



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 27, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5352

Lamb Weston, Inc.
c/o The Prentice-Hall Corporation System, Registered Agent
1127 Broadway St., NE, Suite 310
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-ER-2021-190

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$127,800 for exceeding the nitrogen limits of your wastewater disposal permit for your facility in Hermiston, Oregon, and for causing pollution of waters of the state by causing or allowing nitrates from your land application sites to enter groundwater.

Lamb Weston's wastewater land application sites are located in the Lower Umatilla Basin Groundwater Management Area (LUBGWMA). DEQ established the LUBGWMA in 1990 due to elevated concentrations, greater than 7 milligrams per liter (mg/L), of nitrate-nitrogen in groundwater. Current concentrations of nitrate-nitrogen in the LUBGWMA have been measured as high as 76 mg/L. Nitrates consumed through drinking water may adversely affect human health, including potential increased risk for recurrent respiratory infections, thyroid dysfunction, negative reproductive outcomes such as spontaneous abortion and certain cancers, including cancer of the stomach or bladder.

The purpose of the LUBGWMA declaration is to identify and implement measures that will reduce nitrate loading and reduce regional groundwater nitrate concentrations to below 7 mg/L. These measures include limits in the permit and operations plan for nitrogen applied from all sources to your wastewater land application sites. The permit prohibits nitrogen loading from all sources from exceeding agronomic rates. Beginning in 2015 through 2021, nitrogen loading from all sources exceeded agronomic rates on 90 occasions.

Included in Section IV of the enclosed Notice is an order requiring Lamb Weston to develop and implement a plan to ensure compliance with the nitrogen limits in the Permit and to develop and implement a scope of work and schedule for a remedial investigation/feasibility study of the alluvial aquifer underlying your land application sites.

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

Lamb Weston, Inc.
Case No. WQ/I-WR-2021-190
Page 2

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. 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.

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,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Larry Brown, DEQ
Justin Sterger, DEQ
Rick Hill, DEQ
Mike Hiatt, DEQ
Accounting, DEQ
Jeffrey L. Hunter, Perkins Coie LLP, 1120 NW Couch St #10, Portland, OR 97209

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:
4 LAMB WESTON, INC.,
a Delaware corporation,

5 Respondent.

)
) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER

)
) CASE NO. WQ/I-ER-2021-190

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 and
10 012.

11 II. FINDINGS OF FACT

12 1. At all relevant times, Respondent operated potato processing facilities in Hermiston,
13 Oregon and managed cogen-wastewater, defrost wastewater, and washwater from additional facilities
14 as authorized by the assigned permit.

15 2. Management and disposal of industrial wastewater from Respondent’s operations is
16 authorized by Water Pollution Control Facilities Permit, No. 101326 (the Permit) issued by DEQ.

17 3. The Permit was in effect at all material times and authorizes Respondent to construct,
18 install, modify or operate a wastewater collection, treatment control and disposal system in
19 conformance with the conditions and limitations of the Permit.

20 4. The Permit authorizes the disposal of industrial wastewater only through land
21 application to crop land in accordance with the conditions and limitations of the Permit.

22 5. Schedule A, Condition 10 of the Permit states in relevant part: “nitrogen loading from
23 all sources shall not exceed the agronomic rates for the receiving crops.” Agronomic rates are listed in
24 Respondent’s DEQ-approved Operation, Maintenance and Monitoring Plan (the OM&M Plan).

