



# 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 22, 2022

CERTIFIED MAIL: 7018 1830 3331 5906 3879

Kraft Heinz Foods Company, LLC  
c/o C T Corporation System (Registered Agent)  
780 Commercial St. SE, Ste. 100  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/I-ER-2022-064

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Kraft Heinz Foods Company, LLC (Kraft Heinz) a civil penalty of \$9,600 for violating the terms of the National Pollutant Discharge Elimination System (NPDES) permit issued to its food processing facility in Ontario, Oregon. Specifically, Kraft Heinz failed to submit to DEQ an Operation, Monitoring and Management (OM&M) Plan for its industrial reuse water that meets the requirements of the permit by August 1, 2021.

DEQ issued this penalty because Kraft Heinz previously received a Warning Letter in regard to this violation but failed to submit an OM&M plan to DEQ that met the requirements of the permit by the corrective action deadline. DEQ acknowledges that Kraft Heinz eventually submitted a sufficient OM&M plan, nearly a year after it was due. DEQ considered that when determining the amount of the civil penalty.

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](mailto: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.

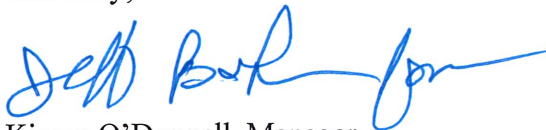
The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

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: Jeremiah Goodrich, Kraft Heinz (via email at [Jeremiah.Goodrich@kraftheinz.com](mailto:Jeremiah.Goodrich@kraftheinz.com))  
Mark Copley, Kraft Heinz (via email at [mcopley@stovergroup.net](mailto:mcopley@stovergroup.net))  
Anna Morgan-Hayes, DEQ ER  
Accounting, DEQ

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

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 KRAFT HEINZ FOODS COMPANY, LLC ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. WQ/I-ER-2022-064

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 the owner and operator of a food processing facility located at 175 NE 6th  
13 Avenue in Ontario, Oregon (the Facility).

14 2. On April 1, 2021, Respondent was issued renewed coverage under National Pollutant  
15 Discharge Elimination System (NPDES) Permit No. 101607 (the Permit). Permit coverage took effect on  
16 May 1, 2021.

17 3. The Permit authorizes the Respondent to discharge wastewater to the Snake River, a water  
18 of the state pursuant to ORS 468B.005(10). Additionally, the Permit authorizes the Respondent to  
19 distribute industrial reuse water between April 1st and October 31st of each year, provided the water is  
20 managed in accordance with a DEQ-approved Operation, Monitoring and Management (OM&M) Plan.

21 4. Pursuant to Schedule B, Table B1 of the Permit, Respondent was required to submit an  
22 OM&M plan to DEQ for approval “[w]ithin 3 months of the permit effective date.” Since the permit took  
23 effect on May 1, 2021, the OM&M plan was due to DEQ by August 1, 2021.

24 5. Pursuant to Schedule D.1 of the Permit, the OM&M Plan is required to include, at a  
25 minimum, the following:

- 26 a. Treatment system description;
- 27 b. Identify all proposed beneficial uses of reuse water and estimated volumes for each use;

- c. Identify the industrial reuse water characteristics, quality, and total volume produced;
- d. Treatment system maintenance plan;
- e. Contingency procedures including public notification;
- f. Land application site(s) description including: legal description, zoned land use, and site ownership;
- g. Site map detailing setbacks, and distances to wells, surface water and the nearest developed property from all boundaries of the irrigation site;
- h. Description of the irrigation system, application methods and rates, and shut off procedures;
- i. Site management practices including the timing of irrigation, methods used to mitigate potential aerosol drift;
- j. Irrigation system maintenance plan;
- k. Characterization of the soils and crops or vegetation grown at the land application site including agronomic rates for water and nutrient uptake;
- l. Monitoring, sampling, and reporting procedures;
- m. Public access control and how the public and personnel will be notified of reuse water irrigation;
- n. Identify all proposed beneficial uses of wastewater solids and waste process solids and estimated quantities for each use;
- o. Identify any permits associated with the reuse of solids;
- p. Completed Land Use Compatibility Statement (LUCS);
- q. Completed Oregon Water Resources industrial water reuse registration form.

