



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW 6th Ave
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

April 27, 2016

CERTIFIED MAIL No. 7011 2000 0000 5122 8827

ConAgra Foods Lamb Weston, Inc.
c/o The Prentice-Hall Corporation System, Inc., Registered Agent
1127 Broadway Street NE, Suite 310
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AC-ER-16-039

This letter is to inform you that DEQ has issued you a civil penalty of \$2,400 for exceeding the PM_{2.5} plant site emission limit in your Air Contaminant Discharge Permit at your potato processing facility at 750 NE Columbia Avenue in Boardman.

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 individuals. Once inhaled, particulate matter can affect the heart and lungs, causing serious health problems such as decreased lung function, irregular heartbeat and chronic bronchitis.

DEQ appreciates your efforts to address the violation by submitting new emission factor information and applying for and obtaining a permit modification to incorporate the new emission factors into your permit. DEQ considered these efforts when determining the amount of civil penalty.

If you wish to appeal this matter, you have 20 calendar days from receipt of this letter to request a contested case hearing. This hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

Via fax - 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a written hearing request from you within 20 days, the penalty will become due.

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 you to resolve part of the penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.



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DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Jenny Root, at (503) 229-5874.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Tom Hack, Pendleton Office, DEQ
David Nevin, Administrative Manager, ConAgra Foods Lamb Weston, Inc.
PO Box 379, Boardman, OR 97818
Ian C. Toevs, Environmental Manager, ConAgra Foods Lamb Weston, Inc.
8701 W. Gage Blvd., Kennewick, WA 99336

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 CONAGRA FOODS LAMB WESTON,) ASSESSMENT AND ORDER
INC.)
5 a Delaware corporation,) NO. AQ/AC-ER-16-039
Respondent.)

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty
8 Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through
9 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR) Chapter 340,
10 Divisions 011, 012, 200, and 216.

11 II. FINDINGS OF FACT

12 1. Respondent, ConAgra Foods Lamb Weston, Inc., a Delaware corporation
13 registered to conduct business in Oregon, owns and operates a potato processing plant at 750 NE
14 Columbia Avenue, Boardman, Oregon (the Facility).

15 2. On February 29, 2012, DEQ issued Respondent Simple Air Contaminant
16 Discharge Permit No. 25-0027-SI-01 (Permit). On September 5, 2013, DEQ modified the Permit,
17 as Addendum Number One. The Permit was in effect at all material times.

18 3. The Permit authorizes Respondent to discharge air contaminants from the Facility
19 in conformance with the requirements, limitations and conditions set forth in the Permit.

20 4. Condition 2.1 of the Permit establishes Respondent's annual plant site emission
21 limits (PSELS) for the Facility. Condition 2.1 limits Respondent's emissions of particulate matter
22 less than 2.5 microns in size (PM_{2.5}) to no more than 9 tons per year on a rolling 12-consecutive
23 calendar month period (PM_{2.5} PSEL).

24 5. In accordance with Conditions 4.3 and 4.4 of the Permit, Respondent must use the
25 emission factors provided in Condition 10.0 of the Permit for calculating pollutant emissions for the
26 purposes of determining compliance with the PSELS, unless an alternative emission factor is
27 approved by DEQ. At all material times, no alternative emission factors were approved by DEQ.

1 6. Using the emission factors in Condition 10.0 of the Permit for the June 2014 to
2 March 2016 operating period, Respondent's PM_{2.5} emissions on a rolling 12-consecutive
3 calendar month period, were as follows:

4 a. From June 2014 to May 2015, Respondent's PM_{2.5} emissions were 9.96
5 tons.

6 b. From July 2014 to June 2015, Respondent's PM_{2.5} emissions were 10.25
7 tons.

8 c. From August 2014 to July 2015, Respondent's PM_{2.5} emissions were
9 10.15 tons.

10 d. From September 2014 to August 2015, Respondent's PM_{2.5} emissions
11 were 10.19 tons.

12 e. From October 2014 to September 2015, Respondent's PM_{2.5} emissions
13 were 10.28 tons.

14 f. From November 2014 to October 2015, Respondent's PM_{2.5} emissions
15 were 10.53 tons.