25 6. Respondent exceeded agronomic rates for nitrogen loading as follows:

26 ///

27 ///

	Date Crop Planted	Application Site as Identified in Respondent's OM&M Plan	Crop	DEQ approved Nitrogen Loading Agronomic Rate in Pounds per Acre	Nitrogen Loading from all Sources in Pounds per Acre
1					
2					
3					
4	07-27-2015	Field 8	Alfalfa Seed	200	304
5	07-27-2015	Field 16	Alfalfa	400	421
6	07-27-2015	Field 26	Alfalfa	400	403
7					
8	07-27-2015	Field 43	Alfalfa Seed	200	254
9	08-03-2015	Field 24	Triticale	310	336
10	09-24-2015	Field 55	Onions	280	285
11					
12	10-08-2015	Field 5	Soft Winter Wheat	310	373
13	10-08-2015	Field 7	Alfalfa Seed	200	278
14	10-12-2015	Field 44	Alfalfa	400	418
15	10-15-2015	Field 53	Peas	150	213
16	11-02-2015	Field 9	Alfalfa	400	402
17					
18	07-12-2016	Field 97	Canola	250	288
19	07-18-2016	Field 10	Peas	150	183
20	07-18-2016	Field 13	Canola	250	315
21	07-18-2016	Field 17	Peas	150	225
22	08-01-2016	Field 46	Canola	250	275
23	09-06-2016	Field 4	Winter Wheat	310	326
24	09-06-2016	Field 7	Alfalfa Seed	200	271
25					
26	09-06-2016	Field 8	Alfalfa Seed	200	283
27	09-12-2016	Field 15	Alfalfa Seed	200	201

1	09-12-2016	Field 28	Alfalfa Seed	200	251
2	09-30-2016	Field 53	Grain Corn	350	363
3	09-19-2016	Field 18	Winter Wheat	310	349
4	09-19-2016	Field 36	Alfalfa Seed	200	206
5	09-20-2016	Field 55	Rye Grass	225	228
6	09-21-2016	Field 23	Canola	250	355
7	09-30-2016	Field 11	Winter Wheat	310	427
8	10-17-2016	Field 113	Alfalfa Seed	200	327
9	10-24-2016	Field 51	Peas	150	212
10	10-24-2016	Field 54	Peas	150	215
11	12-01-2016	Field 25	Winter Wheat	310	314
12	12-05-2016	Field 24	Winter Wheat	310	372
13	07-17-2017	Field 13	First Year Bluegrass	170	268
14	07-17-2017	Field 23	First Year Bluegrass	170	274
15	07-17-2017	Field 35	First Year Bluegrass	170	211
16	08-07-2017	Field 41	Canola	250	313
17	08-27-2017	Field 17	First Year Bluegrass	170	270
18	10-16-2017	Field 40	Hard Red Winter Wheat	476	640
19	06-18-2018	Field 18	First Year Bluegrass	170	243
20					
21	07-12-2018	Field 19	First Year Bluegrass	170	253

1			First year	170	189
2	07-23-2018	Field 44	Bluegrass		
3			First Year		
4	07-25-2018	Field 16	Bluegrass	170	216
5			First Year		
6	07-25-2018	Field 45	Bluegrass	170	212
7			First Year		
8	07-26-2018	Field 12	Bluegrass	170	341
9			Volunteer		
10	07-26-2018	Field 20	Wheat	310	346
11			First Year		
12	08-03-2018	Field 46	Bluegrass	170	250
13			Alfalfa Seed		
14	08-24-2018	Field 14		300	344
15			Canola		
16	08-29-2018	Field 7		250	513
17			Alfalfa Seed		
18	08-30-2018	Field 15		300	316
19			Timothy Hay		
20	09-19-2018	Field 25		200	255
21			Volunteer		
22	09-21-2018	Field 6	Wheat	310	333
23			Hard Red		
24	10-15-2018	Field 56	Winter Wheat	476	498
25			Oat Hay		
26	03-25-2019	Field 38		200	225
27			Oat Hay		
28	03-25-2019	Field 40		200	220
29			Oat Hay		
30	03-25-2019	Field 89		200	377
31			Grain Corn		
32	04-24-2019	Field 53		350	409
33			Grain Corn		
34	04-25-2019	Field 54		350	398
35			Sweet Corn		
36	07-02-2019	Field 107		290	310
37			First Year		
38	07-16-2019	Field 22	Bluegrass	170	204

