



**Via Overnight Mail**

April 21, 2014

Hon. Joseph J. Martens  
Commissioner  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-1010

**Re: Application by Global Companies LLC to Expand Crude Oil Shipments at the Albany Terminal: Request for Independent Audit of Global Crude Oil Shipments**

Dear Commissioner Martens:

Earthjustice submits this letter on behalf of the Ezra Prentice Homes Tenants Association, Albany City Council President Carolyn McLaughlin, Albany City Councilmembers Dorcey Applrys, Vivian Kornegay, Leah Golby, Judd Krasher, and Judy Doesschate, Sierra Club Atlantic Chapter, Hudson Riverkeeper, Natural Resources Defense Council, Center for Biological Diversity, Scenic Hudson, Environmental Advocates of New York, Catskill Mountainkeeper, and People of Albany United for Safe Energy, to request that the Department of Environmental Conservation (“DEC” or “Department”) require Global Companies, LLC (“Global”) to provide full responses to the information requests in DEC’s March 24, 2014 letter by no later than May 3, 2014. We respectfully submit that this deadline is necessary to ensure that the requested information concerning Global’s current and proposed operations at its Albany Terminal is available sufficiently in advance of the June 2, 2014 public comment deadline to enable it to be reviewed, considered and incorporated into public comments.

Additionally, for the reasons set forth herein, we reiterate our request that the Department rescind its Notice of Complete Application pending submission by Global of complete and satisfactory responses to DEC’s March 24 information requests and submission by Global, and approval by DEC, of an enhanced Public Participation Plan as required by the Department’s Environmental Justice Policy.

We also request that the Department (1) conduct an independent audit of crude oil shipments currently moving and/or proposed to be moved through Global’s Albany and New Windsor, New York terminals; (2) require Global to prospectively submit to DEC monthly reports detailing throughput at its Albany and New Windsor terminals; and (3) provide all of the foregoing information to the public as it becomes available. We believe such action is warranted in view of Global’s poor track record for veracity, as demonstrated by the recent enforcement action by the Oregon Department of Environmental Quality (“ODEQ”) against Global regarding the company’s gross misrepresentations of crude oil throughput at its Columbia Pacific terminal in Clatskanie, Oregon, and by Global’s submission to DEC of misleading information in its prior application for a modification of its Title V permit.

## **I. The Need for a Deadline for Global's Response to DEC's March 24 Letter**

At the outset, we welcome the Department's March 24, 2014 letter to Global requesting that the company provide crucial details concerning its existing and planned operations at the Albany Terminal, and clarifying that DEC's November 2013 Negative Declaration was an interim review subject to a final future determination of significance under SEQRA. We are gratified that DEC is demanding that Global provide information that has long been sought by the affected community and the public at large, and that the Department has made clear that Global can no longer dismiss concerns regarding the environmental and public health impacts of its operations by relying on the Department's November 2013 Negative Declaration.

However, because the Department neglected to include in the March 24 letter any deadline by which Global must provide responses to the information requests, we are concerned that Global may not provide responses until after the close of the public comment period, thereby depriving the public of an opportunity to include the new information in comments. Alternatively, Global's response may occur so close to the comment deadline that the public will not have enough time to adequately review, evaluate and incorporate the new information into comments before the deadline.

Accordingly, it is imperative that the Department require Global to provide its responses to the March 24 information requests by no later than May 3, 2014, and that those responses be made available to the public immediately upon receipt by DEC. This will provide Global slightly more than five weeks from the date of DEC's information request to prepare and submit responses, and will allow the public four weeks in which to evaluate those responses and incorporate them into comments for submission by the June 2 deadline.

## **II. Request to Rescind Notice of Complete Application**

At this time, we respectfully reiterate the request set forth in our January 30, 2014 letter that the Department rescind its Notice of Complete Application for Global's proposed expansion of its Albany Terminal operations. We believe the scope and magnitude of the requests for additional information set forth in DEC's March 24, 2014 letter make clear that significant details crucial to an adequate and well-informed review of Global's proposal are missing from the current application materials. It is difficult for the public to understand how the Department can continue to consider Global's application complete in the face of so many glaring deficiencies in the information provided by the company.

We also note that the lack of basic details concerning Global's operations and the breadth of the information requests by DEC underscore the need for an EIS that will provide crucial baseline information concerning the environmental and public health impacts of Global's current operations at its Albany and New Windsor terminals, and a comprehensive assessment of the environmental and public health impacts of its proposed expansions of those facilities. An EIS is the legally mandated and appropriate way in which to explain and evaluate those impacts in an open, transparent and public process.

