



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
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Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

May 2, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5579

Trident Seafoods Corporation
c/o CT Corporation System, Registered Agent
388 State Street, Suite 420
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-WR-16-024

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$14,309 for failing to monitor your wastewater effluent as required by the wastewater discharge permits for your fish meal and surimi facilities in Newport, Oregon. Trident Seafoods also failed to timely report noncompliance to DEQ, as required by its permit.

DEQ issued this penalty because Trident Seafoods' obligation to fulfill mandatory monitoring and reporting conditions is important. Without monitoring data, DEQ and the public are unable to determine the effectiveness of the wastewater treatment systems in the facilities and whether you are meeting permit limits.

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. 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 Jeff Bachman, at (503) 229-5950. You may call toll-free within Oregon at 1-800-452-4011, extension 5950.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Timothy C. McFetridge, Western Region, Salem Office, DEQ
John Koestler, HQ, DEQ

1 5. The Surimi and Fish Meal permits were in effect at all material times.

2 6. Schedule B, Condition 1.A of the Fish Meal permit requires Respondent to monitor its
3 wastewater effluent at the Fish Meal facility for biochemical oxygen demand (BOD), total suspended
4 solids (TSS), and Oil and Grease (O&G) at least once a month.

5 7. Respondent did not monitor effluent BOD, TSS, and O&G in October 2015 at the Fish Meal
6 facility.

7 8. Schedule B, Condition 1.b of the Surimi permit requires Respondent to monitor its
8 wastewater effluent at the Surimi facility for total residual chlorine, dissolved oxygen, BOD, TSS, and
9 O&G once per week.

10 9. Respondent did not monitor Surimi facility effluent BOD, TSS, and O&G for the first week
11 of October 2015.

12 10. Respondent did not monitor Surimi facility effluent total residual chlorine, dissolved
13 oxygen, BOD, TSS and O&G for the first week of January 2016.

14 11. Schedule B, Condition 1.c of the Surimi permit requires Respondent to monitor its effluent
15 at the Surimi facility for pH daily.

16 12. Respondent did not monitor its Surimi facility effluent pH levels on January 4, 5, 7, 8, 28
17 and 29, 2016.

18 13. Schedule B, Condition 1.d of the Surimi permit requires Respondent to monitor its
19 wastewater at the Surimi facility by performing daily screen inspections when discharging effluent.

20 14. Respondent discharged effluent from the Surimi facility on January 4, 5, 7, 8, 11, 12, 16, 18,
21 19, 22, 23, 28 and 29, 2016.

22 15. Respondent did not perform daily screen inspections on January 4, 5, 7, 8, 11, 12, 16, 18,
23 19, 22, 23, 28 and 29, 2016, at the Surimi facility.

24 16. Schedule F, Section D, Condition 6 of the Fish Meal permit requires Respondent to report
25 information regarding noncompliance to DEQ by the 15th day of the month following the violation's
26 occurrence.

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1 17. Respondent did not report its failure to monitor effluent BOD, TSS, and O&G in October
2 2015 at the Fish Meal facility to DEQ by November 15, 2015.

3 III. CONCLUSIONS

4 1. In October 2015, Respondent violated Condition 1.A of Schedule B of the Fish Meal permit
5 and ORS 468B.025(2), by failing to conduct effluent monitoring as required by the Fish Meal permit,
6 as described in Section II above. These are Class I violations, according to OAR 340-012-0055(1)(o).
7 DEQ hereby assesses a \$6,903 civil penalty for these violations.

8 2. In October 2015 and January 2016, Respondent violated Conditions 1.b and 1.d of Schedule B
9 of the Surimi permit and ORS 468B.025(2), by failing to conduct effluent monitoring and screen
10 inspections as required by the Surimi permit, as described in Section II above. These are Class I
11 violations, according to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$7,406 civil penalty for these
12 violations.

13 3. On November 15, 2015, Respondent violated Schedule F, Section D, Condition 6 of the Fish
14 Meal permit, and ORS 468B.025(2), by failing to timely report noncompliance to DEQ, as described in
15 Section II above. These are Class II violations according to OAR 340-012-0055(2)(b). DEQ does not
16 assess a 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 total civil penalty of \$14,309. The determinations of the civil penalties are attached as
21 Exhibits 1 and 2 and are 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 **811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty, the Findings of Fact,
25 Conclusions and Order become final.

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

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

14 Active duty service-members have a right to stay proceedings under the federal Service
15 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
16 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
17 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
18 <http://legalassistance.law.af.mil/content/locator.php>.

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

25
26 May 2, 2016
Date

27 Leah K. Feldon for
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: Failing to collect monitoring data for BOD, TSS, and O&G at the Fish Meal facility in violation of Schedule B, Condition 1.a of the Fish Meal permit 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 a 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 0. Respondent has two Class I equivalent prior significant actions, stemming from Case Nos. WQ/I-WR-06-027 and WQ/I-WR-09-138, for an initial P value of 3. This value is reduced by 4, however, as the cases were issued more than five years before the current violations occurred. According to OAR 340-012-0145(2)(e), the "P" value may not be less than 0, resulting in a final P value of 0.

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

"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 three separate 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 was aware of the obligation to monitor and provide a DMR for its processing facilities under Schedule B of the permit, and Respondent had complied with the permit monitoring requirements in the prior months. By failing to take the necessary action to ensure that it conducted the required

monitoring, Respondent failed to exercise reasonable care to avoid the foreseeable risk of a violation of the permit.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f), 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 \$103. This is the amount Respondent gained by avoiding spending \$165 to monitor and report effluent BOD, TSS, and O&G. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 1 + 2 + 4 + 0)] + \$103 \\ &= \$4,000 + [\$400 \times 7] + \$103 \\ &= \$4,000 + \$2,800 + \$103 \\ &= \$6,903 \end{aligned}$$

EXHIBIT 2

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

VIOLATION 2: Failing to collect monitoring data for total residual chlorine, dissolved oxygen, BOD, TSS, O&G, and pH, and conduct screen inspections at the Surimi facility in violation of Schedule B, Conditions 1.b and 1.d of the Surimi permit 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)(ii), because Respondent has a Tier 2 industrial source NPDES 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. Respondent has two Class I equivalent prior significant actions, stemming from Case Nos. WQ/I-WR-06-027 and WQ/I-WR-09-138, for an initial P value of 3. This value is reduced by 4, however, as the cases were issued more than five years before the current violations occurred. According to 340-012-0145(2)(e), the "P" value may not be less than 0 resulting in a P value of 0.

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

"O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c), because there were 27 separate 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 was aware of the obligation to monitor and provide a DMR for its processing facilities under Schedule B of the permit, and Respondent had complied with the permit monitoring requirements in the prior months. By failing to take the necessary action to ensure that it conducted the required

monitoring. Respondent failed to exercise reasonable care to avoid the foreseeable risk of a violation of the permit.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f), 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 \$206. This is the amount Respondent gained by avoiding spending \$330 to monitor and report effluent BOD, TSS, and O&G in October 2015 and January 2016. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 1 + 3 + 4 + 0)] + \$206 \\ &= \$4,000 + [\$400 \times 8] + \$206 \\ &= \$4,000 + \$3,200 + \$206 \\ &= \$7,406 \end{aligned}$$