1	07-18-2019	Field 97	Timothy Hay	200	255
2					
3	07-21-2019	Field 20	First Year Bluegrass	170	206
4	08-01-2019	Field 4	Canola	250	288
5	08-01-2019	Field 24	Pasture Grass	300	332
6					
7	08-01-2019	Field 40	First Year Bluegrass	170	254
8					
9	08-01-2019	Field 45	Second Year Bluegrass	275	296
10	08-08-2019	Field 38	Dry Beans	80	108
11	09-20-2019	Field 53	Peas	150	283
12	09-20-2019	Field 54	Peas	150	258
13					
14	10-25-2019	Field 21	Alfalfa	450	489
15	10-25-2019	Field 36	Alfalfa	450	481
16	04-09-2020	Field 40	Grain Corn	350	504
17	06-16-2020	Field 44	Dry Beans	80	97
18					
19	07-01-2020	Field 22	First Year Bluegrass	170	171
20	07-08-2020	Field 55	Triticali Forage	310	391
21	07-09-2020	Field 20	Canola	250	305
22					
23	07-10-2020	Field 26	First Year Bluegrass	170	178
24					
25	08-02-2020	Field 11	First Year Bluegrass	170	173
26					
27	08-07-2020	Field 34	First Year Bluegrass	170	172

1	08-28-2020	Field 28	Canola	250	258
2	08-28-2020	Field 48	Canola	250	318
3	09-24-2020	Field 38	Alfalfa	450	555
4	10-16-2020	Field 40	Grain Corn	350	374
5	10-27-2020	Field 51	Grain Corn	350	374
6	10-29-2020	Field 17	Soft White Wheat	350	359
7	10-29-2020	Field 112	Dry Beans	80	242
8	11-04-2020	Field 53	Rye Grass	225	230
9	11-04-2020	Field 54	Triticali Forage	310	311
10	11-04-2020	Field 56	Peas	150	180
11	07-09-2021	Field 26	Buckwheat	160	261
12	07-30-2021	Field 56	Sweet Corn	290	297

13 7. Bacteria in the soil convert nitrogen applied to Respondent's wastewater applications
14 sites to nitrate in the soil.

15 8. Nitrogen from all sources at Respondent's land application sites has resulted in the
16 discharge of nitrates to groundwater in the alluvial aquifer underlying its application sites.

17 9. Nitrates consumed through drinking water may adversely affect human health, including
18 potential increased risk for recurrent respiratory infections, thyroid dysfunction, negative reproductive
19 outcomes such as spontaneous abortion and certain cancers, including cancer of the stomach or bladder.

20 10. In 1990, DEQ declared the Lower Umatilla Basin a Groundwater Management Area
21 (GWMA) because nitrate-nitrogen concentrations exceeded 7 milligrams per liter (mg/L) in many area
22 groundwater samples. This level is 70% of the Oregon maximum contaminant level of 10 mg/L
23 (Federal Safe Drinking Water Standard) and is the trigger level for declaring a GWMA. Under the
24 Oregon Groundwater Protection laws (ORS 468B.180), DEQ is required to declare a GWMA if area-
25 wide groundwater contamination is present as a result of suspected non-point source activities.
26
27

1 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

4 1. Pay a total civil penalty of \$127,800. The determinations of the civil penalties are attached as
5 Exhibits 1 and 2 and are incorporated as part of this Notice.

6 If you do not file a request for hearing as set forth in Section V below, your check or money
7 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
8 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

9 2. Within 45 days of this order becoming final by operation of law or on appeal, submit to
10 DEQ for review and approval a plan and schedule for achieving consistent compliance with Schedule A
11 of the Permit (the Compliance Plan).

12 3. If DEQ rejects the Compliance Plan, within 30 days of rejection, Respondent must
13 revise and resubmit the Compliance Plan consistent with DEQ's comments on the plan.