16 g. From December 2014 to November 2015, Respondent's PM_{2.5} emissions
17 were 10.71 tons.

18 h. From January 2015 to December 2015, Respondent's PM_{2.5} emissions
19 were 10.96 tons.

20 i. From February 2015 to January 2016, Respondent's PM_{2.5} emissions were
21 10.47 tons.

22 j. From March 2015 to February 2016, Respondent's PM_{2.5} emissions were
23 10.18 tons.

24 k. From April 2015 to March 2016, Respondent's PM_{2.5} emissions were 9.87
25 tons.

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27 ///

1 III. CONCLUSION

2 Respondent violated Condition 2.1 of the Permit and ORS 468A.045(2), by exceeding the
3 9 tons per year PM_{2.5} PSEL as described in Section II above. These are Class I violations,
4 according to OAR 340-012-0054(1)(c). DEQ hereby assesses a \$2,400 civil penalty for these
5 violations.

6 IV. ORDER TO PAY CIVIL PENALTY

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

9 Pay a total civil penalty of \$2,400. The determination of the civil penalty is attached as
10 Exhibit No. 1 and is incorporated as part of this Notice.

11 If you do not file a request for hearing as set forth in Section V below, your check or money
12 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ,**
13 **Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty,
14 the Findings of Fact, Conclusions and Order become final.

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

16 You have a right to a contested case hearing on this Notice, if you request one in writing.
17 You must ensure that DEQ receives the request for hearing **within 20 calendar days** from the
18 date you receive this Notice. If you have any affirmative defenses or wish to dispute any
19 allegations of fact in this Notice or attached exhibits, you must include them in your request for
20 hearing, as factual matters not denied will be considered admitted, and failure to raise a defense
21 will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests
22 for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and**
23 **Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204,** or fax it to **503-229-**
24 **5100.** An administrative law judge employed by the Office of Administrative Hearings will
25 conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR
26 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you
27 may represent yourself unless you are a corporation, agency or association.

1 Active duty servicemembers have a right to stay proceedings under the federal
2 Servicemembers Civil Relief Act. For more information, please call the Oregon State Bar at
3 1(800) 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information
4 can be found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services
5 Locator website, <http://legalassistance.law.af.mil/content/locator.php>.

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

13
14
15 April 27, 2016
16 Date

15 Susan Wheeler for
16 Leah K. Feldon, Manager
17 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: Exceeding the 9 tons per year PM_{2.5} PSEL in violation of Condition 2.1 of the Permit and ORS 468A.045(2).
- CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0054(1)(c).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(1)(e)(C) because Respondent exceeded the annual PM_{2.5} PSEL by an amount less than 50% of the annual significant emission rate (SER). The SER for PM_{2.5} is 10 tons per year pursuant to OAR 340-200-0020(161)(f) [formerly OAR 340-200-0020 Tables 2 and 3].
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent operates its facility under a Simple Air Contaminant Discharge Permit.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by 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 3 according to OAR 340-012-0145(4)(c), because there were from seven to 28 occurrences of the violation. Respondent exceeded its annual PM_{2.5} PSEL for the periods of June 2014 to May 2015; July 2014 to June 2015; August 2014 to July 2015; September 2014 to August 2015; October 2014 to September 2015, November 2014 to October 2015; December 2014 to November 2015; January 2015 to December 2015; February 2015 to January 2016; March 2015 to February 2016; and April 2015 to March 2016, for a total of 11 occurrences.
- "M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent reasonably should have known of the requirement to comply with the PSELs in the Permit. The PM_{2.5} PSEL and the methods for calculating compliance with the PSELs are express conditions of the Permit.
- "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 minimize the effects of the violation. Respondent submitted new source test data to DEQ that indicated the PM_{2.5} emission factors used to determine compliance with the PSEL should be lower than those contained in the Permit at that time. Respondent applied for and obtained a modified permit from DEQ on January 13, 2016, that incorporates the new PM_{2.5} emission factors.

"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 \$0 pursuant to OAR 340-012-0150(3) because any economic benefit derived from the violation would have been de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 3 + 2 + -3)] + \$0 \\ &= \$2,000 + (\$200 \times 2) + \$0 \\ &= \$2,000 + \$400 + \$0 \\ &= \$2,400 \end{aligned}$$