



March 24, 2023

Hon. Steven S. Cliff, Ph.D.  
Executive Officer  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

*Submitted via electronic mail to Gabriel Monroe (Gabriel.Monroe@arb.ca.gov)*

Re: Unlawful generation of LCFS Credits; Request for enforcement action against Iogen D3 Biofuel Partners II LLC's WOF PNW Threemile Project

Dear Executive Officer Cliff,

The Stand Up to Factory Farms coalition ("SUFF")<sup>1</sup> requests enforcement action against Iogen D3 Biofuel Partners II LLC's WOF PNW Threemile Project in Oregon ("Threemile Factory Farm Gas Project" or "the Project"). For the second time since California Air Resources Board ("CARB") staff certified its LCFS Tier 2 pathway, the Project has been fined by the state of Oregon for violating its Oregon Title V Operating Permit No. 25-0047-TV-01. As explained in the attached enforcement request submitted to CARB on January 19, 2022, the Project's initial period of noncompliance spanned CARB's consideration and certification of its Tier 2 pathway (June 1, 2019, through at least September 30, 2020). *See* Attachment A. This second period of noncompliance spans approximately 7 additional months (October 9, 2021, through May 13, 2022). *See* Attachment B.

Because the Threemile Factory Farm Gas Project has been operating in violation of Oregon law, SUFF requests that CARB exercise its authority under Cal. Code Regs. tit. 17 § 95495 and initiate appropriate enforcement action. At a minimum this includes invalidating any credits generated during these periods of noncompliance. Further, because the Project was

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<sup>1</sup> The Stand Up to Factory Farms coalition is a coalition of local, state, and national organizations concerned about the ongoing expansion of factory farming and its harmful impacts to Oregon's climate, family farms, communities, air and water, and animal welfare. *See* <https://standuptofactoryfarms.org>.

violating its air quality permit and Oregon’s air pollution regulations *while it was applying for its LCFS pathway*, and now displays a pattern of such violations as well as submitting untrustworthy compliance assurances, SUFF requests that CARB consider deleting its Certified CI so that California does not continue rewarding this bad actor with lucrative LCFS credits.

## I. Background and Violations

On September 9, 2020, CARB certified Tier 2 pathway application B0072 for the Threemile Factory Farm Gas Project, with a deemed completed date of April 17, 2020.<sup>2</sup> Two separate opposition comments were filed with CARB during the public notice of the Project’s application, one by SUFF and the other by a broad coalition of public interest and environmental justice organizations. These comments put CARB on notice that the Project is an environmentally dangerous operation that “will increase and/or sustain air pollution and threats to water quality in the locality and region.”<sup>3</sup> In response to these opposition comments, the Project assured CARB that “[t]he Project agrees with The Commenter’s statement that applicants should be conforming with all mandated environmental requirements. The Project has a valid Title V Operating permit and CAFO permit, which were submitted as a part of the application, and operates in compliance with local regulations.”<sup>4</sup> CARB reviewed the Project’s response to comments and “determined that these adequately address” the concerns raised.<sup>5</sup> CARB later recertified the Project under pathway B007201.

But we now know that the concerns expressed by opposition commenters were not adequately addressed because the Project was operating in violation of its Title V Operating permit *at the very time it provided its assurance* to CARB that the Project “operates in compliance with local regulations.” And more recently, Oregon’s Department of Environmental Quality (“Oregon DEQ”) has fined the Project again for a second period of noncompliance with its Title V Operating permit and for failing to submit an accurate compliance certification. A pattern of noncompliance is now on the record and CARB should take action to hold the Project accountable.

### A. *The Threemile Factory Farm Gas Project Violated Its Title V Operating Permit in 2019 and 2020*

The Threemile Factory Farm Gas Project was committing Class I violations according to OAR 340-012-0054(1)(g) beginning before the Project submitted a complete Tier 2 application, throughout CARB’s assessment and certification of its pathway application, and beyond—until at least September 30, 2020. *See* Attachment A, Exhibit A (Oregon DEQ Notice of Civil Penalty Assessment and Order). As explained by Oregon DEQ, the Project violated its air pollution permit by repeatedly exceeding its allowable PM<sub>2.5</sub> air emissions. *Id.* Oregon DEQ assessed a

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<sup>2</sup> [https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0072\\_cover.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0072_cover.pdf).

<sup>3</sup> Leadership Counsel for Justice and Accountability et al. Comments at 1, [https://www.arb.ca.gov/lists/com-attach/858-tier2lcfsfuelpathways-ws-WjgFM1RIBWELP1R6.pdf?\\_ga=2.124420426.150381920.1642118450-885759113.1613274265](https://www.arb.ca.gov/lists/com-attach/858-tier2lcfsfuelpathways-ws-WjgFM1RIBWELP1R6.pdf?_ga=2.124420426.150381920.1642118450-885759113.1613274265).