Moreover, Global has yet to have in place a DEC-approved enhanced Public Participation Plan (“Plan”). As noted in our January 30, 2014 letter, the Department’s Environmental Justice Policy clearly states that an approved Plan is required before an application affecting an environmental justice community may be deemed complete. It simply makes no sense for the Department to continue to consider Global’s application complete in the face of considerable missing information and the lack of a DEC-approved Plan, and we therefore again urge the Department to comply with its own policies and rescind the Notice of Complete Application.

### **III. Need for DEC to Independently Audit Global’s Shipments**

We are concerned that the Department’s analyses of impacts from Global’s operations at its Albany and New Windsor terminals continue to be largely based on the company’s unsubstantiated claims regarding throughput. As you know, the air quality, noise, odor and other environmental and public health impacts from Global’s terminal operations are directly related to the amount of crude oil throughput, and Global’s Title V air permits are based upon the throughput assumptions for each terminal. However, as the Department has conceded at public meetings concerning Global’s Albany Terminal operations, DEC has not independently verified Global’s claims regarding existing throughput of crude oil at the Albany Terminal, or prospective throughput at Global’s New Windsor Terminal. Recent developments concerning Global’s crude oil terminal in Oregon strongly suggest that the company’s throughput claims should be the subject of independent verification.

In June 2012, Cascade Kelly Holdings, Inc. (“Cascade”), Global’s predecessor in interest at the Columbia Pacific terminal, submitted an application to modify its air permit to allow crude oil throughput at the terminal to be increased to a maximum of 50 million gallons per year. *See* Notice of Civil Penalty Assessment and Order (March 27, 2014) (annexed hereto as Exhibit A) ¶ 3. Cascade’s application was approved by ODEQ based on the throughput representations in the company’s permit application. *Id.* ¶ 4. The following month, Cascade notified ODEQ that “it wanted to significantly increase and expand its crude oil transloading operations” at the Columbia Pacific terminal, and was notified by ODEQ that such an expansion would require an air permit modification because it “would increase volatile organic compound emissions above the de minimis emission rate and . . . would become a new principal emitting activity” at the terminal. *Id.* ¶¶ 5-6.

In January 2013, Global purchased Cascade and the Columbia Pacific terminal and almost immediately proceeded to significantly increase crude oil throughput at the terminal without first seeking the required permit modification. During the nine month period from March 2013 through November 2013, Global increased crude oil throughput at the Columbia Pacific terminal to over 1.5 *billion* gallons – more than thirty times the maximum annual throughput of 50 million gallons authorized by the ODEQ permit. *Id.* ¶ 10. The throughput violations were discovered when ODEQ demanded documentation from Global detailing crude oil shipments for the period in question.

As a result of these significant throughput violations, Global was ordered by ODEQ to (1) pay a civil penalty of \$117,292; (2) reduce its annual crude oil throughput to 50 million

gallons as authorized by the existing permit; and (3) submit monthly reports detailing crude oil shipment amounts. *Id.* Part IV. The magnitude of the throughput exceedances make clear that the violations at Global's Oregon terminal were not the result of a simple accounting error or a single unexpectedly large shipment. Rather, the exceedances were apparently the result of the company's decision to implement a massive expansion of crude oil shipments without first complying with air pollution permitting requirements.

As noted in our January 30, 2014 letter, Global has already misled the Department by repeatedly claiming in its prior application for a Title V Permit modification that the doubling of crude oil throughput at the Albany Terminal would result in no increase in rail traffic. To your credit, you candidly acknowledged at the March 5, 2014 community meeting that rail traffic into Global's Albany Terminal has in fact significantly increased as a result of Global's throughput increase.

We respectfully submit that Global's poor track record for veracity, as evidenced by its false claim regarding rail traffic into the Albany Terminal and its significant misrepresentations concerning throughput at its Columbia Pacific terminal, demonstrates a vital need for independent verification of throughput at Global's Albany and New Windsor terminals. Global should also be required to submit monthly reports detailing throughput volumes at both terminals, as ODEQ is requiring for the company's Columbia Pacific terminal.

Moreover, given the high level of public interest in Global's operations, and the fact that DEC has determined that environmental justice communities are impacted by operations at the Albany and New Windsor terminals, Global's throughput information should be made available to the public. Such a requirement would further the objectives of DEC's Environmental Justice Policy and would be consistent with the commendable goal of the Department's March 24 letter goal to require Global to provide additional critical information concerning its operations.

