

State of Oregon
Department of Environmental Quality

Memorandum

Date: Nov. 6, 2019

To: Environmental Quality Commission

From: Leah Feldon, Deputy Director

Subject: Item E: Authorization to include claims derived from ORS 459 in a complaint against NW Metals Inc., to be filed in Multnomah County Circuit Court (Action) Nov. 14-15, 2019, EQC meeting

Why this is important

Pursuant to ORS 459.376, the Environmental Quality Commission has the sole authority to initiate proceedings to enforce compliance with or restrain violations of ORS 459 and 459A, or any rule, standard, permit or order adopted, entered or issued pursuant to ORS 459 and 459A. This item is a request for EQC to authorize DEQ to include, in a complaint to be filed against NW Metals Inc. in Multnomah County Circuit Court, claims derived from ORS 459, Oregon's Solid Waste Management statute. Specifically, DEQ requests authorization to pursue claims regarding NW Metals Inc.'s improper storage, handling, and management of waste tires.

Pursuant to ORS 468.035(1)(k), ORS 465.260(5), and ORS 466.210, the DEQ Director has authority to authorize claims related to air quality, water quality, cleanup and hazardous waste violations claims. Director Whitman has authorized DEQ to include air quality, water quality, cleanup and hazardous waste violations in the complaint. The commission would be authorizing Solid Waste claims in addition to the claims authorized by Director Whitman. This action is necessary to compel compliance with environmental law and protect human health and the environment.

DEQ recommendation and EQC motion

DEQ recommends that EQC authorize DEQ to include solid waste claims in its complaint against NW Metals Inc., to be filed in Multnomah County Circuit Court for the enforcement of environmental statutes.

Proposed motion language:

"I move that the Oregon Environmental Quality Commission authorize DEQ to include solid waste claims under ORS chapter 459 in a complaint for the enforcement of environmental statutes, to be filed against NW Metals Inc. in Multnomah County Circuit Court."

Background

NW Metals Inc. is an auto-dismantler and scrapyard located on a two-acre lot at 7600 NE Killingsworth Street, Portland, Oregon. On the morning of March

12, 2018, a fire began at the facility in the foam pile beneath the vehicle shredder. Eventually, the fire involved the entire southern scrap yard. The large pile of used tires stored behind the warehouse burned during the fire, producing extremely high levels of fire and significant black smoke. The black smoke from the fire extended for miles from the facility and obscured the horizon.

On March 28, 2018, in response to the fire, DEQ issued NW Metals Inc. a remedial action order, or RAO, requiring NW Metals Inc. to submit a plan to remove fire debris, characterize the waste for proper disposal, and assess the extent of hazardous substances released to the soil.

On Aug. 30, 2018, DEQ issued NW Metals Inc. a Notice of Civil Penalty Assessment and Order, assessing civil penalties totaling \$52,854 and requiring compliance actions. DEQ alleged that NW Metals Inc. violated and continued to violate several requirements of Oregon environmental law, including operating a prohibited Class V injection system, constructing and operating the vehicle shredder without an air quality permit, operating a waste tire storage site without a permit, failing to comply with the waste tire storage standards, failing to perform a hazardous waste determination on residues and failing to comply with the conditions of the RAO. NW Metals Inc. submitted to DEQ a timely request for a contested case hearing.

DEQ referred the order to the Office of Administrative Hearings for adjudication. On Aug. 29, 2019, Administrative Law Judge Samantha Fair, issued a Proposed and Final Order, upholding DEQ's Notice of Civil Penalty Assessment and Order in full. NW Metals Inc. has requested EQC review of the Proposed and Final Order. However, the violations at the facility are ongoing and the risk of harm from the facility to human health and the environment persists.

Alternatives for action

EQC may choose to take several actions:

1. As requested by DEQ, authorize DEQ to include solid waste claims in a complaint for the enforcement of environmental statutes, to be filed in Multnomah County Circuit Court against NW Metals Inc.; or
2. Reject DEQ's request and take no action, disallowing DEQ to include solid waste claims in its complaint; or
3. Reject DEQ's request and provide other policy direction to DEQ.

EQC authority

The commission has authority to take this action under ORS 459.376.

Report prepared by Kieran O'Donnell
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