your efforts to promptly address the violation by applying for assignment to the General ACDP in July. DEQ considered these efforts when determining the amount of civil penalty.

If you wish to appeal this matter, you have 20 calendar days from receipt of this letter to request a contested case hearing. This 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 written hearing request from you within 20 days, 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.

If you have any questions, please contact DEQ Environmental Law Specialist Esther Westbrook at (503) 229-5374.

Sincerely,

Susan Muela for

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Bonnie Hough, Bend Office, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

| | | |
|---|---|---|
| IN THE MATTER OF:<br>AMERICAN ROCK PRODUCTS, INC.,<br>a Washington corporation<br><br>Respondent. | )<br>)<br>)<br>)<br>) | NOTICE OF CIVIL PENALTY<br>ASSESSMENT AND ORDER<br><br>NO. AQ/AC-ER-2016-117 |

## I. AUTHORITY

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

## II. FINDINGS OF FACT

1. Respondent, American Rock Products, Inc., a Washington corporation, operates a portable concrete manufacturing plant (plant) in Oregon.

2. On July 30, 2010, the Department of Environmental Quality (DEQ) issued Respondent Basic Air Contaminant Discharge Permit No. 37-0715 (Permit). The Permit was in effect at all material times.

3. The Permit authorized Respondent to discharge air contaminants from the plant in conformance with the requirements, limitations and conditions set forth in the Permit.

4. Condition 2.1 of the Permit prohibits Respondent from increasing production or throughput to 25,000 cubic yards or more per year without first applying for and being assigned to General Air Contaminant Discharge Permit AQGP-009 (General ACDP).

5. Condition 3.2 of the Permit requires Respondent to submit an annual report to DEQ by February 15th of each year that includes the amount of concrete produced in Oregon during the previous calendar year.

6. On March 25, 2016, DEQ received Respondent's 2015 annual report. According to the report, Respondent had an output of 27,847 cubic yards of concrete in 2015.

8. Respondent did not apply to DEQ for assignment to the General ACDP prior to increasing production to 25,000 cubic yards per year or more.

9. Respondent applied for assignment to the General ACDP on July 22, 2016.

10. DEQ assigned Respondent to the General ACDP on July 25, 2016.

## III. CONCLUSION

During 2015, Respondent violated Condition 2.1 of the Permit by producing 25,000 cubic yards or more of concrete without first applying for and being assigned to the General ACDP, as described in Section II, paragraphs 1-8 above. This is a Class II violation according to OAR 340-012-0054(2)(b). DEQ has assessed a $1,322 civil penalty for this violation.

## IV. ORDER TO PAY CIVIL PENALTY

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

Pay a total civil penalty of $1,322. The determination of the civil penalty is attached as Exhibit No. 1 and is incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

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

You have a right to a contested case hearing on this Notice, if you request one in writing. You must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must include them in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-**

**5100**. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you may represent yourself unless you are a corporation, agency or association.

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

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

August 29, 2016
Date

Susan Wheeler for
Leah K. Feldon, 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: Producing 25,000 cubic yards or more of concrete per year without applying for and being assigned to the General ACDP, in violation of Condition 2.1 of Respondent's Basic ACDP.

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

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 x BP) x (P + H + O + M + C)] + EB

"BP" is the base penalty, which is $750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(C).

"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" 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. In accordance with OAR 340-012-0145(4), each day of violation with a duration of more than one day is a separate occurrence. Respondent exceeded its annual limit and needed to apply for and receive assignment to the General Permit from operating year 2015 until July 22, 2016.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent reasonably should have known of the requirement to apply for and receive assignment to the General Permit. Condition 2.1 of Respondent's Permit expressly prohibited Respondent from crushing 25,000 tons or more of material per year unless Respondent applied for and received assignment to the General ACDP.

"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 made reasonable efforts to correct the violation by applying to DEQ for assignment under the General ACDP on July 22, 2016.

"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 $347. This is the amount Respondent gained by delaying payment of the $1,440 initial permit assignment fee and $864 annual fee until July 22, 2016 for assignment to the General ACDP. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $750 + [(0.1 x $750) x (0 + 0 + 4 + 2 + (-3))] + $347
= $750 + (75 x 3) + $347
= $750 + $225 + $347
= $1,322