



Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality

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March 27, 2014

CERTIFIED MAIL No. 7013 1090 0001 2733 1899

Brien J. Flanagan, Attorney
Schwabe, Williamson & Wyatt
1211 SW 5th Avenue, Suite 1900
Portland, OR 97204

Re: Notice of Civil Penalty Assessment and Order
Cascade Kelly Holdings LLC
Case No. AQ/AC-NWR-14-014

This letter is to inform you that the Department of Environmental Quality (DEQ) has issued your client, Cascade Kelly Holdings LLC (the company), a civil penalty of \$117,292 for operating a new source (crude oil transloading operation) without the required Air Contaminant Discharge Permit (ACDP) from DEQ. The violation occurred at the Columbia Pacific Bio-Refinery facility at 81200 Kallunki Road in Clatskanie, Oregon (the Facility). DEQ's approval for the company to conduct crude oil transloading through the company's ethanol plant ACDP only provided approval of crude oil transloading up to 50,000,000 gallons per year. The approval was limited to a 50,000,000 gallon per year maximum because this was the quantity the company requested in its permit modification application that DEQ reviewed and approved. The company far exceeded that amount in the first year of conducting crude oil transloading operations. Crude oil transloading in excess of the authorized 50,000,000 gallons per year has not been approved by DEQ and constitutes operations and emissions that are not permitted under the company's ethanol plant ACDP.

DEQ issued this penalty because operating an air contaminant source without an ACDP is a serious violation. ACDPs contain emission limitations, monitoring and reporting requirements and other conditions to protect Oregon's air quality and ensure that the state meets and maintains national air quality health standards. The permitting process also allows the public to have input before a new facility is established so that DEQ and the facility can address concerns of those who may be impacted.

Cascade Kelly Holdings LLC has now submitted a valid ACDP application for the company's current crude oil transloading operation. DEQ is processing that application through its normal course of action. However, in the meantime, included in Section IV of the enclosed Notice is an order requiring Cascade Kelly Holdings LLC to comply with its current ethanol plant ACDP and limit crude oil transloading to no more than 50,000,000 gallons per consecutive 12-month period until the new standard ACDP is issued, and to submit monthly reports to DEQ by the 10th of each month detailing the previous month's consecutive 12-month calculation. Please be advised that failing to comply with a Department Order is a serious violation and may result in additional civil penalties.



If you wish to appeal this matter, you have 20 calendar days from receipt of this letter to request a contested case hearing. This hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

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 written hearing request from you within 20 days, the penalty will become due.

The enclosed Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review it and refer to it when discussing this case with DEQ.

DEQ may allow the company to resolve a portion of its penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that are sponsored in lieu of paying part of the penalty. Enclosed is more detail on how to pursue a SEP.

Because this violation occurred before the new Division 12 Oregon Administrative Rules came into effect, the enclosed Notice references the previous version of the rules. You may review the rules through this link: http://www.oregon.gov/deq/OCE/Documents/Div12_through01062014.pdf.

If you have any questions, please contact DEQ Environmental Law Specialist Jenny Root, at (503) 229-5874. You may call toll-free within Oregon at 1-800-452-4011, extension 5874.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Greg Grunow, Northwest Region, DEQ
Columbia County District Attorney
Paul Garrahan, Oregon Department of Justice
Corporation Service Company, Registered Agent
285 Liberty Street NE, Salem, OR 97301
Tom Keefe, Global Companies, LLC
P.O. Box 9161, Waltham, MA 02454
Daniel R. Luckett, General Manager, Columbia Pacific Bio-Refinery
81200 Kallunki Road, Clatskanie, OR 97016
Brandon Gimper, Environmental Manager, Columbia Pacific Bio-Refinery
81200 Kallunki Road, Clatskanie, OR 97016

1 throughput of 50,000,000 gallons per year (consecutive 12-month period) of crude oil, which
2 would result in volatile organic compound (VOC) emissions no greater than 0.62 tons per year.

3 4. Based on that application, on June 26, 2012, DEQ modified ACDP 05-0006
4 (Addendum No. 2) to allow Respondent to begin the crude oil transloading activity, as identified
5 in the application. This activity was deemed an incidental activity to support the ethanol plant's
6 operation because the limited amount of crude oil transloading identified in the application
7 would be done utilizing existing equipment and would result in VOC emissions less than the de
8 minimis emission rate of one ton per year (Table 4 – OAR 340-200-0020(33)). This was a
9 simple, technical modification of ACDP 05-0006. As such, the permit modification was
10 processed as a Type 1 change to a stationary source, in accordance with OAR 340-210-0225(1).

