



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

November 3, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5475

Andrew Bornstein
Astoria Pacific Seafoods, LLC
P.O. Box 58
Astoria, OR 97103

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-NWR-2022-080

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Astoria Pacific Seafoods, LLC a civil penalty of \$10,200 for violating the technology-based effluent limits set forth in both the prior and current versions of the National Pollutant Discharge Elimination Permit (NPDES) Seafood Processing General Permit No. 900-J (the Permit) at its facility located at 55 Pier 2, Building A, in Astoria. Specifically, from August 2020 through June 2022, Astoria Pacific Seafoods exceeded the effluent limitations set forth in the permits a total of 51 times, 39 of which were Class I violations.

DEQ issued this penalty because Astoria Pacific Seafoods, LLC continues to have serious, repeated, and ongoing issues meeting the effluent limitations set forth in the Permit. Compliance with the effluent limitations set forth in the Permit is essential in protecting water quality.

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.

If you have any questions, please contact Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Suzanne Lacampagne, Miller Nash LLP, suzanne.lacampagne@millernash.com
Randall Bailey, DEQ NWR
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 ASTORIA PACIFIC SEAFOODS, LLC) ASSESSMENT AND ORDER
5)
6 Respondent.) CASE NO. WQ/I-NWR-2022-080

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, ORS 468.126 through 468.140,
10 ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
11 011, 012, and 045.

12 II. FINDINGS OF FACT

13 1. Respondent is the owner and operator of a seafood processing facility located at 55 Pier
14 2, Building A, Astoria, OR 97103 (the Facility). The Facility discharges wastewater to the Columbia
15 River, a water of the state.

16 2. In 2006, Respondent was issued coverage under the National Pollutant Discharge
17 Elimination System (NPDES) Seafood Processing General Permit No. 900-J(the Permit) with Facility
18 ID# 110825.

19 3. The Facility processes bottom fish – mechanized.

20 4. Because the Facility discharges wastewater from all its processing operations through a
21 single outfall, the applicable Daily Maximum and Monthly Average Technology-Based Effluent
22 Limitations (TBELs) under the Permit are calculated using a “Compliance Calculator” spreadsheet
23 developed by DEQ (Spreadsheet). The Spreadsheet calculates the applicable limits based on the total
24 pounds of seafood processed on a given day/month, how much of each type of seafood was processed
25 on a given day/month, and the limits for each type set forth in the Permit.

26 5. The Discharge Monitoring Reports (DMRs) submitted by Respondent for August 2020
27 through January 2022, identified the following violations of the BOD₅, TSS, and Oil & Grease Daily
Maximum Limits:

Date	Pollutant	Load lb/klb	Limit lb/klb	% Exceedance	Violation Class
8/7/2020	BOD ₅	11	9.4	17%	3
10/16/2020	BOD ₅	12	11	9%	3
1/15/2021	BOD ₅	2.0	1.2	67%	1
3/12/2021	BOD ₅	1.6	1.2	33%	2
4/20/2021	BOD ₅	4.7	1.2	292%	1
4/26/2021	BOD ₅	7.6	1.2	533%	1
6/9/2021	BOD ₅	2.6	1.2	117%	1
6/24/2021	BOD ₅	2.4	1.2	100%	1
1/21/2022	BOD ₅	54	13	315%	1
2/18/2022	BOD ₅	14	13	8%	3
10/16/2020	TSS	5.1	4.9	4%	3
1/21/2022	TSS	16	5.3	202%	1
10/16/2020	O&G	2.1	1.2	75%	1
3/12/2021	O&G	0.089	0.077	16%	2
4/20/2021	O&G	0.12	0.077	56%	1
4/26/2021	O&G	0.25	0.077	225%	1
1/21/2022	O&G	2.2	1.2	83%	1

6. The DMRs submitted by Respondent for August 2020 through February 2022, identified the following violations of the BOD₅, TSS, and Oil & Grease Monthly Average Limits:

Month	Month	Pollutant	Load lb/klb	Limit lb/klb	% Exceedance	Violation Class
2020	August	BOD ₅	11	6.5	69%	1
2021	January	BOD ₅	2.0	0.71	182%	1
2021	March	BOD ₅	1.7	0.71	139%	1
2021	April	BOD ₅	6.9	0.71	872%	1
2021	June	BOD ₅	2.5	0.71	252%	1
2022	January	BOD ₅	54	7.5	620%	1
2022	February	BOD ₅	10	7.5	33%	2
2020	August	TSS	4.6	2.5	84%	1
2020	October	TSS	2.9	2.4	21%	2
2021	January	TSS	0.77	0.73	5%	3
2021	April	TSS	1.3	0.73	78%	1
2022	January	TSS	16	2.9	452%	1
2020	August	O&G	0.95	0.55	73%	1
2020	October	O&G	1.4	0.58	141%	1
2021	January	O&G	0.077	0.042	81%	1
2021	March	O&G	0.093	0.042	121%	1
2021	April	O&G	0.22	0.042	424%	1

2021	December	O&G	0.18	0.10	80%	1
2022	January	O&G	2.2	0.47	368%	1

7. On April 1, 2022, Respondent's coverage under the Revised National Pollutant Discharge Elimination System (NPDES) Seafood Processing General Permit No. 900-J (the 2020 Permit) for the Facility took effect.

8. The DMRs submitted by Respondent for April 2022 through June 2022, identified the following violations of the BOD₅, TSS, and Oil & Grease Daily Maximum Limits:

Date	Pollutant	Load lb/klb	Limit lb/klb	% Exceedance	Violation Class
4/8/2022	BOD ₅	48	13	269	1
4/27/2022	BOD ₅	16	13	23	2
5/23/2022	BOD ₅	14	13	8	3
6/22/2022	BOD ₅	76	13	485	1
4/8/2022	TSS	12	5.3	126	1
6/22/2022	TSS	38	5.3	617	1
4/8/2022	O&G	3.6	1.2	200	1
4/12/2022	O&G	2.7	1.2	125	1
6/22/2022	O&G	26	1.2	2067	1

9. The DMRs submitted by Respondent for April 2022 and June 2022, identified the following violations of the BOD₅, TSS, and Oil & Grease Monthly Average Limits:

Month	Month	Pollutant	Load lb/klb	Limit lb/klb	% Exceedance	Violation Class
2022	April	BOD ₅	14	7.5	87	1
2022	June	BOD ₅	15	7.5	100	1
2022	April	TSS	3.0	2.9	3	3
2022	June	TSS	7.3	2.9	152	1
2022	April	O&G	1.0	0.47	113	1
2022	June	O&G	4.6	0.47	879	1

10. Pursuant to Schedule F, Section A.1. of the Permit, failure to comply with any permit condition is a violation of ORS 468B.025.

11. Pursuant to ORS 468B.025(2), no person shall violate the conditions of any waste discharge permit issued under ORS 468B.050.

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1 III. CONCLUSIONS

2 1. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the
3 TBELs for BOD₅ a total of twenty-three times. Specifically:

- 4 a. On sixteen occasions Respondent exceeded the TBELs for BOD₅ by 50% or more. These
5 are Class I violations pursuant to OAR 340-012-0055(1)(k)(A);
- 6 b. On three occasions Respondent exceeded the TBELs for BOD₅ by 20% or more but less
7 than 50%. These are Class II violations pursuant to OAR 340-012-0055(2)(a)(A); and
- 8 c. On four occasions Respondent exceeded the TBELs for BOD₅ by less than 20%. This is a
9 Class III violation pursuant to OAR 340-012-0055(3)(b)(A).

10 DEQ hereby assesses a \$3,400 civil penalty for these violations.

11 2. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the TBELs
12 for TSS a total of eleven times. Specifically,

- 13 a. On seven occasions Respondent exceeded the TBELs for TSS by 50% or more. These are
14 Class I violations pursuant to OAR 340-012-0055(1)(k)(A);
- 15 b. On one occasion Respondent exceeded the TBELs for TSS by 20% or more but less than
16 50%. This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A); and
- 17 c. On three occasions Respondent exceeded the TBELs for TSS by less than 20%. These are
18 Class III violations pursuant to OAR 340-012-0055(3)(b)(A).

19 DEQ hereby assesses a \$3,400 civil penalty for these violations.

20 3. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the TBELs
21 for Oil & Grease seventeen times. Specifically,

- 22 a. On sixteen occasions Respondent exceeded the TBELs for Oil & Grease by 50% or more.
23 These are Class I violations pursuant to OAR 340-012-0055(1)(k)(A); and
- 24 b. On one occasion Respondent exceeded the TBELs for Oil & Grease by 10% or more but
25 less than 50%. This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A).

