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

May 13, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 3181

Bob Jonas and Water Truck Services, Inc., dba Ecology Composting
10985 SW Clutter St.
Sherwood, OR 97140

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-WR-16-051

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $22,800 for causing pollution to waters of the state by discharging stormwater mixed with leachate from your composting facility near Dayton, Oregon. In addition, DEQ cited you without civil penalty for failing to operate and maintain your facility in a manner to prevent leachate discharges to surface waters.

DEQ issued this penalty because leachate from a compost facility may contain a host of harmful pollutants including iron. When discharged into waters of the state, these pollutants can harm aquatic life; contaminate drinking waters; and impair recreational, commercial, and agricultural uses of the water body. In addition, discharging compost leachate to the ground may cause offensive odors and poses a substantial threat to public health and the environment.

Included in Section IV of the attached Notice of Civil Penalty Assessment and Order (Notice) is an order requiring you to submit to DEQ for approval a written plan, designed and stamped by a licensed professional engineer (PE) or certified engineering geologist (CEG), with at least the following elements: measures to minimize production of leachate, measures to prevent leachate discharge, measures to ensure compliance with the Performance Standards in your Solid Waste Disposal Site Permit, a stormwater compliance determination, and a schedule for implementing the measures. In addition, the Notice requires you to implement the plan according to the approved schedule. Finally, the Notice requires you to immediately cease accepting all feedstock types. DEQ will allow you to resume accepting the permitted feedstock types only after you have completed the implementation of the approved plan.

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

Via mail - 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 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 it 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 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.

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 Kieran O'Donnell, at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Julie Berndt, DEQ, Eugene Office
Bob Jonas & Water Truck Service, Inc., PO Box 1130, Wilsonville, OR 97070

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: BOB JONAS & WATER TRUCK SERVICE, INC., dba ECOLOGY COMPOSTING Respondents.	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. LQ/SW-WR-16-051

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 and 468.126 through 468.140, ORS 459.995, ORS 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 096.

II. FINDINGS OF FACT

1. Respondents own and operate a composting facility located at 14425 SE Wallace Rd., Dayton, OR 97114 (the Facility).

2. On or about April 3, 2013 DEQ issued Respondents a Composting Facility Permit, No. 1522 (the Permit), authorizing Respondents to establish, operate, and maintain a solid waste disposal site for composting activities at the Facility.

3. Condition 3.2 of the Permit is a Performance Standard and requires the Respondents to design, construct, and operate all composting facilities in a manner that does not cause the discharge of leachate or stormwater.

4. Condition 1.2 of the Permit authorizes the Respondents to receive type 1 and type 2 feedstocks and Condition 1.3 of the Permit prohibits the Respondents from receiving any feedstock not explicitly authorized.

5. Respondents are not authorized to discharge leachate or leachate mixed with stormwater to waters of the state through the Permit or any other permit.

6. Carlton Pond (the Pond) is located to the east-southeast and adjacent to the Facility.

7. Carlton Pond is hydrologically connected to Parker Creek.

8. On January 25, 2016, stormwater mixed with leachate from the Facility's composting operation drained through a culvert underneath SE Wallace Road and into a conveyance ditch that flowed to the Pond. The stormwater mixed with leachate located near the composting operation contained 247 mg/l of Total Iron and the conveyance ditch contained 44.7 mg/l of Total Iron.

9. On February 24, 2016, DEQ performed an inspection of the Facility. During the inspection, stormwater mixed with leachate from the Facility's composting operation flowed through a series of culverts and catchbasins, into the conveyance ditch, and into the Pond, causing a multi-colored bacterial slime growth in both the conveyance ditch and the Pond.

10. At the time of the February 24, 2016, inspection, Respondent had accepted a gelatinous food waste from a confection manufacturer.

III. CONCLUSIONS

1. Respondents have violated ORS 468B.025(1)(a) by causing pollution to waters of the state, as described in Section II above. The conveyance ditch and the Pond are "waters of the state," as defined by ORS 468B.005(10) because they are surface waters within the state of Oregon. The leachate mixed with stormwater caused "pollution," as defined by ORS 468B.005(5), because it altered the physical and chemical properties of the conveyance ditch and the Pond by creating a multi-colored slimy growth on their surfaces and increasing the concentration of Total Iron. These are Class I violations, according to OAR 340-012-0055(1)(a). DEQ hereby assesses a $22,800 civil penalty for these violations.

2. Respondents have violated OAR 340-096-0070(1) and the Performance Standards in Condition 3.2 of the Permit by failing to operate a composting facility in a manner that prevents the discharge of leachate and stormwater to surface water, as described in Section II above. The discharge of stormwater mixed with leachate to the conveyance ditch and the Pond demonstrates that the Respondents failed to take operational measures to prevent the discharge. This is a Class I violation, according to OAR 340-012-0065(1)(k). DEQ has not assessed a civil penalty for this violation.