<sup>4</sup> The Project’s response to Coalition Comments at 2, [https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0072\\_response2.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0072_response2.pdf).

<sup>5</sup> Staff Summary at 4, [https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0072\\_summary.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0072_summary.pdf).

\$19,500 penalty against the Project for these violations. *Id.* Therefore, it is beyond dispute that the Project failed to generate LCFS credits in compliance with law during this period.

*B. The Threemile Factory Farm Gas Project Violated Its Title V Operating Permit in 2021 and 2022*

The Threemile Factory Farm Gas Project again violated its air quality permit and Oregon law from October 9, 2021, through May 13, 2022. This time the Project committed Class I violations according to OAR 340-012-0054(1)(p) and Class II violations according to OAR 340-012-0054(2)(g). This period of noncompliance with Oregon law was based on the Project's failure to conduct required emissions source testing as well as failure to timely report deviations from permit requirements to Oregon DEQ. *See* Attachment B.

The Project's permit requires it to source test three internal combustion engines used to generate electricity at certain intervals to ensure they are operating in conformity with carbon monoxide, nitrogen oxides, and volatile organic compounds emissions limits. Oregon law establishes a Class I violation for "[f]ailing to perform testing or monitoring, required by a permit, ... that results in failure to show compliance with a Plant Site Emission Limit or with an emission limitation or a performance standard..." OAR 340-012-0054(1)(p). The Project failed to conduct the testing required by its permit. *See* Attachment B.

Despite not conducting these compliance tests – which were required beginning October 9, 2021 – the Project submitted a compliance certification to Oregon DEQ on February 14, 2022, claiming continuous compliance with its permit, including the testing and reporting requirements. *Id.* It was not until state regulators informed the Project of this failure to adhere to these permit requirements that it submitted the necessary deviation report on March 31, 2022. *Id.* As Oregon DEQ has explained, "The facility should have discovered the late source testing through routine compliance assurance procedures and before submittal of its semi-annual compliance certification in February 2022." *Id.* The Project did not conduct the required emissions tests until May 12 and 13, 2022.<sup>6</sup> Oregon law establishes a Class II violation for "[f]ailing to timely submit a certification, report, or plan as required by rule, permit, or permit attachment..." OAR 340-012-0054(2)(g). The Project's submission of an inaccurate compliance certificate and its failure to submit a deviation report constituted a violation of the Project's permit obligations and Oregon law.

For these violations, Oregon DEQ assessed a total civil penalty of \$17,400. *See* Attachment B. Therefore, it is beyond dispute that the Project failed to generate LCFS credits in compliance with law during this period.

*C. The Threemile Factory Farm Gas Project Violations Indicate a Pattern of Noncompliance and Deceptive Reporting*

From the date CARB deems the Threemile Factory Farm Gas Project LCFS pathway application complete and its carbon intensity value certified (April 17, 2020, and April 1, 2020,

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<sup>6</sup> The Project's air quality permit mandates that each of the three engines at issue undergo source emissions tests upon 8,760 hours of operation or 3 years, whichever comes first. *See* Attachment B (explaining that these sources tests were due on October 9, November 4, and November 22, 2021).

respectively), the Threemile Factory Farm Gas Project has been out of compliance with Oregon law for at least 12 months. In other words, in the less than three years the Project has been generating LCFS credits, it has failed to meet CARB's requirement that those credits be generated in compliance with "other laws, statutes or regulations" for a third of its time in the LCFS program to date. *See* Cal. Code Regs. tit. 17 § 95495(b)(1)(E).

This pattern of noncompliance is made more alarming by the Project's inaccurate claims of compliance both to CARB staff and Oregon regulators. First, in response to opposition comments to its Tier 2 pathway application the Project assured CARB staff by stating: "The Project agrees with The Commenter's statement that applicants should be conforming with all mandated environmental requirements. The Project has a valid Title V Operating permit and CAFO permit, which were submitted as a part of the application, and operates in compliance with local regulations." Again, this statement was submitted to CARB as the Project was actively violating its permitted emissions limitations. *See* Attachment A.

And second, the Project submitted an inaccurate compliance certification to Oregon DEQ, only correcting the violating after state regulators informed it of its failure to comply with its basic testing and reporting obligations, which are designed to protect Oregon's air and public health. As Oregon DEQ pointed out, Project operators should have easily identified such noncompliance through routine procedures. *See* Attachment B. This apparent pattern of submitting incorrect and/or deceptive claims of compliance to multiple sets of regulators raises red flags for any future compliance assurances and the accuracy of the Project's paperwork.

