



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
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(503) 229-5696
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June 21, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 2863

Distribution, Inc.,
doing business as FTL, Inc.
c/o 5665, LLC, Registered Agent
5665 SW Meadows Rd., Suite 200
Lake Oswego, OR 97035

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-16-014

This letter is to inform you that DEQ has issued you a civil penalty of \$6,000 for failing to collect stormwater monitoring data during the 2014-2015 monitoring period at your trucking facility at 16795 SE Evelyn St. in Clackamas, as required under your National Pollutant Discharge Elimination System (NPDES) Stormwater General Permit Number 1200-Z (Permit). The Permit requires that you collect and analyze two samples for benchmark pollutants between July 1 and December 31 and two samples between January 1 and June 30 each year. You failed to collect and have analyzed two samples for benchmark pollutants between January 1 and June 30, 2015.

DEQ issued this penalty because permittees are required to sample and monitor their stormwater discharge according to the schedule in the Permit to ensure their discharges meet the water quality benchmarks in the Permit. Failure to meet the benchmarks may indicate the presence of harmful levels of industrial pollutants that could enter public streams and rivers. These discharges can damage aquatic species and their habitat and reduce the safety of public waters for public use.

DEQ cited an additional violation in the enclosed Notice that you are not being penalized for at this time. That violation is for failing to implement and maintain an employee stormwater orientation and education program until December 2015. This is also a serious violation because many employees at your facility are in close contact with materials and processes which may be exposed to stormwater runoff, making them the first line of response to spills or equipment failures.

DEQ appreciates your efforts to minimize the effects of the violations by taking two additional benchmark samples during the fall 2014 monitoring period and for implementing your stormwater training program. 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 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>.

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: Derek Gill, Water Quality Specialist, NWR
John Koestler, WQ, HQ, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 DISTRIBUTION, INC.,) NOTICE OF CIVIL PENALTY
an Oregon corporation) ASSESSMENT AND ORDER
5 doing business as FTL, INC.,)
an assumed business name,) CASE NO. WQ/SW-NWR-16-014
6 Respondent.)

7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

13 1. Respondent, Distribution, Inc., an Oregon corporation doing business as FTL, Inc., owns
14 and operates a trucking facility at 16795 SE Evelyn St. in Clackamas, Oregon.

15 2. On or about July 10, 2012, the Department of Environmental Quality (DEQ) granted
16 Respondent coverage under National Pollutant Discharge Elimination System (NPDES) Stormwater
17 Discharge General Permit Number 1200-Z (Permit), File No. 107617. DEQ issued the Permit pursuant to
18 ORS 468B.050 and the Federal Clean Water Act. The Permit was in effect at all material times.

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

22 4. Schedule B.8 of the Permit requires Respondent to submit a DEQ-approved Discharge
23 Monitoring Report (DMR) form to DEQ by July 31 of each year. The DMR must identify the sampling
24 results for the previous monitoring year and include the laboratory results from the testing laboratory.

25 5. Schedule B of the Permit requires Respondent to monitor its stormwater through grab
26 sampling and analysis for various parameters. Specifically, Schedule B.1.a of the Permit requires
27 Respondent to monitor for the benchmark pollutants identified in Schedule A.9 of the Permit.

1 IV. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
3 hereby ORDERED TO pay a total civil penalty of \$6,000. The determination of the civil penalty is
4 attached as Exhibit 1 and is incorporated as part of this Notice.

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

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

22 Active duty service-members have a right to stay proceedings under the federal
23 Servicemembers Civil Relief Act. For more information, please call the Oregon State Bar at 1(800)
24 452-8260 or the Oregon Military Department at 1(800) 452-7500. Additional information can be found
25 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website,
26 <http://legalassistance.law.af.mil/content/locator.php>.

27 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the

1 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
2 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing,
3 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
4 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
5 information submitted by you, as the record for purposes of proving a prima facie case.
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9 6/21/16

10 Date

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10 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 1: Failure to conduct monitoring in violation of Schedule B.1.a and B.2.e of NPDES Permit No. 1200-Z and ORS 468B.025(2).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(o).

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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii).

"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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent had a Class I violation in EEO No. WQ-SW-NWR-001, issued on October 6, 2014.

"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 monitor benchmark pollutants two times from two outfalls during the spring of 2015, for a total of four missed monitoring events during the 2014 - 2015 monitoring year.

"M" is the mental state of the Respondent and receives a value of 4 pursuant to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Respondent is granted coverage under the 1200-Z Permit, which specifically requires that Respondent monitor benchmark pollutants two times between July 1 and December 31 and two times between January 1 and June 30 of each year. DEQ previously issued an Expedited Enforcement Offer to Respondent on October 6, 2014, for monitoring violations during the 2013-2014 monitoring year. By failing to ensure it properly monitored benchmark pollutants at the

specific time and frequency specified in the Permit, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate its Permit.

"C" is Respondent's efforts to correct the violation and receives a value of -3 according to OAR 340-012-0145(6)(c), because Respondent took reasonable affirmative efforts to minimize the effects of the violation. Respondent conducted two extra benchmark sampling events during the July 1, 2014 to December 1, 2014 monitoring period.

"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 according to OAR 340-012-0150(3), because the Department finds that any economic benefit Respondent gained is de minimis. Respondent conducted two additional benchmark sampling events during the July 1, 2014 to December 31, 2014 monitoring period.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (2 + 0 + 2 + 4 + -3)] + \$0
= \$4,000 + [\$400 x 5] + \$0
= \$4,000 + \$2,000 + \$0
= \$6,000

SEP FAQs

What is a Supplemental Environmental Project (SEP)?

A SEP is a means through which persons who have been assessed civil penalties may reduce penalties owed to DEQ by agreeing to fund projects that benefit public health and the environment in Oregon. Penalties may be mitigated dollar for dollar up to 80% depending on the cost of the project and type of benefits derived.

Who/what projects qualify?

- Project must primarily benefit the public health or the environment in Oregon.
- Respondent's contribution to the project is worth at least as much as the penalty reduction;
- Project must not be an activity or result that is already required by law or one that is not set to become a future requirement.
- The portion of the project attributable to penalty reduction is not funded by government contracts, loans or grants.
- The responsibilities of the respondent under the SEP are commensurate with the respondent's expertise and capabilities, if respondent is doing the work.
- Project does not result in DEQ's controlling the funds or implementing the SEP, nor can the SEP fulfill statutory obligations or circumvent statutory prohibitions of DEQ.
- Project does not create a significant market or economic advantage for the violator.
- Project must provide for a final report.
- DEQ prefers that projects relate to the same environmental program and will be implemented in the same geographic area in which the violation occurred.

Are there examples of past successful projects or ideas available? Glad you asked! DEQ is currently maintaining and updating a list of possible project ideas. Give us a call at 503-229-5340 to obtain a copy.

Can a third party conduct the project if I commit the funds? Absolutely. Many successful projects have been conducted through third party nonprofit organizations, such as local communities, cities, watershed councils, etc. There must be a defined project that is approved by DEQ before the penalty can be mitigated.

How do I get started? Call the Office of Compliance and Enforcement at 503-229-5340 to obtain an application. Identify a project, fill out the SEP application as completely as possible and submit it to the Department's Office of Compliance and Enforcement at 811 SW 6th Avenue, Portland, Oregon 97204. Please be sure to include the enforcement case name and number.