



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 9, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4315

Rolling Frito-Lay Sales LP
c/o CT Corporation System, Registered Agent
780 Commercial Street SE, Suite 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-SW-NWR-2023-574

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$12,372 for failing to monitor your stormwater discharge as required under the National Pollutant Discharge Elimination System Industrial Stormwater General Permit No. 1200-Z for your motor freight transportation and warehousing facility located at 4300 NE 189th Ave. in Portland, Oregon. Specifically, you failed to monitor on two occasions during the 2021-22 monitoring year and on three occasions during the 2022-23 monitoring year for statewide benchmark pollutants and Total Iron, an impairment pollutant.

DEQ issued this penalty because the failure to monitor industrial stormwater discharge presents a risk of harm to water quality. Monitoring may reveal the presence of harmful levels of pollutants that pose a threat to waters of the state. In addition, monitoring allows Permit registrants to gauge the effectiveness of stormwater controls and best management practices at reducing levels of pollutants in industrial stormwater discharges.

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 Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Rich Wilson, Rolling Frito-Lay Sales, LP, 4300 NE 189th Avenue, Portland, OR 97230
Michael Kennedy, DEQ
Benjamin Benninghoff, DEQ
Accounting, DEQ

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

3 IN THE MATTER OF:)
4 ROLLING FRITO-LAY SALES LP,) NOTICE OF CIVIL PENALTY
a Delaware corporation,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ-SW-NWR-2023-574

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

11 II. FINDINGS OF FACT

- 12 1. Respondent is registered under the National Pollutant Discharge Elimination System
13 Industrial Stormwater Discharge General Permit No. 1200-Z (the Permit) for its motor freight
14 transportation and warehousing facility located at 4300 NE 189th Ave. in Portland, Oregon (the
15 Facility).
- 16 2. Respondent's Facility discharges stormwater to the Columbia Slough.
- 17 3. The Permit was in effect at all material times.
- 18 4. Schedule B.2 of the Permit requires Respondent to monitor for the benchmark pollutants
19 identified in Table 4 of the Permit for the Columbia Slough Georegion: pH, Total Copper, Total Lead,
20 Total Zinc, Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD), Total Phosphorus,
21 and E. coli.
- 22 5. Schedule B.4 of the Permit requires Respondent to monitor for the impairment pollutant
23 Total Iron.
- 24 6. Schedule B.7.f of the Permit requires registrants to monitor for benchmark pollutants and
25 impairment pollutants at a frequency of four times per monitoring year (July 1 through June 30), with
26 two samples between July 1 and December 31, and two samples between January 1 and June 30.

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1 7. Respondent's Facility has one monitoring point, known as Catch Basin 1 (CB1) or
2 Monitoring Point 001 (MP001).

3 8. During the 2021-22 monitoring year, Respondent monitored the stormwater discharge at
4 Monitoring Point 001 on two occasions, on May 24, 2022 and June 10, 2022. Respondent did not
5 monitor the stormwater discharge at Monitoring Point 001 during the first half of the monitoring year
6 (July 1 – December 31).

7 9. During the 2022-23 monitoring year, Respondent monitored the stormwater discharge at
8 Monitoring Point 001 on one occasion, on April 17, 2023. Respondent did not monitor the stormwater
9 discharge at Monitoring Point 001 during the first half of the monitoring year (July 1 – December 31).

10 III. CONCLUSIONS

11 1. Respondent violated ORS 468B.025(2) and Schedule B.7.f of the Permit by failing to collect
12 monitoring data on five occasions during the 2021-22 and 2022-23 monitoring years, as described in
13 Section II, Paragraphs 1-9 above. Specifically, Respondent failed to monitor for pH, Total Copper,
14 Total Lead, Total Zinc, TSS, BOD, Total Phosphorus, E. coli and Total Iron at Monitoring Point 001
15 two out of the required four occasions during the 2021-22 monitoring year, and three out of the
16 required four occasions during the 2022-23 monitoring year. These are Class I violations according to
17 OAR 340-012-0055(1)(o). DEQ hereby assesses a \$12,372 civil penalty for these violations.

