



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5382
FAX (503) 229-5787
TTY 711

October 27, 2021

CERTIFIED MAIL No. 7017 0530 0000 7760 6483

Johnny Cat, Inc.
c/o Tara Holmes, Registered Agent
670 Powderhorn Drive
Jacksonville, OR 97530

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-WR-2021-075

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that DEQ has issued you a civil penalty of \$4,300 for failing to submit your 2020 annual report to DEQ for your portable rock crusher (source no. 37-0748); and for late submittal to DEQ of your 2020 annual report for your portable concrete plant (source no. 37-0689), as required by your Air Contaminant Discharge Permits.

DEQ issued this penalty because annual reports are an important mechanism for DEQ to determine whether sources of air contaminants are operating within the conditions and limits of permits. Without the report, DEQ is unable to determine the compliance status of your rock crusher or concrete plant to ensure emissions are within levels that do not pose harm to the public's health or the environment.

Included in Section IV of the attached Notice is an order requiring you to submit your 2020 annual report for your rock crusher to DEQ, within 30 days of the order becoming final.

DEQ appreciates your effort to correct the late report violation for your concrete plant by submitting the report to DEQ on March 18, 2021. DEQ considered this effort when determining the amount of civil penalty.

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 portion of the 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.

If you have any questions, please contact Jenny Root at 503-229-5874 or toll free in Oregon at 800-452-4011, extension 5874.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jennifer Horton, Western Region, Medford Office, DEQ
Claudia Davis, Western Region, Salem Office, DEQ
Donald Hendrix, AQ, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 JOHNNY CAT, INC.,) ASSESSMENT AND ORDER
5 an Oregon corporation,)
6 Respondent.) NO. AQ/ACDP-WR-2021-075

7 I. AUTHORITY

8 This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and
9 468.126 through 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR)
10 Chapter 340, Divisions 011, 012, 200, 214 and 216.

11 II. FINDINGS OF FACT

12 1. Respondent operates a portable rock crusher in Oregon.

13 2. On October 10, 2017, the Department of Environmental Quality (DEQ) assigned
14 Respondent's rock crusher to General Air Contaminant Discharge Permit AQGP-008 as source
15 number 37-0748 (the Rock Crusher). The permit was in effect at all material times.

16 3. Respondent also operates a portable concrete manufacturing plant in Oregon.

17 4. On February 9, 2018, the Department of Environmental Quality (DEQ) assigned
18 Respondent's concrete plant to General Air Contaminant Discharge Permit AQGP-009 as source
19 number 37-0689 (the Concrete Plant). The permit was in effect at all material times.

20 5. AQGP-008 and AQGP-009 authorize Respondent to operate and discharge air
21 contaminants from the Rock Crusher and the Concrete Plant, respectively, and from activities
22 associated with their operation, in accordance with the requirements, limitations and conditions
23 of each permit.

24 6. Condition 7.2 of AQGP-008 and AQGP-009 each require Respondent to submit
25 an annual report to DEQ by February 15th of each year that includes specific production,
26 maintenance and pollutant emission information for the previous calendar year of operation of
27 the Rock Crusher and Concrete Plant.

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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.
3 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive
4 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this
5 Notice or attached exhibits, you must do so in your request for hearing, as factual matters not
6 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 send your
8 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**
9 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to
10 DEQappeals@deq.state.or.us. An administrative law judge employed by the Office of
11 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
12 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
13 attorney at the hearing, however you are not required to be. If you are an individual, you may
14 represent yourself. If you are a corporation, partnership, limited liability company,
15 unincorporated association, trust or government body, you must be represented by an attorney or
16 a duly authorized representative, as set forth in OAR 137-003-0555.

17 Active duty service members have a right to stay proceedings under the federal Service
18 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
19 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
20 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
21 Department does not have a toll-free telephone number.

22 If you fail to file a timely request for hearing, the Notice will become a final order by
23 default without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing
24 but later withdraw your request, fail to attend the hearing or notify DEQ that you will not be
25 attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3).

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DEQ designates the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

10 / 27 / 2021
Date



Kieran O'Donnell, 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: Failing to submit to DEQ, the 2020 annual report for Respondent's portable rock crusher, in violation of Condition 7.2 of AQGP-008 and OAR 340-214-0114(1) and (2).

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

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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent operates the Facility under a General 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 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 0 according to OAR 340-012-0145(4)(a), because there was one occurrence of the violation. Respondent was late submitting one (2020) annual report for the rock crusher.

"M" is the mental state of the Respondent and receives a value of 4 pursuant to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Respondent's Permit expressly requires Respondent to submit an annual report by February 15th of each year. On April 7, 2020, DEQ issued Respondent a Warning Letter with Opportunity to Correct for failing to submit its 2019 annual report to DEQ by the February 15, 2020, due date. By failing to take adequate measures to ensure the 2020 report would be submitted timely by February 15, 2021, Respondent failed to take reasonable care to avoid a foreseeable risk that Respondent would again violate the Permit and Oregon law.

"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).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of 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 any economic benefit derived is likely to be de minimis.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 4 + 2)] + \$0 \\ &= \$2,000 + (200 \times 6) + \$0 \\ &= \$2,000 + \$1,200 + \$0 \\ &= \$3,200 \end{aligned}$$

EXHIBIT 2

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

- VIOLATION: Failing to timely submit to DEQ, the 2020 annual report for Respondent's concrete plant, in violation of Condition 7.2 of AQGP-008 and OAR 340-214-0114(1) and (2).
- 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 DEQ finds that the violation, by itself, 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 or the environment. In making this finding, DEQ considered the following reasonably available information: once Respondent submitted the annual report, DEQ was able to determine Respondent operated in compliance with its permit limits during the 2020 operating year.
- 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 \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent operates the Facility under a General 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 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 0 according to OAR 340-012-0145(4)(a), because there was one occurrence of the violation. Respondent was late submitting one 2020 annual report for the concrete plant.
- "M" is the mental state of the Respondent and receives a value of 4 pursuant to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Respondent's Permit expressly requires Respondent to submit an annual report by February 15th of each year. On April 7,

2020, DEQ issued Respondent a Warning Letter with Opportunity to Correct for failing to submit its 2019 annual report to DEQ by the February 15, 2020, due date. By failing to take adequate measures to ensure the 2020 annual report would be submitted timely, Respondent failed to take reasonable care to avoid a foreseeable risk that Respondent would again violate the Permit and Oregon law.

"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 submitting the report on March 18, 2021.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of 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 any economic benefit derived is likely to be de minimis.

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

$$\begin{aligned} &= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 0 + 4 + -3)] + \$0 \\ &= \$1,000 + (100 \times 1) + \$0 \\ &= \$1,000 + \$100 + \$0 \\ &= \$1,100 \end{aligned}$$