



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 15, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6528 57

Shamrock Foods Company
c/o CT Corporation System, Registered Agent
780 Commercial St. SE, Suite 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2021-129

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a total civil penalty of \$31,079 for violations of the National Pollutant Discharge Elimination System Stormwater Discharge General Permit Number 1200-Z (Permit) at your facility in Portland. You failed to implement the Stormwater Pollution Control Plan (SWPCP) for the facility, failed to conduct stormwater monitoring for the 2021-2022 and 2022-2033 monitoring periods, failed to prepare Tier I reports in response to visual observations of stormwater pollution, and failed to conduct monthly inspections at the facility. These are violations of your Permit and Oregon environmental law.

DEQ issued this penalty because you failed to implement many of the best management practices in the SWPCP, which are intended to reduce pollutants in your stormwater discharge and protect water quality. Although visual observations of the stormwater discharge indicated evidence of pollution, you did not take the required steps of preparing Tier I reports and implementing corrective actions. These violations, coupled with the lack of monitoring and site inspections, indicate a general lack of compliance with the Permit.

Included in Section IV is an Order requiring you to submit a revised SWPCP to DEQ and implement stormwater Best Management Practices within 60 days of the Order becoming final.

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.state.or.us
Via fax – 503-229-5100

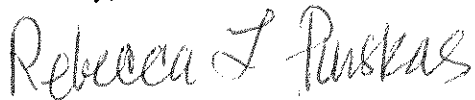
Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

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 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,



Becka Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: John Colligan, Shamrock Foods Company, 2540 N 29th Ave., Phoenix, AZ 85009
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: |) | NOTICE OF CIVIL PENALTY |
| 4 | SHAMROCK FOODS COMPANY, |) | ASSESSMENT AND ORDER |
| 5 | an Arizona corporation, |) | |
| 6 | |) | CASE NO. WQ/SW-NWR-2021-129 |
| 7 | Respondent. |) | |

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 18332 NE San Rafael Street in
14 Portland, Multnomah County, Oregon (the Facility).
- 15 2. On or about November 29, 2018, DEQ assigned coverage to Respondent under the National
16 Pollutant Discharge Elimination System Stormwater Discharge General Permit No. 1200-Z (the
17 Permit). Respondent had coverage under the Permit or subsequent versions of the Permit at all material
18 times.¹
- 19 3. Schedule A, Condition 6.d of the Permit requires Respondent to implement the stormwater
20 pollution control plan (SWPCP) and any revisions to the plan.
- 21 4. Respondent’s SWPCP, dated September 2018, sets forth the following best management
22 practices (BMPs) in Section 3.1.1:

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24
25 ¹ The most recent renewal of the Permit was effective on July 1, 2021. The citations in Section II,
26 paragraphs 3-11 and Section III, paragraphs 1-3 of this Notice are to the previous version of the Permit,
27 which was effective August 1, 2017 through July 1, 2021. A copy of the previous version of the Permit
is available at: <https://www.oregon.gov/deq/FilterPermitsDocs/Final1200Zpermit.pdf>. The citations in
Section II, paragraphs 12-15 and Section III, paragraph 4 are to the current version of the Permit.

- a. All concrete/asphalt surfaces shall be swept on a minimum of a weekly basis (high traffic areas should be swept on a daily basis). Repairs shall be done as necessary.
 - b. Outdoor activities are performed either on gravel or on concrete and do not routinely generate dust or sediment track-out. The exit/entrance shall be inspected daily for signs of track-in/track-out and shall be swept as necessary.
 - c. The facility has no exposed soil areas. However, the storm drain in the gravel parking lot (Outfall 003) is subject to sedimentation and therefore measures will be taken to prevent sediment from entering the drain, such as placing a silt sock or equivalent device around the drain.
 - d. Floatable debris is retained onsite in the stormwater puddling and retention areas, where it shall then be removed and disposed of properly in trash receptacles or with a third-party contractor if tainted with oil and grease. The retention area shall be cleaned on no less than a weekly basis.
 - e. Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases. Make the methods and procedures available to appropriate personnel. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures. Have the necessary cleanup material onsite and readily available.
5. On July 14, 2021, DEQ staff inspected the Facility and reviewed Respondent's records.
 6. On July 14, 2021, the Facility was in the following condition:
 - a. There was sediment accumulated throughout the Facility. Respondent's activities on the unpaved lot to the east of the Facility (Matson property) was the main source of sediment.
 - b. The Facility had not been swept regularly, and Respondent did not have records that it was swept in the previous year.
 - c. There were no erosion or sediment controls in place to prevent sediment from the Matson property from accumulating at the Facility or contributing to the Facility's stormwater discharge.