#### **IV. Conclusion**

As acknowledged in the Department's March 24, 2014 letter, significant information concerning Global's current and proposed operations at the Albany Terminal has yet to be made available to the public. Given the fast-approaching deadline for public comments on Global's proposed expansion of its Albany operations, it is essential that DEC require that the missing information – which is crucial to an informed review of Global's proposal – be provided by no later than May 3 so that the public will have an adequate opportunity to review and respond to that information prior to the deadline. Additionally, because crucial information is missing from Global's application material and the company does not yet have a DEC-approved Plan, we reiterate our request that the Notice of Complete Application be rescinded.

Also, given Global's pattern of deceitfulness, we ask that the Department conduct an independent audit of Global's existing and prospective shipments and require the company to submit monthly shipment reports, and that all of the foregoing information be made available to the public.

We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Amato", written in a cursive style.

Christopher Amato  
Staff Attorney

C: Hon. Andrew M. Cuomo, Governor  
Hon. Neil D. Breslin, Senator, 44th Senate District  
Hon. John T. McDonald, III, Assemblyman, 108<sup>th</sup> Assembly District  
Hon. Patricia Fahy, Assemblywoman, 109<sup>th</sup> Assembly District  
Hon. Kathy M. Sheehan, Mayor, City of Albany  
Hon. Daniel McCoy, Albany County Executive  
Basil Seggos, Deputy Secretary for the Environment  
Hon. Judith Enck, EPA Regional Administrator  
Marc Gerstman, DEC Executive Deputy Commissioner  
Ed McTiernan, DEC General Counsel  
Melvin Norris, Director, DEC Office of Environmental Justice



# **EXHIBIT A**







# Oregon

John A. Kitzhaber, MD, Governor

## Department of Environmental Quality

Headquarters  
811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY: 711

March 27, 2014

CERTIFIED MAIL No. 7013 1090 0001 2733 1899

Brien J. Flanagan, Attorney  
Schwabe, Williamson & Wyatt  
1211 SW 5<sup>th</sup> Avenue, Suite 1900  
Portland, OR 97204

Re: Notice of Civil Penalty Assessment and Order  
Cascade Kelly Holdings LLC  
Case No. AQ/AC-NWR-14-014

This letter is to inform you that the Department of Environmental Quality (DEQ) has issued your client, Cascade Kelly Holdings LLC (the company), a civil penalty of \$117,292 for operating a new source (crude oil transloading operation) without the required Air Contaminant Discharge Permit (ACDP) from DEQ. The violation occurred at the Columbia Pacific Bio-Refinery facility at 81200 Kallunki Road in Clatskanie, Oregon (the Facility). DEQ's approval for the company to conduct crude oil transloading through the company's ethanol plant ACDP only provided approval of crude oil transloading up to 50,000,000 gallons per year. The approval was limited to a 50,000,000 gallon per year maximum because this was the quantity the company requested in its permit modification application that DEQ reviewed and approved. The company far exceeded that amount in the first year of conducting crude oil transloading operations. Crude oil transloading in excess of the authorized 50,000,000 gallons per year has not been approved by DEQ and constitutes operations and emissions that are not permitted under the company's ethanol plant ACDP.

DEQ issued this penalty because operating an air contaminant source without an ACDP is a serious violation. ACDPs contain emission limitations, monitoring and reporting requirements and other conditions to protect Oregon's air quality and ensure that the state meets and maintains national air quality health standards. The permitting process also allows the public to have input before a new facility is established so that DEQ and the facility can address concerns of those who may be impacted.

Cascade Kelly Holdings LLC has now submitted a valid ACDP application for the company's current crude oil transloading operation. DEQ is processing that application through its normal course of action. However, in the meantime, included in Section IV of the enclosed Notice is an order requiring Cascade Kelly Holdings LLC to comply with its current ethanol plant ACDP and limit crude oil transloading to no more than 50,000,000 gallons per consecutive 12-month period until the new standard ACDP is issued, and to submit monthly reports to DEQ by the 10<sup>th</sup> of each month detailing the previous month's consecutive 12-month calculation. Please be advised that failing to comply with a Department Order is a serious violation and may result in additional civil penalties.

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.

The enclosed 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 the company to resolve a portion of its penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that are sponsored in lieu of paying part of the penalty. Enclosed is more detail on how to pursue a SEP.

