



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
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Portland, OR 97204-1390
(503) 229-5696
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TTY: 711

April 6, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5104

Boeing Aerospace Operations, Inc.
Corporation Service Company, Registered Agent
1127 Broadway Street NE, Suite 310
Salem OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-NWR-16-040

This letter is to inform you that DEQ has issued you a civil penalty of \$4,000 for violating a state water quality standard on January 5, 2016. You allowed a white substance to be discharged from your stormwater outfall located at 4635 NE Cornfoot Road in Portland. The discharge created a white plume in the Columbia Slough, potentially harming fish and other aquatic life.

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. 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 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.

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 by calling the number below to request a paper copy or at <http://www.deq.state.or.us/regulations/rules.htm>.

If you have any questions, please contact DEQ Environmental Law Specialist Susan Elworth, at (503) 229-5152. You may call toll-free within Oregon at 1-800-452-4011, extension 5152.

Sincerely,

Leah K. Feldon, Manager
Office of Compliance and Enforcement

cc: E. Jay Murphy, NWR, DEQ
John Koestler, WQ, HQ
Dina Torgerson, The Boeing Company, 4635 NE Cornfoot Rd, Portland OR 97218



1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 BOEING AEROSPACE OPERATIONS, INC.) ASSESSMENT OF CIVIL PENALTY
Respondent.) CASE NO. WQ/I-NWR-16-040

5 I. AUTHORITY

6 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
7 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, 468.126 through 468.140, ORS
8 Chapter 183 and 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and
9 041.

10 II. FINDINGS OF FACT

- 11 1. Respondent operates a facility located at 4635 NE Cornfoot Road in Portland Oregon.
12 2. On January 5, 2016, Respondent reported, to Oregon Emergency Response System, a
13 discharge of a cloudy white substance from its stormwater outfall to the Columbia Slough.
14 3. The discharge caused a visible white plume in the Columbia Slough.

15 III. CONCLUSIONS

16 Respondent has violated ORS 468B.025(1)(b) by causing or allowing the discharge of waste, as
17 defined in ORS 468B.005(9), to waters of the state that reduced the quality of such waters below a
18 water quality standard. Respondent violated the standard established in OAR 340-041-0007(13) and
19 (14), which prohibits discharges that cause objectionable discoloration and/or offensive aesthetic
20 conditions. This is a Class I violation, according to OAR 340-012-0055(1)(b). DEQ hereby assesses a
21 \$4,000 civil penalty for this violation.

22 IV. ORDER TO PAY CIVIL PENALTY

23 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
24 hereby ORDERED TO pay a total civil penalty of \$4,000. The determination of the civil penalty is
25 attached as Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as
26 set forth in Section V below, your check or money order must be made payable to "**State Treasurer,**
27 **State of Oregon**" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon**
97204. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

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

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

14 Active duty service-members have a right to stay proceedings under the federal Service
15 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
16 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
17 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
18 <http://legalassistance.law.af.mil/content/locator.php>.

19 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
20 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
21 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
22 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
23 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
24 information submitted by you, as the record for purposes of proving a prima facie case.

25
26 April 6, 2016
Date

26 Sarah Wheeler for
Leah K. Feldon, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

- VIOLATION 1: Causing or allowing the discharge of waste to waters of the state that reduced the quality of such waters below a water quality standard, in violation of 468B.025(1)(b).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(b).
- 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)(A)(iii). Respondent has coverage under a 1200-COLS NPDES permit.
- "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 an initial value of 2 according to OAR 340-012-0145(2)(a)(C), because Respondent has one Class I violation in case no. WQ/SW-NWR-12-119. According to OAR 340-012-0145(2)(d)(A)(i), this amount is reduced by 2 because all the formal enforcement actions in which prior significant actions were cited were issued more than three years before the date the current violation occurred. Thus the final value of P is 0.
- "H" is Respondent's history of correcting prior significant actions and receives an initial value of 0 according to OAR 340-012-0145(3)(c), because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b). According to OAR 340-012-0145(3)(d), this value is increased to 1 because the sum of the "P" and "H" factors may not be less than 1 unless Respondent took extraordinary efforts to correct or minimize the effects of all PSAs.
- "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. The discharge occurred on one day: January 5, 2016.
- "M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent had constructive knowledge (reasonably should have known) of the requirement. In 2012, Respondent was previously assessed a penalty for

discharges from the stormwater outfall to the Columbia Slough and reasonably should have known of the requirement to ensure that discharges did not again occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c), because Respondent took reasonable affirmative efforts to minimize the effects of the violation. Respondent hired a company to remove the cloudy white material and to clean the piping to prevent any further discharges.

"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 as DEQ is unable to make an estimate of any costs delayed or avoided.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 1 + 0 + 2 - 3)] + \$0 \\ &= \$4,000 + [\$400 \times 0] + \$0 \\ &= \$4,000 + \$0 + \$0 \\ &= \$4,000 \end{aligned}$$