



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5382
FAX (503) 229-5100
TTY 711

March 1, 2023

CERTIFIED MAIL No. 7018 1830 0001 6172 7394

Douglas County, Inc.
dba Douglas County Forest Products
c/o Richard Matthews, Registered Agent
398 Del Rio Road
Winchester, OR 97495

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/V-WR-2022-056

This letter is to inform you that DEQ has issued Douglas County, Inc. a civil penalty of \$207,496 for violations of its Oregon Title V Operating Permit issued to its wood products mill located at 398 Del Rio Road, Winchester, Oregon. Specifically, from March 23, 2022, to March 30, 2022, Douglas County, Inc. exceeded the emissions limit for opacity 429 times. On six of these days, one or more of the six-minute block average opacities from the wood-fired boiler was more than double the 20 percent opacity limit in the permit.

DEQ issued this penalty because the opacity limit in the permit is designed to ensure the facility's emissions are protective of human health and the environment. The limit for the wood fired boiler is a new source performance standard (NSPS), promulgated by the federal government and adopted by Oregon to ensure that new air contaminant sources maintain optimum efficiency and keep pollutant levels to a minimum to ensure that national air quality health standards are met. 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. By violating the opacity limit 429 times over an eight day period you presented a risk of harm to human health and the environment.

You may pay the penalty by mailing a check or money order to the below address. 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.oregon.gov
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.

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 your 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,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Janice Tacconi, Western Region, Medford Office, DEQ
Accounting, DEQ
Donald Hendrix, AQ, DEQ
John Keenan, EPA, Region 10 keenan.john@epa.gov
Mick Baranko, Controller, Douglas County Forest Products
398 Del Rio Road, Winchester, OR 97495

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF: DOUGLAS COUNTY, INC., an Oregon corporation doing business as DOUGLAS COUNTY FOREST PRODUCTS, an assumed business name, Respondent.)))))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER NO. AQ/V-WR-2022-056
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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, 218 and 40 Code of Federal Regulations (CFR), Part 60, Standards of Performance for New Stationary Sources (NSPS), Subpart Db, adopted and incorporated by reference in OAR 340-238-0060(1) and (3)(d).

II. FINDINGS OF FACT

1. Respondent, Douglas County Inc., an Oregon corporation registered to conduct business in Oregon under the assumed business name Douglas County Forest Products, operates a wood products mill at 398 Del Rio Road, Winchester, Oregon (the Facility).

2. On October 11, 2010, the Department of Environmental Quality (DEQ) issued Oregon Title V Operating Permit No. 10-0012-TV-01 (the 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 conformance with the requirements, limitations and conditions set forth in the Permit.

4. Condition 10 of the Permit prohibits Respondent from causing or allowing the discharge of gases from the Facility’s wood-fired boiler (identified as EU HFB-1 in the Permit) into the atmosphere that exhibit greater than 20 percent opacity over a six-minute block average, except for one six-minute block period per hour of not more than 27 percent opacity. This limit is set pursuant to New Source Performance Standard (NSPS), Subpart Db at 40 CFR 60.43b(f).

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1 IV. ORDER TO PAY CIVIL PENALTY

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

4 Pay a total civil penalty of \$207,496. The determination of the civil penalty is attached as
5 Exhibits 1 through 5 and is incorporated as part of this Notice.

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

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

10 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
11 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
12 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
13 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
14 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
15 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
16 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,** fax
17 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
18 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
19 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
20 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
21 you may represent yourself. If you are a corporation, partnership, limited liability company,
22 unincorporated association, trust or government body, you must be represented by an attorney or a duly
23 authorized representative, as set forth in OAR 137-003-0555.

24 Active-duty service members have a right to stay proceedings under the federal Service
25 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
26 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
27 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military

1 Department does not have a toll-free telephone number.

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

8
9 3/1/2023
10 Date



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Kieran O'Donnell, 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 : Causing or allowing opacity levels from EU HFB-1 to exceed 20% opacity over a six-minute block average period in violation of Condition 10 of Respondent's Oregon Title V Operating Permit, ORS 468A.045(2) and 40 CFR 60.43b(f).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0054(1)(d).

MAGNITUDE: The magnitude of the violations is major pursuant to OAR 340-012-0135(1)(a)(A), because Respondent's highest opacity measurements on March 23, 2022, March 25, 2022, March 27, 2022, March 28, 2022, March 29, 2022, and March 30, 2022, were 20% opacity or more over the applicable limit.

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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) 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 an initial value of 7 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had six Class I or Class I equivalent violations in Notice of Civil Penalty Assessment and Order No. AQ/V-WR-13-007 issued May 14, 2013. According to 340-012-0145(2)(d)(A)(ii), DEQ will reduce the value of "P" by 4 if all of the formal enforcement actions containing prior significant actions were issued more than five years before the date the current violation occurred. Therefore, the value of "P" is 3.

"H" is Respondent's history of correcting prior significant actions and receives a value -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited as prior significant actions.

"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. There were approximately 429 occurrences of the violation over the period of March 23, 2022, to March 30, 2022. According to OAR 340-012-0145(4), each separate violation is a separate occurrence when determining the "O" factor. DEQ is electing to assess six base penalties for these violations. Therefore, each base penalty represents at least 71 occurrences

of the violation. According to OAR 340-012-0145(4)(e), each base penalty is based on the highest classification and magnitude applicable to any of the occurrences.

"M" is the mental state of Respondent and receives a value 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Condition 10 of the Permit expressly prohibits Respondent from causing or allowing the discharge of gases from EU HFB-1 into the atmosphere that exhibit greater than 20 percent opacity over a six-minute block average, except for one six-minute block period per hour of not more than 27 percent opacity. However, Respondent continued to operate EU-HFB-1 after shutting down the electrostatic precipitator (ESP) pollution control device that controls emissions, including opacity, while upgrades were made to the ESP. Once the ESP was brought back online, it did not function properly. Nonetheless, Respondent continued to operate EU-HFB-1 knowing that the ESP pollution control device was not operating properly. In addition, the Facility has three natural gas boilers it could have used to produce steam and continue operations in place of EU-HFB-1. By continuing to operate EU-HFB-1 with no pollution control or while the pollution control device was not functioning properly, Respondent consciously disregarded a substantial and unjustifiable risk that Respondent would violate the opacity limits in the Permit. The risk was of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"C" 0 according to OAR 340-012-0145(6)(f) because once the violation occurred, the violation (excess emissions) or the effects of the violation could not be corrected or minimized.

"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 \$41,896. This is the amount of economic benefit Respondent gained by avoiding spending approximately \$54,493 to purchase natural gas to operate the natural gas boilers at the Facility from March 23, 2022, to March 30, 2022, while the wood waste boiler ESP was offline or not functioning properly. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

BASE PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$12,000 + [(0.1 x \$12,000) x (3 - 2 + 4 + 8 + 0)] + \$41,896
= \$12,000 + (1,200 x 13) + \$41,896
= \$12,000 + \$15,600 + \$41,896
= \$27,600 per violation + \$41,896 EB

TOTAL PENALTY CALCULATION

In accordance with ORS 468.140(2), each day of violation constitutes a separate offense and is subject to a civil penalty up to \$25,000 per day. Respondent exceeded the opacity limit 429 times. On six of the days, one or more times opacity from the wood-fired boiler reached a major magnitude level (20% opacity or more over the limit). DEQ elects to assess six separate base penalties for these violations.

$\$27,600 \text{ per base penalty} \times 6 = \$165,600$. $\$165,600 + \$41,896 \text{ EB for the violation period (March 23, 2022, through March 30, 2022)} = \$207,496 \text{ total penalty}$