



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Headquarters  
811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY: 711

March 8, 2016

CERTIFIED MAIL No. 70142870000133782917

Oriente Maritime S.A.  
c/o Todd Zilbert  
Lindsay Hart LLP  
1300 SW 5<sup>th</sup> Ave., Suite 3400  
Portland, OR 97201

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SP-NWR-15-227

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$13,200 for allowing oil to enter the Columbia River, waters of the state, from your cargo vessel, the M/V Global Gold. On October 2, 2015, Global Gold collided with Pier 1 at the Port of Astoria when it was mooring, and the vessel spilled approximately 250 gallons of diesel fuel into the Columbia River, in violation of ORS 468B.305(1).

DEQ issued this penalty because spilling oil into waters of the state is a serious violation of Oregon environmental law. The spilling of oil or petroleum products into state waters has negative environmental impacts on aquatic life and ecosystems. DEQ is concerned with the adverse impacts and cumulative effects that numerous spills of this kind have on the water quality of the Columbia River and on Oregon's water quality in general.

DEQ appreciates your efforts to minimize the effects of the violation by transferring the remaining fuel from the vessel's tank to avoid further spillage, and deploying containment boom and absorbents to contain the spill and remove the diesel fuel from the Columbia River. DEQ considered these efforts when determining the amount of the civil penalty.

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

Via mail - 811 S.W. 6<sup>th</sup> 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 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 it and refer to it when discussing this case with DEQ.



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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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Mike Greenburg, Northwest Region, DEQ

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

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 ORIENTE MARITIME S.A., ) ASSESSMENT AND ORDER  
a Panama corporation, )  
5 Respondent. ) CASE NO. WQ/SP-NWR-15-227  
6

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,  
10 468B.450(1), ORS Chapters 183 and 468B, and Oregon Administrative Rules (OAR) Chapter 340,  
11 Divisions 011 and 012, and 081.

12 II. FINDINGS OF FACT

- 13 1. Respondent owns or operates the cargo vessel named M/V "Global Gold."  
14 2. On October 2, 2015, Global Gold was mooring at Pier 1 at the Port of Astoria in Astoria,  
15 Oregon, when it collided with the pier.  
16 3. The collision gouged Global Gold's fuel tank, causing approximately 250 gallons of  
17 diesel fuel to spill into the Columbia River.  
18 4. On October 2, 2015, there was a diesel sheen on the Columbia River and the adjacent  
19 shoreline near Global Gold.  
20 5. Global Gold is a "ship" as defined in ORS 468B.300(27).  
21 6. Diesel fuel is a petroleum related product, and is defined as "oil" under ORS 468B.300(18).  
22 7. The Columbia River is "waters of the state" as defined in ORS 468B.005(10).

23 III. CONCLUSION

24 On October 2, 2015, Respondent violated ORS 468B.305 by causing or allowing oil to enter  
25 waters of the state from a ship, as described in Section II, Paragraphs 1-7 above. This is a Class I violation  
26 according to OAR 340-012-0081(1)(a). DEQ hereby assesses a \$13,200 civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY

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

4 Pay a total civil penalty of \$13,200. The determination of the civil penalty is attached as  
5 Exhibit No. 1 and is incorporated as part of this Notice.

6 If you do not file a request for hearing as set forth in Section V below, your check or money  
7 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**  
8 **Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of  
9 Fact, Conclusions and Order become final.

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

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

23 Active duty service-members have a right to stay proceedings under the federal Service  
24 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
25 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
26 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
27 <http://legalassistance.law.af.mil/content/locator.php>.

1           If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
2 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
3 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
4 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
5 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
6 information submitted by you, as the record for purposes of proving a prima facie case.  
7  
8  
9

10 March 8, 2016  
11 Date

10 Sarah Wheeler for  
11 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: Spilling or releasing oil which enters waters of the state from a ship, in violation of ORS 468B.305.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0081(1)(c).

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(N) because Respondent violated an oil and hazardous material spill and release statute, and Global Gold is a "covered vessel" as defined in ORS 468B.300(5). Pursuant to OAR 340-012-0155(1)(b), because Respondent negligently caused or permitted the discharge of oil into waters of the state, DEQ will add the values set forth in 340-012-0155(1)(b)(B) to determine the multiplier for the base penalty. The violation was caused negligently, therefore a value of 2 is assigned according to 340-012-0155(1)(b)(B)(i). This results in a base penalty of \$12,000.

"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 the same 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 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation. Respondent caused or allowed a spill of diesel fuel to the Columbia River on October 2, 2015.

"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. Respondent's vessel Global Gold collided with the pier during mooring due to excessive speed, which resulted from human error. The collision gouged the vessel's fuel tank, resulting in the spill of diesel fuel into the Columbia River. By operating the vessel at a speed that resulted in an

avoidable collision and structural damage to the vessel, Respondent failed to take reasonable care to avoid a foreseeable risk that it would cause a spill in violation of Oregon law.

"C" is Respondent's efforts to correct the violation and receives a value of -3 according to OAR 340-012-0145(6)(c), because Respondent made reasonable affirmative efforts to minimize the effects of the violation by promptly implementing its spill response plan. Respondent transferred the remaining fuel from the tank to avoid further spillage, and deployed containment boom and absorbents to contain the spill and remove the diesel fuel from the Columbia River.

"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 \$0 because DEQ has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$12,000 + [(0.1 x \$12,000) x (0 + 0 + 0 + 4 + (-3))] + \$0  
= \$12,000 + [(\$1,200) x (1)] + \$0  
= \$12,000 + \$1,200 + \$0  
= \$13,200