1 d. The catchbasins were full of dirty water and contained trash, discarded gloves, and other
2 debris. The catchbasins had not been cleaned in at least one year and did not have filters
3 or inserts to prevent sediment and debris from entering them.

4 e. There were no spill kits at the Facility. There were no records of staff having received
5 spill response training.

6 7. Schedule B, Condition 7.f.vi requires Respondent to prepare a Tier I report if visual
7 observation shows evidence of stormwater pollution, such as the presence of floating, suspended or
8 settleable solids, color, odor, foam, visible oil sheen, or other obvious indicators of pollution.

9 8. Respondent's records included "Stormwater Discharge Inspection Forms." On
10 approximately 48 occasions prior to July 14, 2021, the forms noted evidence of stormwater pollution,
11 describing the stormwater discharge as "dark," "brown," "oily," "oil sheen," "murky," and "dark blue."

12 9. Respondent did not prepare Tier I reports or implement any corrective actions in response to
13 the visual observations described above.

14 10. Schedule B, Condition 7 of the Permit requires Respondent to conduct monthly inspections
15 at the Facility.

16 11. Respondent did not conduct any inspections from December 2018 through October 2019.

17 12. Schedule B of the Permit requires Respondent to monitor its stormwater through grab
18 sampling for various parameters. Specifically, Schedule B, Condition 2 of the Permit requires
19 Respondent to monitor for the statewide benchmark pollutants identified in Table 4. Schedule B,
20 Condition 7.f of the Permit, which references Table 6, requires Respondent to monitor its stormwater
21 discharge four times per year. Schedule B, Condition 7.a.i of the Permit requires Respondent to collect
22 a sample at each monitoring point.

23 13. As of July 1, 2021, the Facility had two monitoring points.

24 14. For the 2021-2022 monitoring year, Respondent failed to collect and analyze all four
25 required samples at both monitoring points.

26 15. For the 2022-2023 monitoring year, Respondent failed to collect and analyze all four
27 required samples at both monitoring points.

1 III. CONCLUSIONS

2 1. Respondent has violated Schedule A, Condition 6.d of the Permit and ORS 468B.025(2) by
3 failing to implement the SWPCP as described in Section II, Paragraphs 1-6 above. According to OAR
4 340-012-0055(1)(r), this is a Class I violation. DEQ hereby assesses a \$20,594 civil penalty for this
5 violation.

6 2. Respondent has violated Schedule B, Condition 7.f.vi of the Permit and ORS 468B.025(2) by
7 failing to prepare Tier I reports as described in Section II, Paragraphs 7- 9 above. According to OAR 340-
8 012-0053(2), this is a Class II violation. DEQ has not assessed a civil penalty for this violation.

9 3. Respondent has violated Schedule B, Condition 7 of the Permit and ORS 468B.025(2) by
10 failing to conduct monthly inspections as described in Section II, Paragraphs 10 and 11 above. According
11 to OAR 340-012-0053(2), this is a Class II violation. DEQ has not assessed a civil penalty for this
12 violation.

13 4. Respondent has violated Schedule B, Condition 2 of the Permit and ORS 468B.025(2) by
14 failing to conduct required stormwater monitoring on eight occasions at two monitoring points during the
15 2021-2022 and 2022-2023 monitoring periods, as described in Section II, Paragraphs 12 – 15 above.
16 According to OAR 340-012-0055(1)(o), this is a Class I violation. DEQ hereby assesses a \$10,485 civil
17 penalty for this violation.

18 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

21 1. Pay a total civil penalty of \$31,079. The determination of the civil penalties is attached as
22 Exhibit Nos. 1 and 2, and incorporated as part of this Notice.