14 4. Respondent must Begin implementation of the Compliance Plan upon receipt of DEQ's
15 written approval.

16 5. Within 90 days of this order becoming final by operation of law or on appeal, submit for
17 DEQ review and approval a scope of work and schedule (SOW) for a remedial investigation and
18 feasibility study (RI/FS) for nitrate contamination in the alluvial aquifer underlying Respondent's
19 wastewater land application sites. The SOW must conform with the requirements of OAR 340-040-
20 0040.

21 6. If DEQ rejects the SOW, within 30 days of rejection, Respondent must revise and
22 resubmit the SOW consistent with DEQ's comments.

23 7. Respondent must begin implementation of the SOW and comply with the schedule upon
24 receipt of DEQ's written approval.

25 2. V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

26 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
27 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If

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

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

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

24
25
26 9/27/2022

27 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 NO. 1 Violating Schedule A, Condition 10 of the Permit, in violation of ORS 468B.025(2), by exceeding the agronomic rate for nitrogen loading from all sources.

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

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, 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)(E)(ii) as Respondent has a Tier I 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 according to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of 9 or more Class I equivalent violations stemming from Case Nos. WQ/I-ER 2018-170, WQ/I-ER-2019-189 and WQ/I-ER-2019-249.

"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 3 pursuant to OAR 340-012-0145(4)(c) because there were seven or more, but less than 28 occurrences of the violation. Each instance of exceeding the agronomic rate on each field number represents a separate occurrence. Respondent exceeded the agronomic rate on 90 occurrences in violation of the permit as detailed in the Notice. DEQ is assessing a separate penalty for 7 of the violations. To arrive at "O," DEQ divides the total number of violations by the number of violations penalized. Therefore, each assessed penalty represents approximately 13 occurrences for an "O" factor value of 3.

"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. The nitrogen limits are express

conditions of Respondent's Permit. By failing to take the actions to prevent excess loading, Respondent failed to take reasonable care to avoid the foreseeable risk of committing the violation.

"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 \$0 as DEQ has insufficient information as to which measures Respondent would have taken to prevent the violations to arrive at a reasonable estimate of avoided or delayed compliance costs.

SINGLE OCCURRENCE PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})]$
= \$6,000 + [(0.1 x \$6,000) x (10 + 0 + 3 + 4 + 0)]
= \$6,000 + (\$600 x 17)
= \$6,000 + \$10,200
= \$16,200

MULTIPLE PENALTY CALCULATION

In exercising its enforcement discretion, DEQ elects to assess separate base penalties for 7 of the 90 occurrences of the violation, representing a single base penalty for each year a violation occurred.

FINAL PENALTY CALCULATION

Final Penalty = single occurrence penalty calculation x number of violations penalized + economic benefit

$\$16,200 \times 7 + \$0 = \$113,400$

EXHIBIT 2

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

- VIOLATION NO. 2 Causing pollution of waters of the state in violation of ORS 468B.025(1)(a).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(a).
- 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, 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)(E)(ii) as Respondent has a Tier I 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 according to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of 9 or more Class I equivalent violations stemming from Case Nos. WQ/I-ER-2018-170, WQ/I-ER-2019-189 and WQ/I-ER-2019-249.
- "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)(a) because there is insufficient information on which to base another finding.
- "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. The nitrogen limits intended to prevent discharge of nitrates to groundwater are express conditions of Respondent's Permit. By failing to take the actions to prevent excess nitrogen loading, Respondent failed to take reasonable care to avoid the foreseeable risk of committing the violation.

"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 \$0 as DEQ has insufficient information as to which measures Respondent would have taken to prevent the violation to arrive at a reasonable estimate of avoided or delayed compliance costs.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (10 + 0 + 0 + 4 + 0)] + \$0
= \$6,000 + (\$600 x 14) + \$0
= \$6,000 + \$8,400 + \$0
= \$14,400