



Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah Street, Suite 600

Portland, OR 97232

(503) 229-5382

FAX (503) 229-5787

TTY 711

August 10, 2018

CERTIFIED MAIL: 7016 3010 0000 6028 6824

Trident Seafoods Corporation
c/o CT Corporation System, Registered Agent
780 Commercial Street, SE, Suite 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-WR-2018-061

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$43,200 for exceeding pollution limits in the wastewater discharge permit for your facility at 623 Yaquina Bay Boulevard in Newport, Oregon. The pollution limits in your permit are set to protect aquatic life and human health. Compliance with the permit terms is essential to protecting the quality of our public waters. You were previously penalized in 2017 for violating the same limits.

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 – 503-229-5100

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 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.

Trident Seafoods Corporation
Case No. WQ/I-WRE-2018-016
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If you have any questions, please contact Jeff Bachman at 503-229-5950 or toll free in Oregon at 800-452-4011, extension 5950.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell".

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Tim McFetridge, P.E., Salem Office, Western Region, DEQ
Ranei Nomura, Salem Office, Western Region, DEQ
Accounting, HQ, DEQ
John Koestler, WQ, DEQ

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

3 IN THE MATTER OF:)
4 TRIDENT SEAFOODS CORPORATION,) NOTICE OF CIVIL PENALTY
a Washington corporation,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ/I-WR-2018-061

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 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012
10 and 045.

11 II. FINDINGS OF FACT

12 1. At all relevant times, Respondent owned and operated a seafood processing plant
13 located at 623 Yaquina Bay Boulevard in Newport, Oregon (the Facility).

14 2. At all relevant times, Respondent was authorized to operate an industrial wastewater
15 collection, treatment, control, and disposal system and discharge adequately treated wastewater to
16 waters of the state only in conformance with National Pollutant Discharge Elimination System
17 (NPDES) Waste Discharge Permit Number 101805 (the Permit) for the Facility issued to Respondent
18 by DEQ pursuant to ORS 468B.050 on December 29, 2005.

19 3. Schedule A of the Permit establishes daily maximum and monthly average pollutant
20 load limits for oil and grease (O&G), biochemical oxygen demand (BOD₅) and total suspended solids
21 (TSS) not to be exceeded in Respondent's discharged effluent.

22 4. Respondent has discharged pollutant loads from the Surimi Facility to Yaquina Bay as
23 follows:

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Date or Month	Parameter	Permit Limit in pounds	Loading in Pounds	% Over Limit
07/06/17	O&G Daily Maximum	379	1,711	351%

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Date or Month	Parameter	Permit Limit in pounds	Loading in Pounds	% Over Limit
07/20/17	BOD ₅ Daily Maximum	4,106	9,342	128%
07/20/17	TSS Daily Maximum	1,674	5,854	250%
07/20/17	O&G Daily Maximum	379	1,264	234%
07/27/17	BOD ₅ Daily Maximum	4,106	6,991	70%
July 2017	BOD ₅ Monthly Average	2,369	5,486	132%
July 2017	TSS Monthly Average	916	4,007	337%
July 2017	O&G Monthly Average	148	955	545%
08/03/17	BOD ₅ Daily Maximum	4,230	6,833	61%
08/03/17	TSS Daily Maximum	1,724	1,653	182%
08/03/17	O&G Daily Maximum	390	1,094	180%
08/10/17	BOD ₅ Daily Maximum	4,230	7,507	77%
08/10/17	TSS Daily Maximum	1,724	4,939	186%
08/10/17	O&G Daily Maximum	390	1,334	242%
08/17/17	BOD ₅ Daily Maximum	4,230	9,903	136%
08/17/17	TSS Daily Maximum	1,724	6,019	249%
08/17/17	O&G Daily Maximum	390	1,834	370%
08/24/17	BOD ₅ Daily Maximum	4,230	4,614	9%
08/24/17	TSS Daily Maximum	1,724	2,672	35%
08/24/17	O&G Daily Maximum	390	1,356	248%
August 2017	BOD ₅ Monthly Average	2,440	6,074	60%
August 2017	TSS Monthly Average	944	3,949	318%