23 If you do not file a request for hearing as set forth in Section V below, your check or money order
24 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
25 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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1 2. Within sixty (60) days after this Order becomes final by operation of law or on appeal,
2 comply with Oregon law by:

3 a. Submitting a revised SWPCP to DEQ that meets the requirements of Schedule A.8-
4 10 of the Permit; and

5 b. Submitting documentation, including before and after photographs, to DEQ that
6 demonstrates implementation BMPs at the Facility. At a minimum, Respondent must demonstrate
7 implementation of (i) housekeeping to remove sediment and debris, (ii) installation of erosion or
8 sediment controls to prevent sediment from the Matson property, (iii) catch basin maintenance, and (iv)
9 installation of spill kits.

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

11 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
12 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
13 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
14 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
15 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
16 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
17 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
18 it to **503-229-5100** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge
19 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
20 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
21 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
22 you may represent yourself. If you are a corporation, partnership, limited liability company,
23 unincorporated association, trust, or government body, you must be represented by an attorney or a
24 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 Notice will become a final order by default
7 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
8 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.

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2/15/2024
Date

Becka Puskas
Becka Puskas, Interim Manager
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 1: Failing to implement the Stormwater Pollution Control Plan (SWPCP), in violation of Schedule A, Condition 6.d of the NPDES Stormwater Discharge General Permit No. 1200-Z (the Permit) and ORS 468B.025(2).

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

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 violated a water quality statute, rule or permit and 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 4 according to OAR 340-012-0145(2)(a)(B)-(D), because Respondent had one Class I violation and one Class II violation in Case No. 2019-EEO-4912 and one Class I violation in Case No. 2020-EEO-5797.

"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 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondent failed to substantially implement the plan for at least one year prior to the inspection on July 14, 2021.

"M" is the mental state of the Respondent and receives an 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. The 1200-Z Permit and the SWPCP prepared by Respondent's consultant require implementation of best management practices in order to minimize the discharge of industrial pollutants from the Site. By failing to implement many of the key measures included in the SWPCP despite the condition of the

site and visible indications of stormwater pollution, consciously disregarded a substantial and unjustifiable risk that it would violate its Permit and potentially discharge polluted stormwater from the facility. Disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"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). As of the date of this Notice, Respondent has not fully implemented the SWPCP for the facility.

"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 \$9,394. This is the amount Respondent gained by avoiding spending a total of \$11,937 to implement BMPs at the site, including site sweeping, cleaning catchbasins, and replacing catchbasin inserts. 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 x \$4,000) x (4 + 0 + 4 + 8 + 2)] + \$9,394
= \$4,000 + [\$400 x 18] + \$9,394
= \$4,000 + \$7,200 + \$9,394
= \$20,594

EXHIBIT NO. 2

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

VIOLATION 4: Failing to conduct monitoring in violation of Schedule B, Condition 2 of NPDES 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 4 according to OAR 340-012-0145(2)(a)(B)-(D), because Respondent had one Class I violation and one Class II violation in Case No. 2019-EEO-4912 and one Class I violation in Case No. 2020-EEO-5797.

"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 3 according to OAR 340-012-0145(4)(c), because there were from seven to 28 occurrences of the violation. During the 2021-2022 and 2022-2023 monitoring periods, Respondent failed to conduct required monitoring of its stormwater discharge on a total of eight occasions at two outfalls, for a total of 16 occurrences.

"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 holds an NPDES 1200-Z Permit, which specifically requires that it collect and analyze stormwater samples according to the conditions in Schedule B. Additionally, Respondent received a penalty for the same violation for the 2019-2020 monitoring year. Although Respondent has claimed there is no stormwater discharge from the site on its DMRs, it has not provided sufficient data for DEQ to grant a variance or terminate permit coverage. When Respondent failed to collect all four of the required stormwater samples during the 2021-2022 and 2022-2023 monitoring years, it failed to take reasonable care to avoid a foreseeable risk that it would violate the Permit and Oregon environmental law.

"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 \$2,085. This is the amount Respondent gained by avoiding spending a total of \$2,560 to collect and analyze 16 stormwater samples during the 2021-2022 and 2022-2023 monitoring years. 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 x \$4,000) x (4 + 0 + 3 + 4 + 0)] + \$2,085
= \$4,000 + [\$400 x 11] + \$2,085
= \$4,000 + \$4,400 + \$2,085
= \$10,485