

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
ZENITH ENERGY TERMINALS
HOLDINGS LLC,
a foreign limited liability corporation,

Respondent.

REQUEST FOR A CONTESTED CASE
HEARING AND ANSWER

CASE NO. WQ/SW-NWR-2021-041

I. REQUEST FOR A CONTESTED CASE HEARING

1. On July 7, 2021, the Oregon Department of Environmental Quality (“DEQ” or “Department”) issued Notice of Civil Penalty Assessment and Order No. WQ/ SW-NWR-2021-041 (“Notice”) to Respondent Zenith Energy Terminal Holdings LLC (“Zenith”).

2. Pursuant to ORS 183.745, ORS 468.135(1), and OAR 340-011-0530, Respondents hereby request a contested case hearing on the Notice.

3. Zenith is represented in this matter by:

Aaron Courtney, OSB No. 935252
Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
Telephone: (503) 294-9411
Email: aaron.courtney@stoel.com

II. ANSWER

4. Section I of the Notice does not require a response.

5. Respondent admits Paragraph II.1. of the Notice.

6. Respondent lacks knowledge or information sufficient to form a belief as to the truthfulness or accuracy of the allegations in Paragraph II.2. and therefore denies the same.

7. With respect to Paragraph II.3, Respondent admits it submitted said application for coverage under the Department’s National Pollutant Discharge Elimination System

Construction Stormwater Discharge Permit Number 1200-C Permit (“1200-C Permit”), but notes that the application estimated the acreage to be 12.1 acres, not 14.5 acres.

8. With respect to Paragraph II.4., Respondent admits that on July 16, 2020, it received a request from DEQ for information about Zenith’s Land Use Compatibility Statement (“LUCS”) from the City of Portland (the “City”), but Respondent lacks knowledge or information sufficient to form a belief as to the truthfulness or accuracy of the remaining allegations in Paragraph II.4.; therefore, Respondent denies the same.

9. Respondent admits Paragraph II.5.

10. With respect to Paragraph II.6., Respondent admits that in March 2020 only, it cleared certain vegetation from the Site, placed stockpiles of recycled construction debris on the Site, and conducted cleanup and salvage activities associated with sorting and crushing the recyclable materials located at the Site. Respondent denies the remaining allegations in Paragraph II.6.

11. Paragraph II.7. states conclusions of law to which no response is required.

12. Respondent lacks knowledge or information sufficient to form a belief as to the truthfulness or accuracy of the allegations contained in Paragraph II.8. and therefore denies the same.

13. With respect to Paragraph II.9., Respondent admits that on January 29, 2021, it was informed by the Department that a DEQ official had visited the Site on January 12, 2021, but denies the remaining allegations contained therein.

14. With respect to Paragraph II.10., Respondent admits that by April 22, 2021 it had stabilized the stockpiles of fill material but denies that it ever engaged in “grubbing and grading the Site” and denies all other remaining allegations contained therein.

15. Respondent denies the conclusions stated in Section III of the Notice.

16. With respect to Section IV of the Notice, Respondent restates its responses to the preceding paragraphs and denies that it is liable for any civil penalty. In the alternative, Respondent denies that it is liable for a civil penalty of \$23,598, and states as follows with respect to the civil penalty calculation allegations contained in Exhibit 1 of the Notice:

a. With respect to the Magnitude and BP gravity factor, given the benign nature of the any discharge from the Site, even if a discharge to waters of the state occurred, the Magnitude should be Minor as there is no evidence of more than a *de minimis* impact or threat to human health or the environment. Accordingly, the BP should be \$2,000.

b. With respect to the “O” gravity factor, contrary to the Department’s characterization, Zenith did not “engage[] in construction activities for approximately eight months.” Assuming the cleanup and salvage activities described above even constitute “construction activities,” they did not occur over the course of eight months; rather, Zenith’s activities took place over the course of approximately three weeks in the month of March 2020. Consequently, there were less than 28 days of violations and at most O should be valued at 3.

c. With respect to the “M” gravity factor, Respondent denies that its conduct was flagrant. The cleanup and salvage activities that took place in March 2020 were independent of Zenith’s application for 1200-C Permit coverage which was filed in May of 2020. It was not until the City notified Zenith in April of 2020 of the need to apply for 1200-C Permit coverage in conjunction with its application for a construction permit from the City that Respondent first learned of the requirement. Thus, at most Zenith

“reasonably should have known of the [permitting] requirement.” Accordingly, the M gravity factor should be 2, not 10.

d. With respect to the “C” gravity factor, contrary to DEQ’s assertion that “Respondent had failed to employ any sediment controls,” a visit by the Department’s representative on January 12, 2021 would have verified first-hand that silt fencing actually had been installed throughout and around the perimeter of the Site, fencing that Zenith installed as part of and prior to commencing the cleanup and salvage activities. These , actions certainly at a minimum constitute “reasonable efforts to minimize the effects of the [alleged] violation.” Accordingly, the C gravity factor should be -3, not 0

Therefore, if any penalty is warranted, it should be calculated as follows:

$$\$2,000 + [0.1 \times \$2,000] \times (0 + 0 + 3 + 2 + -3)] + \$13,998 = \underline{\$16,398}$$

III. INFORMAL DISCUSSION

17. Respondent requests an informal discussion with the Department concerning the Notice. Respondent further requests that the Department not schedule a hearing on this matter until the informal discussion is completed.

DATED: July 26, 2021.

STOEL RIVES LLP



AARON COURTNEY
OSB No. 935252
aaron.courtney@stoel.com

Attorney for Respondent