Because this violation occurred before the new Division 12 Oregon Administrative Rules came into effect, the enclosed Notice references the previous version of the rules. You may review the rules through this link: [http://www.oregon.gov/deq/OCE/Documents/Div12\\_through01062014.pdf](http://www.oregon.gov/deq/OCE/Documents/Div12_through01062014.pdf).

If you have any questions, please contact DEQ Environmental Law Specialist Jenny Root, at (503) 229-5874. You may call toll-free within Oregon at 1-800-452-4011, extension 5874.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Greg Grunow, Northwest Region, DEQ  
Columbia County District Attorney  
Paul Garrahan, Oregon Department of Justice  
Corporation Service Company, Registered Agent  
285 Liberty Street NE, Salem, OR 97301  
Tom Keefe, Global Companies, LLC  
P.O. Box 9161, Waltham, MA 02454  
Daniel R. Lockett, General Manager, Columbia Pacific Bio-Refinery  
81200 Kallunki Road, Clatskanie, OR 97016  
Brandon Gimper, Environmental Manager, Columbia Pacific Bio-Refinery  
81200 Kallunki Road, Clatskanie, OR 97016

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

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 CASCADE KELLY HOLDINGS LLC, ) ASSESSMENT AND ORDER  
5 an Oregon limited liability company )  
6 doing business as COLUMBIA ) NO. AQ/AC-NWR-14-014  
7 PACIFIC BIO-REFINERY, )  
8 an assumed business name, )  
9 Respondent. )

10 I. AUTHORITY

11 This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and  
12 468.126 through 468.140, ORS Chapters 183 and 468A, and Oregon Administrative Rules (OAR)  
13 Chapter 340, Divisions 011, 012, 200, and 216.

14 II. FINDINGS OF FACT

15 1. Respondent, Cascade Kelly Holdings LLC, doing business as Columbia Pacific  
16 Bio-Refinery, owns an existing grain processing and ethanol manufacturing plant (ethanol plant)  
17 at 81200 Kallunki Road, Clatskanie, Oregon (the Facility). The ethanol plant currently includes  
18 two 3.8 million gallon storage tanks at the site.

19 2. On January 30, 2008, the Department of Environmental Quality (DEQ) issued  
20 Standard Air Contaminant Discharge Permit No. 05-0006-ST-01 (ACDP 05-0006) to the former  
21 owner, Cascade Grain Products, LLC, to operate an ethanol plant at the Facility. Permitted  
22 activities included processing corn to produce ethanol and dry distiller's grain soluble (animal  
23 feed), storage and transfer of 200 proof ethanol and denatured ethanol, and barge loadout  
24 operations for ethanol distribution. On July 26, 2010, DEQ modified the permit (Addendum No.  
25 1) to reflect a change in ownership of the ethanol plant to Respondent.

26 3. On June 4, 2012, Respondent submitted ACDP permit application number 026864  
27 to DEQ to request that DEQ modify ACDP 05-0006 to allow Respondent "operating flexibility"  
to transload a limited amount of crude oil from rail cars to barges using the two existing storage  
tanks for storing ethanol products (paragraph 1 above). In that application, Respondent  
identified that the crude oil transloading activity would consist of a maximum projected

1 throughput of 50,000,000 gallons per year (consecutive 12-month period) of crude oil, which  
2 would result in volatile organic compound (VOC) emissions no greater than 0.62 tons per year.

3 4. Based on that application, on June 26, 2012, DEQ modified ACDP 05-0006  
4 (Addendum No. 2) to allow Respondent to begin the crude oil transloading activity, as identified  
5 in the application. This activity was deemed an incidental activity to support the ethanol plant's  
6 operation because the limited amount of crude oil transloading identified in the application  
7 would be done utilizing existing equipment and would result in VOC emissions less than the de  
8 minimis emission rate of one ton per year (Table 4 – OAR 340-200-0020(33)). This was a  
9 simple, technical modification of ACDP 05-0006. As such, the permit modification was  
10 processed as a Type 1 change to a stationary source, in accordance with OAR 340-210-0225(1).

11 5. In July 2012, Respondent notified DEQ that it wanted to significantly increase  
12 and expand its crude oil transloading operations at the Facility. Respondent was not currently  
13 conducting the permitted activity of manufacturing ethanol at the site.

14 6. In discussions with Respondent and in a July 26, 2012 email, DEQ notified  
15 Respondent that increasing the crude oil transloading activity to the levels Respondent was  
16 proposing would require a separate ACDP from DEQ. The increased crude oil transloading  
17 would increase volatile organic compound emissions above the de minimis emission rate and  
18 would no longer be an incidental activity at the ethanol plant. Therefore, transloading crude oil  
19 would become a new principal emitting activity at the Facility.