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3. Respondents have violated conditions 1.2 and 1.3 of the Permit by accepting an unauthorized feedstock. Specifically, Respondents accepted a gelatinous food waste from a confection manufacturer. The Permit authorizes Respondents to accept only type 1 and type 2 feedstocks. The gelatinous food waste from a confection manufacturer is a type 3 feedstock, pursuant to OAR 340-093-0030(43)(c), because it contained industrially produced non-vegetative food waste. This is a Class II violation, according to OAR 340-012-0065(2)(f). DEQ has not assessed a civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondents are hereby ORDERED TO:

1. Pay a total civil penalty of $22,800. The determination of the civil penalty is attached as Exhibit No. 1 and is 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 "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

2. Comply with Oregon law by doing the following:
   a. Immediately cease acceptance of all feedstock types.
   b. By no later than June 10, 2016, Respondents must submit to DEQ a written plan (the Plan) for approval, designed and stamped by a licensed professional engineer (PE) or certified engineer geologist (CEG), with at least the following elements:
      i. Measures to minimize the production of leachate;
      ii. Measures to prevent leachate and leachate mixed with stormwater from discharging to waters of the state, including the construction of berms or similar structures and pumping activities;
      iii. Measures to ensure compliance with the Performance Standards listed in OAR 340, Division 096 and Condition 3.2 of the Permit;

iv. A determination of whether the Facility discharges stormwater from a point source to surface waters or to conveyance systems that discharge to surface waters of the state, requiring coverage under the 1200Z National Pollution Discharge Elimination System (NPDES) general permit for industrial stormwater discharges; and

v. A schedule for the implementation of the elements of the Plan.

c. Once approved by DEQ, Respondents must implement and complete the Plan according to the Plan's approved implementation schedule, including the application for authorization under 1200Z, if necessary. In addition, Respondents must send DEQ monthly progress reports demonstrating phased implementation.

d. Written documentation demonstrating Respondents' compliance must be sent to:

DEQ, Eugene Office
c/o Julie Berndt
165 E. 7th Avenue
Eugene, OR 97401

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. You must ensure that DEQ receives the 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 exhibit, you must include them 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 mail the request for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-5100**. 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, or you may represent yourself unless you are a corporation, agency or association.

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

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

May 13, 2016
Date

Sarah Wheeler for
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 No.1: Causing pollution to waters of the state, in violation of ORS 468B.025(1)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(a).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0130(3) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had a significant adverse impact on human health or the environment. In making this finding, DEQ considered the following reasonably available information: the elevated concentration of Total Iron in the stormwater mixed with leachate, the extent of the bacterial slime in the conveyance ditch and the Pond, and the degree of deviation from the information provided during the Respondents' Permit application process. Specifically, Respondents asserted that they would conduct all composting activities on impermeable surfaces and collect leachate through existing infrastructure. However, Respondents operate the composting activities on former farmland consisting of native clay soil that becomes exceedingly wet during winter months, exacerbating the leachate discharge problem.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is $12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(D) because Respondent does not have a National Pollutant Discharge Elimination System Permit.

"P" is whether Respondents have 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 Respondents, and receives a value of 0 according to OAR 340-012-0145(2) (a) (A), because there are no prior significant actions.

"H" is Respondents' 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 2 according to OAR 340-012-0145(4)(b), because there were more than one but less than seven occurrences of the violation. Each day of violation constitutes a separate occurrence. The

violation occurred on at least two days, January 25, 2016 and February 24, 2016. Therefore, there were at least two occurrences of the violation.

"M" is the mental state of the Respondents and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondents' conduct was reckless. Respondents' Permit explicitly prohibits the discharge of leachate to surface waters. In addition, since 2013, DEQ has warned the Respondents of the potential for leachate discharges from the Facility. On April 22, 2014, DEQ sent Respondents a Warning Letter with Opportunity to Correct that identified stormwater and leachate management as an "Area of Concern." Specifically, DEQ noted that Respondents have not set up measures to operate composting either in a concrete holding basin or by covering the material during winter months, as Respondents agreed to in the Permit application. In a June 25, 2015, inspection report provided to Respondents, DEQ noted that Respondents had "no active controls in place to reduce leachate production or potential run-off from the site," and DEQ requested Respondents provide such controls at that time. Therefore, Respondents consciously disregarded a substantial and unjustifiable risk that its failure to minimize leachate production and prevent leachate discharges would result in a violation.

"C" is Respondents' efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondents made reasonable efforts to ensure the violation would not be repeated. Respondents have implemented temporary measures to reduce the potential for stormwater mixed with leachate discharge, including the construction of sumps, leachate tanks, and berms.

"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 there is insufficient information on which to base a finding under OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $12,000 + [(0.1 x $12,000) x (0 + 0 + 2 + 8+ -1)] + $0
= $12,000 + [$1,200 x 9] + $0
= $12,000 + $10,800 + $0
= $22,800