26 DEQ hereby assesses a \$3,400 civil penalty for these violations.

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1 IV. ORDER TO PAY CIVIL PENALTY

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

4 1. Pay a total civil penalty of \$10,200. The determination of the civil penalty is attached as
5 Exhibits 1–3 and is 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 "**Department of Environmental Quality**" and sent to the **DEQ,**
8 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

10 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
11 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
12 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
13 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
14 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
15 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
16 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
17 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
18 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
19 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
20 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
21 you may represent yourself. If you are a corporation, partnership, limited liability company,
22 unincorporated association, trust or government body, you must be represented by an attorney or a duly
23 authorized representative, as set forth in OAR 137-003-0555.

24 Active duty Service members have a right to stay proceedings under the federal Service
25 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
26 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
27 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military

1 Department does not have a toll free telephone number.

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

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11 11 / 3 / 2022

12 Date

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12 Kieran O'Donnell, Manager
13 Office of Compliance and Enforcement
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EXHIBIT 1

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

VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the TBELs for BOD₅ set forth in Schedule A, Table A1 of the Permit 23 times.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) because Respondent exceeded the permit limit by 50 percent or more. Pursuant to OAR 340-012-0145(4)(e), the penalty is based on the highest classification applicable to any of the occurrences.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because the receiving stream flow at the time of the exceedances was more than 10 times the flow of Respondent's discharge.

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)(iii) because Respondent operates under the NPDES 900-J General Permit.

"P" is whether Respondent has any prior significant actions (PSAs), 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), because Respondent has no PSAs.

"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 3 according to OAR 340-012-0145(4)(c) because there were between seven and 28 occurrences of the violation. Respondent's discharge exceeded the BOD₅ TBELs on 23 occasions.

"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 has a copy of both relevant permits and is aware of the TBELs required under the permits. By failing to meet those TBELs, Respondent failed to take reasonable care to avoid the foreseeable risk that a violation would occur.

"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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 3 + 4 + 0)] + \$0 \\ &= \$2,000 + [\$200 \times 7] + \$0 \\ &= \$2,000 + \$1,400 + \$0 \\ &= \$3,400 \end{aligned}$$

EXHIBIT 2

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

- VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the TBELs for TSS set forth in Schedule A, Table A1 of the Permit 11 times.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) because the Respondent exceeded the permit limit by 50 percent or more. Pursuant to OAR 340-012-0145(4)(e), the penalty is based on the highest classification applicable to any of the occurrences.
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because the receiving stream flow at the time of the exceedances was more than 10 times the flow of Respondent's discharge.
- 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)(iii) because Respondent operates under the NPDES 900-J General Permit.
- "P" is whether Respondent has any prior significant actions (PSAs), 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), because Respondent has no PSAs.
- "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 3 according to OAR 340-012-0145(4)(c) because there were between seven and 28 occurrences of the violation. Respondent's discharge exceeded the TSS TBELs on 11 occasions.
- "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 has a copy of both relevant permits and is aware of the TBELs required under the permits. By failing to meet those TBELs, Respondent failed to take reasonable care to avoid the foreseeable risk that a violation would occur.

"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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 3 + 4 + 0)] + \$0 \\ &= \$2,000 + [\$200 \times 7] + \$0 \\ &= \$2,000 + \$1,400 + \$0 \\ &= \$3,400 \end{aligned}$$

EXHIBIT 3

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

VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the TBELs for Oil & Grease set forth in Schedule A, Table A1 of the Permit 17 times.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) because Respondent exceeded the permit limit by 50 percent or more. Pursuant to OAR 340-012-0145(4)(e), the penalty is based on the highest classification applicable to any of the occurrences.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because the receiving stream flow at the time of the exceedances was more than 10 times the flow of Respondent's discharge.

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)(iii) because Respondent operates under the NPDES 900-J General Permit.

"P" is whether Respondent has any prior significant actions (PSAs), 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), because Respondent has no PSAs.

"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 3 according to OAR 340-012-0145(4)(c) because there were between seven and 28 occurrences of the violation. Respondent's discharge exceeded the TBELs for Oil & Grease on 17 occasions.

"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 has a copy of both relevant permits and is aware of the TBELs required under the permits. By failing to meet those TBELs, Respondent failed to take reasonable care to avoid the foreseeable risk that a violation would occur.

"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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 3 + 4 + 0)] + \$0 \\ &= \$2,000 + [\$200 \times 7] + \$0 \\ &= \$2,000 + \$1,400 + \$0 \\ &= \$3,400 \end{aligned}$$