



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

October 24, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4285

Jasper Wood Products, LLC
c/o Rick McDougal
37385 Jasper Lowell Road
Jasper, OR 97438

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-WR-2023-114

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Jasper Wood Products, LLC a civil penalty of \$10,800 for violations of the National Pollutant Discharge Elimination System (NPDES) Permit (the Permit) issued to its facility located at 37385 Jasper Lowell Road in Jasper, Oregon. Specifically, you failed to complete required effluent monitoring during February 2023, and you exceeded the Total Suspended Solids (TSS) limits set forth in the Permit on two occasions during March 2023.

DEQ issued this penalty because without monitoring data, DEQ is unable to evaluate the effectiveness of the facility's stormwater pollution control plan and stormwater treatment, and thus is unable to ensure the protection of water quality. Additionally, high levels of suspended solids can cause significant water quality impairments that are detrimental to aquatic life.

DEQ understands that the missed sampling in February 2023 was caused by the failure of an independent firm you contracted with to complete the sampling and that your contract with that firm has since been terminated. As the permittee, it is your responsibility to ensure the permit conditions are met. However, DEQ considered these circumstances in calculating the 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.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 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 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: E. Andrew Ullrich, DEQ WR
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 JASPER WOOD PRODUCTS, LLC,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ-I-WR-2023-114

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9 ORS Chapters 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,
10 and 045.

11 II. FINDINGS OF FACT

12 1. Respondent owns and operates a wood treating facility located at 37385 Jasper Lowell
13 Road in Jasper, Oregon (the Facility).

14 2. On February 25, 2010, Respondent was issued a National Pollutant Discharge
15 Elimination System (NPDES) Waste Discharge Permit under Permit No. 101427 (the Permit) for
16 stormwater discharges from the Facility. The Permit expired on June 30, 2014, however Respondent's
17 coverage under the Permit has been administratively extended because Respondent submitted a timely
18 renewal application on April 8, 2014.

19 3. Pursuant to Schedule B.1. of the Permit, Respondent is required to monitor its effluent
20 by taking effluent samples at Outfalls 001 and 002 "once per 2 weeks." Pursuant to Schedule B.2. of
21 the Permit, the monitoring results must be submitted to DEQ by the 15th day of the following month.

22 4. In February 2023, the independent firm Respondent contracted with to complete the
23 sampling failed to collect either of the two samples for Outfall 001 and 002. Thus, Respondent
24 submitted a Discharge Monitoring Report (DMR) to DEQ that indicated that no samples were collected
25 in February of 2023 for Outfalls 001 or 002. Respondent has since terminated its relationship with the
26 independent firm.

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1 If you do not file a request for hearing as set forth in Section V below, your check or money
2 order must be made payable to "**Department of Environmental Quality**" and sent to the **DEQ,**

3
4 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

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

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

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

1 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
2 the relevant portions of its files, including information submitted by you, as the record for purposes of
3 proving a prima facie case.
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10 10/24/2023

11 Date



11 Kieran O'Donnell, Manager
12 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

VIOLATIONS: Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to conduct either of the two required sampling events at the facility's two outfalls during February 2023.

CLASSIFICATION: These are Class I violations according to OAR 340-012-0055(1)(k)(A).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

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 is a Tier 2 industrial source.

"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 0 according to OAR 340-012-0145(2)(a), because Respondent has no PSAs in the preceding ten years.

"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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. In total, Respondent missed collecting four effluent samples.

"M" is the mental state of the Respondent and receives a value of 0 according to OAR 340-012-0145(5)(a) because there is insufficient information on which to base a finding under paragraphs (5)(b) through (5)(d). Respondent had contracted with an independent firm to conduct the facility's sampling. In February 2023, that firm failed to collect the requisite samples. Respondent was not aware the samples had not been collected until the end of the month.

"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 terminating its contract with the independent firm.

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

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 2 + 0 + -1)] + \$0 \\ &= \$4,000 + (\$400 \times 1) + \$0 \\ &= \$4,000 + \$400 + \$0 \\ &= \$4,400 \end{aligned}$$

EXHIBIT 2

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

VIOLATIONS: Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the effluent limits for TSS on two occasions.

CLASSIFICATION: Of the two violations, one is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A); and one is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A). Pursuant to OAR 340-012-0145(4)(e), the penalty is calculated as a Class I penalty.

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

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 is a Tier 2 industrial source.

"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 0 according to OAR 340-012-0145(2)(a), because Respondent has no PSAs in the preceding ten years.

"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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent violated the TSS limits in the Permit on two occasions.

"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. The TSS limits are clearly set forth in the Permit. By discharging above those limits, Respondent failed to take reasonable care to avoid the foreseeable risk a violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation cannot be corrected.

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

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})]$
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 2 + 4 + 0)] + \$0
= \$4,000 + (\$400 x 6) + \$0
= \$4,000 + \$2,400 + \$0
= \$6,400