



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

September 30, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5086

Del Monte Fresh Produce
c/o CT Corporation System
780 Commercial St SE, Ste. 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-SW-NWR-2022-533

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$9,322 for failing to timely install Tier 2 corrective actions as required by the National Pollutant Discharge Elimination System Industrial Stormwater Discharge General Permit, No. 1200-Z (the Permit) at the facility located at 9243 N Rivergate Blvd in Portland, Oregon (the Facility).

DEQ issued this penalty because complying with Tier 2 corrective actions is essential to reducing pollutant concentrations in industrial stormwater runoff. A Tier 2 Corrective Action Response was triggered by multiple exceedances of statewide pollutant benchmarks. Permit benchmarks are established to protect both aquatic life and human health. Benchmark exceedances pose a threat to waters of the state, and corrective actions are essential to preventing further risk of harm.

DEQ appreciates your efforts to correct the violation by eventually implementing Tier 2 corrective actions by installing new catch basin filters. DEQ considered these efforts when determining the amount of civil penalty.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

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.oregon.gov

Via fax – 503-229-6762

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.

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 Emily Knobbe at 971-300-9770.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Del Monte Fresh Produce, c/o Daniel Plunkett, 9243 N Rivergate Blvd, Portland, OR 97203
Ellen Dorsey, Bureau of Environmental Services, City of Portland,
ellen.dorsey@portlandoregon.gov
Accounting, DEQ

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

3 IN THE MATTER OF:)
4 DEL MONTE FRESH PRODUCE,)
5 Respondent.) NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER
CASE NO. WQ-SW-NWR-2022-533

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 Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
10 011, 012, and 045.

11 II. FINDINGS OF FACT

12 1. Respondent is registered under the National Pollutant Discharge Elimination System
13 Industrial Stormwater Discharge General Permit No. 1200-Z (the Permit) for the facility located at
14 9243 N Rivergate Blvd in Portland, Oregon (the Facility).

15 2. Pursuant to Schedule A.12.e.i and Schedule A.12.f.iii of the Permit, Respondent
16 submitted a Stormwater Corrective Action Tier 2 Report (the Report) which proposed installation of
17 new Filtrexx StormExx CLEAN filter inserts in the seven Facility catch basins. The deadline for the
18 implementation of the corrective actions was June 30, 2021.

19 3. On March 2, 2022, the City of Portland Bureau of Environmental Services (BES)
20 inspected the Facility. At the time of the inspection, all catch basins had old filters that had not been
21 replaced with new Filtrexx StormExx CLEAN filter inserts.

22 4. Condition I.3.b of the Permit states “[e]xisting permitted facilities must comply with the
23 implementation deadlines established under the previous 1200-Z NPDES permit, including Tier 2
24 corrective action requirements.”

25 5. Schedule A.14.e of the Permit states a “permit registrant must complete corrective action
26 associated with monitoring exceedances.”

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1 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
2 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
3 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
4 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
5 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
6 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
7 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
8 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
9 you may represent yourself. If you are a corporation, partnership, limited liability company,
10 unincorporated association, trust or government body, you must be represented by an attorney or a duly
11 authorized representative, as set forth in OAR 137-003-0555.

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

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

23
24
25
26
27
Date

9/30/2022



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 NO. 1 Violated ORS 468B.025(2) Schedule A, condition 14.e of the Permit by failing to timely implement Tier 2 Corrective Actions.

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

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 is registered under the NPDES 1200-Z 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 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. The deadline for implementation of Tier 2 corrective actions was June 30, 2021. On March 2, 2022, Respondent had not installed the catch basin filters required by Respondent's Tier 2 Corrective Action Response. BES sent Respondent a Pre-Enforcement Notice on April 4, 2022, requesting implementation of the Tier 2 corrective actions and received confirmation of implementation on or about April 26, 2022.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. Respondent submitted a Tier 2 Corrective Action Response on December 30, 2019, with a later revision submitted on February 18, 2020, which included an implementation schedule with a deadline of June 30, 2021. In addition, the Respondent

received two letters confirming the Corrective Action Response. Respondent failed to timely implement the required measures, despite having actual knowledge of the requirement.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to correct the violation. Respondent failed to meet the June 30, 2021 deadline for implementing the measures submitted in the Report. On the date of the inspection, March 2, 2022, Respondent had still not implemented the required measures. As of the date of the Pre-Enforcement Referral from the City of Portland, April 4, 2022, Respondent had not installed the required stormwater treatment measures. However, Respondent eventually completed the Tier 2 corrective actions on or about April 26, 2022, approximately nine and half months after the deadline.

"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 \$1,322. This is the amount Respondent gained by avoiding spending \$1,720 to replace Filtrexx StormExx CLEAN filter inserts for seven catch basins twice per year. Since the Tier 2 corrective action deadline, Respondent has purchased only one set of replacement filters. 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 (0 + 0 + 4 + 8 + -2)] + \$1,322
= \$4,000 + (\$400 x 10) + \$1,322
= \$4,000 + \$4,000 + \$1,322
= \$9,322

Oregon Department of Environmental Quality
 700 NE Multnomah Street, Suite 600
 Portland, OR 97232-4100



State of Oregon
 Department of Environmental Quality

Phone: 503-229-5437
 Fax: 503-229-5850

CIVIL PENALTY - ORS 468.135(2)

DATE:	September 30, 2022
RESPONSE DATE :	December 9, 2022
TOTAL PENALTY:	\$9,322.00

Account Name:	DEL MONTE FRESH PRODUCE N.A., INC. <DEL MONTE FRESH PRODUCE> <116471>		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300027
SubSystem ID:	190666	FIMS Acct. ID:	2265

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 9,322.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 9,322.00

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit <https://ydo.oregon.gov> and select 'Register Account'



 PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



REFERENCE NO.	CPGFD2300027		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	December 9, 2022
FIMS ACCT. ID:	2265	TOTAL PENALTY DUE:	\$9322.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

DEQ FINANCIAL SERVICES - LBX4244
 PO BOX 4244
 PORTLAND OR 97208-4244

Check this box if updated address information has been provided on the back of the form.

00401 7400 10040 74001 0500 000000 0095000022652(CPGF)230002700009322001



State of Oregon
Department of
Environmental
Quality

State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
Phone: 503-229-5437
Fax: 503-229-5850

Penalty Detail

Transaction Date	Description	Amount
9/29/2022	2022-533 WQ-SW-NWR-2022-533	\$9,322.00

SFMS Agencies Use:

Trans Code	Treasury Fund	SFMS	Index	PCA (5)	Agency Object	Project #	Phase
723	00401	7400	10040	74001	0500	00000	00

Address Changes

Please visit <https://ydo.oregon.gov> to update your mailing address online or provide the following information:

Name _____
Address _____
City, State, Zip _____