



# 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

September 26, 2023

CERTIFIED MAIL No. 9589 0710 5270 0110 6008 14

Chris Dials Contracting LLC  
c/o Chris Dials, Registered Agent  
PO Box 1030  
Tillamook, OR 97141

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/ACDP-WR-2022-137

This letter is to inform you that the Department of Environmental Quality (DEQ) has issued you a \$2,674 civil penalty for operating your rock crusher in Oregon without an Air Contaminant Discharge Permit (ACDP) from DEQ.

DEQ issued this penalty because operating without an ACDP is a serious violation. ACDPs include emissions limits, monitoring and reporting requirements to ensure that emissions generating equipment do not emit air contaminants at levels that may harm the public's health or the environment. Crushers emit particulate matter which, when emitted in excess, can contribute to respiratory distress in individuals. Once inhaled, particulate matter can affect the heart and lungs, causing serious health problems such as decreased lung function, irregular heartbeat and chronic bronchitis. When a company subject to permitting requirements operates without an ACDP, the company has avoided regulation and gained an economic advantage over other similar facilities that timely obtained their ACDP by avoiding the costs of complying with the law. Of the \$2,674 penalty, \$2,074 is the economic benefit you derived by avoiding ACDP initial application and annual permit and Cleaner Air Oregon program fees from 2019 through 2023. If you apply for the permit, DEQ may consider recalculating a portion of the economic benefit as delayed rather than avoided and will reduce the civil penalty accordingly.

Included in Section IV of the attached Notice is an order requiring that you, within 30 days of the order becoming final, submit a complete application for a new Basic ACDP to DEQ or to submit a statement to DEQ certifying that you will cease operating the crusher in Oregon or limit crushing activities to 5,000 tons or less of material per year.

You can pay the penalty by sending a check or money order to the address below. 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 – 503-229-5100

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.

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 your 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.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

cc: Sarah Gallino, Western Region, Salem Office, DEQ  
Zach Loboy, Western Region, Eugene Office, DEQ  
Don Hendrix, AQ, HQ, DEQ  
Accounting, DEQ  
Chris Dials, Chris Dials Contracting LLC, 6355 Blimp Blvd., Tillamook, OR 97141



1 III. CONCLUSION

2 Since on or about 2019, Respondent has violated ORS 468A.045(1)(b) and OAR 340-216-  
3 0020(3), adopted pursuant to ORS 468A.040, by operating an air contaminant source listed in  
4 OAR 340-216-8010 (rock crusher that crushes more than 5,000 tons of rock or other material per  
5 year), without an ACDP from DEQ. This is a Class III violation according to OAR 340-012-  
6 0054(3)(b). DEQ hereby assesses a \$2,674 civil penalty for this violation.

7 IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

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

10 1. Pay a total civil penalty of \$2,674. The determination of the civil penalty is attached  
11 as Exhibit 1 and is incorporated as part of this Notice.

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

15 2. Within 30 days of this order becoming final by operation of law or on appeal:  
16 a. submit a complete application for a new Basic ACDP to: **Sarah Gallino,**  
17 **DEQ Western Region, 4026 Fairview Industrial Drive SE, Salem, OR 97302.** A complete  
18 application includes a complete Basic ACDP application form, a Land Use Compatibility  
19 Statement (LUCS) form that has been completed by either Respondent's local city or county  
20 planning/zoning department or the one where Respondent is currently operating the crusher that  
21 demonstrates Respondent's operation of a rock crusher is an approved land use activity and the  
22 initial permit fees. (Table 2 of OAR 340-216-8020); or

23 b. Cease operating the crusher or limit crushing activity to less than 5,000  
24 tons per year. To comply with this option, Respondent must submit a written response to DEQ  
25 certifying that it has either ceased operating the crusher in Oregon and will not operate the  
26 crusher in Oregon unless or until Respondent applies for and obtains an ACDP from DEQ  
27 authorizing operation of the crusher, or has limited crushing activity 5,000 tons or less of

1 material per year. Submit the written response to: **Sarah Gallino, DEQ Western Region, 4026**  
2 **Fairview Industrial Drive SE, Salem, OR 97302.**

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


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

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

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

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

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4 9/26/2023  
5 Date

  
Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

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EXHIBIT 1

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

VIOLATION: Operating an air contaminant source listed in OAR 340-216-8010 (rock crusher that crushes more than 5,000 tons of material per year) without first obtaining an ACDP from DEQ, in violation of ORS 468A.045(1)(b) and OAR 340-216-0020(3).

CLASSIFICATION: This is a Class III violation pursuant to OAR 340-012-0054(3)(b) because Respondent is required to obtain a Basic ACDP to operate its rock crusher.

MAGNITUDE: According to OAR 340-012-0140(1), no magnitude determination is required for Class III violations.

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 \$250 for a Class III violation in the matrix listed in OAR 340-012-0140(4)(b)(C) and applicable pursuant to OAR 340-012-0140(4)(a)(C) because Respondent should be operating the rock crusher under a Basic ACDP.

"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 of 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. In accordance with OAR 340-012-0145(4), each day of violation with a duration of more than one day is a separate occurrence. Respondent has operated the rock crusher without an ACDP from 2019 to present.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Respondent was notified by DEQ in a Warning Letter with Opportunity to Correct on September 1, 2022; in phone calls on September 6, 2022 and September 28, 2022; and in a Pre-Enforcement Notice on November 17, 2022, that Respondent must apply for a Basic ACDP to operate the

crusher, if Respondent is crushing more than 5,000 tons of material per year. By continuing to operate the rock crusher, crushing more than 5,000 tons per year of material, after being notified of the violation numerous times by DEQ, Respondent has consciously disregarded a substantial and unjustifiable risk that Respondent would continue to operate the crusher without an ACDP and in violation of the law. Disregarding this risk constitutes a gross deviation from the standard of care a reasonable person would observe in this situation.

"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 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 \$2,074. This is the amount Respondent gained by avoiding spending \$3,470 in permit fees<sup>1</sup> as follows: By January 2019, Respondent should have spent \$144 for the initial Basic ACDP application fee, \$432 for the 2019 annual permit fee; \$432 for the 2020 annual permit fee; \$497 for the 2021 annual permit fee; \$562 for the 2022 annual permit fee, and \$648 for the 2023 annual permit fee. In addition, Respondent should have spent \$151 each year from 2019 to 2023 for the Cleaner Air Oregon annual fee. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$250 + [(0.1 \times \$250) \times (0 + 0 + 4 + 8 + 2)] + \$2,074 \\ &= \$250 + (25 \times 14) + \$2,074 \\ &= \$250 + \$350 + \$2,074 \\ &= \$2,674 \end{aligned}$$

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<sup>1</sup> In accordance with OAR 340-216-0090 and 340-216-8020(1), all sources listed in OAR 340-216-8010 are subject to fees in Table 2 of OAR 340-216-8020, including ACDP annual fees and Cleaner Air Oregon annual fees.