



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

April 11, 2024

CERTIFIED MAIL: 7017 1450 0000 8310 4012

Oregon Hill Farms Foods, LLC
c/o Thomas McMahon, Registered Agent
32861 Pittsburg Road
St. Helens, OR 97051

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-I-NWR-2023-024

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$73,033 for operating an unpermitted wastewater disposal lagoon at your food processing facility located at 32861 Pittsburg Rd in St. Helens, Oregon.

DEQ issued this penalty because your failure to obtain permit coverage for your wastewater lagoon posed a risk of harm to waters of the state. Cannery process wastewater must be managed carefully to protect water quality because it can contain high concentrations of Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), Total Nitrogen (Total-N), Sodium, (Na), Chloride (Cl), and Total Dissolved Solids (TDS), which are potential threats to waters of the state. Water quality permits issued by DEQ require implementation of best management practices for wastewater disposal intended to prevent harm to waters of the state.

Included in Section IV is an order requiring you to immediately cease all discharges to the lagoon, within 60 days of this order becoming final or by August 1, whichever is later, develop a lagoon closure plan, and within 180 days of receiving approval from DEQ implement the closure plan. \$65,033 of the civil penalty represents the economic benefit you gained by avoiding the cost to install and operate a permitted wastewater treatment and disposal system at the facility. If you choose to apply for coverage under a WPCF permit and install a wastewater system compliant with the requirements of the permit, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

Additionally, the facility's operations are classified under SIC code 2033, which is an industrial source covered by the National Pollutant Discharge Elimination System (NPDES) Industrial Stormwater General Permit No. 1200-Z. If the facility may discharge industrial stormwater to surface waters, submit a complete permit application. Alternatively, submit documentation demonstrating that the facility does not discharge industrial stormwater to surface waters.

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. 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 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.

Sincerely,



Becca Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Tim Ruby, Northwest Region
Tiffany Yelton-Bram, 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 OREGON HILL FARMS FOODS, LLC,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ-I-NWR-2023-024

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 the operator of the food processing facility located at 32861 Pittsburg Rd
13 in St. Helens, Oregon (the Facility).

14 2. The Facility is located to the west of Dart Creek and to the east of Milton Creek. The
15 depth to shallow groundwater in the area surrounding the Facility is approximately 50 feet below
16 ground surface. The soil in the area is primarily sandy and silt loam, which has the potential to drain at
17 moderately high rates at saturation.

18 3. At all relevant times, Respondent was not issued coverage under a Water Pollution
19 Control Facility (WPCF) permit or any other water quality permit from DEQ.

20 4. On December 28, 2022, DEQ inspected the Facility. At the time of the inspection:

- 21 a. There was a wastewater lagoon along the western fence line of the Facility;
22 b. The lagoon was receiving up to 1,000 gallons per day of untreated process
23 wastewater from the Facility;
24 c. The lagoon was unlined; and
25 d. There were no stormwater management structures present.

26 5. Wastewater from the facility is likely to contain high concentrations of Biochemical
27 Oxygen Demand (BOD), Total Suspended Solids (TSS), Total Nitrogen (Total-N), Sodium, (Na),
Chloride (Cl), and Total Dissolved Solids (TDS).

1 III. CONCLUSIONS

2 1. Respondent violated ORS 468B.050(1)(b) and OAR 240-045-0015(1)(b) by operating a
3 disposal system without a permit. Specifically, since at least December 28, 2022, Respondent has
4 discharged waste into an unpermitted wastewater lagoon. The lagoon is a “disposal system,” pursuant
5 to ORS 468B.005(1), because the purpose of the lagoon is to dispose of wastes by both surface and
6 underground methods, by draining through the soil to groundwater and by evaporation. The wastewater
7 from food processing is “waste” pursuant to ORS 468B.005(9) because it tends to alter the physical,
8 chemical, or biological properties of waters of the state, which tends to be injurious to beneficial uses,
9 including as habitat for aquatic life. This is a Class I violation, according to OAR 340-012-0055(1)(d).
10 DEQ hereby assesses a \$73,033 civil penalty for this violation.

11 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

14 1. Pay a total civil penalty of \$73,033. The determination of the civil penalty is attached as
15 Exhibit 1 and is incorporated as part of this Notice.

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

19 2. Immediately stop discharging all process wastewaters to the Facility’s lagoon.

20 3. Develop and submit to DEQ for approval a lagoon closure plan within 60 days of this order
21 becoming final or by August 1, 2024, whichever is later. The lagoon closure plan must include the
22 following:

- 23 a. Removal of pipes and other structures in place that discharge wastewater to the lagoon;
- 24 b. Removal of all liquid and residual solids from the lagoon;
- 25 c. Lagoon fill. The lagoon must be filled with clean soil, which must be compacted and
26 backfilled as needed to prevent the development of a depression that could collect
27 precipitation. The top 6-12 inches must be topsoil to allow for establishment of cover
crop; and

1 d. Cover crop or sod to establish a permanent vegetative cover over the lagoon site.

2 4. Implement the lagoon closure plan within 180 days of DEQ's approval and submit
3 documentation demonstrating closure to DEQ. The final lagoon closure documentation must include a
4 narrative description of the process followed to close the lagoon including pipe removal, photographs
5 of the site after lagoon closure, and documentation of how lagoon solids were handled and disposed.
6 Written documentation demonstrating Respondent's compliance must be sent to: Tim Ruby,
7 Tim.Ruby@deq.oregon.gov.

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

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

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

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

7
8
9
10 4/11/2024
11 Date

Rebecca J Puskas
12 Becca Puskas, Interim Manager
13 Office of Compliance and Enforcement
14
15
16
17
18
19
20
21
22
23
24
25
26
27

EXHIBIT 1

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

VIOLATION: Operating a disposal system without a Permit in violation of ORS 468B.050(1)(b).

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

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).

"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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent operated the wastewater lagoon at the Facility from at least December 28, 2022, until the date of this notice, over 400 days.

"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 failed to take reasonable care to ensure that the Facility was operating in compliance with all applicable laws and regulations. Respondent operated an illegal wastewater disposal system, which created a foreseeable risk that Respondent would violate the law.

"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 December 28, 2022, and issued the pre-enforcement notice on February 22, 2023, which listed several corrective actions. As of the date of this notice, Respondent has not taken any of the corrective actions in the pre-enforcement notice.

"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 \$65,033. This is the amount Respondent gained by continuing operations at the Facility while discharging wastewater to the unpermitted lagoon instead of installing and operating a wastewater treatment and disposal system compliant with a WPCF permit. By operating without a permitted wastewater system, Respondent avoided spending \$585 to apply for a WPCF permit, \$834 annually for Permit fees in 2022 and 2023, and \$90,000 to install a wastewater treatment and disposal system. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 4 + 2)] + \$65,033 \\ &= \$4,000 + (\$400 \times 10) + \$65,033 \\ &= \$4,000 + \$4,000 + \$65,033 \\ &= \$73,033 \end{aligned}$$