

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3  
4 IN THE MATTER OF  
5 VISCO, INC.,

6 Respondent.

)  
) MUTUAL AGREEMENT  
) AND FINAL ORDER  
) CASE NO. LQ/SW-WR-2021-053  
)

7 WHEREAS:

8 1. Respondent owns and operates an industrial metal foundry facility, located at 29579  
9 Awbrey Lane, Eugene, Oregon (facility).

10 2. Prior to August 17, 2017 and continuing through the date of this Mutual Agreement  
11 and Order (MAO), Respondent accumulated and stored at the facility an estimated 79,400 square  
12 feet of spent sandblasting grit.

13 3. The spent grit is a solid waste pursuant to Oregon Revised Statute (ORS)  
14 459.005(24) and Oregon Administrative Rule (OAR) 340-093-0030(91).

15 4. Respondent's facility is a solid waste disposal site pursuant to ORS 459.005(8)(a)  
16 and OAR 340-093-0030(38).

17 5. ORS 459.205(1) states: "Except as provided by ORS 459.215, a disposal site shall  
18 not be established, operated, maintained or substantially altered, expanded or improved, and a  
19 change shall not be made in the method or type of disposal at a disposal site, until the person  
20 owning or controlling the disposal site obtains a permit therefor from the Department of  
21 Environmental Quality as provided in ORS 459.235."

22 6. DEQ has not issued Respondent a solid waste disposal site permit for the facility.

23 7. Respondent has violated ORS 459.205(1) and OAR 340-093-0040(1) by disposing  
24 of solid waste at an unauthorized location. Specifically, Respondent has placed industrial solid  
25 waste in large uncovered piles at the facility.

26 8. DEQ and Respondent recognize that the Environmental Quality Commission has the  
27 power to impose civil penalties and issue compliance orders for any violation of applicable Oregon

1 law. Pursuant to ORS 183.745(11), ORS 459.376, and OAR Chapter 340, Division 12, DEQ and  
2 Respondent wish to settle the past and ongoing violations referred to in Paragraph 7 above through  
3 this MAO.

#### 4 I. AGREEMENT

5 Respondent and DEQ hereby agree that:

6 1. This MAO is not intended to limit, in any way, DEQ's right to proceed against  
7 Respondent in any forum for any past or future violations not expressly settled herein.

8 2. Compliance with the conditions of this MAO does not exempt Respondent from  
9 compliance with applicable statutes, rules, and regulations.

10 3. Respondent and DEQ agree that the total civil penalty for the violations alleged in  
11 Paragraph 7 is \$20,400. The determination of the civil penalty is attached and incorporated as  
12 Exhibit No. 1. The civil penalty must be paid when Respondent submits this MAO to DEQ for full  
13 execution.

14 4. Pursuant to OAR 340-012-0030(19) and OAR 340-012-0145(2), the violations  
15 alleged in paragraph 7 of the recitals above in this MAO will be treated as prior significant actions  
16 in the event a future violation occurs.

17 5. Respondent agrees to waive any and all rights and objections to a contested case  
18 hearing and judicial review of the violations described in this MAO, and to service of a copy of this  
19 MAO, which shall be effective when signed by DEQ.

20 6. Respondent agrees that this MAO shall be binding on Respondent and its respective  
21 successors, agents, and assigns. The undersigned representative of Respondent certifies that he or  
22 she is fully authorized to execute and bind Respondent to this MAO. No change in ownership,  
23 corporate or partnership status of Respondent, or change in the ownership of the properties or  
24 businesses affected by this MAO shall in any way alter Respondent's obligation under this MAO,  
25 unless otherwise approved in writing by DEQ.

26 7. Respondent agrees to comply with the schedule and conditions set forth in Section II  
27 below.

1 8. If Respondent fails to satisfactorily complete the requirements contained in Section  
2 II, paragraph 2 upon receipt of a written Penalty Demand Notice from DEQ, Respondent agrees to  
3 pay a civil penalty of \$2,400 for each day of each violation of this MAO until such violation is  
4 corrected.

5 9. Within twenty (20) days of receipt of a Penalty Demand Notice from DEQ,  
6 Respondent may contest the Penalty Demand Notice. Respondent agrees that the issue shall be  
7 limited to Respondent's compliance or noncompliance with this MAO. The amount of the  
8 stipulated civil penalty is established in advance by this MAO and is not a contestable issue.

9 10. This MAO will terminate when Respondent pays all civil penalties in full and when  
10 Respondent complies with the conditions of this MAO.

