



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

August 6, 2021

CERTIFIED MAIL No. 7018 1830 0001 5903 8747

EP Minerals, LLC
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/V-ER-2021-043

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that DEQ has issued you a \$11,700 civil penalty for failing to conduct visible emission (opacity) monitoring at your diatomaceous earth processing plant at 2630 Graham Boulevard, Vale, Oregon, in violation of your Oregon Title V Operating Permit and the federal New Source Performance Standards (NSPS), Subpart UUU requirements.

DEQ issued this penalty due to the serious nature of the violations. DEQ and federal NSPS Subpart UUU require that you monitor your kilns to ensure particulate matter emissions from the kilns are kept to minimum levels. Opacity is an indicator of particulate matter emission levels. Particulate matter, when emitted in excess, can contribute to respiratory distress in individuals. Once inhaled, particulate matter can affect the heart and lungs, causing serious health problems such as decreased lung function, irregular heartbeat and chronic bronchitis.

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 – 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 portion of the 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.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell".

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

cc: Frank Messina, Eastern Region, Bend Office, DEQ
Mark Bailey, Eastern Region, Bend Office, DEQ
Accounting, DEQ
Donald Hendrix, AQ, DEQ
EP Minerals, LLC, c/o Klay Wagner, Plant Manager, 2630 Graham Blvd., Vale, OR 97918

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
EP MINERALS, LLC,)	ASSESSMENT AND ORDER
a Delaware limited liability company,)	
)	NO. AQ/V-ER-2021-043
Respondent.)	

I. AUTHORITY

This Notice of Civil Penalty Assessment and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468A, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 200, 208, 218, 238 and 40 Code of Federal Regulations (CFR) Part 60, subpart UUU, adopted and incorporated by reference in OAR 340-238-0060(1) and (3)(www).

II. FINDINGS OF FACT

1. Respondent, EP Minerals, LLC, a Delaware limited liability company registered to conduct business in Oregon, operates a diatomaceous earth processing plant at 2630 Graham Boulevard, Vale, Oregon (the Facility).

2. On September 29, 2017, the Department of Environmental Quality (DEQ) issued Oregon Title V Operating Permit No. 23-0032-TV-01 (Permit) to Respondent. The Permit was in effect at all material times.

3. The Permit authorizes Respondent to discharge air contaminants from the Facility in accordance with the requirements, limitations and conditions in the Permit.

4. The Facility includes two calcining kilns (Kilns 1 and 2) to process diatomaceous earth into filter products. Kiln 2 is subject to the federal Standards of Performance for Calciners and Dryers in Mineral Industries regulations in 40 CFR Part 60, subpart UUU (Subpart UUU).

5. Condition 38 of the Permit requires that Respondent monitor visible emissions (opacity) of Kiln 1 once per week by performing either EPA Method 9 or EPA Method 22 visible emission readings.

6. Condition 38 of the Permit and 40 CFR 60.734(b) require that Respondent

1 monitor visible emissions (opacity) of Kiln 2 each day by performing three six-minute average
2 EPA Method 9 visible emission readings. This monitoring requirement is part of the Subpart
3 UUU requirements to demonstrate compliance with the opacity emission limit in 40 CFR
4 60.732(b).

5 7. On the following dates, Respondent failed to conduct visible emission monitoring
6 of the kilns:

7 A. On February 9, 2021, Respondent failed to conduct the daily three six-minute
8 average visible emission readings of Kiln 2.

9 B. During the week of February 15, 2021 to February 21, 2021, Respondent
10 failed to conduct a weekly Method 9 or Method 22 visible emission reading of Kiln 1.

11 III. CONCLUSIONS

12 1. On February 9, 2021, Respondent violated Condition 38 of the Permit and 40
13 CFR 60.734(b) by failing to conduct three six-minute Method 9 visible emission readings of Kiln
14 2, as further described in Section II, Paragraphs 6 and 7.A above. This is a Class I violation
15 according to OAR 340-012-0054(1)(p). DEQ hereby assesses a \$7,800 civil penalty for this
16 violation.

17 2. During the week of February 15, 2021 to February 21, 2021, Respondent violated
18 Condition 38 of the Permit by failing to conduct a weekly Method 9 or Method 22 visible
19 emission reading of Kiln 1, as further described in Section II, Paragraphs 5 and 7.B above. This
20 is a Class II violation according to OAR 340-012-0054(2)(b). DEQ hereby assesses a \$3,900
21 civil penalty for this violation.

