



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

June 21, 2016

CERTIFIED MAIL: 7011 2000 0000 5122 8872

PSC Custom Limited Partnership
Doing business as Polar Services Center
c/o CT Corporation System, Registered Agent
388 State Street, Suite 420
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-WR-16-013

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$3,858 for failing to prepare Tier I Corrective Action Response Reports for exceedences of Total Suspended Solids (TSS) and Iron as required by the National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge General Permit 1200-COLS, under which you are registered. These violations occurred during the 2014–2015 monitoring year. Each report was to be prepared within 30 days of your receiving stormwater monitoring results showing pollutant exceedences at your tank trailer and tractor facility at 8801 North Vancouver Avenue in Portland.

DEQ issued this penalty because fulfilling the Tier I corrective actions is an important obligation. The purpose of monitoring stormwater discharge is so that corrective measures can be taken in case exceedences in pollutants occur. Without preparing the Tier I report, DEQ and the City of Portland cannot know whether corrective actions were taken, or whether further action may be required. DEQ is particularly concerned because this is your third violation of failing to prepare Tier I reports in less than five years.

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. Further detail regarding SEPs may be found on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>.



PSC Custom Limited Partnership

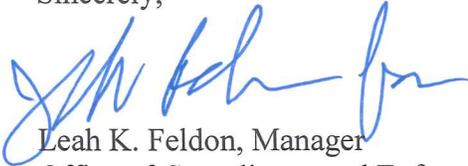
WQ/SW-NWR-16-013

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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. You may call toll-free within Oregon at 1-800-452-4011, extension 5874.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Reuben Snyder, City of Portland, Bureau of Environmental Services
John Koestler, WQ, HQ, DEQ

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

3 IN THE MATTER OF:)
4 PSC CUSTOM LIMITED PARTNERSHIP,) NOTICE OF CIVIL PENALTY
5 a Texas limited partnership doing business) ASSESSMENT AND ORDER
6 as POLAR SERVICE CENTER,)
7 an assumed business name,) CASE NO. WQ/SW-NWR-16-013
8 Respondent.)

9 I. AUTHORITY

10 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty
11 Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126
12 through 468.140, ORS Chapters 183 and 468B, and Oregon Administrative Rules (OAR) Chapter 340,
13 Divisions 011 and 012, and 045.

14 II. FINDINGS OF FACT

15 1. Respondent, PSC Custom Limited Partnership, a Texas limited partnership doing
16 business in Oregon as “Polar Service Center,” owns and operates a tank trailer and tractor facility at
17 8801 North Vancouver Av3nue in Portland, Oregon (the Facility).

18 2. On or about June 12, 2013, the Department of Environmental Quality (DEQ) granted
19 Respondent coverage under National Pollutant Discharge Elimination System (NPDES) Storm Water
20 Discharge General Permit Number 1200-COLS (Permit). DEQ issued the Permit pursuant to ORS
21 468B.050 and the Federal Clean Water Act. The Permit was in effect at all material times.

22 3. The Permit authorizes Respondent to construct, install, modify or operate stormwater
23 treatment and/or control facilities, and to discharge stormwater to waters of the state in conformance
24 with the requirements, limitations and conditions set forth in the Permit.

25 4. Schedules B.1.a and B.2.e, Table 4 of the Permit require Respondent to monitor its
26 stormwater for benchmarks listed in Schedule A.9 at least 4 times per year, with two samples from each
27 outfall taken on or before December 31, and two samples from each outfall taken on or after January 1
of each stormwater monitoring year.

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1 5. Schedule B.1.b and B.2.e of the Permit require Respondent to monitor its stormwater for
2 impairment pollutants at least two times per year, with one sample from each outfall taken on or before
3 December 31 and one sample from each outfall taken on or after January 1 of each stormwater
4 monitoring period (July 1-June 30). Respondent is required to monitor for the impairment pollutant total
5 iron, in accordance with the facility permit assignment letter (PAL).

6 6. In accordance with Schedule A.10.a of the Permit, if Respondent's stormwater sampling
7 results exceed any of the statewide benchmarks in Schedule A.9 of the Permit or reference
8 concentrations for impairment pollutants identified in the PAL, Respondent must prepare a Tier I
9 corrective action response report within 30 days of obtaining monitoring results.

10 7. Schedule A.10.a.iii of the Permit requires that Respondent's Tier I report summarize the
11 following:

12 a. The results of the investigation as to the cause of the elevated pollutant levels;

13 b. Corrective actions taken or to be taken, including date corrective action was
14 completed or is expected to be completed. If Respondent determines that corrective action is not
15 necessary, Respondent must provide the basis for this determination; and

16 c. Document whether revisions to Respondent's stormwater pollution control plan
17 (SWPCP) are necessary.