## II. CARB Should Exercise Its Enforcement Authority Against the Project, Invalidate the Unlawfully Generated LCFS Credits, and Consider Deleting Its Certified CI

CARB should take enforcement action against the Threemile Factory Farm Gas Project by invalidating all credits generated while the Project was violating Oregon law. In addition to any other appropriate enforcement actions, CARB "may modify or delete a Certified CI and invalidate credits" when "[c]redits or deficits were generated or transferred in violation of any provision of [the LCFS regulations] or in violation of other laws, statutes or regulations." Cal. Code Regs. tit. 17 § 95495(b)(1)(E). It should do so here.

The need for CARB to invalidate all credits generated by the Project while it was violating Oregon law is unambiguous. And the Project's apparent pattern of incorrect and/or deceptive compliance assurances should call into question CARB's ability to trust the Project's paperwork, warranting serious consideration of deleting the Project's Certified CI. CARB cannot independently police the behavior of out-of-state pathway holders such as the Project, and therefore CARB must be able to trust the information provided by those actors. It can no longer do so for the Threemile Factory Farm Gas Project.

## III. Conclusion

Based on the foregoing, SUFF requests that CARB invalidate all LCFS credits generated by the Threemile Factory Farm Gas Project during the established periods of noncompliance (June 1, 2019 through at least September 30, 2020, and October 9, 2021 through May 13, 2022), delete the Project's Certified CI, and conduct any additional appropriate enforcement actions. It should raise serious concerns for CARB that the Project was operating unlawfully even during



the period of time when it was applying for and making incorrect assurances to CARB staff; this conduct shows a disregard for the guardrails California deems necessary to responsibly administer the LCFS program. As a coalition working to protect Oregonians and Oregon's environment from pollution and other harmful effects of operations like the Threemile Factory Farm Gas Project, SUFF urges CARB to take action in this matter and make clear that entities failing to comply with Oregon's environmental and public health laws will not be rewarded with lucrative LCFS credits while doing so.

Respectfully,

Tyler Lobdell  
Staff Attorney  
Food & Water Watch  
[tlobdell@fwwatch.org](mailto:tlobdell@fwwatch.org)  
(208) 209-3569

*On behalf of the Stand Up to Factory Farms coalition*

# **ATTACHMENT A**



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Suite 300  
Washington, DC 20036  
T +202.683.2500  
F +202.683.2501  
[foodandwaterwatch.org](http://foodandwaterwatch.org)

January 19, 2022

Submitted via [LCFSEnforcement@arb.ca.gov](mailto:LCFSEnforcement@arb.ca.gov)

Richard Corey  
Executive Officer  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

Re: Unlawful generation of LCFS Credits; Request for enforcement action against Iogen D3 Biofuels Partners II LLC

Dear Executive Officer Corey,

Food & Water Watch ("FWW") submits this request for enforcement action against the WOF PNW Threemile Project in Oregon ("Threemile Factory Farm Gas Project" or "the Project") because it has been operating and generating Low Carbon Fuel Standard ("LCFS") credits in violation of Oregon air pollution control laws and regulations. This period of noncompliance spans the California Air Resources Board's ("CARB") consideration and certification of this Tier 2 pathway, and therefore this pathway never should have been certified in the first instance, exactly as FWW and other opposition commenters warned at the time. FWW requests that CARB exercise its authority under Cal. Code Regs. tit. 17, § 95495 and initiate appropriate enforcement action, invalidate all LCFS credits generated during the period of noncompliance, and revoke the Threemile Factory Farm Gas Project's LCFS account. A facility that cannot comply with minimal air quality requirements, even while applying for participation in the LCFS program, has no place in California's greenhouse gas reduction programs.

### Background

On September 9, 2020, CARB certified Tier 2 pathway application B0072 for Iogen D3 Biofuels Partners II LLC and the WOF PNW Threemile Project in Oregon. Two groups, the Stand Up to Factory Farms coalition ("SUFF Comments") and another broad coalition of public interest and environmental justice organizations ("Coalition Comments"), filed separate opposition comments during the public notice of the Project's application. CARB failed to heed the warnings raised by these comments, including that the Threemile Factory Farm Gas Project is an environmentally dangerous project that "will increase and/or sustain air pollution and threats to water quality in the locality and region."<sup>1</sup> CARB appears to have summarily dismissed

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<sup>1</sup> Coalition Comments at 1, [https://www.arb.ca.gov/lists/com-attach/858-tier2lcfspathways-ws-WjgFM1RIBWELP1R6.pdf?\\_ga=2.124420426.150381920.1642118450-885759113.1613274265](https://www.arb.ca.gov/lists/com-attach/858-tier2lcfspathways-ws-WjgFM1RIBWELP1R6.pdf?_ga=2.124420426.150381920.1642118450-885759113.1613274265).

these concerns, stating only that “CARB has reviewed the applicant’s response to comments ... [and] determined that these adequately address” them.<sup>2</sup>

Unfortunately, these concerns were prescient because the Project was in fact actively violating Oregon air quality protection laws at the very time CARB was considering the application. Further, the Project and associated Threemile Canyon factory farm will continue to emit “increase[d] and/or sustain[ed]” pollution, as described in the SUFF Comments and Coalition Comments.

