



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Headquarters  
811 SW 6th Ave  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY: 711

July 26, 2016

CERTIFIED MAIL No. 7011 2000 0000 5122 8889

Bend Oil Company  
c/o Mill View Professional Services, Inc., Registered Agent  
591 SW Mill View Way  
Bend, OR 97702

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/AC-ER-2016-096

This letter is to inform you that the Department of Environmental Quality (DEQ) has issued you a civil penalty of \$7,341 for operating your bulk gasoline plant at 303 SE Scott Street in Bend and your gasoline dispensing facility at 1075 W Railway in Sisters without Air Contaminant Discharge Permits (ACDPs) from DEQ. Of this amount, \$5,091 is the economic benefit you derived by delaying the payment of the initial permit fees and by avoiding annual permit fees from 2009 through 2014.

DEQ issued this penalty because operating without an ACDP is a serious violation. Bulk gasoline plants and dispensing facilities are subject to permitting because gasoline vapors contain benzene, a known cancer-causing chemical. Controlling gasoline vapors reduces benzene exposure at and near gasoline bulk plants and dispensing facilities, and contributes to continuing compliance with federal ozone standards to protect the public's health and the environment. When a company subject to permitting requirements operates without a permit, the company has avoided regulation and gained an economic advantage over other similar facilities that did timely obtain their permit by avoiding or delaying the costs of complying with the law.

DEQ appreciates your efforts to apply for assignment to the General ACDPs, once notified by DEQ. DEQ considered these efforts when determining the amount of civil penalty.

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. 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 written hearing request from you within 20 days, 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 Jenny Root at (503) 229-5874.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Bonnie Hough, Eastern Region, Bend Office, DEQ  
Cindy Troupe, AQ, HQ, DEQ





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.

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

14 Active duty service-members have a right to stay proceedings under the federal  
15 Servicemembers Civil Relief Act. For more information, please call the Oregon State Bar at  
16 1(800) 452-8260 or the Oregon Military Department at 1(800) 452-7500. Additional information  
17 can be found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services  
18 Locator website, <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  
21 OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend  
22 the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a final  
23 order by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its  
24 files, including information submitted by you, as the record for purposes of proving a prima facie  
25 case.

26 July 26, 2016  
Date

27 Sharon Wheeler for  
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: Operating an air contaminant source (bulk gasoline plant) listed in OAR 340-216-8010 without first obtaining an ACDP from DEQ, in violation of ORS 468A.045(1)(b) and OAR 340-216-0020(3).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(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 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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(C) because Respondent needed to apply for a General Air Contaminant Discharge Permit because Respondent is subject to the federal Area-Source NESHAP requirements.

"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 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 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. In accordance with OAR 340-012-0145(4), each day of violation with a duration of more than one day is a separate occurrence. Respondent operated the bulk gasoline plant without an ACDP from 2009 to January 15, 2016.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent was negligent. Respondent owns or operates other bulk gasoline plants and gasoline dispensing facilities in Oregon that have been assigned to the General ACDPs. Therefore, Respondent has general knowledge of DEQ air quality permitting requirements for these facilities. By failing to ensure that its bulk gasoline plant in Bend had been assigned to the General Permit before starting up operation or to inquire

with DEQ whether a permit was needed, Respondent failed to take reasonable care to avoid a foreseeable risk that Respondent would be operating the facility without an ACDP, in violation of the law.

"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 made reasonable efforts to correct the violation by applying to DEQ for assignment under the General ACDP on April 29, 2015.

"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 \$4,893. This is the amount Respondent gained by delaying payment of the initial permit fee of \$1,440 from January 1, 2009 to April 10, 2015, and by avoiding an annual fee of \$864 each year for operating years 2009-2014 for assignment to the General ACDP. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$750 + [(0.1 \times \$750) \times (0 + 0 + 4 + 4 + -3)] + \$4,893 \\ &= \$750 + (75 \times 5) + \$4,893 \\ &= \$750 + \$375 + \$4,893 \\ &= \$6,018 \end{aligned}$$

EXHIBIT NO. 2

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

VIOLATION: Operating an air contaminant source (gasoline dispensing facility) listed in OAR 340-216-8010 without first obtaining an ACDP from DEQ, in violation of ORS 468A.045(1)(b) and OAR 340-216-0020(3).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(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 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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(C) because Respondent needed to apply for a General Air Contaminant Discharge Permit because Respondent is subject to the federal Area-Source NESHAP requirements.

"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 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 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. In accordance with OAR 340-012-0145(4), each day of violation with a duration of more than one day is a separate occurrence. Respondent operated the GDF without an ACDP from April 1, 2014 to January 14, 2016.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent was negligent. Respondent owns or operates other bulk gasoline plants and gasoline dispensing facilities in Oregon that have been assigned to the General ACDPs. Therefore, Respondent has general knowledge of DEQ air quality permitting requirements for these facilities. By failing to ensure that its GDF in Sisters had

been assigned to the General Permit before starting up operation or to inquire with DEQ whether a permit was needed, Respondent failed to take reasonable care to avoid a foreseeable risk that Respondent would be operating the facility without an ACDP, in violation of the law.

"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 made reasonable efforts to correct the violation by applying to DEQ for assignment under the General ACDP on April 29, 2015.

"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 \$198. This is the amount Respondent gained by delaying payment of the initial permit fee of \$1,440 from April 1, 2014 to April 10, 2015, and by avoiding an annual fee of \$144 for operating year 2014 for assignment to the General ACDP. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$750 + [(0.1 \times \$750) \times (0 + 0 + 4 + 4 + -3)] + \$198 \\ &= \$750 + (75 \times 5) + \$198 \\ &= \$750 + \$375 + \$198 \\ &= \$1,323 \end{aligned}$$