



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW 6th Ave
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

May 3, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 3020

Pacific Foods of Oregon, Inc.
c/o Kaye Barnes, Registered Agent
9955 SW Potano St.
Tualatin, OR 97062

CERTIFIED MAIL: 7014 2870 0001 3378 3037

Law Office of Bryan P. Coluccio, P.S.
c/o Bryan Coluccio, Attorney for Respondent
999 Third Avenue, Suite 3000
Seattle, WA 98104

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-16-029

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Pacific Foods of Oregon, Inc., (Pacific Foods) a civil penalty of \$17,400 for discharging process wastewater into Hedges Creek Wetland without a permit.

DEQ issued this penalty because Pacific Foods' unpermitted discharges of process wastewater from its food processing operation were high in biochemical oxygen demand and have a pH which makes them harmful to fish and other aquatic life in receiving waters. By causing or allowing its process wastewater to discharge into its stormwater conveyance system and directly into Hedges Creek Wetland, Pacific Foods created a risk of harm to aquatic life.

Included in Section IV of the attached Notice of Civil Penalty Assessment and Order is an order requiring Pacific Foods to comply with Oregon law by submitting to DEQ a written plan, designed and stamped by a licensed professional engineer (PE) or certified engineer geologist (CEG) that details the actions it will take to prevent further discharges of wastes from the facility to its stormwater conveyance system and Hedges Creek Wetland.

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.

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 Kieran O'Donnell, at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Celeste Schlegel, Clean Water Services
Christine Svetkovich, NWR, DEQ
John Koestler, WQ, HQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	PACIFIC FOODS OF OREGON, INC.)	ASSESSMENT AND ORDER
	<i>an Oregon corporation</i>)	
5)	CASE NO. WQ/SW-NWR-16-029
	Respondent.)	

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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 Chapter 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 19550 SW 97th Avenue, Tualatin,
14 Oregon 97062 (the Facility).
- 15 2. The Facility is located adjacent to Hedges Creek Wetland (the Wetland).
- 16 3. On or about August 21, 2012, DEQ assigned Respondent coverage under the NPDES
17 Stormwater General Permit Number 1200-Z (the Permit), which authorizes Respondent to discharge
18 stormwater from its Facility only in conformance with the requirements, limitations, and conditions set
19 forth in the Permit.
- 20 4. DEQ issued the Permit pursuant to ORS 468B.050 and the Federal Clean Water Act.
- 21 5. Pursuant to Condition 7(c) of the Permit, the Respondent is not authorized to discharge
22 wastewater, including stormwater mixed with wastewater.
- 23 6. On or about January 28, 2016, Respondent discharged approximately 15 gallons of soy milk
24 to the Wetland.
- 25 7. On or about April 25, 2016, Respondent discharged approximately 80 gallons of processed
26 food waste water into the Wetlands.

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1 III. CONCLUSIONS

2 Respondent has violated ORS 468B.050(1)(a) by discharging wastes into waters of the state
3 without a waste discharge permit issued by DEQ allowing that discharge, as described in Section II
4 above. Specifically, Respondent discharged soy milk and processed food waste water from its Facility
5 to the Wetland on or about January 28, 2016 and April 25, 2016, respectively. Both the soy milk and
6 the processed food waste water were "wastes" as defined by ORS 468B.005(9) because they were
7 liquid substances that may alter the physical, chemical, or biological properties of the Wetland. The
8 Wetland is "waters of the state" pursuant to ORS 468B.005(10), because it is a body of surface water.
9 The Permit does not authorize these wastewater discharges to the Wetland. These are Class I violations
10 according to OAR 340-012-0055(1)(c). DEQ hereby assesses a \$17,400 civil penalty for these violations.

11 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

14 1. Pay a total civil penalty of \$17,400. The determination of the civil penalty is attached as
15 Exhibit No. 1 and is incorporated as part of this Notice. If you do not file a request for hearing as set forth
16 in Section V below, your check or money order must be made payable to "**State Treasurer, State of**
17 **Oregon**" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**.
18 Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

19 2. Comply with Oregon Law by doing the following:

20 a. By no later than 45 days after this Notice becomes a Final Order, Respondent must
21 submit to DEQ a written plan (the Plan) for approval, designed and stamped by a
22 licensed professional engineer (PE) or certified engineer geologist (CEG) with at least
23 the following elements:

24 i. Facility-wide measures to prevent the ongoing spill and discharge of wastes and
25 process waste water from the Facility to the Facility's stormwater conveyance
26 system and the Wetland,

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1 ii. An explanation of how the selected measures are expected to prevent wastewater
2 discharge, and

3 iii. A schedule for implementing these spill and discharge prevention measures.

4 b. Once DEQ has approved the Plan, Respondent must implement the Plan according to
5 the Plan's approved implementation schedule.

6 3. Written documentation demonstrating Respondent's compliance with Section IV, paragraph 2
7 must be sent to:

8 Department of Environmental Quality
9 c/o Michael Kennedy
10 700 NE Multnomah St., Suite #600
11 Portland, OR 97232

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

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

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

6 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
7 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
8 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
9 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
10 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
11 information submitted by you, as the record for purposes of proving a prima facie case.
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15 May 3, 2016
16 Date

15 Susan Wheeler for
16 Leah K. Feldon, 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: Discharging wastes into a water of the state without a waste discharge permit issued by DEQ allowing that discharge, in violation of ORS 468B.050(1)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(c).

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 \$6,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D) because Respondent does not have an NPDES permit that authorizes discharging process wastewater into waters of the state.

"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 9 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had eight Class I violations in Case No. WQ/SW-NWR-15-131.

"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 (3)(a) or (b).

"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. Each day of violation constitutes a separate occurrence. The violation occurred on January 28, 2016, and April 25, 2016. Therefore, there were two occurrence of the violation.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent has received detailed and consistent technical assistance from Clean Water Services regarding the discharges of waste and the proper implementation of the NPDES Stormwater General Permit Number 1200-Z. In addition, within the past year, DEQ issued Respondent a Notice of Civil Penalty

Assessment and Order citing eight similar violations, each for the illegal discharge of process waste water to the wetland. Despite detailed and consistent technical assistance from Clean Water Services, and the formal enforcement action from DEQ, the Respondent has consciously disregarded a substantial and unjustifiable risk that its handling of process wastewater would lead to an additional illicit discharge.

"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 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 \$0 because DEQ does not have sufficient information to make an estimate under OAR 340-012-0150.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (9 + 0 + 2 + 8 + 0)] + \$0 \\ &= \$6,000 + [\$600 \times 19] + \$0 \\ &= \$6,000 + \$11,400 + \$0 \\ &= \$17,400 \end{aligned}$$