### CARB’s LCFS Enforcement Authority

CARB is empowered to take appropriate enforcement actions against participants in the LCFS. CARB “may modify or delete a Certified CI and invalidate credits” when “[c]redits or deficits were generated or transferred in violation of any provision of [the LCFS regulations] or in violation of other laws, statutes or regulations.” § 95495(b)(1)(E). CARB may also “suspend, restrict, modify, or revoke an LRT-CBTS account.” § 95495(a).

CARB may also “seek penalties and injunctive relief” for violations, including the submission of incomplete or inaccurate “reports.” Cal. Code Regs. tit. 17, § 95494(a), (b). A “report” means any submittal to the Executive Officer.” § 95494(b).

### Threemile Factory Farm Gas Project Title V Operating Permit Violations

The Threemile Factory Farm Gas Project has consistently failed to generate LCFS credits in compliance with law. The Project began committing Class I violations of Oregon law, according to OAR 340-012-0054(1)(g), *before* the Project submitted a complete Tier 2 application, and these violations continued throughout CARB’s assessment and certification of its pathway application and beyond – until at least September 30, 2020. *See* Exhibit A (Oregon Department of Environmental Quality Notice of Civil Penalty Assessment and Order). As explained by the Oregon Department of Environmental Quality (“Oregon DEQ”), the Project violated its air pollution permit by repeatedly exceeding its allowable PM<sub>2.5</sub> air emissions. *Id.* Oregon DEQ assessed a \$19,500 penalty against the Project for these violations. *Id.*

Despite this, in response to opposition comments to its Tier 2 application, the Project’s proponents assured CARB: “The Project agrees with The Commenter’s statement that applicants should be conforming with all mandated environmental requirements. The Project has a valid Title V Operating permit and CAFO permit, which were submitted as a part of the application, *and operates in compliance with local regulations.*”<sup>3</sup> Again, when the applicant reported this assurance to CARB, the Project was already actively violating its Title V operating permit. Thus, either the Project applicants willfully deceived CARB, or they were negligently and inexplicably

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<sup>2</sup> Staff Summary at 4, [https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0072\\_summary.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0072_summary.pdf).

<sup>3</sup> The Project’s response to Coalition Comments at 2, [https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0072\\_response2.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0072_response2.pdf) (emphasis added).

unaware of their own facility's compliance status. From this, CARB should presume that the Threemile Factory Farm Gas Project will continue to have compliance problems going forward.

### CARB Should Fully Exercise Its Enforcement Authority Against the Project

CARB should take enforcement action against the Threemile Factory Farm Gas Project, including invalidating all unlawfully generated credits, revoking the Project's LRT-CBTS account, and levying an appropriate fine for submitting an incomplete or inaccurate report (including any other reports submitted to CARB that failed to disclose the Project's noncompliance). FWW trusts that CARB takes seriously its responsibility to enforce the LCFS rigorously and to hold entities accountable when they engage in California programs like the LCFS.

In this case, where the Project proponents provided CARB with assurance of environmental compliance while in violation of their Title V permit, CARB should use its authority to the fullest extent possible. Conduct of this sort requires more than simply invalidating the unlawfully generated credits. CARB cannot rely on this actor to be an honest broker, and therefore must exclude the Project from the LCFS and revoke its credit account. Not only is CARB unlikely to have capacity to actively oversee the Project's operations and future compliance with all environmental laws and regulations, but a strong response from CARB is critical to maintaining the integrity of the LCFS program and assuring that other participating entities are incentivized to comply with environmental and other laws.

### Conclusion

FWW requests that CARB invalidate all LCFS credits generated by the Threemile Factory Farm Gas Project, application number B0072, during the established period of noncompliance with Oregon law (June 1, 2019 through at least September 30, 2020, Exhibit A at 2), revoke the Project's LCFS credit account, and conduct any additional appropriate enforcement action. Furthermore, because the Threemile Factory Farm Gas Project was unable to lawfully operate even during the period of time when it was applying for and making assurances to CARB, the Project's proponents have displayed disregard for the guardrails California deems necessary to administer the LCFS program, rendering the Project undeserving of the significant benefits afforded by LCFS certification and credit generation. Any lesser response from CARB would send the message to present and future violators that CARB is not concerned with environmental compliance among credit generators, and that obfuscation and outright deception are acceptable.