11 5. In July 2012, Respondent notified DEQ that it wanted to significantly increase
12 and expand its crude oil transloading operations at the Facility. Respondent was not currently
13 conducting the permitted activity of manufacturing ethanol at the site.

14 6. In discussions with Respondent and in a July 26, 2012 email, DEQ notified
15 Respondent that increasing the crude oil transloading activity to the levels Respondent was
16 proposing would require a separate ACDP from DEQ. The increased crude oil transloading
17 would increase volatile organic compound emissions above the de minimis emission rate and
18 would no longer be an incidental activity at the ethanol plant. Therefore, transloading crude oil
19 would become a new principal emitting activity at the Facility.

20 7. According to OAR 340-200-0020(136), "source" means any building, structure,
21 facility, installation or combination thereof that emits or is capable of emitting air contaminants
22 to the atmosphere, is located on one or more contiguous or adjacent properties and is owned or
23 operated by the same person or by persons under common control. The term includes all
24 pollutant emitting activities that belong to a single major industrial group (i.e., that have the same
25 two-digit code) as described in the Standard Industrial Classification (SIC) Manual, (U.S. Office
26 of Management and Budget, 1987) or that support the major industrial group.

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1 8. Crude oil transloading operations are categorized as "Petroleum Bulk Stations and
2 Terminals" under SIC code 5171. Ethanol plants are categorized under SIC code 2869.
3 Because the two have different two-digit codes and are not considered supporting activities of
4 one another, they are separate air contaminant sources.

5 9. OAR 340-216-0020(1) states, "No person may construct, install, establish, develop
6 or operate any air contaminant source referred to in Table 1 without first obtaining an Air
7 Contaminant Discharge Permit (ACDP) from DEQ." Table 1 of OAR 340-216-0020(1), Part B,
8 Item 48 requires an ACDP for "Marine Vessel Petroleum Loading and Unloading."

9 10. In March 2013, Respondent began increasing crude oil transloading operations at
10 its Facility beyond the 50,000,000 gallons per year throughput that Addendum 2 of ACDP 05-
11 0006 was based on. According to Respondent's records, Respondent transloaded the following
12 amounts of crude oil (per consecutive 12-month period):

Month	Crude Oil Throughput (gallons)
March 2013	65,835,201
April 2013	92,321,347
May 2013	125,727,330
June 2013	156,671,299
July 2013	168,397,880
August 2013	193,564,882
September 2013	221,064,275
October 2013	256,038,837
November 2013	294,495,686

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20 11. In a May 2013 meeting, DEQ again informed Respondent that Respondent's
21 increase of the crude oil transloading resulted in establishing a new air contaminant source that
22 requires a new ACDP from DEQ. This new source is a major source pursuant to OAR 340-200-
23 0020(72)(a), because the crude oil transloading operation's potential-to-emit VOCs are at or
24 above the significant emission rate of 40 tons per year (Table 2, OAR 340-200-0020).

25 12. In August 2013, Respondent submitted a complete Standard ACDP application
26 and fees to DEQ.

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1 13. To date, DEQ has completed a draft ACDP for the crude oil transloading
2 operation that is currently out for public notice and comment. Respondent does not have a valid
3 ACDP to operate the crude oil transloading operation at the throughput levels it is currently
4 maintaining until DEQ issues the new ACDP for crude oil transloading.

5 III. CONCLUSION

6 From approximately March 1, 2013 until present, Respondent has violated ORS
7 468A.045(1)(b) and OAR 340-216-0020(1), adopted pursuant to ORS 468A.040, by establishing
8 and operating a new air contaminant source (crude oil transloading operation) listed in Table 1 of
9 OAR 340-216-0020(1) under category 48 "Marine Vessel Petroleum Loading and Unloading,"
10 without first obtaining the required ACDP from DEQ, as further described in Section II,
11 Paragraphs 1-13 above. These are Class I violations according to OAR 340-012-0054(1)(b)
12 because the crude oil transloading operation is a major source pursuant to OAR 340-200-
13 0020(72)(a). DEQ hereby assesses a \$117,292 civil penalty for these violations.

