



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

November 10, 2021

CERTIFIED MAIL: 7018 1830 0001 5906 3022

Farm Power Misty Meadow LLC
c/o Jason Mitchell
9550 Hurliman Hill Rd.
Tillamook, OR 97141

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ-ACDP-NWR-2021-132

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 \$18,701 for violations of the air contaminant discharge permit for your agricultural waste-to-energy facility located at 23 Evergreen Drive, Tillamook, Oregon 97141. Specifically, during 13% of your total operating time between July 3, 2019 and May 4, 2021, you failed to operate a flare at the facility to combust biogas being vented through the flare to the atmosphere. In addition, you failed to accurately report flare malfunctions to DEQ in your annual reports required under the permit. The attached Notice of Civil Penalty Assessment and Order (Notice) also cites you, without penalty, for failing to install a warning signal connected to the flare and failing to keep records of flare malfunctions.

DEQ issued this penalty because the proper operation of the flare is essential to control emissions when there is excess digester gas venting through the flare. When there is no flame present at the flare, air pollutants including volatile organic compounds (VOC) and methane are emitted at uncontrolled rates. VOCs are ozone precursors that lead to the formation of smog and methane is a potent greenhouse gas that contributes to climate change. In addition, without combustion, hydrogen sulfide (H₂S) emissions from the anaerobic digester are high and produce foul odors that can be a public nuisance.

DEQ is in the process of reviewing protocols for reporting the uncontrolled biogas emissions under OAR Chapter 340, Division 215 and will follow up with you regarding how to amend your greenhouse gas reports submitted to DEQ. Any violation of the Greenhouse Gas Reporting Program requirements will be addressed separately by the DEQ Office of Greenhouse Gas Programs.

Included in Section IV of the attached Notice is an order requiring you to:

- Within 10 days of the order becoming final by operation of law or on appeal, submit to DEQ for approval a Notice to Construct, to construct a shield tower around the flare at the Facility; and
- Within 60 days of DEQ's approval of the Notice to Construct, complete construction of the shield and submit a Notice of Completion to DEQ according to OAR 340-210-0240(3), including photographs demonstrating that a shield tower has been constructed around the flare as described in the Notice to Construct.

\$8,007 of the civil penalty represents the economic benefit you gained by avoiding the cost of installing a shield tower for the flare. If you complete the shield tower installation, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

DEQ appreciates your efforts to ensure that the violations would not be repeated by installing a text messaging warning system connected to the flare. 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@deq.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 Becca 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: Kevin Mass, President, Farm Power Misty Meadow LLC, P.O. Box 1228, Mount Vernon, WA
98273
Weston Li, DEQ
Matt Hoffman, DEQ
Accounting, DEQ
Donald Hendrix, AQ, DEQ
US EPA, Region 10, c/o Katie McClintock, 1200 Sixth Avenue, Seattle, WA 98101

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 FARM POWER MISTY MEADOW LLC,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. AQ/ACDP-NWR-2021-132

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9 ORS Chapters 183 and 468A, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,
10 200, 214 and 216.

11 II. FINDINGS OF FACT

12 1. Respondent owns and operates an anaerobic digester facility that produces electricity by
13 combusting biogas generated from agricultural waste, located at 23 Evergreen Drive, Tillamook,
14 Oregon 97141 (the Facility).

15 2. On June 13, 2019, DEQ issued Air Contaminant Discharge Permit No. 29-0008-SI-01
16 (the Permit) to Respondent. The Permit authorizes Respondent to discharge air contaminants associated
17 with its operation of the Facility in conformance with the requirements, limitations and conditions set
18 forth in the Permit.

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

20 4. A flare is operated at the Facility to combust biogas when the Facility's engine is down for
21 maintenance or when biogas is produced in quantities greater than the facility can safely process.
22 Biogas that is not combusted is rich in methane (a greenhouse gas) and in volatile organic compounds
23 (VOCs).

24 5. Condition 3.3 of the Permit requires Respondent to operate the flare at all times when biogas
25 may be vented to it.

26 6. Condition 3.3.b of the Permit requires that a flame must be present at all times when biogas
27 is routed to the flare.

