



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
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Portland, OR 97204-1390
(503) 229-5696
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TTY: 711

September 14, 2016

CERTIFIED MAIL No. 70142870000133736385

JSH Farms, Inc.
c/o Carl St. Hilaire, Registered Agent
84186 Highway 37
Hermiston, OR 97838

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AC-ER-2016-098

This letter is to inform you that DEQ has issued you a civil penalty of \$1,400 for failing to timely submit your 2014 and 2015 annual reports to DEQ as required by your Air Contaminant Discharge Permit.

DEQ issued this penalty because annual reports are an important mechanism for DEQ to determine whether companies are operating within the operational and emission limits allowed by the permit, and to ensure emissions are within levels that do not pose harm to the public's health or the environment.

DEQ appreciates your efforts to correct the violation by submitting the late reports to DEQ. 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 Esther Westbrook, at (503) 229-5374.

Sincerely,



Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement

Enclosures

cc: Tom Hack, Pendleton Office, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 JSH FARMS, INC.,) ASSESSMENT AND ORDER
a Washington corporation,)
5 Respondent.) NO. AQ/AC-ER-2016-098

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7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty
9 Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through
10 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR) Chapter 340,
11 Divisions 011, 012, 214 and 216.

12 II. FINDINGS OF FACT

13 1. Respondent owns and operates gas-fired boilers at its industrial facility located at
14 84186 Highway 37 in Hermiston, Umatilla County, Oregon (the Facility).

15 2. On February 26, 2006, DEQ assigned Respondent to General Air Contaminant
16 Discharge Permit AQGP-011 (Permit) as source number: 30-0018. The Permit was in effect at
17 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 8.2 of the Permit requires Respondent to submit an annual report to
21 DEQ by February 15th of each year that includes information about fuel usage, pollutant
22 emissions and maintenance for the previous calendar year of operation at the Facility.

23 5. DEQ received Respondent's 2014 annual report on March 24, 2015.

24 6. DEQ received Respondent's 2015 annual report on February 24, 2016.

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1 III. CONCLUSION

2 Respondent violated Condition 8.2 of the Permit and OAR 340-214-0114(1) and (2),
3 adopted pursuant to ORS 468A.050(1), by failing to timely submit its 2014 and 2015 annual
4 reports to DEQ. These are Class II violations, according to OAR 340-012-0054(2)(f). DEQ hereby
5 assesses a \$1,400 civil penalty for these 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 \$1,400. 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

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1 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you
2 may represent yourself unless you are a corporation, agency or association.

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

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

15
16 9-14-16
17 Date

15 Jenny Rost for
16 Sarah G. Wheeler, Acting 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: Failing to timely submit the 2014 and 2015 annual reports in violation of Condition 8.2 of Respondent's Air Contaminant Discharge Permit and OAR 340-214-0114(1) and (2), adopted pursuant to ORS 468A.050(1).

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0054(2)(f).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or the environment. In making this finding, DEQ considered the following reasonably available information: Once Respondent submitted the annual reports, DEQ was able to determine Respondent had operated in compliance with its permit emission limits during the 2014-2015 operating years.

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 \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(A).

"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. Respondent had one Class I violation in Case No. AQ/AC-ER-06-095, which results in a value of 2 according to OAR 340-012-0145(2)(a)(C). This value is reduced by 4 according to OAR 340-012-0145(2)(d)(A)(ii) because all the FEAs in which PSAs were cited were issued more than five years before the date the current violation occurred. However, "P" may not be reduced below zero according to OAR 340-012-0145(2)(e).

"H" is Respondent's history of correcting prior significant actions and receives a value of 1 according to OAR 340-012-0145(3)(d), because the sum of values for "P" and "H" may not be less than 1 because Respondent did not take extraordinary efforts to correct or minimize the effects of all PSAs.

- "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 submitted two late annual reports (2014 and 2015), which is 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. The requirement to submit an annual report by February 15th of each year is an express condition of the Permit and Respondent has previously been advised by DEQ of the reporting requirement. On May 7, 2013, DEQ issued Respondent a Warning Letter to notify Respondent that the 2012 annual report was submitted late. By failing to take action to ensure that the 2014 and 2015 annual reports were submitted timely, Respondent failed to take reasonable care to avoid the foreseeable risk of committing the violation.
- "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 by submitting the 2014 annual report to DEQ on March 24, 2015, and the 2015 annual report on February 24, 2016.
- "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 as any economic benefit derived from preparing and submitting the report late would likely be de minimis.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$1,000 + [(0.1 \times \$1,000) \times (0 + 1 + 2 + 4 + (-3))] + \0
 $= \$1,000 + (\$100 \times 4) + \$0$
 $= \$1,000 + \$400 + \$0$
 $= \$1,400$