Respectfully,

A handwritten signature in black ink, appearing to read "Tyler Lobdell".

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Tyler Lobdell  
Staff Attorney



Food & Water Watch  
[tlobdell@fwwatch.org](mailto:tlobdell@fwwatch.org)  
(208) 209-3569

# **EXHIBIT A**



# 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

October 27, 2021

CERTIFIED MAIL: 7017 0530 0000 7760 6469

WOF PNW Threemile Project, LLC  
c/o Unisearch, Inc., Registered Agent  
698 12<sup>th</sup> Street SE, Suite 200  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/TV-ER-2020-154

*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 the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$19,500 for violating the plant site emission limit (PSEL) for fine particulate matter (PM<sub>2.5</sub>) at your agricultural waste-to-energy facility located at 75906 Threemile Road in Boardman, Oregon. Specifically, you violated the PM<sub>2.5</sub> PSEL during five rolling annual periods from June 1, 2019 - May 31, 2020 through October 2019 - September 2020 as a result of using more natural gas than projected in the facility's fiber dryer.

DEQ issued this penalty because plant site emission limits are important limits that help DEQ manage airshed capacity for pollutants and ensure a facility's emissions are limited to levels that protect public health and the environment. In this case, the emission limit is for fine particulate matter, which, when emitted in excess of permitted limits, can contribute to respiratory distress in people. Once inhaled, particulate matter can affect the heart and lungs, causing serious health problems such as decreased lung function, irregular heartbeat and chronic bronchitis.

DEQ appreciates your efforts to minimize the impacts of the violation by taking actions to reduce natural gas usage in the dryer starting in August 2020 such that the rolling 12 month PM<sub>2.5</sub> PSEL exceedances were remedied by October 2020. DEQ considered these efforts 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](mailto:DEQappeals@deq.state.or.us)

Via fax – 503-229-6762

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 Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: David Jenson, WOF PNW Threemile Project, LLC, 75906 Threemile Road, Boardman, OR 97818  
Rick Morck, WOF PNW Threemile Project, LLC, 75906 Threemile Road, Boardman, OR 97818  
Tom Wood, Attorney for Respondent, Stoel Rives LLP, 760 SW Ninth Ave, Suite 3000, Portland, OR 97205  
Frank Messina, DEQ  
Walt West, DEQ  
Mark Bailey, DEQ  
Accounting, DEQ  
Donald Hendrix, AQ, DEQ  
US EPA, Region 10, c/o Katie McClintock, 1200 Sixth Avenue, Seattle, WA 98101

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:	)	NOTICE OF CIVIL PENALTY
WOF PNW THREEMILE PROJECT, LLC,	)	ASSESSMENT AND ORDER
a Delaware limited liability company,	)	
Respondent.	)	CASE NO. AQ/TV-ER-2020-154

## I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapter 468A, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 200, 218 and 222.

## II. FINDINGS OF FACT

1. Respondent owns and operates a facility that processes agricultural waste to produce pipeline grade natural gas and generates electricity by running three natural gas engines, located at 75906 Threemile Road, Boardman, OR 97818 (the Facility).

2. On June 25, 2019, DEQ issued Oregon Title V Operating Permit No. 25-0047-TV-01 (the Permit) to Respondent. The Permit authorizes Respondent to discharge air contaminants associated with its operation of the Facility in conformance with the requirements, limitations and conditions set forth in the Permit.

3. The Permit was in effect at all material times.

4. The Facility includes a fiber dryer (the Dryer) that includes a natural gas burner.

5. In its permit application submitted to DEQ on August 3, 2018, Respondent stated that the Dryer's natural gas burner would use a maximum of 52.4 million cubic feet of natural gas in any 12 consecutive calendar month period, which translates to an average of approximately 4.4 million cubic feet per month (approximately 4,400,000 scf).

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6. During the months of January through July 2020, Respondent's reported natural gas combustion for the dryer was as follows:

Month	Natural gas combusted in dryer (scf)
January 2020	5,056,560
February 2020	4,164,780
March 2020	3,862,200
April 2020	1,090,140
May 2020	4,658,820
June 2020	7,079,940
July 2020	6,891,900

7. Condition 37 of the Permit limits the plant site emissions from the Facility to no more than 9 tons per year of fine particulate matter (PM<sub>2.5</sub>) for any 12 consecutive calendar month period (the PM<sub>2.5</sub> PSEL).

