



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
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TTY 711

June 27, 2022

CERTIFIED MAIL: 9589 0710 5270 0110 6010 64

Duckwall-Pooley Fruit Co.
c/o Sara M. Duckwall
3430 Davis Dr.
Hood River, OR 97031

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-ER-2023-070

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the Duckwall-Pooley Fruit Co. a civil penalty of \$6,800 for failing to meet the monitoring requirements set forth in its National Pollutant Discharge Elimination System (NPDES) Permit for wastewater discharges from the Van Horn Cold Storage Facility located at 2809 Van Horn Drive in Hood River. Specifically, between January 2020 and August 2021, Duckwall-Pooley Fruit Co. failed to collect a total of eight pH samples.

DEQ issued this penalty because adherence to the monitoring requirements is crucial to ensuring the facility is in compliance with the effluent limits set forth in the Permit. Without regular monitoring data, DEQ cannot ensure that discharges from the facility are not posing a threat to 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: Justin Sterger, DEQ ER
Accounting, DEQ
Craig Mallon, Duckwall-Pooley Fruit Co. (via email cmallon@duckwallfruit.com)

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 DUCKWALL-POOLEY FRUIT CO.) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ/I-ER-2023-070

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, 012,
10 and 045.

11 II. FINDINGS OF FACT

12 1. Respondent is owner and operator of the Van Horn Cold Storage Facility located at 2809 Van
13 Horn Drive in Hood River, Oregon (the Facility). The Facility provides cold storage and packing of
14 domestic whole fruit for shipment to customers.

15 2. Respondent was issued National Pollutant Discharge Elimination System (NPDES) permit
16 coverage for wastewater discharges from the Facility under Permit No. 102876 (the Permit) on October
17 5, 2018. The Permit took effect on November 1, 2018.

18 3. Pursuant to Schedule B, Condition 1.b. of the Permit, Respondent is required to submit monthly
19 discharge monitoring reports (DMRs) to DEQ by the 15th day of the month following the reporting
20 period. Monitoring reports must be submitted via NetDMR. Any data used to calculate summary
21 statistics must be submitted as a separate attachment.

22 4. On January 25, 2023, DEQ conducted an inspection of the Facility.

23 5. During the inspection, DEQ reviewed DMRs submitted by the Facility and discovered that the
24 flow values on the NetDMR spreadsheets submitted to DEQ since November of 2019 had been
25 incorrectly calculated. Specifically, the Facility had been dividing by 10M instead of 1M which
26 resulted in incorrect effluent data being reported to DEQ.

27 6. Pursuant to Schedule B, Table B1 of the Permit, Respondent is required to monitor for pH twice

1 per week, year-round.

2 7. Respondent failed to collect samples and monitor for pH twice weekly during the following
3 weeks:

4 a. January 26, 2020 – February 1, 2020

5 b. August 2, 2020 – August 8, 2020

6 c. August 1, 2021 – August 7, 2021

7 d. August 8, 2021 – August 14, 2021

8 8. Pursuant to Schedule B, Condition 1.d. of the Permit, Respondent must develop and implement
9 a written Laboratory Quality Assurance and Quality Control (QA/QC) program that conforms to the
10 requirements of 40 C.F.R. § 136.7.

11 9. At the time of the inspection, the Facility did not have a QA/QC manual for in-house analyses
12 of pH, temperature, and chlorine.

13 10. At the time of the inspection, the pH buffers at the Odell Duckwall lab used for permit
14 compliance were expired.

15 11. Pursuant to Schedule F, Condition A1 of the Permit, failure to comply with any permit
16 condition is a violation of ORS 468B.025.

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

19 III. CONCLUSIONS

20 1. Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to complete
21 required monitoring. Specifically, between January 2020 and August 2021, Respondent failed to collect
22 a total of eight pH samples. These are Class I violations according to OAR 340-012-0055(1)(o). DEQ
23 hereby assesses a \$6,800 civil penalty for these violations.

24 2. Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to submit
25 complete and accurate DMRs to DEQ. Specifically, between August 2019 and January 2023,
26 Respondent submitted DMRs to DEQ wherein the flow rate from the Facility was calculated
27 incorrectly. These are Class III violations according to OAR 340-012-0055(3)(a). DEQ has not assessed a

1 civil penalty for this violation.

2 3. Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to develop and
3 implement a written QA/QC program that conforms to the conditions of 40 C.F.R. § 136.7. Specifically,
4 Respondent failed to maintain a QA/QC manual for in-house analyses of pH, temperature, and chlorine.
5 This is a Class II violation according to OAR 340-012-0055(2)(d). DEQ has not assessed a civil penalty
6 for this violation.

7 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

10 1. Pay a total civil penalty of \$6,800. The determination of the civil penalty is attached as Exhibit
11 1 and is incorporated as part of this Notice.

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

15 2. Within 30 days of this order becoming final by operation of law or on appeal, Respondent
16 must:

17 a. Submit to DEQ corrected discharge monitoring reports for November 2019 through March
18 2023. Guidance on submitting corrected DMRs can be found in DEQ's NetDMR User's Guide at
19 <https://www.oregon.gov/deq/FilterDocs/WQP-guide-NETDMR-Useguide.pdf>

20 b. Develop and submit to DEQ a QA/QC Plan that includes the following:

- 21 i. Organization and Responsibilities,
- 22 ii. Sample Control and Documentation,
- 23 iii. SOP Procedures for Analytical Methods,
- 24 iv. Training Requirements,
- 25 v. Equipment Maintenance and Calibration Procedures,
- 26 vi. Calibration Procedure and Detection Limits,
- 27 vii. Corrective Action Procedures,

- viii. Quality Control and Calculations,
- ix. Performance Audits,
- x. Evaluating Data for Precision and Accuracy, and
- xi. Reporting and Recordkeeping.

The QA/QC Plan should be submitted to Justin Sterger via email at Justin.Sterger@deq.oregon.gov.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

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

If you fail to file a timely request for hearing, the Notice will become a final order by default without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later

1 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
2 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
3 the relevant portions of its files, including information submitted by you, as the record for purposes of
4 proving a prima facie case.
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7

8 6/27/2023

9 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: Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to conduct required monitoring.

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(o).

MAGNITUDE: The magnitude of the violations is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to these violations, 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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(ii) because Respondent has a Tier 2 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 Respondent has had no prior water quality violations.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(d) 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 from seven to 28 occurrences of the violation. Specifically, Respondent failed to collect eight pH samples.

"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 the permit that clearly sets forth the pH sampling requirements. By failing to collect the required number of samples, 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 pursuant to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 3 + 4 + 0)] + \$0 \\ &= \$4,000 + [\$400 \times 7] + \$0 \\ &= \$4,000 + \$2,800 + \$0 \\ &= \$6,800 \end{aligned}$$