



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

July 18, 2018

Certified Mail No. 7016 0750 0000 3470 2565

Paul Silva
Organic Valley McMinnville Creamery
700 N. Highway 99W
McMinnville, OR 97128

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2017-223

Dear Mr. Silva,

Please find enclosed a copy of the Notice referenced above. We sent the original Notice to the agent for service listed for Cooperative Regions of Organic Producer Pools with the Oregon Secretary of State, but it was returned as undeliverable. We understand you are the correct person at the facility to receive these documents. If you have any questions, please contact me at 503-229-5692 or toll free in Oregon at 800-452-4011, extension 5692.

Sincerely,

Jane K. Hickman, Environmental Law Specialist
Office of Compliance and Enforcement



Oregon

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Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5382
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June 27, 2018

CERTIFIED MAIL: 7016 3010 0000 6028 6473

Cooperative Regions of Organic Producer Pools
c/o National Registered Agents, Inc.
388 State Street, Suite 420
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-WR-2018-068

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Cooperative Regions of Organic Producer Pools a civil penalty totaling \$7,800 for discharging wastes into waters of the state from the Organic Valley McMinnville Creamery located at 700 N. Highway 99W in McMinnville. On April 4, 2018, a silo at the creamery overflowed and spilled approximately 7,500 gallons of process wastewater that entered the storm system and an unnamed tributary of the South Yamhill River.

DEQ issued this penalty because the spill of milk products, particularly when in large quantities, may decrease the oxygen level available to aquatic life and cause fish and other aquatic species to suffocate.

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 the hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail – 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232

Via fax – 503-229-5100

Via email – DEQappeals@deq.state.or.us

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 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>.

Cooperative Regions of Organic Producer Pools
Case No. WQ/I-WR-2018-068
Page 2

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 Jane Hickman at 503-229-5692 or toll free in Oregon at 800-452-4011, extension 5692.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Timothy McPetridge, DEQ, Western Region, Salem Office
Ranei Nomura, DEQ, Western Region, Eugene Office
Shaumae Hall, Accounting, DEQ
John Koestler, WQ, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 COOPERATIVE REGIONS OF ORGANIC) ASSESSMENT AND ORDER
5 a foreign business corporation,)
Respondent.) CASE NO. WQ/I-WR-2018-068

6
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, ORS Chapter 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions
11 011, 012, and 045.

12 II. FINDINGS OF FACT

13 1. Respondent owns and operates the Organic Valley McMinnville Creamery located at
14 700 North Highway 99W in McMinnville, Oregon (the Facility).

15 2. On April 4, 2018, a silo at the Facility overflowed and spilled approximately 7,500
16 gallons of process wastewater to the storm sewer system and an unnamed tributary of the South
17 Yamhill River, which is a water of the state as defined in ORS 468B.005(10).

18 3. Respondent reported the spill to the Oregon Emergency Response System on April 5,
19 2018.

20 4. Respondent does not have any permit authorizing discharge of process wastewater to
21 waters of the state.

22 III. CONCLUSIONS

23 5. On April 4, 2018, Respondent violated ORS 468B.050(1)(a) and OAR 340-045-
24 0015(1)(a) by discharging wastes into waters of the state without first obtaining a permit from DEQ.
25 Specifically, Respondent discharged process wastewater into the stormwater system and an unnamed
26 tributary of the South Yamhill River. The Facility is a commercial creamery. Process wastewater from
27 the Facility is "wastes" pursuant to ORS 468B.005(9), as it tends to cause pollution to waters of the

1 state. The unnamed tributary of the South Yamhill River is a "water of the state" as defined in ORS
2 468B.005(10) because it is a stream, creek or river. Respondent does not have any permit authorizing
3 discharge of process wastewater to waters of the state. This is a Class I violation according to OAR
4 340-012-0055(1)(c). DEQ hereby assesses a \$7,800 civil penalty for this violation.

5 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

8 Pay a total civil penalty of \$7,800. The determination of the civil penalty is attached as Exhibit
9 No. 1 and is 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 exhibit, 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,

1 unincorporated association, trust or government body, you must be represented by an attorney or a duly
2 authorized representative, as set forth in OAR 137-003-0555.

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

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

14
15
16
17 6/27/18
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: Discharging wastes into waters of the state from an industrial or commercial establishment or activity, in violation of ORS 468B.050(1)(a) and OAR 340-045-0015(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), because there is no applicable selected magnitude and there is no evidence showing the magnitude is major under paragraph (3) or minor under paragraph (4).
- 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, moderate 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 violated ORS 468B.050(1)(a) and does not hold an 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 according to OAR 340-012-0145(2)(a)(A) and (2)(f) because all of Respondent's prior significant actions are more than 10 years old.
- "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 0 according to OAR 340-012-0145(4)(a) because there was one occurrence of the violation. Each day of violation constitutes a separate occurrence. The violation occurred on one day, April 4, 2018.
- "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. "Negligent" means that Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent failed to have an alarm to warn employees when the silo was getting full. In addition, Respondent should have capped the blower agitation line when the blower was removed for repair. Respondent has had other spills at this Facility, yet failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

"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. Respondent has installed an alarm to notify Respondent when the tank volume is at 85% capacity so that overflows will no longer occur.

"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 determine the amount of any economic benefit Respondent gained from these violations.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 4 - 1)] + \$0 \\ &= \$6,000 + (\$600 \times 3) + \$0 \\ &= \$6,000 + \$1,800 + \$0 \\ &= \$7,800 \end{aligned}$$

