



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah Street, Suite 600

Portland, OR 97232

(503) 229-5696

FAX (503) 229-5100

TTY 711

October 30, 2019

CERTIFIED MAIL: 7016 0750 0000 3470 4750

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-2019-184

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 \$26,574 for unpermitted discharges into waters of the state from the Organic Valley McMinnville Creamery located at 700 N. Highway 99W in McMinnville. On January 5, 2019, the creamery discharged condensed skim milk and solids into an unnamed tributary of the South Yamhill River. On June 25, 2019, the creamery discharged milk into the same creek, turning the creek white and milky for over half a mile.

DEQ issued these penalties 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. In addition, DEQ is concerned with the repeated nature of these unpermitted discharges over the past couple years. However, DEQ appreciates the efforts you made to ensure the violations will not be repeated again and has taken these efforts into consideration when determining the amount of civil penalty.

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](mailto: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>.

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: Paul Silva, Organic Valley Creamery, 700 N. Highway 99, McMinnville, OR 97128, via  
Certified Mail No. 7016 0750 0000 3470 4767  
Timothy McFetridge, DEQ, Western Region, Salem Office  
Ranei Nomura, WQ Manager, Western Region DEQ, Salem Office  
Accounting, DEQ  
John Koestler, WQ, DEQ



1 detrimental to fish or other aquatic life. The Facility is a commercial creamery. The Creek is a “water  
2 of the state” as defined in ORS 468B.005(10) because it is a stream, creek or river. Respondent does  
3 not have any permit authorizing discharge of condensed skim milk and solids or process wastewater to  
4 waters of the state. This is a Class I violation according to OAR 340-012-0055(1)(c). DEQ hereby  
5 assesses a \$13,374 civil penalty for this violation.

6 2. On June 25, 2019, Respondent violated ORS 468B.050(1)(a) and OAR 340-045-  
7 0015(1)(a) by discharging wastes into waters of the state without first obtaining a permit from DEQ.  
8 Specifically, Respondent discharged milk through the stormwater system and into the Creek. The  
9 Facility is a commercial creamery. The Creek is a “water of the state” as defined in ORS 468B.005(10)  
10 because it is a stream, creek or river. The milk that was discharged from the Facility is “waste”  
11 pursuant to ORS 468B.005(9), as it caused pollution to waters of the state by altering the physical,  
12 chemical or biological properties of the Creek in a manner that was or tended to be detrimental to fish  
13 or other aquatic life. Respondent does not have any permit authorizing discharge of process wastewater  
14 to waters of the state. This is a Class I violation according to OAR 340-012-0055(1)(c). DEQ hereby  
15 assesses a \$13,200 civil penalty for this violation.

#### 16 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

19 Pay a total civil penalty of \$26,574. The determination of the civil penalties are attached as  
20 Exhibit Nos. 1 and 2 and are incorporated as part of this Notice.

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

#### 25 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 exhibit(s), 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 **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). 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  
27  
Date

10/30/2019

  
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: 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 authorizing the discharge of condensed skim milk and solids or process wastewater to 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 (2)(a)(D) because Respondent has eight prior significant actions that are less than 10 years old. Respondent was cited for eight Class I violations in the Mutual Agreement and Final Order in Case No. WQ/I-WR-2018-068, executed on November 26, 2018.
- "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 was one occurrence of the violation. Each day of violation constitutes a separate occurrence. The violation occurred on January 5, 2019.
- "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. By failing to ensure the conductivity meter was set properly and by failing to have a heat exchanger installed to keep the evaporator from cooling down, Respondent failed to take reasonable care to avoid a

foreseeable risk of discharging condensed skim milk and solids or process wastewater to waters of the state.

"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. Within two weeks of the spill, Respondent conducted training of its operators; adjusted the conductivity meter to turn off the pump that caused the spill. On April 22, 2019, Respondent installed a tube and shell heat exchanger to keep the evaporator from cooling down when water is added in.

"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 \$174 according to OAR 340-012-0150(3), which is the amount Respondent saved by delaying the cost of a new heat exchanger from January 5, 2019 (the date of the violation) until April 22, 2019.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (9 + 0 + 0 + 4 - 1)] + \$174 \\ &= \$6,000 + (\$600 \times 12) + \$174 \\ &= \$6,000 + \$7,200 + \$174 \\ &= \$13,374 \end{aligned}$$

EXHIBIT 2

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

- VIOLATION 2: 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 authorizing the discharge of milk or process wastewater to 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 (2)(a)(D) because Respondent has eight prior significant actions that are less than 10 years old. Respondent was cited for eight Class I violations in the Mutual Agreement and Final Order in Case No. WQ/I-WR-2018-068, executed on November 26, 2018.
- "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 was one occurrence of the violation. Each day of violation constitutes a separate occurrence. The violation occurred on June 25, 2019.
- "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. By failing to close the silo being filled with milk and failing to adequately maintain the plug leading to its stormdrain, Respondent failed to take reasonable care to avoid a foreseeable risk of discharging milk to waters of the state.



"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 replaced the faulty plug on the storm drain by July 31, 2019.

"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 according to OAR 340-012-0150(3) because the EB Respondent obtained by delaying the cost of installing a new plug for six days was de minimis.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (9 + 0 + 0 + 4 - 1)] + \$0 \\ &= \$6,000 + (\$600 \times 12) + \$0 \\ &= \$6,000 + \$7,200 + \$0 \\ &= \$13,200 \end{aligned}$$