8. Compliance with the PM<sub>2.5</sub> PSEL is determined according to the monitoring and calculations in Condition 38 of the Permit.

9. Using the monitoring and calculations described in Condition 38 of the Permit, Respondent's plant site emissions of PM<sub>2.5</sub> from the Facility were as follows:

12 consecutive calendar month period	Plant site emissions of PM <sub>2.5</sub> (tons per year)
June 1, 2019 - May 31, 2020	9.93
July 1, 2019 - June 30, 2020	10.79
August 1, 2019 - July 31, 2020	10.71
September 1, 2019 - August 31, 2020	10.08
October 1, 2019 - September 30, 2020	9.65

### III. CONCLUSIONS

1. Respondent violated Condition 37 of the Permit and ORS 468A.045(2) by exceeding the 9 ton per year PM<sub>2.5</sub> PSEL, as described in Section II, Paragraphs 1-9, above. Specifically, Respondent violated the PM<sub>2.5</sub> PSEL on five occasions, during the 12 consecutive calendar month periods from June 1, 2019 - May 31, 2020 through October 2019 - September 2020. These are Class I violations, according to OAR 340-012-0054(1)(g). DEQ hereby assesses a \$19,500 civil penalty for these violations.

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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 \$19,500. The determination of the civil penalty is attached as  
5 Exhibit 1 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 "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**  
8 **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.state.or.us](mailto:DEQappeals@deq.state.or.us). 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.

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1 Active duty Service members have a right to stay proceedings under the federal Service  
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
5 Department does not have a toll free telephone number.

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 of  
11 proving a prima facie case.

12  
13  
14  
15 10/27/2021  
16 Date

15   
16 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 Exceeding the annual 9 tons per year PM<sub>2.5</sub> plant site emission limit, in violation of Condition 37 of the Permit and ORS 468A.045(2).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(g).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(1)(f)(C)(i), because Respondent exceeded the annual PM<sub>2.5</sub> plant site emission limit by less than 50 percent of the annual SER (10 tons of PM<sub>2.5</sub> per 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 \$3,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(A) because Respondent has a Title V 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 the same 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)(e), because DEQ is assessing a penalty for each occurrence of the violation.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. According to OAR 34-012-0030, negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. In its permit application submitted to DEQ on August 3, 2018, Respondent stated that the Dryer's natural gas burner would use a maximum of 52.4 million cubic feet of natural gas in any 12 consecutive calendar month period, which translates to an average of approximately 4.4 million cubic feet per month. The PM<sub>2.5</sub> PSEL in Respondent's permit was calculated, in part, based on this maximum. Nevertheless, in January, June and July 2020, Respondent combusted well over 4.4 million cubic feet per month, with 5.1 million cubic feet of natural gas combusted in January 2020, 7.0 million cubic feet combusted in June 2020 and 6.9 million cubic feet

combusted in July 2020. Respondent did not recognize or correct the issue until August 2020. The increased combustion of natural gas between January and July 2020 resulted in exceedances of the PM<sub>2.5</sub> PSEL during five 12 consecutive calendar month periods. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation of the PM<sub>2.5</sub> PSEL in 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. Starting in August 2020, Respondent reduced natural gas fuel consumption in the dryer by adjusting the screw that helps remove moisture from the fiber processed in the dryer and by diverting some of the fiber from the dryer. These actions reduced natural gas combustion and remedied the PM<sub>2.5</sub> PSEL exceedances by October 2020.

"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 because DEQ has insufficient information to calculate an economic benefit for this violation.

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 per violation

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 PM<sub>2.5</sub> PSEL during five 12 consecutive calendar month periods. DEQ is assessing a civil penalty for each of the five 12 consecutive calendar month periods.

\$3,900 per violation x 5 violations for a total civil penalty of \$19,500.

# **ATTACHMENT B**





# Oregon

Tina Kotek, 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

January 19, 2023

CERTIFIED MAIL: 7020 2450 0000 3349 5673

WOF PNW Threemile Project LLC  
c/o Corporation Service Company, Registered Agent  
1127 Broadway Street NE, Suite 310  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ-V-ER-2022-059

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$17,400 for failing to timely source test three engines at your agricultural waste-to-energy facility located at 75906 Threemile Road in Boardman, Oregon, and failing to timely report the late testing issue to DEQ.

DEQ issued this penalty because annual source testing is important to ensure that the engines are operating in compliance with the New Source Performance Standard (NSPS) emission limits for carbon monoxide, nitrogen oxides and volatile organic compounds. In addition, DEQ expects permitted facilities to have a system in place to ensure compliance with permit requirements such as source testing, and to promptly report deviations from permit requirements to DEQ. The facility should have discovered the late source testing through routine compliance assurance procedures and before the submittal of its semi-annual compliance certification in February 2022. Instead, DEQ alerted the facility of its failure to timely test in March 2022.