14 IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

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

- 17 1. Pay a total civil penalty of \$117,292. The determination of the civil penalty is
18 attached as Exhibit No. 1 and is incorporated as part of this Notice.
- 19 2. Immediately comply with ACDP 05-0006 by transloading no more than
20 50,000,000 gallons of crude oil per consecutive 12-month period until DEQ issues the new Standard
21 ACDP that authorizes an increase in crude oil transloading operations.
- 22 3. Submit monthly reports to DEQ detailing crude oil transloading amounts per each
23 consecutive 12-month period until DEQ issues the new Standard ACDP for crude oil transloading.
24 Submit the report by the 10th of each month with information on the previous month's consecutive
25 12-month period, to: **Greg Grunow, DEQ-Northwest Region Office, 2020 SW 4th Avenue, Suite**
26 **400, Portland, Oregon 97201 or by email at: grunow.greg@deq.state.or.us.**

27 If you do not file a request for hearing as set forth in Section V below, your check or money

1 order must be made payable to "State Treasurer, State of Oregon" and sent to the DEQ,
2 **Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty,
3 the Findings of Fact, Conclusions and Order become final.

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

5 You have a right to a contested case hearing on this Notice, if you request one in writing.
6 You must ensure that DEQ receives the request for hearing **within 20 calendar days** from the
7 date you receive this Notice. If you have any affirmative defenses or wish to dispute any
8 allegations of fact in this Notice or attached exhibit, you must include them in your request for
9 hearing, as factual matters not denied will be considered admitted, and failure to raise a defense
10 will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests
11 for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and**
12 **Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204,** or fax it to **503-229-**
13 **5100.** An administrative law judge employed by the Office of Administrative Hearings will
14 conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR
15 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you
16 may represent yourself unless you are a corporation, agency or association.

17 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
18 Notice, the Notice will become a final order by default without further action by DEQ, as per
19 OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend
20 the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a final
21 order by default pursuant to OAR 137-003-0672. DEQ designates the relevant portions of its
22 files, including information submitted by you, as the record for purposes of proving a prima facie
23 case.

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Date

3/27/14


Leah K. Feldon, Manager
Office of Compliance and Enforcement

EXHIBIT NO. 1

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

VIOLATION: Establishing and operating a new an air contaminant source (crude oil transloading operation) listed in Table 1 of OAR 340-216-0020(1) under category 48 "Marine Vessel Petroleum Loading and Unloading," without first obtaining the required Air Contaminant Discharge Permit from DEQ, in violation of ORS 468A.045(1)(b) and OAR 340-216-0020(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(b) because the air contaminant source is a major source according to OAR 340-200-0020(72)(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 for 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 \$3,000 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)(A) because Respondent needed to apply for a Standard Air Contaminant Discharge Permit.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(17), 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)(A), because Respondent has 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)(a)(C), because Respondent has no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 0 pursuant to OAR 340-012-0145(4)(b), because DEQ is issuing multiple penalties for multiple occurrences of the violation.

"M" is the mental state of Respondent and receives a value of 6 according to OAR 340-012-0145(5)(a)(C), because Respondent had actual knowledge that its conduct would be a violation and Respondent's conduct was intentional. DEQ had specific conversations with Respondent in July 2012 and May 2013 that increasing the crude oil transloading operation would result in Respondent establishing a new air contaminant source, that it would require a new ACDP from DEQ, and that Respondent could not lawfully increase the crude oil transloading throughputs under the current ethanol plant permit (ACDP 05-0006). Respondent acted with the conscious objective to cause the result of the conduct (operating without the required ACDP) by making the conscious decision and taking conscious action to increase the crude oil transloading throughputs before receiving a valid ACDP from DEQ authorizing such activity.

"C" is Respondent's efforts to correct the violation and receives a value of -1 according to OAR 340-012-0145(6)(a)(C), because Respondent eventually made efforts to correct the violation by submitting an ACDP application and fees to DEQ for the crude oil transloading operation on August 29, 2013.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 \$292. This is the amount Respondent gained by delaying spending \$13,680 for the initial application fee and 2013 annual fee from March 1, 2013 to August 29, 2013. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 0 + 6 - 1)] + \$292 \\ &= \$3,000 + (\$300 \times 5) + \$292 \\ &= \$3,000 + \$1,500 + \$292 \\ &= \$4,500 \text{ per week} + \$292 \end{aligned}$$

In accordance with ORS 468.140(2), each day of violation constitutes a separate offense and is subject to a civil penalty up to \$25,000 per day. Respondent has established and operated a new source (crude oil transloading operations) without having first obtained a Standard ACDP from approximately March 1, 2013 to present. DEQ is assessing a civil penalty for each week Respondent operated between March 1, 2013 until Respondent submitted a complete Standard ACDP application on August 29, 2013, which is 26 weeks.

\$4,500 per week x 26 weeks equals \$117,000 plus \$292 in economic benefit of delayed permitting fees for a total civil penalty of \$117,292.