



Oregon

Kate Brown, Governor

Department of Environmental Quality

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September 2, 2016

CERTIFIED MAIL No. 7014 2870 0001 3373 5760

Pendleton Grain Growers, Inc.
c/o Steve Rosvold, Registered Agent
1000 SW Dorion Avenue
Pendleton, OR 97801

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AC-ER-2016-101

This letter is to inform you that the Department of Environmental Quality (DEQ) has issued you a civil penalty of \$16,737 for operating your grain elevator at 31005 Launch Lane in Umatilla without an Air Contaminant Discharge Permit (ACDP) from DEQ. Grain elevators used for intermediate storage of 10,000 or more tons per year of grain and that are located in special control areas are required to obtain a General ACDP from DEQ. By no later than December of 2000, the City of Umatilla reached a population of 4,000 or more citizens, becoming a "special control area" and triggering the requirement that you obtain an ACDP for this facility at that time.

DEQ issued this penalty because operating without an ACDP is a serious violation. Grain elevators emit fugitive dust that can decrease visibility and may be an irritant to those who suffer from asthma or other respiratory illness at the work site, or in nearby residential or commercial areas, especially in populated areas. The General ACDP for grain elevators requires that the facilities use best work practices to ensure dust and odors are kept to minimal levels. 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 timely obtained their permit by avoiding the costs of complying with the law. Of the \$16,737 penalty, \$15,437 is the economic benefit you derived by avoiding annual permit fees from 2001 through 2015.

DEQ appreciates your efforts to apply for assignment to the General ACDP once you became aware of the violation. DEQ considered these efforts when determining the amount of civil penalty. Because you self-disclosed the violation, DEQ has significantly reduced the otherwise-applicable 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. 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 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.

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: Tom Hack, Eastern Region, Pendleton Office, DEQ
Cindy Troupe, AQ, HQ, DEQ

1 will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests
2 for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and**
3 **Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-**
4 **5100**. An administrative law judge employed by the Office of Administrative Hearings will
5 conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR
6 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you
7 may represent yourself unless you are a corporation, agency or association.

8 Active duty service-members have a right to stay proceedings under the federal
9 Servicemembers Civil Relief Act. For more information, please call the Oregon State Bar at
10 1(800) 452-8260 or the Oregon Military Department at 1(800) 452-7500. Additional information
11 can be found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services
12 Locator website, <http://legalassistance.law.af.mil/content/locator.php>.

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

20 September 6, 2016
21 Date

20 Sarah Wheeler for
21 Leah K. Feldon, Manager
22 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 (grain elevator) 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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent needed to apply for a General 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 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 facility without an ACDP from December 2000 to May 13, 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 reasonably should have known it needed an ACDP for the Facility once the City of Umatilla reached a population of 4,000 people. Respondent has general knowledge of DEQ air quality permitting requirements for these facilities located near populated areas because Respondent owns or operates other grain elevator/storage facilities in Oregon that have been assigned to the General ACDP.

"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 May 9, 2016.

"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 \$15,437. This is the amount Respondent gained by avoiding annual fees for assignment to the General ACDP of \$500 for operating year 2001; \$600 each year for operating years 2002-2007; \$720 each year for operating years 2008-2013; and \$864 each year for operating years 2014 and 2015. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$2,000 + [(0.1 x \$2,000) x (0 + 0 + 4 + 2 + -3)] + \$15,437
= \$2,000 + (200 x 3) + \$15,437
= \$2,000 + \$600 + \$15,437
= \$2,600* + \$15,437

*Pursuant to DEQ's self-disclosure policy and OAR 340-012-0160(2), Respondent's gravity-based civil penalty (excluding the economic benefit) is reduced by 50%. Thus, Respondent's **total civil penalty is \$16,737** [\$1,300 gravity penalty + \$15,437 EB].