6. On July 30, 2021, Respondent submitted a draft OM&M Plan to DEQ for review and approval.

7. On November 18, 2021, DEQ notified Respondent that the OM&M Plan it submitted on July 30, 2021, was insufficient. DEQ provided Respondent with a list of missing information, including, but not limited to, the following:

- a. Identification of the proposed beneficial uses of the reuse water, as required by Schedule D, Condition 1.b of the Permit;
- b. A characterization of the wastewater, as required by Schedule D, Condition 1.c of the Permit;
- c. A treatment system maintenance plan, as required by Schedule D, Condition 1.d of the Permit;
- d. A description of the land application site(s), as required by Schedule D, Condition 1.f of the Permit;
- e. A description of the irrigation system, as required by Schedule D, Condition 1.h of the Permit;
- f. Characterization of the soils at the proposed land application sites, as required by Schedule D, Condition 1.k of the Permit;
- g. A Land Use Compatibility Statement, as required by Schedule D, Condition 1.p of the Permit;
- h. A completed Oregon Water Resources industrial water reuse registration form, as required by Schedule D, Condition 1.q of the Permit;

8. In the November 18, 2021, communication, DEQ gave Respondent until January 31, 2022, to submit an OM&M Plan that fulfills the requirements of the Permit.

9. Respondent did not submit a revised OM&M plan to DEQ by January 31, 2022.

10. On February 4, 2022, DEQ issued a warning letter with opportunity to correct (2022-WLOTC-6859) to Respondent notifying Respondent that it may be subject to an enforcement action if it fails to submit an OM&M plan that meets the requirements of the Permit by April 1, 2022.

11. On March 31, 2022, Respondent submitted an updated OM&M Plan that again failed to meet the requirements of Schedule D, Condition 1 of the Permit. Specifically, the submitted plan failed to provide a complete description of the wastewater characteristics (as required by Schedule D, Condition 1.c of the Permit) or identification of the proposed beneficial use of the reuse water and the estimated volume of reuse water needed by that use (as required by Schedule D, Condition 1.b of the

1 Permit).

2 12. On June 3, 2022, Respondent submitted an OM&M Plan to DEQ that met the  
3 requirements of Schedule D, Condition 1 of the Permit.

4 13. Pursuant to Schedule F, Condition A1 of the Permit, failure to comply with any permit  
5 condition is a violation of Oregon Revised Statutes (ORS) 468B.025.

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

### 8 III. CONCLUSION

9 Respondent violated ORS 468B.025(2) and Schedule B, Table B1 of the Permit by  
10 failing to submit to DEQ an OM&M plan that met the requirements set forth in Schedule D,  
11 Condition 1 of the Permit by August 1, 2021. This is a Class II violation pursuant to OAR 340-  
12 012-0055(2)(b). DEQ hereby assesses a \$9,600 civil penalty for this violation.

### 13 IV. ORDER TO PAY CIVIL PENALTY

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

16 Pay a total civil penalty of \$9,600. The determination of the civil penalty is attached as Exhibit  
17 1 and is incorporated as part of this Notice.

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

### 21 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING


22 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
23 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
24 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
25 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered  
26 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
27 further information about requests for hearing.) You must send your request to: **DEQ, Office of**

1 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
2 it to **503-229-6762** or email it to [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov). An administrative law judge  
3 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
4 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
5 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
6 you may represent yourself. If you are a corporation, partnership, limited liability company,  
7 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
8 authorized representative, as set forth in OAR 137-003-0555.

9 Active duty Service members have a right to stay proceedings under the federal Service  
10 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
11 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
12 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
13 Department does not have a toll free telephone number.

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

20  
21  
22  
23 11/22/22  
24 Date

25  
26  
27   
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

VIOLATIONS: Respondent violated ORS 468B.025(2) and Schedule B, Table B1 of the Permit by failing to submit an OM&M Plan that meets the requirements of Schedule D, Condition 1 of the Permit by August 1, 2021.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(b).

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) because Respondent has a Tier I industrial source NPDES 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), because there is insufficient information on which to base a finding under this section.

"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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is considered a separate occurrence. Respondent was required to submit an OM&M plan that met the requirements of the Permit by August 1, 2021, but failed to do so until June 3, 2022.

"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 required elements of an OM&M plan are clearly listed in Schedule D of the Permit—by repeatedly failing to submit a plan that fulfilled those requirements, Respondent failed to exercise reasonable care to avoid the foreseeable risk a permit violation would occur.



"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 the Respondent eventually corrected the violation by submitting a plan that met the requirements of the Permit.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 4 + 4 + -2)] + \$0 \\ &= \$6,000 + [\$600 \times 6] + \$0 \\ &= \$6,000 + \$3,600 + \$0 \\ &= \$9,600 \end{aligned}$$