1 7. Respondent measures and records the flow of biogas through the flare. In addition, the flare
2 is fitted with a thermocouple that measures temperature continuously and the temperature data are
3 recorded at fifteen minute intervals.

4 8. Between July 3, 2019 and May 4, 2021, there were a total of 8,385 data points, each
5 representing a fifteen-minute interval, when there was biogas flowing to the flare, but the temperature
6 of the flare was less than 200 degrees Fahrenheit, indicating no combustion was taking place. The
7 8,385 fifteen-minute periods translates to 13 percent of the Facility's total operating time during that
8 time period or a total of 87 equivalent days.

9 9. Condition 3.3.d of the Permit requires that the flare be connected to a warning signal that is
10 visible to the plant operator. Additionally, any instance of malfunction must be recorded, including
11 date/times, cause, and remedial actions taken.

12 10. From on or before July 3, 2019 to October 13, 2021, the flare was not connected to a
13 warning signal that was visible to the plant operator and Respondent did not keep any records of flare
14 malfunctions.

15 11. On or about October 13, 2021, Respondent installed a text-messaging system to alert the
16 plant operator to flare malfunction.

17 12. Condition 7.1.g of the Permit requires that Respondent keep records of any instance of
18 malfunction of the flare and remedial actions taken, upon occurrence.

19 13. Respondent did not keep any records of flare malfunctions other than the records of biogas
20 flow and thermocouple temperature described in Section II, Paragraph 7, above. Respondent did not
21 record any remedial actions until August 31, 2021, when Respondent submitted a flare operation plan
22 to DEQ.

23 14. Condition 8.4.a.iii of the Permit requires Respondent to submit in its Annual Report to DEQ
24 flare malfunctions, dates/times, causes and remedial actions taken.

25 15. In its 2019 Annual Report for the Facility, submitted to DEQ on February 10, 2020,
26 Respondent stated that there were no flare malfunctions in 2019.

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1 16. In its 2020 Annual Report for the Facility, submitted to DEQ on February 17, 2021,
2 Respondent stated that there were no flare malfunctions in 2020.

3 III. CONCLUSIONS

4 1. Between July 3, 2019 and May 4, 2021, Respondent violated Condition 3.3.b of the Permit
5 and ORS 468A.045(2) by failing to ensure that a flame was present at all times when biogas was routed
6 to the flare, as described in Section II, Paragraphs 4-8, above. Specifically, during 13% of the total
7 operating time between July 3, 2019 and May 4, 2021 (the equivalent of 87 days), Respondent failed to
8 ensure that a flame was present in the flare to combust the biogas that was flowing through it, and thus
9 released uncontrolled biogas into the atmosphere. These are Class II violations according to OAR 340-
10 012-0054(2)(b). DEQ hereby assesses an \$11,501 civil penalty for these violations.

11 2. From on or before July 3, 2019 to October 13, 2021, Respondent violated Condition 3.3.d of
12 the Permit by failing to keep the Facility's flare connected to a warning signal that is visible to the plant
13 operator, as described in Section II, Paragraphs 9-11, above. These are Class II violations according to
14 OAR 340-012-0054(2)(b). DEQ has not assessed a civil penalty for these violations.

15 3. Respondent violated Condition 7.1.g of the Permit by failing to keep records of flare
16 malfunctions, as described in Section II, Paragraphs 12-13, above. This is a Class II violation according
17 to OAR 340-012-0054(2)(b). DEQ has not assessed a civil penalty for this violation.

18 4. Respondent violated Condition 8.4.a.iii of the Permit by submitting inaccurate annual
19 reports to DEQ, as described in Section II, Paragraphs 7-8 and 14-16, above. Specifically,
20 Respondent's 2019 and 2020 Annual Reports stated that there were no flare malfunctions during those
21 years, despite the fact that the flare was not operating for 13% of the total operating time between July
22 3, 2019 and May 4, 2021. These are Class I violations according to OAR 340-012-0053(1)(b). DEQ
23 hereby assesses a \$7,200 civil penalty for these violations.

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1 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

4 1. Pay a total civil penalty of \$18,701. The determination of the civil penalties are attached as
5 Exhibits 1 and 2 and are incorporated as part of this Notice.

