



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 1450 0000 8310 4890

Southern Oregon Rock LLC
c/o John Holmes, Registered Agent
670 Powderhorn Drive
Jacksonville, OR 97530

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-WR-2021-074

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 \$1,100 for failing to timely submit your 2020 annual report to DEQ for your portable rock crusher (source no. 37-0445), as required by your Air Contaminant Discharge Permit.

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 crushers or to ensure emissions are within levels that do not pose harm to the public's health or the environment.

In addition, DEQ cited you without penalty for the late submittal of your 2020 annual report for another rock crusher (source no. 37-0637) you own. However, because you did not operate the crusher during 2020, DEQ has chosen not to assess a civil penalty for this violation.

DEQ appreciates your effort to correct the late annual report violations for your rock crushers by submitting the reports 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 III. CONCLUSIONS

2 1. Respondent violated Condition 7.2 of the Permit and OAR 340-214-0114(1) and
3 (2), adopted pursuant to ORS 468A.050(1), by failing to submit its 2020 annual report for
4 crusher 37-0445 to DEQ, by February 15, 2021, as further described in Section II, Paragraph 6
5 above. This is a Class II violation according to OAR 340-012-0054(2) (f). DEQ has assessed a
6 \$1,100 civil penalty for this violation.

7 2. Respondent violated Condition 7.2 of the Permit and OAR 340-214-0114(1) and
8 (2), adopted pursuant to ORS 468A.050(1), by failing to submit its 2020 annual report for
9 crusher 37-0637 to DEQ, by February 15, 2021, as further described in Section II, Paragraph 6
10 above. This is a Class II violation according to OAR 340-012-0054(2) (f). DEQ has not assessed a
11 civil penalty for this violation.

12 IV. ORDER TO PAY CIVIL PENALTY

13 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSION, Respondent is
14 hereby ORDERED TO:

15 1. Pay a total civil penalty of \$1,100. The determination of the civil penalty is attached
16 as Exhibit 1 and is incorporated as part of this Notice.

17 If you do not file a request for hearing as set forth in Section V below, your check or
18 money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ,**
19 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

21 You have a right to a contested case hearing on this Notice, if you request one in writing.
22 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive
23 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this
24 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not
25 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
26 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your
27 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**

1 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to
2 DEQappeals@deq.state.or.us. An administrative law judge employed by the Office of
3 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
4 340, and Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
5 attorney at the hearing, however you are not required to be. If you are an individual, you may
6 represent yourself. If you are a corporation, partnership, limited liability company,
7 unincorporated association, trust or government body, you must be represented by an attorney or
8 a duly authorized representative, as set forth in OAR 137-003-0555.

9 Active duty service members have a right to stay proceedings under the federal Service
10 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
11 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
12 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
13 Department does not have a toll-free telephone number.

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

20
21
22
23 10/27/2021
24 Date


23 
24 Kieran O'Donnell, Manager
25 Office of Compliance and Enforcement
26
27

EXHIBIT 1

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 crusher 37-0445, in violation of Condition 7.2 of the Permit 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 crusher 37-0445.

"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 -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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,000 + [(0.1 x \$1,000) x (0 + 0 + 0 + 4 + -3)] + \$0
= \$1,000 + (100 x 1) + \$0
= \$1,000 + \$100 + \$0
= \$1,100