



Oregon

Tina Kotek, 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 9, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4322

Pacific Foods of Oregon, LLC
c/o C T Corporation System, Registered Agent
720 Commercial Street SE, Suite 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2023-572

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$9,304 for a stormwater violation at your facility in Wilsonville. For the 2022-2023 monitoring year, you failed to collect one of the samples required under the National Pollutant Discharge Elimination System Industrial Stormwater General Permit Number 1200-Z (Permit). This is a violation of your Permit and ORS 468B.025(2).

DEQ issued this penalty because permit registrants are required to monitor their stormwater discharge to ensure their discharges meet the water quality benchmark pollutant concentrations in the Permit. Without this information, DEQ and the public are unable to evaluate the effectiveness of your stormwater controls in protecting water quality.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

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

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.

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 portion of your 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 DEQ Environmental Law Specialist Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Liz Miller, Pacific Foods of Oregon, LLC: liz_miller@pacificfoods.com
Michael Kennedy, Portland Office, DEQ
Benjamin Benninghoff, Portland Office, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 PACIFIC FOODS) NOTICE OF CIVIL PENALTY
5 OF OREGON, LLC,) ASSESSMENT AND ORDER
6 an Oregon limited liability company,)
Respondent.) CASE NO. WQ/SW-NWR-2023-572

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

12 II. FINDINGS OF FACT

13 1. Respondent operates an industrial facility located at 27255 SW 95th Avenue in Wilsonville,
14 Clackamas County, Oregon (the Facility).

15 2. On or about May 26, 2021, DEQ assigned coverage to Respondent under the reissued
16 National Pollutant Discharge Elimination System Industrial Stormwater General Permit No. 1200-Z
17 (the Permit). Respondent had coverage under the Permit at all material times.

18 3. The Permit authorizes Respondent to construct, install, modify, or operate stormwater
19 treatment and control facilities, and to discharge stormwater to surface waters or to conveyance systems
20 that discharge to waters of the state in conformance with all the conditions in the Permit.

21 4. Schedule B of the Permit requires Respondent to monitor its stormwater through grab
22 sampling for various parameters. Specifically, Schedule B, Condition 2 of the Permit requires
23 Respondent to monitor for the statewide benchmark pollutants identified in Table 4. Schedule B,
24 Condition 2.f of the Permit, which references Table 6, requires Respondent to monitor its stormwater
25 discharge four times per year.

26 5. For the 2022-2023 monitoring year, Respondent failed to collect and analyze one of the four
27 required samples for statewide benchmark pollutants.

1 III. CONCLUSION

2 Respondent has violated Schedule B, Condition 2 of the Permit and ORS 468B.025(2) by
3 failing to conduct required stormwater monitoring on one occasion during the 2022-2023 monitoring
4 period, as described in Section II, Paragraphs 1-5 above. According to OAR 340-012-0055(1)(o), this is a
5 Class I violation. DEQ hereby assesses a \$9,304 civil penalty for this violation.

6 IV. ORDER TO PAY CIVIL PENALTY

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

9 Pay a civil penalty of \$9,304. The determination of the civil penalty is attached as Exhibit No. 1,
10 which is incorporated as part of this Notice.

11 If you do not file a request for hearing as set forth in Section V below, please pay the penalty as
12 follows:

13 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:
14 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account
15 dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US
16 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional
17 charges.

18 Pay by check or money order: Make checks payable to "Department of Environmental
19 Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment
20 slip with your check or money order.

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**. 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
8 duly 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 11/9/2023
23 Date

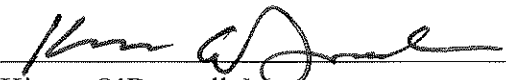
22 
23 Kieran O'Donnell, Manager
24 Office of Compliance and Enforcement

EXHIBIT NO. 1

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

VIOLATION: Failure to conduct monitoring in violation of Schedule B, Condition 1 of NPDES Industrial Stormwater General Permit No. 1200-Z and ORS 468B.025(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(o).

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 \$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)(iii), because Respondent has coverage under an NPDES general 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 2 according to OAR 340-012-0145(2)(a)(C). Respondent had a Class I violation in EEO No. 2020-EEO-5885.

"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 (4)(b) through (4)(d).

"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 only one occurrence of the violation. During the 2022-2023 monitoring period, Respondent failed to conduct required monitoring of its stormwater discharge on one occasion.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent failed to act intentionally with actual knowledge of the requirement. Respondent holds an NPDES 1200-Z Permit, which specifically requires that it collect and analyze stormwater samples according to the conditions in Schedule B. Respondent had previous enforcement for missed monitoring, so it had actual knowledge monitoring was required and that failing to monitor was a violation. Despite this knowledge, Respondent intentionally failed to conduct monitoring on one occasion during the 2022-2023 monitoring year.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(a)(D), 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 \$104. This is the amount Respondent gained by avoiding spending \$160 to analyze one stormwater sample. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (2 + 0 + 3 + 8 + 0)] + \$104 \\ &= \$4,000 + [\$400 \times 13] + \$104 \\ &= \$4,000 + \$5,200 + \$104 \\ &= \$9,304 \end{aligned}$$

Oregon Department of Environmental Quality
 700 NE Multnomah Street, Suite 600
 Portland, OR 97232-4100



State of Oregon
 Department of Environmental Quality

Phone: 503-229-5437
 Fax: 503-229-5850

CIVIL PENALTY - ORS 468.135(2)

DATE:	November 9, 2023
RESPONSE DATE :	January 18, 2024
TOTAL PENALTY:	\$9,304.00

Account Name:	PACIFIC FOODS OF OREGON, LLC <PACIFIC FOODS> <103777>		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400022
SubSystem ID:	179666	FIMS Acct. ID:	4887

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 9,304.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 9,304.00

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit <https://ydo.oregon.gov> and select 'Register Account'



 PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



REFERENCE NO.	CPGFD2400022		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	January 18, 2024
FIMS ACCT. ID:	4887	TOTAL PENALTY DUE:	\$9304.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

DEQ FINANCIAL SERVICES - LBX4244
 PO BOX 4244
 PORTLAND OR 97208-4244

Check this box if updated address information has been provided on the back of the form.

00401 7400 10040 74001 0500 000000 0095000048874CPGF240002200009304002



State of Oregon
Department of
Environmental
Quality

State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
Phone: 503-229-5437
Fax: 503-229-5850

Penalty Detail

Transaction Date	Description	Amount
11/8/2023	2023-572 WQ-SW-NWR-2023-572	\$9,304.00

SFMS Agencies Use:

Trans Code	Treasury Fund	SFMS	Index	PCA (5)	Agency Object	Project #	Phase
723	00401	7400	10040	74001	0500	00000	00

Address Changes

Please visit <https://vdo.oregon.gov> to update your mailing address online or provide the following information:

Name _____
Address _____
City, State, Zip _____