22 V. ORDER TO PAY CIVIL PENALTY

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

25 Pay a total civil penalty of \$11,700. The determination of the civil penalty is
26 attached as Exhibits 1 and 2 and is incorporated as part of this Notice.

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1 If you do not file a request for hearing as set forth in Section V below, your check or
2 money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ,**
3 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

4 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
5 must receive your request for hearing **within 20 calendar days** from the date you receive this
6 Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this
7 Notice or attached exhibits, you must do so in your request for hearing, as factual matters not
8 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
9 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your
10 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**
11 **600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to

12 DEQappeals@deq.state.or.us. An administrative law judge employed by the Office of
13 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
14 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
15 attorney at the hearing, however you are not required to be. If you are an individual, you may
16 represent yourself. If you are a corporation, partnership, limited liability company,
17 unincorporated association, trust or government body, you must be represented by an attorney or
18 a duly authorized representative, as set forth in OAR 137-003-0555.

19 Active duty service members have a right to stay proceedings under the federal Service
20 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
21 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
22 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
23 Department does not have a toll-free telephone number.

24 If you fail to file a timely request for hearing, the Notice will become a final order by
25 default without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing
26 but later withdraw your request, fail to attend the hearing or notify DEQ that you will not be
27 attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3).

1 DEQ designates the relevant portions of its files, including information submitted by you, as the
2 record for purposes of proving a prima facie case.

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5 8/6/21
6 Date

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Kieran O'Donnell
Kieran O'Donnell, 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 NO. 1: Failing to conduct three six-minute average Method 9 visible emission readings of Kiln 2, in violation of Condition 38 of Respondent's Oregon Title V Operating Permit and 40 CFR 60.734(b).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(p), because the monitoring is required to demonstrate compliance with an emission limit established under the New Source Performance Standards, 40 CFR, Part 60, Subpart UUU.
- 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 \$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)(A) because Respondent operates the facility under an Oregon Title V Operating 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 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 missed one daily monitoring event on February 9, 2021.
- "M" is the mental state of Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Condition 38 of the Permit expressly requires that Respondent conduct daily Method 9 visible emission monitoring of Kiln 2. On November 3, 2020, DEQ issued Respondent a warning letter for missed visible emission readings in 2019. By failing to take adequate measures to ensure this

violation did not reoccur, Respondent failed to take reasonable care to avoid the foreseeable risk Respondent would again violate its Permit and federal NSPS requirements.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. Respondent has sent additional staff to Method 9 training to be Method 9 certified observers and has assigned backup staff each day to ensure Method 9 readings will not be missed.

"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 any economic benefit derived from failing to miss one monitoring event is likely to be de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 4 + -1)] + \0
 $= \$6,000 + (600 \times 3) + \0
 $= \$6,000 + \$1,800 + \$0$
 $= \$7,800$

EXHIBIT 2

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

- VIOLATION NO. 2: Failing to conduct weekly EPA Method 9 or Method 22 visible emission monitoring of Kiln 1, in violation of Condition 38 of Respondent's Oregon Title V Operating Permit.
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(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 \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(A) because Respondent operates the facility under an Oregon Title V Operating 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 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 one occurrence of the violation. Respondent missed one weekly visible emission monitoring event of Kiln 1 during the week of February 15, 2021 to February 21, 2021.
- "M" is the mental state of Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Condition 38 of the Permit expressly requires that Respondent conduct weekly visible emission monitoring of Kiln 1. On November 3, 2020, DEQ issued Respondent a warning letter for missed visible emission monitoring in 2019. By failing to take adequate measures to ensure this violation did not reoccur, Respondent failed to take reasonable care to avoid the foreseeable risk Respondent would again violate its Permit.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. Respondent has sent additional staff to Method 9 training to be EPA Method 9 certified observers and has assigned backup staff each day to ensure that either EPA Method 9 or 22 readings will not be missed.

"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 any economic benefit derived from failing to miss one monitoring event is likely to be de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$3,000 + [(0.1 x \$3,000) x (0 + 0 + 0 + 4 + -1)] + \$0
= \$3,000 + (300 x 3) + \$0
= \$3,000 + \$900 + \$0
= \$3,900