



# 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

February 8, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6527 96

Miscoe Properties, LLC  
c/o CLG Registered Agent, LLC  
510 SW 5<sup>th</sup> St, Ste. 500  
Portland, OR 97204

Re: Amended Notice of Civil Penalty Assessment and Order  
Case No. WQ-NP-NWR-2022-090

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$28,752 for discharging waste from your food processing and production facility into the Columbia Slough and placing waste where it was likely to be carried into the Slough.

DEQ originally issued the Notice of Civil Penalty Assessment and Order (Notice) on May 4, 2023, to Oregon Harvest, LLC, the former operator of the facility. Oregon Harvest, LLC, requested a contested case hearing on June 23, 2023. DEQ hereby withdraws the Notice as applied to Oregon Harvest LLC, and issues this Amended Notice to the current owner of the facility, Miscoe Properties, LLC.

DEQ issued this penalty because the substance that was discharged contained food particles that may pose a risk of harm to beneficial uses of waters, including use of those waters by aquatic life.

Included in Section IV of the enclosed Amended Notice is an order requiring you to conduct dye tests of all floor drains, schedule a Facility inspection with DEQ, and secure all applicable local government permits and approvals within 30 days from the date the order becomes final by operation of law or on appeal. \$13,752 of the civil penalty represents the economic benefit you gained by failing to pretreat your wastewater and obtain permit coverage for discharging to the sanitary sewer. If you complete the requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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 Amended 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 the 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 Emily Knobbe at (971) 300-9770 or [emily.knobbe@deq.oregon.gov](mailto:emily.knobbe@deq.oregon.gov).

Sincerely,



Becca Puskas, Interim Manager  
Office of Compliance and Enforcement

Enclosures

cc: Tiffany Yelton-Bram, Northwest Region  
Christine Svetkovich, DEQ  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) AMENDED NOTICE OF CIVIL PENALTY  
4 MISCOE PROPERTIES, LLC ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. WQ-NP-NWR-2022-090

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Amended Notice of Civil Penalty  
8 Assessment and Order (Amended Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS  
9 468.126 through 468.140, ORS Chapters 465, 468B, and 183, and Oregon Administrative Rules (OAR)  
10 Chapter 340, Divisions 011, and 012.

11 II. FINDINGS OF FACT

12 1. At all relevant times, Respondent was the owner of the property located at 9348 N  
13 Peninsular Ave in Portland, Oregon (the Facility).

14 2. The Facility contains several floor drains that convey wastewater through pipes under  
15 the floor of the Facility into a sump located in a small building north of the Facility. The sump has two  
16 exit pipes. The lower pipe drains into the sewer system. The higher pipe drains into a stormwater  
17 system, which discharges to the Columbia Slough.

18 3. On September 2, 2020, the City of Portland Bureau of Environmental Services (BES)  
19 conducted an inspection at the Facility.

20 4. At the time of the inspection, Respondent discharged wastewater into the Columbia  
21 Slough that had the odor and color of humus, and there was wastewater in the stormwater system that  
22 contained substances related to hummus manufacturing.

23 5. On November 8, 2021, the Department of Environmental Quality (DEQ) conducted an  
24 inspection of the Facility. At the time of the DEQ inspection:

- 25 a. Hummus solids were floating on the surface of the water in the sump;
- 26 b. There was spilled product near floor drains and on the surface of floor drains of the  
27 production room;

- c. Drainage from a water heater was conveyed through a pipe to floor drains; and
- d. Bleach was dripping into floor drains in a bathroom.

### III. CONCLUSIONS

1. Respondent violated ORS 468B.050(1)(a) by discharging waste to waters of the state without a permit. Specifically, on September 2, 2020, wastewater from Respondent’s Facility which contained substances related to hummus manufacturing was discharged into the Columbia Slough. The Columbia Slough is waters of the state pursuant to ORS 468B.005(10). Hummus product is “waste,” pursuant to ORS 468B.005(9), likely to cause “pollution,” pursuant to ORS 468B.005(5), because it contains food particles that may alter the physical and chemical characteristics of waters and poses a risk of harm to aquatic life and habitat. This is a Class I violation, according to OAR 340-012-0055(1)(a). DEQ hereby assesses a \$23,352 civil penalty for this violation.