20 7. According to OAR 340-200-0020(136), "source" means any building, structure,  
21 facility, installation or combination thereof that emits or is capable of emitting air contaminants  
22 to the atmosphere, is located on one or more contiguous or adjacent properties and is owned or  
23 operated by the same person or by persons under common control. The term includes all  
24 pollutant emitting activities that belong to a single major industrial group (i.e., that have the same  
25 two-digit code) as described in the Standard Industrial Classification (SIC) Manual, (U.S. Office  
26 of Management and Budget, 1987) or that support the major industrial group.

27 ///

1 8. Crude oil transloading operations are categorized as "Petroleum Bulk Stations and  
2 Terminals" under SIC code 5171. Ethanol plants are categorized under SIC code 2869.  
3 Because the two have different two-digit codes and are not considered supporting activities of  
4 one another, they are separate air contaminant sources.

5 9. OAR 340-216-0020(1) states, "No person may construct, install, establish, develop  
6 or operate any air contaminant source referred to in Table 1 without first obtaining an Air  
7 Contaminant Discharge Permit (ACDP) from DEQ." Table 1 of OAR 340-216-0020(1), Part B,  
8 Item 48 requires an ACDP for "Marine Vessel Petroleum Loading and Unloading."

9 10. In March 2013, Respondent began increasing crude oil transloading operations at  
10 its Facility beyond the 50,000,000 gallons per year throughput that Addendum 2 of ACDP 05-  
11 0006 was based on. According to Respondent's records, Respondent transloaded the following  
12 amounts of crude oil (per consecutive 12-month period):

13

Month	Crude Oil Throughput (gallons)
March 2013	65,835,201
April 2013	92,321,347
May 2013	125,727,330
June 2013	156,671,299
July 2013	168,397,880
August 2013	193,564,882
September 2013	221,064,275
October 2013	256,038,837
November 2013	294,495,686

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20 11. In a May 2013 meeting, DEQ again informed Respondent that Respondent's  
21 increase of the crude oil transloading resulted in establishing a new air contaminant source that  
22 requires a new ACDP from DEQ. This new source is a major source pursuant to OAR 340-200-  
23 0020(72)(a), because the crude oil transloading operation's potential-to-emit VOCs are at or  
24 above the significant emission rate of 40 tons per year (Table 2, OAR 340-200-0020).

25 12. In August 2013, Respondent submitted a complete Standard ACDP application  
26 and fees to DEQ.

27 ////

1 13. To date, DEQ has completed a draft ACDP for the crude oil transloading  
2 operation that is currently out for public notice and comment. Respondent does not have a valid  
3 ACDP to operate the crude oil transloading operation at the throughput levels it is currently  
4 maintaining until DEQ issues the new ACDP for crude oil transloading.

### 5 III. CONCLUSION

6 From approximately March 1, 2013 until present, Respondent has violated ORS  
7 468A.045(1)(b) and OAR 340-216-0020(1), adopted pursuant to ORS 468A.040, by establishing  
8 and operating a new air contaminant source (crude oil transloading operation) listed in Table 1 of  
9 OAR 340-216-0020(1) under category 48 "Marine Vessel Petroleum Loading and Unloading,"  
10 without first obtaining the required ACDP from DEQ, as further described in Section II,  
11 Paragraphs 1-13 above. These are Class I violations according to OAR 340-012-0054(1)(b)  
12 because the crude oil transloading operation is a major source pursuant to OAR 340-200-  
13 0020(72)(a). DEQ hereby assesses a \$117,292 civil penalty for these violations.

### 14 IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

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

- 17 1. Pay a total civil penalty of \$117,292. The determination of the civil penalty is  
18 attached as Exhibit No. 1 and is incorporated as part of this Notice.
- 19 2. Immediately comply with ACDP 05-0006 by transloading no more than  
20 50,000,000 gallons of crude oil per consecutive 12-month period until DEQ issues the new Standard  
21 ACDP that authorizes an increase in crude oil transloading operations.
- 22 3. Submit monthly reports to DEQ detailing crude oil transloading amounts per each  
23 consecutive 12-month period until DEQ issues the new Standard ACDP for crude oil transloading.  
24 Submit the report by the 10<sup>th</sup> of each month with information on the previous month's consecutive  
25 12-month period, to: **Greg Grunow, DEQ-Northwest Region Office, 2020 SW 4<sup>th</sup> Avenue, Suite**  
26 **400, Portland, Oregon 97201 or by email at: [grunow.greg@deq.state.or.us](mailto:grunow.greg@deq.state.or.us).**

27 If you do not file a request for hearing as set forth in Section V below, your check or money

1 order must be made payable to "State Treasurer, State of Oregon" and sent to the DEQ,  
2 **Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty,  
3 the Findings of Fact, Conclusions and Order become final.