DEQ appreciates your efforts to correct the violation by submitting a deviation report and an updated semi-annual compliance certification to DEQ in March 2022, and by completing a source test on all three engines in May 2022. The source testing completed in May 2022 demonstrated compliance with the NSPS emission limits. DEQ considered these efforts 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.oregon.gov](mailto:DEQappeals@deq.oregon.gov)

Via fax – 503-229-6762

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 Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Bill Antilla, WOF PNW Threemile Project LLC ([bantilla@rdoffutt.com](mailto:bantilla@rdoffutt.com))  
Tom Wood, Attorney for WOF PNW Threemile Project LLC ([tom.wood@stoel.com](mailto:tom.wood@stoel.com))  
Walt West, DEQ  
Mark Bailey, DEQ  
Accounting, DEQ  
Donald Hendrix, AQ, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 WOF PNW THREEMILE PROJECT LLC, ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. AQ-V-ER-2022-059

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,  
9 ORS Chapters 183 and 468A, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,  
10 200, 212, 218 and 238.

11 II. FINDINGS OF FACT

12 1. Respondent owns and operates a facility that processes agricultural waste to produce pipeline  
13 grade natural gas and generates electricity by running three natural gas engines, located at 75906  
14 Threemile Road, Boardman, OR 97818 (the Facility).

15 2. On June 25, 2019, DEQ issued Oregon Title V Operating Permit No. 25-0047-TV-01 (the  
16 Permit) to Respondent. The Permit authorizes Respondent to discharge air contaminants associated  
17 with its operation of the Facility in conformance with the requirements, limitations and conditions set  
18 forth in the Permit.

19 3. The Permit was in effect at all material times.

20 4. Respondent operates three engines at the Facility that are subject to the New Source  
21 Performance Standards (NSPS) regulations in 40 Code of Federal Regulations (CFR) Part 60, subpart  
22 JJJJ (Stationary Spark Ignition Internal Combustion Engines), adopted and incorporated by reference in  
23 OAR 340-238-0060(1). The three engines are identified in the Permit as ENG1, ENG2, and ENG3.

24 5. Condition 42 of the Permit requires Respondent to source test each of the three engines to  
25 demonstrate compliance with the carbon monoxide, nitrogen oxides and volatile organic compounds  
26 NSPS subpart JJJJ emission limits, according to Condition 30, Table 8 of the Permit and 40 CFR  
27 §60.4244.

6. Condition 30, Table 8 of the Permit requires Respondent to test each of the three engines “within 60 days of maximum production but not more than 180 days after switching to natural gas, then test each engine every 8760 hrs. of operation or 3 years, whichever comes first.”

7. On September 15 and 16, 2020, Respondent conducted a source test on all three engines to evaluate compliance with the NSPS subpart JJJJ emission limits (the 2020 Source Test).

8. ENG1 reached 8,760 operating hours after the 2020 Source Test on October 9, 2021.

9. ENG2 reached 8,760 operating hours after the 2020 Source Test on November 22, 2021.

10. ENG3 reached 8,760 operating hours after the 2020 Source Test on November 4, 2021.

11. Following the 2020 Source Test, the next time that Respondent conducted a source test on any of the three engines to evaluate compliance with the NSPS subpart JJJJ emission limits was on May 12 and 13, 2022 (the 2022 Source Test).

12. Condition 52 of the Permit requires Respondent to promptly report to DEQ deviations from permit requirements that do not cause excess emissions. Condition 52 of the Permit defines “prompt” as within 15 days of the deviation.

13. On February 14, 2022, Respondent submitted a semi-annual compliance certification covering the time period from July 1 through December 31, 2021. In that compliance certification, Respondent certified continuous compliance with Conditions 30 and 42 of the Permit.

14. After being alerted to the issue by DEQ, on March 31, 2022, Respondent submitted a deviation report and an updated semi-annual compliance certification for the time from July 1 through December 31, 2021, describing the deviations from the source testing requirement.

### III. CONCLUSIONS

1. Respondent violated Condition 42 and Condition 30, Table 8 of the Permit by failing to conduct a source test on ENG1, ENG2, and ENG3 every 8,760 hours of operation, as described in Section II, paragraphs 1-11, above. Specifically, Respondent operated each of the three engines more than 8,760 hours between the 2020 Source Test and the 2022 Source Test. These are three Class I violations, according to OAR 340-012-0054(1)(p). DEQ hereby assesses a \$10,800 civil penalty for these violations.



