



# Oregon

Tina Kotek, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
(503) 229-5696  
FAX (503) 229-5100  
TTY 711

June 27, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6010 40

Fujimi Corporation  
c/o Cogency Global, Inc.  
698 12th Street, Suite 200  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ-I-NWR-2023-016

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Fujimi Corporation a civil penalty of \$7,600 for exceeding the water-quality based effluent limit (WQBEL) for aluminum established in the National Pollutant Discharge Elimination System (NPDES) Permit (the Permit) issued to Fujimi Corporation's facility located at 9949 SW Commerce Circle in Wilsonville, Oregon.

DEQ issued this penalty because compliance with WQBELs is important to ensure state water quality standards are met.

DEQ appreciates your efforts to ensure the violation will not be repeated by committing to additional monitoring of the ion exchange bed to promptly identify when it needs to be replaced and by keeping an extra bed onsite to facilitate a swift replacement when needed.

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.oregon.gov](mailto:DEQappeals@deq.oregon.gov)

Via fax – 503-229-6762

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

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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 Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kieran O'Donnell', written in a cursive style.

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Mark Bentz, DEQ Northwest Region  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:

4 FUJIMI CORPORATION

5 Respondent.

)  
) NOTICE OF CIVIL PENALTY  
) ASSESSMENT AND ORDER

)  
) CASE NO. WQ/I-NWR-2023-019  
)

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, ORS 468.126 through 468.140,  
10 ORS Chapters 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,  
11 and 045.

12 II. FINDINGS OF FACT

13 1. Respondent owns and operates a facility located at 9949 SW Commerce Circle in  
14 Wilsonville, Oregon (the Facility). The Facility processes bulk alumina (aluminum oxide) to make  
15 abrasives used in polishing silica materials.

16 2. Pursuant to ORS 468B.050, Respondent has coverage under National Pollutant  
17 Discharge Elimination System (NPDES) Permit No. 103033 (the Permit) to discharge process  
18 wastewater from the Facility to channelized portions of an unnamed tributary of Coffee Lake Creek  
19 which flows to the Willamette River. The Permit took effect on October 1, 2012, and expired on  
20 August 31, 2017. Respondent submitted a timely application for renewal, thus permit coverage has  
21 been administratively extended until the renewal permit is issued.

22 3. Schedule A of the Permit establishes a monthly average water-quality based effluent  
23 limit for total recoverable aluminum of 87 µg/L. According to the Permit Evaluation Report, this limit  
24 was set based on the “reasonable potential for chronic toxicity at the end of the pipe but not after  
25 minimal mixing in a regulatory mixing zone.”

26 4. Schedule B of the Permit requires Respondent to monitor the aluminum levels in its  
27 discharge twice per month. Respondent must submit monthly Discharge Monitoring Reports (DMRs)

1 to DEQ reporting its monitoring data by the 15th of each month.

2 5. On October 11, 2022, Respondent submitted its September 2022 DMR to DEQ. The  
3 DMR reported a monthly average aluminum level of 202 µg/L.

4 6. On October 21, 2022, Respondent submitted a Noncompliance Reporting Form to DEQ  
5 reporting that the Facility had exceeded its permit limit for aluminum. Specifically, Respondent  
6 reported that the first sample of the month showed aluminum levels were below the 50 µg/L detection  
7 limit for the test while the second sample of the month showed aluminum levels at 139 µg/L. A third  
8 sample came back at 417 µg/L.

9 7. On January 1, 2023, Respondent submitted a revised DMR to DEQ that corrected how  
10 Respondent calculated the monthly average limit considering the first sample result of the month was  
11 below the detection limit of the test. Respondent's monthly average aluminum level for September  
12 2022, using the corrected calculation, was 185.3 µg/L.

13 8. Pursuant to Schedule F, Condition A1 of the Permit, Respondent must comply with all  
14 conditions of the Permit. Failure to comply with any permit condition is a violation of ORS 468B.025.

15 9. Pursuant to ORS 468B.025(2), no person shall violate the conditions of any waste  
16 discharge permit issued under ORS 468B.050.

17 10. Respondent promptly investigated the cause of the permit exceedance and determined  
18 that it was the result of a depleted ion exchange bed. Respondent has committed to keeping a spare ion  
19 exchange bed on-site and to increasing its monitoring frequency to promptly identify when the ion  
20 exchange bed needs to be replaced.

### 21 III. CONCLUSIONS

22 1. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the  
23 water-quality based effluent limit for aluminum established in the Permit. Specifically, Respondent  
24 reported a monthly average aluminum level of 185.3 µg/L which is over the 85 µg/L limit set forth in  
25 the Permit. This is a Class I violation according to OAR 340-012-0055(1)(l). DEQ hereby assesses a  
26 \$7,600 civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY

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

4 1. Pay a total civil penalty of \$7,600. The determination of the civil penalty is attached as Exhibit  
5 1 and 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 "**Department of Environmental Quality**" and sent to the **DEQ, Business**  
8 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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. DEQ  
11 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
12 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
13 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered  
14 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
15 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
16 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
17 it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge  
18 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
19 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
20 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
21 you may represent yourself. If you are a corporation, partnership, limited liability company,  
22 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
23 authorized representative, as set forth in OAR 137-003-0555.


24 Active duty Service members have a right to stay proceedings under the federal Service  
25 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
26 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
27 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military

1 Department does not have a toll free telephone number.

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

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6/27/2023  
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: Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the water-quality based effluent limit (WQBEL) for aluminum.

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1). Because there was no measurable flow in the receiving water at the time of the exceedance, DEQ has chosen not to apply the major magnitude finding in OAR 340-012-0135(2)(a)(A)(ii). DEQ does not have evidence to support a minor magnitude finding under OAR 340-012-0130(4).

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)(ii) because Respondent has a Tier II industrial source NPDES permit.

"P" is whether Respondent has any prior significant actions (PSAs), 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 6 according to OAR 340-012-0145(2). Respondent had 14 prior water quality violations in Case No. WQ/I-NWR-2016-136. Pursuant to OAR 340-012-0145(2)(b), the value of "P" will not exceed 10. The "P" value was decreased by 4 because the prior FEA was issued more than five years before the date the current violation occurred.

"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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to replace the ion exchange bed before it failed, Respondent failed to take reasonable care to avoid a foreseeable risk that a violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e) because the Respondent made reasonable efforts to ensure the violation would not be repeated by increasing monitoring frequency to promptly identify when the ion exchange bed needs to be replaced and by purchasing a back-up ion exchange bed to keep on site for quick replacement.

"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 pursuant to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$4,000 + [(0.1 \times \$4,000) \times (6 + 0 + 0 + 4 + -1)] + \$0$   
 $= \$4,000 + [\$400 \times 9] + \$0$   
 $= \$4,000 + \$3,600 + \$0$   
 $= \$7,600$