October 27, 2021

CERTIFIED MAIL: 7017 0530 0000 7760 6469

WOF PNW Threemile Project, LLC
c/o Unisearch, Inc., Registered Agent
698 12th Street SE, Suite 200
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/TV-ER-2020-154

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage https://www.oregon.gov/deq/Pages/covid-19.aspx for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $19,500 for violating the plant site emission limit (PSEL) for fine particulate matter (PM$_{2.5}$) at your agricultural waste-to-energy facility located at 75906 Threemile Road in Boardman, Oregon. Specifically, you violated the PM$_{2.5}$ PSEL during five rolling annual periods from June 1, 2019 - May 31, 2020 through October 2019 - September 2020 as a result of using more natural gas than projected in the facility’s fiber dryer.

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 people. 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 minimize the impacts of the violation by taking actions to reduce natural gas usage in the dryer starting in August 2020 such that the rolling 12 month PM$_{2.5}$ PSEL exceedances were remedied by October 2020. 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 hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

- Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232
- Via email – DEQappeals@deo.state.or.us
- Via fax – 503-229-6762

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 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 instead of paying a penalty. Further information is available by calling the number below or at http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx.

DEQ’s rules are available at http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx or by calling the number below.

If you have any questions, please contact Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,

Kieran O’Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc:  David Jenson, WOF PNW Threemile Project, LLC, 75906 Threemile Road, Boardman, OR 97818
     Rick Morck, WOF PNW Threemile Project, LLC, 75906 Threemile Road, Boardman, OR 97818
     Tom Wood, Attorney for Respondent, Stoel Rives LLP, 760 SW Ninth Ave, Suite 3000, Portland, OR 97205
     Frank Messina, DEQ
     Walt West, DEQ
     Mark Bailey, DEQ
     Accounting, DEQ
     Donald Hendrix, AQ, DEQ
     US EPA, Region 10, c/o Katie McClintock, 1200 Sixth Avenue, Seattle, WA 98101
BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF:                     NOTICE OF CIVIL PENALTY
WOF PNW THREEMILE PROJECT, LLC,       ) ASSESSMENT AND ORDER
a Delaware limited liability company, ) CASE NO. AQ/TV-ER-2020-154
Respondent.                          

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, ORS 468.126 through 468.140,
ORS Chapter 468A, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
011, 012, and 200, 21f and 222.

II. FINDINGS OF FACT

1. Respondent owns and operates a facility that processes agricultural waste to produce pipeline
grade natural gas and generates electricity by running three natural gas engines, located at 75906
Threemile Road, Boardman, OR 97818 (the Facility).

2. On June 25, 2019, DEQ issued Oregon Title V Operating Permit No. 25-0047-TV-01 (the
Permit) to Respondent. The Permit authorizes Respondent to discharge air contaminants associated
with its operation of the Facility in conformance with the requirements, limitations and conditions set
forth in the Permit.

3. The Permit was in effect at all material times.

4. The Facility includes a fiber dryer (the Dryer) that includes a natural gas burner.

5. In its permit application submitted to DEQ on August 3, 2018, Respondent stated that the
Dryer’s natural gas burner would use a maximum of 52.4 million cubic feet of natural gas in any 12
consecutive calendar month period, which translates to an average of approximately 4.4 million cubic
feet per month (approximately 4,400,000 scf).
6. During the months of January through July 2020, Respondent’s reported natural gas combustion for the dryer was as follows:

<table>
<thead>
<tr>
<th>Month</th>
<th>Natural gas combusted in dryer (scf)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 2020</td>
<td>5,056,560</td>
</tr>
<tr>
<td>February 2020</td>
<td>4,164,780</td>
</tr>
<tr>
<td>March 2020</td>
<td>3,862,200</td>
</tr>
<tr>
<td>April 2020</td>
<td>1,090,140</td>
</tr>
<tr>
<td>May 2020</td>
<td>4,658,820</td>
</tr>
<tr>
<td>June 2020</td>
<td>7,079,940</td>
</tr>
<tr>
<td>July 2020</td>
<td>6,891,900</td>
</tr>
</tbody>
</table>

7. Condition 37 of the Permit limits the plant site emissions from the Facility to no more than 9 tons per year of fine particulate matter (PM$_{2.5}$) for any 12 consecutive calendar month period (the PM$_{2.5}$ PSEL).

8. Compliance with the PM$_{2.5}$ PSEL is determined according to the monitoring and calculations in Condition 38 of the Permit.