	Date or Month	Parameter	Permit Limit in pounds	Loading in Pounds	% Over Limit
1					
2					
3	09/06/17	O&G Daily Maximum	400	562	41%
4	09/06/17	TSS Daily Maximum	1,768	2,633	49%
5	09/13/17	BOD ₅ Daily Maximum	4,337	7,990	84%
6	09/13/17	TSS Daily Maximum	1,768	5,091	188%
7					
8	09/13/17	O&G Daily Maximum	400	1,477	269%
9	09/19/17	BOD ₅ Daily Maximum	4,337	12,478	188%
10	09/19/17	TSS Daily Maximum	1,768	7,191	307%
11	09/19/17	O&G Daily Maximum	400	1,887	372%
12	09/28/17	BOD ₅ Daily Maximum	4,337	8,264	91%
13	09/28/17	TSS Daily Maximum	1,768	4,947	180%
14					
15	09/28/17	O&G Daily Maximum	400	2,083	421%
16	September 2017	BOD ₅ Monthly Average	2,502	8,111	224%
17	September 2017	TSS Monthly Average	967	4,966	414%
18	September 2017	O&G Monthly Average	157	1503	857%
19	10/05/17	BOD ₅ Daily Maximum	3,248	11,043	240%
20	10/05/17	TSS Daily Maximum	1,324	6,271	374%
21					
22	10/05/17	O&G Daily Maximum	300	2,564	755%
23	10/13/17	BOD ₅ Daily Maximum	3,248	5,693	75%
24	10/13/17	TSS Daily Maximum	1,324	3,463	162%
25	10/13/17	O&G Daily Maximum	300	759	153%
26	10/18/17	BOD ₅ Daily Maximum	3,248	6,734	107%
27	10/18/17	TSS Daily Maximum	1,324	4,756	259%

Date or Month	Parameter	Permit Limit in pounds	Loading in Pounds	% Over Limit
10/18/17	O&G Daily Maximum	300	818	173%
10/26/17	TSS Daily Maximum	1,324	1,430	8%
10/26/17	O&G Daily Maximum	300	690	130%
October 2017	BOD ₅ Monthly Average	1,874	6,526	248%
October 2017	TSS Monthly Average	725	3,980	449%
October 2017	O&G Monthly Average	117	1,208	932%

III. CONCLUSIONS

1. Respondent violated ORS 468B.025(2) by violating a condition of its wastewater discharge permit. Specifically, Respondent violated Schedule A of the Permit when it discharged BOD₅ in excess of the permitted level to Yaquina Bay, a water of the state, from the Facility as described in Section II above. Those occurrences that exceeded the limit by 50% or more are Class I violations pursuant to OAR 340-012-0055(1)(k)(A). The occurrence that exceeded the limit by less than 20% is a Class III violation pursuant to OAR 340-012-0055(3)(b)(A). DEQ assesses a \$14,400 civil penalty for these violations.

2. Respondent violated ORS 468B.025(2) by violating a condition of its wastewater discharge permit. Specifically, Respondent violated Schedule A of the Permit when it discharged TSS in excess of the permitted level to Yaquina Bay, a water of the state, from the Facility as described in Section II above. Those occurrences which exceeded the limit by 50% or more are Class I violations pursuant to OAR 340-012-0055(1)(k)(A). Those occurrences that exceeded the limit by 20% or more, but less than 50% are Class II violations pursuant to OAR 340-012-0055(2)(a)(A). DEQ assesses a \$14,400 civil penalty for these violations.

3. Respondent violated ORS 468B.025(2) by violating a condition of its wastewater discharge permit. Specifically, Respondent violated Schedule A of the Permit when it discharged oil

1 and grease in excess of the permitted level to Yaquina Bay, a water of the state, from the Facility as
2 described in Section II above. Those occurrences that exceeded the limit by 50% or more are Class I
3 violations pursuant to OAR 340-012-0055(1)(k)(A). The occurrence that exceeded the limit by 10% or
4 more, but less than 50% are Class II violations pursuant to OAR 340-012-0055(2)(a)(A). DEQ
5 assesses a \$14,400 penalty for these violations.

6 IV. ORDER TO PAY CIVIL PENALTY

7 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
8 hereby ORDERED TO: Pay a total civil penalty of \$43,200. The determinations of the civil penalties are
9 attached as Exhibit 1, 2 and 3 and are incorporated as part of this Notice.

10 If you do not file a request for hearing as set forth in Section V below, your check or money
11 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
12 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty,
13 the Findings of Fact, Conclusions and Order become final.

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

15 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
16 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
17 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
18 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
19 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
20 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
21 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
22 it to **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
23 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
24 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
25 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
26 you may represent yourself. If you are a corporation, partnership, limited liability company,
27 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.

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

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15 8/10/18
16 Date

15 
16 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 1: Exceeding permit effluent limits for BOD₅ in violation of Schedule A of the permit and ORS 468B.025(2).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(k)(A).