18 IV. ORDER TO PAY CIVIL PENALTY

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

21 1. Pay a total civil penalty of \$12,372. The determination of the civil penalty is attached as
22 Exhibit I and is incorporated as part of this Notice.

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

25 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:
26 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account
27 dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US

1 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional
2 charges.

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

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

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

21 Active duty Service members have a right to stay proceedings under the federal Service
22 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
23 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
24 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
25 Department does not have a toll free telephone number.

26 If you fail to file a timely request for hearing, the Notice will become a final order by default
27 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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9 11/9/2023
10 Date



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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

VIOLATION NO. 1 Failing to collect monitoring data in violation of ORS 468B.025(2) and Schedule B.7.f of the Permit.

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 a 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 initially receives a value of 10 according to OAR 340-012-0145(2)(a)(C) and (D) and OAR 340-012-0145(2)(b) because Respondent has two Class I violations in Case No. WQ-SW-NWR-2013-129, issued on November 20, 2013, at least one Class I violation in Expedited Enforcement Offer No. WQ-SW-WR-2014-147, issued on February 5, 2015, eleven Class I violations in Case No. WQ-SW-NWR-2014-154 issued on January 21, 2015, and nine Class I and one Class II violation in Case No. WQ-SW-NWR-2017-180, issued on February 20, 2018. According to OAR 340-012-0145(2)(b), the value of P will not exceed 10. According to OAR 340-012-0145(2)(d)(A)(i), P is reduced by 2 because all of the formal enforcement actions in which prior significant actions were cited were issued more than three years before the violations addressed in this formal enforcement action occurred. Therefore, the value of P is 8.

"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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Each missed sampling event at each monitoring point is a separate offense. Respondent failed to collect monitoring data on five occasions during the 2021-2022 and 2022-23 monitoring years from one monitoring point.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. Respondent has been cited for missed monitoring under the Permit in four previous DEQ formal enforcement actions, in Case No. WQ-SW-NWR-2013-129, Expedited Enforcement Offer No. WQ-SW-WR-2014-147, Case No. WQ-SW-NWR-2014-154, and Case No. WQ-SW-NWR-2017-180. Therefore, Respondent has actual knowledge of the stormwater monitoring requirements under the Permit, including the four-times-per year monitoring frequency. During both the 2021-22 and 2022-23 monitoring years, Respondent failed to sample during the entire first half of the monitoring year (July 1 – December 31). Thus, Respondent failed to act with actual knowledge of the requirement.

"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 \$1,172. This is the amount Respondent gained by avoiding spending \$1,725 in laboratory costs (\$345 per missed sample) associated with five missed samples for pH, Total Copper, Total Lead, Total Zinc, TSS, BOD, Total Phosphorus, E. coli and Total Iron. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$4,000 + [(0.1 \times \$4,000) \times (8 + 0 + 2 + 8 + 0)] + \$1,172$
 $= \$4,000 + (\$400 \times 18) + \$1,172$
 $= \$4,000 + \$7,200 + \$1,172$
 $= \$12,372$

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:	\$12,372.00

Account Name:	ROLLING FRITO-LAY SALES LP <FRITO-LAY PORTLAND MEGA> <113285>		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400023
SubSystem ID:	179722	FIMS Acct. ID:	4926

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 12,372.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 12,372.00

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.	CPGFD2400023		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	January 18, 2024
FIMS ACCT. ID:	4926	TOTAL PENALTY DUE:	\$12372.00

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 0095000049263CPGFD240002300012372009



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	2023-574 WQ-SW-NWR-2023-574	\$12,372.00

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://ydo.oregon.gov> to update your mailing address online or provide the following information:

Name _____
Address _____
City, State, Zip _____