18 8. On or about March 23, 2015, Respondent conducted stormwater sampling. According to
19 the results, Respondent's stormwater samples exceeded the statewide benchmark for total suspended
20 solids (TSS) and the impairment pollutant reference concentration for total iron.

21 9. On or about April 13, 2015, Respondent conducted stormwater sampling. According to
22 the results, Respondent's stormwater samples exceeded the impairment pollutant reference
23 concentration for total iron.

24 10. On November 10, 2015, staff from the City of Portland Bureau of Environmental
25 Services (BES) conducted an inspection at the Facility. During the inspection, BES reviewed records
26 including requested copies of Tier I Reports for the March 23, 2015 and April 13, 2015, TSS
27 benchmark and/or total iron reference concentration exceedances.

1 11. Respondent's Tier I report for the March 23, 2015, TSS benchmark and total iron
2 reference concentration exceedances was deficient in the following ways:

3 a. No investigation results were discussed;

4 b. The corrective action states "Additional parking lot sweeping and waste control
5 are in place." No details were provided describing how much sweeping or what waste control measures
6 have been put into place.

7 c. No documentation was made on whether revisions to Respondent's stormwater
8 pollution control plan (SWPCP) were necessary.

9 12. Respondent failed to prepare a Tier I report for the April 13, 2015, total iron reference
10 concentration exceedance.

11 III. CONCLUSION

12 Respondent violated Schedule A.10.a and A.10.a.iii of the Permit and ORS 468B.025(2) by
13 failing to adequately prepare Tier I reports that summarized all of the information required by Schedule
14 A.10.a.iii of the Permit, within 30 calendar days of obtaining sampling results that showed benchmark
15 and reference concentration exceedances, as described in Section II, paragraphs 6 through 12 above.
16 These are Class II violations according to OAR 340-012-0053(2). DEQ hereby assesses a \$3,858 civil
17 penalty for these violations.

18 IV. ORDER TO PAY CIVIL PENALTY

19 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
20 hereby ORDERED TO pay a total civil penalty of \$3,858. The determination of the civil penalty is
21 attached as Exhibit 1 and is incorporated as part of this Notice.

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

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

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

14 Active duty service-members have a right to stay proceedings under the federal Service
15 members Civil Relief Act. For more information, please call the Oregon State Bar at 1(800)
16 452-8260 or the Oregon Military Department at 1(800) 452-7500. Additional information can be found
17 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website,
18 <http://legalassistance.law.af.mil/content/locator.php>.

19 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
20 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
21 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing,
22 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
23 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
24 information submitted by you, as the record for purposes of proving a prima facie case.

25
26 6/26/16
27 Date

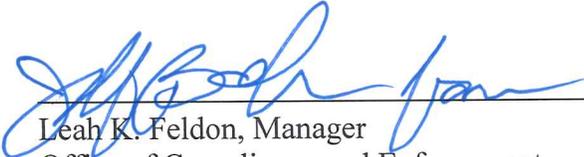

Leah K. Feldon, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION: Failing to adequately prepare Tier I reports that summarized all of the information required by Schedule A.10.a.iii of the Permit, within 30 calendar days of obtaining sampling results that showed benchmark and reference concentration exceedances, in violation of Schedule A.10.a and A.10.a.iii of NPDES Permit No. 1200-COLS and ORS 468B.025(2).

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0053(2).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

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

"BP" is the base penalty, which is \$2,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii), because Respondent has coverage under an NPDES general 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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had one Class I violation in case no. WQ/SW-NWR-13-172 issued February 11, 2014; and one Class I violation in case no. WQ/SW-NWR-14-224 issued April 13, 2015.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 timely prepare complete Tier I reports for sampling results on March 23, 2015 and April 13, 2015. Therefore, there were two 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. Respondent has coverage under

the 1200-COLS Permit, which expressly requires that Respondent prepare complete Tier I Corrective Action Response Reports within 30 days of obtaining sampling results that show exceedances of benchmark and impairment pollutants. In a letter dated February 25, 2014, and in a warning letter dated April 7, 2015, City of Portland, Bureau of Environmental Services reminded Respondent of the requirement to prepare Tier I reports. By failing to take adequate steps after receiving these letters to ensure that it prepared and completed Tier I reports within 30 days of receiving monitoring results that showed exceedances of monitored pollutants, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate its Permit.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f), because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 \$58. This is the amount Respondent gained by avoiding expenditure of approximately \$100 to investigate and prepare a Tier I Report for the total iron exceedance from the April 13, 2015, monitoring results. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model. DEQ has insufficient information on which to base a finding for EB for the deficient Tier I report for the March 23, 2015 sampling event.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$2,000 + [(0.1 \times \$2,000) \times (3 + 0 + 2 + 4 + 0)] + \58
= $\$2,000 + [\$200 \times 9] + \$58$
= $\$2,000 + \$1,800 + \$58$
= $\$3,858$