



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5382
FAX (503) 229-5787
TTY 711

August 3, 2018

CERTIFIED MAIL No. 7016 0750 0000 3470 3654

Grain Craft, Inc.
c/o CT Corporation System, Registered Agent
780 Commercial Street SE, Suite 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AC-ER-2018-080

This letter is to inform you that DEQ has issued you a civil penalty of \$1,600 for failing to timely submit your 2017 annual report to DEQ as required by your Air Contaminant Discharge Permit.

DEQ issued this penalty because annual reports are an important mechanism for DEQ to determine whether companies are operating within the operational and emission limits allowed by the permit, and to ensure emissions are within levels that do not pose harm to the public's health or the environment.

DEQ appreciates your effort to correct the violation by submitting your report on April 19, 2018. DEQ considered this effort when determining the amount of civil penalty.

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

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.state.or.us

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 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

instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact DEQ Environmental Law Specialist Jenny Root at 503-229-5874 or toll free in Oregon at 800-452-4011, extension 5874.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kieran O'Donnell', is written over a horizontal line.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Tom Hack, Eastern Region, Pendleton Office, DEQ
Donald Hendrix, AQ, DEQ
US EPA, Region 10, c/o Katie McClintock, 1200 Sixth Avenue, Seattle, WA 98101
Tim Byam, Grain Craft, Inc., 501 SE Emigrant Avenue, Pendleton, OR 97801

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

3 IN THE MATTER OF:)
4 GRAIN CRAFT, INC.,)
5 a Georgia corporation,)
6 Respondent.)
7 CASE NO. AQ/AC-ER-2018-080

8 I. AUTHORITY

9 This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and
10 468.126 through 468.140, ORS Chapters 183 and 468A, and Oregon Administrative Rules (OAR)
11 Chapter 340, Divisions 011, 012, 200, 214 and 216.

12 II. FINDINGS OF FACT

13 1. Respondent, Grain Craft, Inc., a Georgia corporation registered to conduct
14 business in Oregon, owns and operates a flour and grain mill as at 501 SE Emigrant Avenue,
15 Pendleton, Oregon (the Facility).

16 2. On September 2, 2015, the Department of Environmental Quality (DEQ) issued
17 Air Contaminant Discharge Permit No. 30-0012-SI-01 (Permit) to Respondent. The Permit was
18 in effect at all material times.

19 3. The Permit authorizes Respondent to discharge air contaminants from the Facility
20 in conformance with the requirements, limitations and conditions set forth in the Permit.

21 4. Condition 6.2 of the Permit requires Respondent to submit an annual report to
22 DEQ by February 15th of each year that includes specific production and pollutant emission
23 information for the previous calendar year of operation at the Facility.

24 5. Respondent's 2017 annual report was due by February 15, 2018.

25 6. Respondent submitted its 2017 annual report to DEQ on April 19, 2018.

26 III. CONCLUSION

27 Respondent violated Condition 6.2 of the Permit and OAR 340-214-0114(1) and (2),
adopted pursuant to ORS 468A.050(1), by failing to submit its 2017 annual report to DEQ by

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1 February 15, 2018. This is a Class II violation, according to OAR 340-012-0054(2)(f). DEQ
2 hereby assesses a \$1,600 civil penalty for this violation.

3 IV. ORDER TO PAY CIVIL PENALTY

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

6 Pay a total civil penalty of \$1,600. The determination of the civil penalty is attached as
7 Exhibit No. 1 and is incorporated as part of this Notice.

8 If you do not file a request for hearing as set forth in Section V below, your check or money
9 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
10 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the
11 penalty, the Findings of Fact, Conclusions and Order become final.

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

13 You have a right to a contested case hearing on this Notice, if you request one in writing.
14 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this
15 Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice
16 or attached exhibit, you must do so in your request for hearing, as factual matters not denied will be
17 considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-
18 011-0530 for further information about requests for hearing.) You must send your request to: **DEQ,**
19 **Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland,**
20 **Oregon 97232**, fax it to **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. An
21 administrative law judge employed by the Office of Administrative Hearings will conduct the
22 hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501
23 to 0700. You have a right to be represented by an attorney at the hearing, however you are not
24 required to be. If you are an individual, you may represent yourself. If you are a corporation,
25 partnership, limited liability company, unincorporated association, trust or government body, you
26 must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-
27 003-0555.

- "O" is whether the violation was repeated or ongoing and receives a value 0 according to OAR 340-012-0145(4)(a), because there was one occurrence of the violation. Respondent was late submitting one (2017) annual report.
- "M" is the mental state of the Respondent and receives a value of 8 pursuant to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. Respondent's Permit expressly requires Respondent to submit an annual report by February 15th of each year. In 2016, DEQ issued a civil penalty to Respondent for submitting its 2015 annual report late. By failing to take adequate measures to ensure the 2017 report would be submitted timely, Respondent consciously disregarded a substantial and unjustifiable risk that it would again violate the reporting requirements of the Permit and Oregon's air quality regulations. Given the prior enforcement history of late reporting, disregarding this risk constituted a gross deviation from the standard of care a reasonable person would observe in this situation.
- "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 submitting the report on April 19, 2018.
- "EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of 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 there is insufficient information on which to base a finding.

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

$$= \$1,000 + [(0.1 \times \$1,000) \times (1 + 0 + 0 + 8 + -3)] + \$0$$

$$= \$1,000 + (100 \times 6) + \$0$$

$$= \$1,000 + \$600 + \$0$$

$$= \$1,600$$

1 Active duty service-members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-452-
3 8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
4 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
5 <http://legalassistance.law.af.mil/content/locator.php>.

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

12
13 8/3/18

14 Date

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16 Kieran O'Donnell, Manager
17 Office of Compliance and Enforcement
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EXHIBIT NO. 1

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

- VIOLATION: Failing to timely submit the 2017 annual report in violation of Condition 6.2 of Respondent's Air Contaminant Discharge Permit and OAR 340-214-0114(1) and (2).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(f).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. In making this finding, DEQ considered the following reasonably available information: once Respondent submitted the annual report, DEQ was able to determine Respondent had operated in compliance with its permit emission limits during the 2017 operating year.
- 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 \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent operates the Facility under a Simple Air Contaminant Discharge 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 Respondent, and receives a value of 1 according to OAR 340-012-0145(2)(a)(B), because Respondent had one Class II violation in Notice of Civil Penalty Assessment and Order No. AQ/AC-ER-2016-072 issued July 28, 2016.
- "H" is Respondent's history of correcting prior significant actions and receives an value of -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited as prior significant actions. According to OAR 340-012-0145(3)(d), this value is increased to 0 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. Respondent took reasonable but not extraordinary efforts to correct or minimize the effects of the prior significant action.