11 11. DEQ and Respondent agree that Respondent may request from DEQ an extension to  
12 the deadlines established in Section II, Paragraph 2 of this MAO for the removal and proper  
13 disposal of all solid wastes disposed of at the Facility. Respondent must request the extension in  
14 writing and must support the request with a justification for the extension and a proposed alternative  
15 deadline. The justification must include a description of Respondent's due diligence to meet the  
16 deadlines in Section II, Paragraph 2 of this MAO and the circumstances beyond Respondent's  
17 reasonable control that necessitate an extension. Justification for the extension may include, but is  
18 not limited to, closure of available landfills, inability to pay, acts of nature, unforeseen strikes, work  
19 stoppages, fires, explosion, riot, sabotage, or war. DEQ may approve an extension to the deadlines  
20 in Section II, Paragraph 2 of this MAO by amending this MAO, only if Respondent's request is  
21 made in writing and includes a reasonable justification and alternative deadline, and if DEQ finds  
22 that the cause for delay is beyond Respondent's reasonable control and despite Respondent's due  
23 diligence. Such approval shall not be unreasonably withheld, conditioned, or delayed by DEQ.

24 II. FINAL ORDER

25 The Environmental Quality Commission hereby enters a final order:

26 1. Imposing upon Respondent a total civil penalty of \$20,400 for the violations alleged  
27 in this MAO, all of which is due upon execution of this MAO.

1           2.       Requiring Respondent to comply with the following schedule and conditions:

2                   A. By no later than December 31, 2028, Respondent must remove and properly  
3 dispose, in accordance with all applicable local, state and federal regulations, or beneficially use, in  
4 accordance with OAR 340-093-0260 through -0290, all solid wastes disposed of at the Facility.

5                   B. Beginning in 2022, Respondent must remove the solid waste for disposal or  
6 beneficial use at a rate of at least one seventh of the estimated total of 79,400 square feet per  
7 calendar year.

8                   C. Respondent must remove solid waste down to native soil, prioritizing the  
9 southeastern portion of the disposal area where sampling has found zinc levels in the waste to be the  
10 highest and the area closest to the adjoining property and the ditch along Awbrey Ln.

11                   D. Respondent must take Confirmation samples every 2,000 square feet of area  
12 cleared area or in accordance with a DEQ-approved plan. Samples must be tested for totals of  
13 arsenic (As), lead (Pb), chromium (Cr) and zinc (Zn). No less than six confirmation samples must  
14 be taken and results submitted with Respondent's next quarterly progress report as required by  
15 Paragraph 2.F below.

16                   E. Respondent must implement erosion, sedimentation and track-out controls during  
17 solid waste removal to prevent spent blast from migrating off-site or into non-impacted areas.  
18 Planned activities and control mechanisms must be added to the facility's existing Stormwater  
19 Pollution Control Plan (DEQ file no. 120329), in consultation with DEQ's stormwater program,  
20 prior to removal activities in 2022.

21                   F. Until all solid waste is removed or beneficially used, Respondent must submit  
22 quarterly progress reports to DEQ, due on April 30 for the quarter January-March, July 31 for the  
23 quarter April-June, October 31 for the quarter July-September, and January 31 for the quarter  
24 October-December. Progress reports must include the following:

25                           i. A narrative description of cleanup progress to date, demonstrating that at  
26 least 1/7<sup>th</sup> of the waste on-site has been removed and properly disposed or beneficially used per year

27       ////

1 (in alignment with the estimates indicated above), along with description of any problems or issues  
2 encountered.

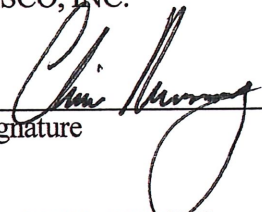
3 ii. A site plan showing where on the subject property cleanup and sampling  
4 have been completed and the next cleanup and sampling areas.

5 iii. Confirmation sampling results;

6 iv. Disposal receipts or beneficial use records for the spent blast, along with  
7 copies of any special permits, waste characterizations or sampling results required by the permitted  
8 disposal site.

9 VISCO, INC.

10  
11 11-5-2021  
Date


  
Signature

12  
13 CHRIS HERRING  
Name (print)

14  
15 PRESIDENT  
Title (print)

16  
17 DEPARTMENT OF ENVIRONMENTAL QUALITY and  
18 ENVIRONMENTAL QUALITY COMMISSION

19  
20 12/9/21  
Date

  
Kieran O'Donnell, Manager  
Office of Compliance and Enforcement  
on behalf of DEQ pursuant to OAR 340-012-0170  
on behalf of the EQC pursuant to OAR 340-011-0505