



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5696
FAX (503) 229-5100
TTY 711

December 12, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 2770

Temco Engineered Products Inc.
c/o Maria F. Bosch, Registered Agent
10240 S.E. Mather Rd
Clackamas, OR 97015

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2018-153

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Temco Engineered Products Inc. a civil penalty totaling \$910 for violating the condition in its 1200-Z general NPDES permit requiring that field notes and chain of custody be submitted with pH sampling results in the annual discharge monitoring report.

DEQ issued this penalty because monitoring is an important condition of the permit. Monitoring may reveal the presence of harmful levels of pollutants that pose a threat to waters of the state. In addition, monitoring allows permittees and DEQ to gauge the effectiveness of stormwater controls and best management practices at reducing levels of pollutants in discharges. Temco has previously been issued a Warning Letter and an Expedited Enforcement Offer for other violations of monitoring requirements in the 1200-Z general NPDES permit. DEQ appreciates your efforts to minimize the impacts of the violation by submitting the pH field notes upon being notified of the violation. DEQ considered these efforts when determining the amount of the civil penalty.

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 – 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232

Via fax – 503-229-5100

Via email – DEQappeals@deq.state.or.us

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 instead

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of paying a 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 Jane Hickman at 503-229-5692 or toll free in Oregon at 800-452-4011, extension 5692.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Michael Kennedy, WQ, NWR DEQ
Shaumae Hall, Accounting, DEQ
John Koestler, WQ, DEQ

1 IV. ORDER TO PAY CIVIL PENALTY

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

4 Pay a total civil penalty of \$910. The determination of the civil penalty is attached as Exhibit 1 and
5 is incorporated as part of this Notice.

6 If you do not file a request for hearing as set forth in Section V below, your check or money order
7 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
8 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.** Once you pay the penalty, the
9 Findings of Fact, Conclusions and Order become final.

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

11 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
12 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
13 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
14 exhibit(s), you must do so in your request for hearing, as factual matters not denied will be considered
15 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
16 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
17 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,** fax
18 it to **503-229-5100** or email it to **DEQappeals@deq.state.or.us.** An administrative law judge
19 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
20 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
21 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
22 you may represent yourself. If you are a corporation, partnership, limited liability company,
23 unincorporated association, trust or government body, you must be represented by an attorney or a duly
24 authorized representative, as set forth in OAR 137-003-0555.

25 Active duty service-members have a right to stay proceedings under the federal Service
26 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-452-8260
27 or the Oregon Military Department at 1-800-452-7500. Additional information can be found online at

1 the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
2 <http://legalassistance.law.af.mil/content/locator.php>.

3 If you fail to file a timely request for hearing, the Notice will become a final order by default
4 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
5 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
6 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
7 the relevant portions of its files, including information submitted by you, as the record for purposes of
8 proving a prima facie case.
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12 December 12, 2018
13 Date

12 Sarah Wheeler for
13 Kieran O'Donnell, Manager
14 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 No. 1: Violating a condition of a waste discharge permit issued under ORS 468B.050 by failing to submit pH field notes and chain of custody, in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class III violation pursuant to OAR 340-012-0055(3)(a).

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 \$700 for a Class III violation in the matrix listed in OAR 340-012-0140(3)(b)(C) and applicable pursuant to OAR 340-012-0140(3)(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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent received and accepted Expedited Enforcement Offer No. 2017-EEO-2925 dated September 18, 2017 for one Class I violation.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 were two occurrences of the violation. Field notes and chain of custody were not submitted for two sampling events: one on November 3, 2017, and one on May 5, 2018.

"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 submit pH field notes and chain of custody. Respondent is registered under the Permit and should be aware of the Permit requirements.

"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 took reasonable affirmative efforts to minimize the effects of the violation by submitting the pH field notes to DEQ upon being notified of the violation.

"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 \$0 because there is insufficient information on which to make a determination pursuant to OAR 340-012-0150.

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

$$\begin{aligned} &= \$700 + [(0.1 \times \$70) \times (2 + 0 + 2 + 2 - 3)] + \$0 \\ &= \$700 + (\$70 \times 3) + \$0 \\ &= \$700 + \$210 + \$0 \\ &= \$910 \end{aligned}$$