



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 12th 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_{2.5}) at your agricultural waste-to-energy facility located at 75906 Threemile Road in Boardman, Oregon. Specifically, you violated the PM_{2.5} 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_{2.5} 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

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

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

3 IN THE MATTER OF:)
4 WOF PNW THREEMILE PROJECT, LLC,)
5 a Delaware limited liability company,)
 Respondent.)
 CASE NO. AQ/TV-ER-2020-154

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 Chapter 468A, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
10 011, 012, and 200, 218 and 222.

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

21 5. In its permit application submitted to DEQ on August 3, 2018, Respondent stated that the
22 Dryer's natural gas burner would use a maximum of 52.4 million cubic feet of natural gas in any 12
23 consecutive calendar month period, which translates to an average of approximately 4.4 million cubic
24 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_{2.5}) for any 12 consecutive calendar month period (the PM_{2.5} PSEL).

8. Compliance with the PM_{2.5} 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_{2.5} from the Facility were as follows:

12 consecutive calendar month period	Plant site emissions of PM _{2.5} (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_{2.5} PSEL, as described in Section II, Paragraphs 1-9, above. Specifically, Respondent violated the PM_{2.5} 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. 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.

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15 10/27/2021
16 Date

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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_{2.5} 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_{2.5} plant site emission limit by less than 50 percent of the annual SER (10 tons of PM_{2.5} 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_{2.5} 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_{2.5} 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_{2.5} 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_{2.5} 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_{2.5} 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.