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

5 You have a right to a contested case hearing on this Notice, if you request one in writing.  
6 You must ensure that DEQ receives the request for hearing **within 20 calendar days** from the  
7 date you receive this Notice. If you have any affirmative defenses or wish to dispute any  
8 allegations of fact in this Notice or attached exhibit, you must include them in your request for  
9 hearing, as factual matters not denied will be considered admitted, and failure to raise a defense  
10 will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests  
11 for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and**  
12 **Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204,** or fax it to **503-229-**  
13 **5100.** An administrative law judge employed by the Office of Administrative Hearings will  
14 conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR  
15 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you  
16 may represent yourself unless you are a corporation, agency or association.

17 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
18 Notice, the Notice will become a final order by default without further action by DEQ, as per  
19 OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend  
20 the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a final  
21 order by default pursuant to OAR 137-003-0672. DEQ designates the relevant portions of its  
22 files, including information submitted by you, as the record for purposes of proving a prima facie  
23 case.

24  
25 3/27/14  
26 Date

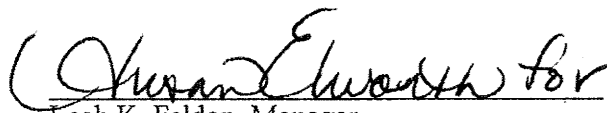
27  
  
Leah K. Feldon, Manager  
Office of Compliance and Enforcement

EXHIBIT NO. 1

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

VIOLATION: Establishing and operating a new an air contaminant source (crude oil transloading operation) listed in Table 1 of OAR 340-216-0020(1) under category 48 "Marine Vessel Petroleum Loading and Unloading," without first obtaining the required Air Contaminant Discharge Permit from DEQ, in violation of ORS 468A.045(1)(b) and OAR 340-216-0020(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(b) because the air contaminant source is a major source according to OAR 340-200-0020(72)(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 for 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 I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent needed to apply for a Standard Air Contaminant Discharge Permit.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(17), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because Respondent has 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)(a)(C), because Respondent has no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 0 pursuant to OAR 340-012-0145(4)(b), because DEQ is issuing multiple penalties for multiple occurrences of the violation.



"M" is the mental state of Respondent and receives a value of 6 according to OAR 340-012-0145(5)(a)(C), because Respondent had actual knowledge that its conduct would be a violation and Respondent's conduct was intentional. DEQ had specific conversations with Respondent in July 2012 and May 2013 that increasing the crude oil transloading operation would result in Respondent establishing a new air contaminant source, that it would require a new ACDP from DEQ, and that Respondent could not lawfully increase the crude oil transloading throughputs under the current ethanol plant permit (ACDP 05-0006). Respondent acted with the conscious objective to cause the result of the conduct (operating without the required ACDP) by making the conscious decision and taking conscious action to increase the crude oil transloading throughputs before receiving a valid ACDP from DEQ authorizing such activity.

"C" is Respondent's efforts to correct the violation and receives a value of -1 according to OAR 340-012-0145(6)(a)(C), because Respondent eventually made efforts to correct the violation by submitting an ACDP application and fees to DEQ for the crude oil transloading operation on August 29, 2013.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 \$292. This is the amount Respondent gained by delaying spending \$13,680 for the initial application fee and 2013 annual fee from March 1, 2013 to August 29, 2013. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

#### PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 0 + 6 - 1)] + \$292 \\ &= \$3,000 + (\$300 \times 5) + \$292 \\ &= \$3,000 + \$1,500 + \$292 \\ &= \$4,500 \text{ per week} + \$292 \end{aligned}$$

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 has established and operated a new source (crude oil transloading operations) without having first obtained a Standard ACDP from approximately March 1, 2013 to present. DEQ is assessing a civil penalty for each week Respondent operated between March 1, 2013 until Respondent submitted a complete Standard ACDP application on August 29, 2013, which is 26 weeks.

\$4,500 per week x 26 weeks equals \$117,000 plus \$292 in economic benefit of delayed permitting fees for a total civil penalty of \$117,292.

