



# 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

February 10, 2021

CERTIFIED MAIL: 7017 0530 0000 7760 2973

Goby Walnut Products, Inc.  
c/o Sussman Shank Registration Services, LLC, Registered Agent  
ATTN: Jeffrey S. Tarr  
1000 SW Broadway, Suite 1400  
Portland, OR 97205

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-NWR-2020-199

***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 total civil penalty of \$9,011 for failing to monitor stormwater discharge for benchmark and impairment pollutants during the 2019-2020 monitoring year as required under the National Pollutant Discharge Elimination System Stormwater Discharge General Permit Number 1200-Z (Permit) at the facility located at 5315 NW St. Helens Road in Portland.

DEQ issued this penalty because monitoring is an important requirement of the Permit and you failed to monitor for Total Suspended Solids (TSS), Polychlorinated biphenyls (PCBs), and dissolved lead. Monitoring may reveal the presence of harmful levels of pollutants that pose a threat to waters of the state. Without monitoring information, DEQ and the public are unable to evaluate the effectiveness of your stormwater controls in protecting water quality.

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](mailto:DEQappeals@deq.state.or.us)

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.

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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 DEQ Environmental Law Specialist Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Aaron Blumenkron, Goby Walnut Products, Inc., 5315 NW St. Helens Rd., Portland, OR 97210  
Laura Johnson, City of Portland, Bureau of Environmental Services  
Christine Svetkovich, Portland Office, DEQ  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 GOBY WALNUT PRODUCTS, INC., ) ASSESSMENT AND ORDER  
5 an Oregon corporation, )  
6 Respondent. ) CASE NO. WQ/SW-NWR-2020-199

7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

13 1. Respondent operates an industrial facility located at 5315 NW St. Helens Road in Portland,  
14 Multnomah County, Oregon (the Facility).

15 2. On or about March 1, 2019, DEQ assigned coverage to Respondent under the National  
16 Pollutant Discharge Elimination System Waste Discharge Permit No. 1200-Z (the Permit). Respondent  
17 was registered under the Permit at all material times.

18 3. The Permit authorizes Respondent to construct, install, modify, or operate stormwater  
19 treatment or control facilities, and to discharge stormwater to surface waters or to conveyance systems  
20 that discharge to surface waters in conformance with all the conditions in the Permit.

21 4. Schedule B of the Permit requires registrants to monitor its stormwater through grab  
22 sampling for various parameters. Specifically, Schedule B, Condition 1 of the Permit requires  
23 registrants to monitor for the benchmark pollutants identified in Schedule A, Condition 9; applicable  
24 sector-specific pollutants identified in Schedule E; and impairment pollutants specified in the permit  
25 assignment letter. Schedule B, Condition 2.a requires registrants to conduct sampling at each discharge  
26 point monitored.

27 ///

1 5. Schedule B, Condition 2.f of the Permit requires registrants to monitor for benchmark  
2 pollutants and impairment pollutants, where there is no approved monitoring waiver, at a frequency of  
3 four times per monitoring year (July 1 through June 30), with two samples before December 31 and  
4 two samples after January 1.

5 6. During the 2019-2020 monitoring year, Respondent monitored its stormwater discharge for  
6 Total Suspended Solids (TSS) and Polychlorinated biphenyls (PCBs), from discharge points 002, 003,  
7 004, 005, and 006 for only two of the required four sampling events.

8 7. During the 2019-2020 monitoring year, Respondent monitored its stormwater discharge for  
9 dissolved lead from discharge points 002, 003, 004, 005, and 006 for only three out of the required four  
10 sampling events.

### 11 III. CONCLUSION

12 Respondent has violated Schedule B, Conditions 1 and 2 of the Permit and ORS 468B.025(2) by  
13 failing to collect monitoring data during the 2019-2020 monitoring year for TSS and PCBs on two of the  
14 required four occasions at five discharge points and dissolved lead on one of the required four occasions at  
15 five discharge points, as described in Section II, Paragraphs 1-7 above. According to OAR 340-012-  
16 0055(1)(o), these are Class I violations. DEQ hereby assesses a \$9,011 civil penalty for these violations.

### 17 IV. ORDER TO PAY CIVIL PENALTY

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

20 Pay a civil penalty of \$9,011. The determination of the civil penalty is attached as Exhibit No. 1  
21 and 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 order  
23 must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business Office,**  
24 **700 NE Multnomah Street, Suite #600, Portland, Oregon 97232.**

### 25 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

26 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
27 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If

1 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
2 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered  
3 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
4 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
5 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
6 it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge  
7 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
8 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
9 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
10 you may represent yourself. If you are a corporation, partnership, limited liability company,  
11 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
12 authorized representative, as set forth in OAR 137-003-0555.

13 Active duty Service members have a right to stay proceedings under the federal Service  
14 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
15 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
16 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
17 Department does not have a toll free telephone number.

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

24  
25  
26 2/10/2021  
Date

27 Kieran O'Donnell  
Kieran O'Donnell, Manager  
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: Failure to conduct monitoring in violation of Schedule B, Conditions 1 and 2 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), 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 2 according to OAR 340-012-0145(2)(a)(C). Respondent had a Class I violation in EEO No. WQ/SW-NWR-2019-253.

"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 (4)(b) through (4)(d).

"O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(a), because there were from seven to 28 occurrences of the violation. Each missed sampling event from each discharge point constitutes a separate occurrence. During the 2019-2020 monitoring period, Respondent failed to conduct required monitoring of its stormwater discharge on two occasions at five discharge points, which is ten 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 holds an NPDES 1200-Z Permit, which specifically requires that it collect and analyze stormwater samples according to the conditions in Schedule B. When Respondent failed to conduct monitoring on two occasions at five outfalls during the 2019-2020 monitoring year, it failed to take

reasonable care to avoid a foreseeable risk that it would violate the Permit and Oregon environmental law.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(a)(D), because the violation or the effects of the violation could not be corrected or minimized.

"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 \$1,411. This is the amount Respondent gained by avoiding spending \$1,856 to analyze ten stormwater samples for the missed parameters. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$4,000 + [(0.1 x \$4,000) x (2 + 0 + 3 + 4 + 0)] + \$1,411  
= \$4,000 + [\$400 x 9] + \$1,411  
= \$4,000 + \$3,600 + \$1,411  
= \$9,011