2. Respondent violated Condition 52 of the Permit by failing to promptly report deviations from a Permit requirement to DEQ, as described in Section II, paragraphs 1-14, above. Specifically, Respondent should have reported deviations to DEQ within 15 days of October 9, November 4, and November 22, 2021, when the three engine source tests were due. Respondent reported the deviations to DEQ four months later, on March 31, 2022. These are three Class II violations according to OAR 340-012-0054(2)(g). DEQ hereby assesses a \$6,600 civil penalty for these violations.

#### IV. ORDER TO PAY CIVIL PENALTY

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

1. Pay a total civil penalty of \$17,400. The determination of the civil penalties are attached as Exhibits 1 and 2 and are incorporated as part of this Notice.

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

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

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

1 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
2 authorized representative, as set forth in OAR 137-003-0555.

3 Active duty Service members have a right to stay proceedings under the federal Service  
4 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
5 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
6 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
7 Department does not have a toll free telephone number.

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

14  
15  
16  
17 11/19/2023  
18 Date

19 Kieran O'Donnell  
20 Kieran O'Donnell, Manager  
21 Office of Compliance and Enforcement  
22  
23  
24  
25  
26  
27

## 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 a source test on ENG1, ENG2, and ENG3 every 8,760 hours of operation, in violation of Condition 42 and Condition 30, Table 8 of the Permit.

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

MAGNITUDE:                      The magnitude of these violations is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to these violations, 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 has a Title V 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 the same Respondent, and receives a value of 6 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has 5 Class I violations in case no. AQ-V-ER-2020-154 issued on October 27, 2021.

"H" is Respondent's history of correcting prior significant actions, and receives a value of -1 according to OAR 340-012-0145(3)(b) because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior significant actions. Respondent reduced natural gas combustion at the Facility, which was the cause of the violations cited as prior significant actions.

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent failed to conduct a timely source test for three engines. Therefore, there were three occurrences of the violation.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. As a Permittee, Respondent is aware of the source testing requirements in the Permit. By failing to keep

track of the source testing schedule in the Permit, Respondent failed to take reasonable care to avoid a foreseeable risk of missing the source tests.

"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. Respondent completed source tests on all three engines on May 12 and 13, 2022 and submitted the test results to DEQ.

"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 because any economic benefit that Respondent received as a result of delaying spending \$20,000 to conduct source tests on the three engines from October 9, 2021, to May 12, 2022 is de minimis. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$6,000 + [(0.1 x \$BP ) x (6 + -1 + 2 + 4 + -3)] + \$0  
= \$6,000 + (\$600 x 8) + \$0  
= \$6,000 + \$4,800 + \$0  
= \$10,800



## EXHIBIT 2

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

- VIOLATION NO. 2 Failing to promptly report deviations from a Permit requirement to DEQ, in violation of Condition 52 of the Permit.
- CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0054(2)(g).
- MAGNITUDE: The magnitude of the violations is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to these violations, 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 has a Title V 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 the same Respondent, and receives a value of 6 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has 5 Class I violations in case no. AQ-V-ER-2020-154 issued on October 27, 2021.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of -1 according to OAR 340-012-0145(3)(b) because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior significant actions. Respondent reduced natural gas combustion at the Facility, which was the cause of the violations cited as prior significant actions.
- "O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent failed to promptly report three Permit deviations to DEQ.
- "M" is the mental state of the Respondent, and receives a value of 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. As a Permittee, Respondent is aware of the Permit's prompt deviation reporting requirement. In addition,

Respondent has previously been cited for late reporting of a permit deviation in Warning Letter No. 2020-WLOTC-5548, issued on May 19, 2020. In addition, on February 14, 2022, Respondent submitted a semi-annual compliance certification covering the time from July 1 through December 31, 2021. In that compliance certification, Respondent certified continuous compliance with Conditions 30 and 42 of the Permit even though Respondent was out of compliance with those requirements. Respondent's responsible official signed the certification with a statement that it was true and accurate. By failing to consistently track permit requirements to ensure compliance and failing to check on compliance with Permit requirements prior to submitting a semi-annual compliance certification, Respondent consciously disregarded a substantial and unjustifiable risk of failing to promptly report a permit deviation to DEQ. Disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe when monitoring compliance with a Title V permit and certifying such compliance to DEQ.

"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. Respondent submitted a deviation report upon becoming aware of the deviations on March 31, 2022.

"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 because DEQ has insufficient information to calculate an economic benefit associated with this violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$3,000 + [(0.1 \times \$\text{BP}) \times (6 + -1 + 2 + 8 + -3)] + \$0$   
 $= \$3,000 + (\$300 \times 12) + \$0$   
 $= \$3,000 + \$3,600 + \$0$   
 $= \$6,600$