2. Respondent violated ORS 468B.025(1)(a) by placing wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means. Specifically, on November 8, 2021, wastewater from the Facility, which contained hummus product, drainage from the water heater, and bleach, was draining into floor drains and being conveyed by pipe from the Facility to a sump. The sump has the potential to drain into the Columbia Slough. The Columbia Slough is waters of the state pursuant to ORS 468B.005(10). Hummus, drainage from the water heater, and bleach are all “waste,” pursuant to ORS 468B.005(9), likely to cause “pollution,” pursuant to ORS 468B.005(5), because they contain food particles and chemicals that may alter the physical and chemical characteristics of waters and pose a risk of harm to aquatic life and habitat. This is a Class II violation according to OAR 340-012-0055(2)(c). DEQ hereby assesses a \$5,400 civil penalty for this violation.

### IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

- 1. Pay a total civil penalty of \$28,752. The determination of the civil penalty is attached as Exhibits 1 and 2 and are incorporated as part of this Amended Notice.

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

4 2. Within 30 days of this order becoming final by operation of law or on appeal:

5 a. Conduct dye tests of all floor drains in the Facility. If dye is found in the sump,  
6 disconnect those drains. Before rerouting disconnected drains to the sanitary sewer,  
7 secure all applicable local government permits and approvals; and

8 b. Schedule an inspection with DEQ to determine if further mitigation or permitting is  
9 warranted.

10 3. Send written documentation demonstrating Respondent's compliance to: Tiffany Yelton-  
11 Bram, 700 NE Multnomah St, Portland, OR 97232

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

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

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1 Active duty Service members have a right to stay proceedings under the federal Service  
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
5 Department does not have a toll free telephone number.

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

12  
13  
14  
15 2/8/2024  
16 Date

15 Rebecca Puskas  
16 Becca Puskas, Interim Manager  
17 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: Respondent violated ORS 468B.050(1)(a) by discharging waste to waters of the state without a permit.

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

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)(D).

"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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. The violation occurred on one day, September 2, 2020.

"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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent knew that waste from the Facility exited through floor drains into the sump. One of the sump's exit pipes discharges to the Columbia Slough. Respondent failed to take reasonable care to avoid waste from the Facility being discharged to the Columbia Slough, which was a foreseeable risk.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as

described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). DEQ inspected the facility on November 8, 2021, and determined that Respondent had not taken any measures to prevent the violation from occurring again. Food and other waste was observed near floor drains in the Facility and in the sump.

"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 \$13,752. This is the amount Respondent gained by avoiding spending Permit fees of \$1,331 in 2020, \$3,753 in 2021, and \$4,276 in 2023. Respondent also avoided the cost of installing pretreatment of the hummus wastewater totaling \$10,000, and sampling costing \$250 each quarter since September 2, 2020. This "EB" was calculated pursuant to OAR 340-0120-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 4 + 2)] + \$13,752$   
 $= \$6,000 + (\$600 \times 6) + \$13,752$   
 $= \$6,000 + \$3,600 + \$13,752$   
 $= \$23,352$



EXHIBIT 2

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

VIOLATION NO. 2: Respondent violated ORS 468B.025(1)(a).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(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 \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D).

"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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. The violation occurred on one day, November 8, 2021.

"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. Following the BES inspection on September 2, 2020, DEQ communicated with Respondent about the discharge by phone on September 14, 2020, and by email on January 21, 2021. At the inspection on November 8, 2021, Respondent had not taken any measures to prevent future discharge of waste, and waste was found in the sump where it has the potential to drain into the Columbia Slough. Respondent had actual knowledge of the requirement and failed to take action that would have prevented this 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)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 because any economic benefit that Respondent gained as a result of this violation is de minimis.

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

$$\begin{aligned} &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 0 + 8 + 0)] + \$0 \\ &= \$3,000 + (\$300 \times 8) + \$0 \\ &= \$3,000 + \$2,400 + \$0 \\ &= \$5,400 \end{aligned}$$