6 If you do not file a request for hearing as set forth in Section V below, your check or money
7 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
8 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

9 2. Within 10 days of this order becoming final by operation of law or on appeal, submit to
10 DEQ for approval a Notice to Construct, to construct a shield tower around the flare at the Facility.

11 3. Within 60 days of DEQ's approval of the Notice to Construct described in Section IV,
12 Paragraph 2, above, complete construction of the shield and submit a Notice of Completion to DEQ
13 according to OAR 340-210-0240(3), including photographs demonstrating that a shield tower has been
14 constructed around the flare as described in the Notice to Construct.

15 4. Written documentation demonstrating compliance with the requirements in Section IV,
16 Paragraphs 2 and 3 above must be sent to Weston Li at weston.li@deq.state.or.us.

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

18 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
19 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
20 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
21 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
22 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
23 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
24 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
25 it to **503-229-6762** or email it to DEQappeals@deq.state.or.us. An administrative law judge
26 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
27 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be

1 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
2 you may represent yourself. If you are a corporation, partnership, limited liability company,
3 unincorporated association, trust or government body, you must be represented by an attorney or a duly
4 authorized representative, as set forth in OAR 137-003-0555.

5 Active duty Service members have a right to stay proceedings under the federal Service
6 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
7 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
8 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
9 Department does not have a toll free telephone number.

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

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19 11 / 10 / 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 Failing to ensure that a flame was present at all times when biogas was routed to the flare, in violation of Condition 3.3.b of the Permit and ORS 468A.045(2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(b).

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 II, 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)(A) because Respondent has an ACDP 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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day is a separate occurrence of the violation. Respondent failed to ensure that a flame was present at all times when biogas was routed to the flare during 13% of the total operating time between at least July 3, 2019 and May 4, 2021.

"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 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. In this case, Respondent failed to ensure that the flare was connected to a warning signal that is visible to the plant operator, as required under Condition 3.3.d. the Permit. Such a warning signal would have alerted operators regarding flare malfunctions. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct resulting in a violation Permit

Condition 3.3.b, which requires that a flame must be present at all times when biogas is routed to the flare.

"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 that the violation would not be repeated. On or about October 13, 2021, Respondent put in place a text messaging warning system to alert operators whenever biogas flow vents to the flare but the thermocouple temperature is too low (currently set at 275 degrees Fahrenheit). When the operators receive a text, they check the digester interface to see if the automatic igniter re-lights the flare (shown by the temperature rising again). If the igniter does not re-light the flare, the operator will manually re-light the flare with a propane torch and check the igniter for proper function.

"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 \$8,101. Of this total, \$94 is the amount Respondent gained by delaying spending approximately \$1,000 to install a text messaging warning system connected to the flare. The warning system should have been installed on or before July 3, 2019, but was actually installed on or about October 13, 2021. \$8,007 is the amount Respondent gained by avoiding spending approximately \$10,000 to install a shield tower around the flare. The shield tower should have been installed on or before July 3, 2019. As of the date of this Notice, the shield tower has not yet been installed. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 4 + 4 + -1)] + \$8,101 \\ &= \$2,000 + (\$200 \times 7) + \$8,101 \\ &= \$2,000 + \$1,400 + \$8,101 \\ &= \$11,501 \end{aligned}$$

EXHIBIT 2

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

- VIOLATION NO. 4 Submitting inaccurate annual reports to DEQ, in violation of Condition 8.4.a.iii of the Permit.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(b).
- 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)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent has an ACDP 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 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Respondent submitted inaccurate annual reports to DEQ for 2019 and 2020. 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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. In this case, Respondent failed to ensure that the flare was connected to a warning signal that is visible to the plant operator, as required under Condition 3.3.d. the Permit. Such a warning signal would have alerted operators regarding flare malfunctions. Even without a warning signal, Respondent could have checked its records of biogas flow to the flare and the temperature of the flare thermocouple to determine if flare malfunctions had occurred. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct

resulting in a violation of Condition 8.4.a.iii of the Permit, which requires Respondent to submit information to DEQ about flare malfunctions in its annual reports.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 2 + 4 + 2)] + \0
 $= \$4,000 + (\$400 \times 8) + \$0$
 $= \$4,000 + \$3,200 + \$0$
 $= \$7,200$