9. Using the monitoring and calculations described in Condition 38 of the Permit, Respondent’s plant site emissions of PM$_{2.5}$ from the Facility were as follows:

<table>
<thead>
<tr>
<th>12 consecutive calendar month period</th>
<th>Plant site emissions of PM$_{2.5}$ (tons per year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 1, 2019 - May 31, 2020</td>
<td>9.93</td>
</tr>
<tr>
<td>July 1, 2019 - June 30, 2020</td>
<td>10.79</td>
</tr>
<tr>
<td>August 1, 2019 - July 31, 2020</td>
<td>10.71</td>
</tr>
<tr>
<td>September 1, 2019 - August 31, 2020</td>
<td>10.08</td>
</tr>
<tr>
<td>October 1, 2019 - September 30, 2020</td>
<td>9.65</td>
</tr>
</tbody>
</table>

III. CONCLUSIONS

1. Respondent violated Condition 37 of the Permit and ORS 468A.045(2) by exceeding the 9 ton per year PM$_{2.5}$ PSEL, as described in Section II, Paragraphs 1-9, above. Specifically, Respondent violated the PM$_{2.5}$ PSEL on five occasions, during the 12 consecutive calendar month periods from June 1, 2019 - May 31, 2020 through October 2019 - September 2020. These are Class I violations, according to OAR 340-012-0054(1)(g). DEQ hereby assesses a $19,500 civil penalty for these violations.

\

NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER

CASE NO. AQ/TV-ER-2020-154
Page 2 of 4
IV. ORDER TO PAY CIVIL PENALTY

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

Pay a total civil penalty of $19,500. The determination of the civil penalty is attached as Exhibit 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, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.

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. DEQ must receive your 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 do so 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 send your request to: DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232, fax it to 503-229-6762 or email it to DEQappeals@deq.state.or.us. 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, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.
Active duty Service members have a right to stay proceedings under the federal Service Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through http://legalassistance.law.af.mil. The Oregon Military Department does not have a toll free telephone number.

If you fail to file a timely request for hearing, 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.

10/27/2021

Date

Kieran O’Donnell, 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 NO. 1  Exceeding the annual 9 tons per year PM$_{2.5}$ plant site emission limit, in violation of Condition 37 of the Permit and ORS 468A.045(2).

CLASSIFICATION:  This is a Class I violation pursuant to OAR 340-012-0054(1)(g).

MAGNITUDE:  The magnitude of the violation is minor pursuant to OAR 340-012-0135(1)(f)(C)(i), because Respondent exceeded the annual PM$_{2.5}$ plant site emission limit by less than 50 percent of the annual SER (10 tons of PM$_{2.5}$ per year).

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 $3,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(A) because Respondent has a Title V 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 0 according to OAR 340-012-0145(4)(e), because DEQ is assessing a penalty for each occurrence 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. According to OAR 34-012-0030, negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. In its permit application submitted to DEQ on August 3, 2018, Respondent stated that the Dryer’s natural gas burner would use a maximum of 52.4 million cubic feet of natural gas in any 12 consecutive calendar month period, which translates to an average of approximately 4.4 million cubic feet per month. The PM$_{2.5}$ PSEL in Respondent’s permit was calculated, in part, based on this maximum. Nevertheless, in January, June and July 2020, Respondent combusted well over 4.4 million cubic feet per month, with 5.1 million cubic feet of natural gas combusted in January 2020, 7.0 million cubic feet combusted in June 2020 and 6.9 million cubic feet combusted in July 2020.
combusted in July 2020. Respondent did not recognize or correct the issue until August 2020. The increased combustion of natural gas between January and July 2020 resulted in exceedances of the PM$_{2.5}$ PSEL during five 12 consecutive calendar month periods. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation of the PM$_{2.5}$ PSEL in its Permit.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. Starting in August 2020, Respondent reduced natural gas fuel consumption in the dryer by adjusting the screw that helps remove moisture from the fiber processed in the dryer and by diverting some of the fiber from the dryer. These actions reduced natural gas combustion and remedied the PM$_{2.5}$ PSEL exceedances by October 2020.

"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 DEQ has insufficient information to calculate an economic benefit for this violation.

**PENALTY CALCULATION:**

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

\[
= $3,000 + [(0.1 \times $3,000) \times (0 + 0 + 0 + 4 + -1)] + $0
\]

\[
= $3,000 + ($300 \times 3) + $0
\]

\[
= $3,000 + $900 + $0
\]

\[
= $3,900 \text{ per violation}
\]

In accordance with ORS 468.140(2), each day of violation constitutes a separate offense and is subject to a civil penalty up to $25,000 per day. Respondent exceeded the PM$_{2.5}$ PSEL during five 12 consecutive calendar month periods. DEQ is assessing a civil penalty for each of the five 12 consecutive calendar month periods.

$3,900 per violation x 5 violations for a total civil penalty of $19,500.