



# 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

January 28, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 2612

Tillamook Country Smoker, LLC  
c/o Geordie Mosbarger, Manager  
P.O. Box 3120  
Bay City, OR 97107

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/NP-NWR-2021-078

***DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.***

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$9,670 for discharging wastewater from meat processing operations to waters of the state without a permit on April 13-15, 2021. DEQ issued this penalty because food processing wastewater contains organic material that can cause depletion of dissolved oxygen necessary to support fish and other aquatic life in receiving waters.

DEQ appreciates your efforts to prevent future violations by installing equipment to better manage your wastewater. DEQ considered these efforts when determining the amount of 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.oregon.gov](mailto: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

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cc: Michael Campbell, Stoel Rives, LLP, [michael.campbell@stoel.com](mailto:michael.campbell@stoel.com)  
Mike Pinney, DEQ  
Tiffany Yelton Bram, DEQ  
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF:	)	NOTICE OF CIVIL PENALTY
TILLAMOOK COUNTRY SMOKER, LLC,	)	ASSESSMENT AND ORDER
a Delaware limited liability company,	)	
	)	CASE NO. WQ/NP-NWR-2021-078
Respondent.	)	

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapters 468B, and 183, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and 012.

II. FINDINGS OF FACT

1. Respondent owns and operates a meat processing and preparation facility located at 8250 Warren St., in Bay City, Oregon (the Facility).
2. Respondent sources fresh and frozen meats which are ground, sliced, and seasoned and then cooked, smoked, and dried in one of eight ovens at the Facility.
3. Respondent generates wash-down waste water inside the Facility. The wash-down waste water flows through floor drains to a sump, located in an outdoor covered area at the southeast corner of the Facility.
4. On April 13, 2021, wash-down waste water overflowed the sump, entered the Facility’s stormwater collection system, and discharged to a ditch along Highway 101. The ditch flows to an unnamed creek that flows into Tillamook Bay.
5. On April 15, 2021, DEQ inspected the Facility. At the time of the inspection, Respondent continued to discharge wash-down waste water from the Facility to the ditch. The wash-down waste water was brown in color, odorous, and caused discoloration of the ditch and creek.
6. At all material times and through present, Respondent did not hold a permit that allows it to discharge wastes to waters of the state.

1 III. CONCLUSION

2 Respondent violated ORS 468B.050(1)(a) by discharging wastes, as defined in ORS  
3 468B.005(9), to a ditch that flows to an unnamed creek that flows to the Pacific Ocean, a water of the  
4 state pursuant to ORS 468B.005(10), without a permit authorizing such discharge, as described in  
5 Section II above. Specifically, from on or about April 13, 2021, through April 15, 2021, Respondent  
6 discharged washdown wastewater from meat processing through its stormwater system and into the  
7 ditch and connected creek. These are Class I violations, according to OAR 340-012-0055(1)(c). DEQ  
8 assesses a \$9,070 civil penalty for these violations.

9 IV. ORDER TO PAY CIVIL PENALTY

10 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
11 hereby ORDERED TO: Pay a total civil penalty of \$9,070. The determination of the civil penalty is  
12 attached as Exhibit No. 1 and is incorporated as part of this Notice.

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

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

17 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
18 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
19 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
20 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered  
21 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
22 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
23 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
24 it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge  
25 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
26 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
27 represented by an attorney at the hearing, however you are not required to be. If you are an individual,

1 you may represent yourself. If you are a corporation, partnership, limited liability company,  
2 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
3 authorized representative, as set forth in OAR 137-003-0555.

4 Active duty Service members have a right to stay proceedings under the federal Service  
5 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
6 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
7 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
8 Department does not have a toll free telephone number.

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

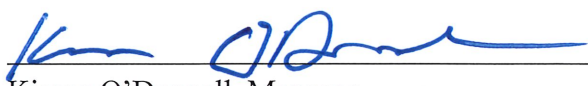
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1/28 / 2022  
Date

  
Kieran O'Donnell, Manager  
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

VIOLATION NO. 1 Discharging wastes to waters of the state without a waste discharge permit issued by DEQ, in violation of ORS 468B.050(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), 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)(a)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D) as Respondent does not have a National Pollutant Discharge Elimination System 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 2 according to OAR 340-012-0145(4)(b) because there were three occurrences of the violation. Each day of violation constitutes a separate offense. The violation occurred on April 13-15, 2021.

"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 duty to ensure that its operations comply with Oregon law. By failing to take the actions necessary to prevent its process water from discharging to waters of the state, Respondent failed to exercise 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)(e) because respondent made reasonable efforts to ensure that the violation would not be repeated by installing equipment to better control its wastewater.

"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 \$70. This is the amount Respondent gained by delaying spending \$20,400 for improvements to its wastewater system that would have prevented the violation. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 2 + 4 + (-)1)] + \$70 \\ &= \$6,000 + (\$600 \times 5) + \$70 \\ &= \$6,000 + \$3,000 + \$70 \\ &= \$9,070 \end{aligned}$$