MAGNITUDE: The magnitude of the violations is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving water.

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 I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(ii) as Respondent has a Tier II industrial source 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 10 pursuant to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of more than eight Class I equivalent violations stemming from Case Nos. WQ/I-WR-16-024 and WQ/I-WR-16-252.

"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 0 according to OAR 340-012-0145(4)(e) because Respondent is being assessed separate penalties for multiple 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 penalized for BOD₅ violations in 2017, but failed to exercise reasonable care to avoid the foreseeable risk of committing the violations cited in the Notice by upgrading its wastewater treatment facilities.

"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 its effects 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 as DEQ does not have sufficient information as to specific upgrades needed by Respondent to arrive at a reasonable estimate of delayed or avoided costs.

PENALTY CALCULATION:

Single Violation Calculation

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] \\ &= \$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 0 + 4 + 0)] \\ &= \$2,000 + [(\$200 \times 14)] \\ &= \$2,000 + \$2,800 \\ &= \$4,800 \end{aligned}$$

Pursuant to ORS 468.140(2), each day of violation constitutes a separate violation. Of the 15 occurrences of the violation, DEQ elects to assess gravity-based separate penalties for three of the Class I violations. Respondent's final civil penalty is calculated by multiplying the number of violations for which a gravity-based penalty is assessed, 3, by the amount of penalty for a single violation, \$4,800, for a total civil penalty of \$14,400.

EXHIBIT 2

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

VIOLATION 2: Exceeding permit effluent limits for TSS in violation of Schedule A of the permit and ORS 468B.025(2).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(k)(A).

MAGNITUDE: The magnitude of the violations is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving water.

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 I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(ii) as Respondent has a Tier II industrial source 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 10 pursuant to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of more than eight Class I equivalent violations stemming from Case Nos. WQ/I-WR-16-024 and WQ/I-WR-16-252.

"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 0 according to OAR 340-012-0145(4)(e) because Respondent is being assessed separate penalties for multiple 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 penalized for TSS violations in 2017, but failed to exercise reasonable care to avoid the foreseeable risk of committing the violations cited in the Notice by timely upgrading its wastewater treatment facilities.

"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 its effects 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 as DEQ does not have sufficient information as to specific upgrades needed by Respondent to arrive at a reasonable estimate of delayed or avoided costs.

PENALTY CALCULATION:

Single Violation Calculation

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] \\ &= \$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 0 + 4 + 0)] \\ &= \$2,000 + [(\$200 \times 14)] \\ &= \$2,000 + \$2,800 \\ &= \$4,800\end{aligned}$$

Pursuant to ORS 468.140(2), each day of violation constitutes a separate violation. Of the 17 occurrences of the violation, DEQ elects to assess gravity-based separate penalties for three of the Class I violations. Respondent's final civil penalty is calculated by multiplying the number of violations for which a gravity-based penalty is assessed, 3, by the amount of penalty for a single violation, \$4,800, for a total civil penalty of \$14,400.

EXHIBIT 3

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

VIOLATION 3: Exceeding permit effluent limits for oil and grease in violation of Schedule A of the permit and ORS 468B.025(2).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(k)(A).

MAGNITUDE: The magnitude of the violations is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving water.

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 I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(ii) as Respondent has a Tier II industrial source 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 10 pursuant to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of more than eight Class I equivalent violations stemming from Case Nos. WQ/I-WR-16-024 and WQ/I-WR-16-252.

"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 0 according to OAR 340-012-0145(4)(e) because Respondent is being assessed separate penalties for multiple 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 penalized for oil and grease violations in 2017, but failed to exercise reasonable care to avoid the foreseeable risk of committing the violations cited in the Notice by upgrading its wastewater treatment facilities.

"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 its effects 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 as DEQ does not have sufficient information as to specific upgrades needed by Respondent to arrive at a reasonable estimate of delayed or avoided costs.

PENALTY CALCULATION:

Single Violation Calculation

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] \\ &= \$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 0 + 4 + 0)] \\ &= \$2,000 + [(\$200 \times 14)] \\ &= \$2,000 + \$2,800 \\ &= \$4,800 \end{aligned}$$

Pursuant to ORS 468.140(2), each day of violation constitutes a separate violation. Of the 17 occurrences of the violation, DEQ elects to assess gravity-based separate penalties for three of the Class I violations. Respondent's final civil penalty is calculated by multiplying the number of violations for which a gravity-based penalty is assessed, 3, by the amount of penalty for a single violation, \$4,800, for a total civil penalty of \$14,400.