



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Office of the Director  
811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5343  
FAX (503) 229-5100  
TTY: 711

October 4, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 6071

Oregon Fir Millwork, Inc.  
c/o Douglas Schmor  
201 West Main St., Suite 5A  
Medford, OR 97501

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-WR-2016-157

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$8,382 for failing to perform stormwater monitoring required by the National Pollutant Discharge Elimination System General Permit 1200-Z at the facility located at 7650 4<sup>th</sup> Street in White City, Oregon.

DEQ issued this penalty because Permittees are required to sample and monitor their storm water discharge to ensure their discharges meet the water quality benchmarks in the Permit. Failure to meet the benchmarks may indicate the presence of harmful levels of industrial pollutants that could enter public streams and rivers. These discharges can damage aquatic species and their habitat and reduce the safety of public waters for public usage.

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.

If you have any questions, please contact DEQ Environmental Law Specialist Courtney Brown, at (503) 229-6839. You may call toll-free within Oregon at 1-800-452-4011, extension 6839.

Sincerely,



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

Enclosures

cc: Jill Seale, Eugene  
John Koestler, WQ, HQ  
Doug Seeley, P.O. Box 2556, White City, OR 97503

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 OREGON FIR MILLWORK, INC. ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. WQ/SW-WR-2016-157  
6

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,  
10 ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions  
11 011, 012, and 045.

12 II. FINDINGS OF FACT

13 1. Respondent operates an industrial facility with a Standard Industrial Code of 2431 located at  
14 7650 4<sup>th</sup> Street in White City, Oregon (the "Facility").

15 2. On or about August 14, 2013, Respondent's Facility was registered for coverage under the  
16 National Pollutant Discharge Elimination System General Permit Number 1200-Z (the Permit).

17 3. Schedule B, conditions 1.a and 2.e of the Permit require permit registrants to monitor  
18 their stormwater discharge four times per monitoring year. The monitoring year is July 1<sup>st</sup> to June 30<sup>th</sup>.

19 4. Schedule B, condition 8 of the Permit requires permit registrants to submit the sampling  
20 results for the previous monitoring year by July 31<sup>st</sup> of each year.

21 5. As of the date of this Notice and Order Respondent has failed to submit any sampling  
22 results for the monitoring year that ran from July 1, 2015, to June 30, 2016.

23 III. CONCLUSIONS

24 Respondent has violated ORS 468B.025(2) by violating Schedule B conditions 1.a and 2.e of  
25 the Permit by failing to perform required stormwater monitoring during the 2015-2016 monitoring year.  
26 This is a Class I violation, according to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$8,382 civil  
27 penalty for this violation.

1 IV. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
3 hereby ORDERED TO: Pay a total civil penalty of \$8,382. The determination of the civil penalty is  
4 attached as Exhibit No.1 and is incorporated as part of this Notice.

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

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

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

22 Active duty service-members have a right to stay proceedings under the federal Service  
23 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
24 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
25 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
26 <http://legalassistance.law.af.mil/content/locator.php>.

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1 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
2 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
3 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
4 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
5 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
6 information submitted by you, as the record for purposes of proving a prima facie case.  
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10 October 11, 2016

11 Date

10 Sarah Wheeler

11 Sarah G. Wheeler, Acting Manager  
12 Office of Compliance and Enforcement  
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EXHIBIT No.1

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

VIOLATION: Violating ORS 468B.025(2) by violating Schedule B, conditions 1.a and 2.e of the Permit during the 2015-2016 monitoring year by failing to monitor.

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

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).

"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 2 according to OAR 340-012-0145(4)(b), because there was more than one but less than seven occurrences of the violation. The Permit requires Respondent to monitor 4 times per monitoring year. Respondent failed to monitor at all during the 2015-2016 monitoring year.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent applied for coverage under the Permit and has a copy of the Permit, which expressly requires Respondent to conduct grab sample analyses and visual monitoring of its discharge. On August 29, 2014, and August 24, 2015, DEQ sent Respondent Warning Letters for violations of the Permit's Schedule B monitoring violations. Respondent is aware of the Permit's Schedule B monitoring requirements. By failing to conduct the required sampling of its storm water, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate its Permit.

"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 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 \$382. This is the amount Respondent gained by avoiding spending \$612 on monitoring costs during the 2015-2016 monitoring year. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 2 + 8 + 0)] + \$382 \\ &= \$4,000 + [\$400 \times 10] + \$382 \\ &= \$4,000 + \$4,000 + \$382 \\ &= \$8,382 \end{aligned}$$