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November 4, 2020

VIA EMAIL

Hannah Young
Deputy Attorney General
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

RE: Notice of Violation

Dear Ms. Young:

This law firm represents Partner's Produce, Inc. ("Partner's Produce"), which owns and operates an onion processing facility near the community of Wood in Payette County, Idaho.

On August 18, 2020, Partner's Produce received a Notice of Violation ("NOV") from the Idaho Department of Water Quality ("IDEQ") alleging violations of the Idaho Ground Water Quality Rule (58.01.11), the Idaho Wastewater Rules (58.01.16), the Idaho Recycled Water Rules (58.01.17), and the Idaho Rules and Standards for Hazardous Waste (58.01.05) (the "Alleged Violations"). We understand that Partner's Produce and IDEQ held a compliance conference on September 21, 2020. This letter provides additional information regarding the operational circumstances that resulted in the Alleged Violations, discusses the factors relevant to reducing the civil penalties set forward in the NOV to settle the alleged Violations, and provides proposals for steps that Partner's Produce can take to prevent violations going forward, which Partner's Produce hopes will assist IDEQ as it considers resolution of this matter.

To be clear, the goal of Partner's Produce is to design and operate its facilities in compliance with applicable rules and regulations. Partner's Produce looks forward to working with IDEQ to resolve any outstanding violations and to ensure that its operations are in compliance on a going-forward basis.

FACTUAL BACKGROUND

Partner's Produce's History, Facility, and Wastewater Processes

Partner's Produce is owned and run by George Rodriguez and his two sons, George Jr. and Eddie. George Sr. began farming onions in 1971 and his operation grew into Partner's Produce, which was established in 1998. Since then Partner's Produce has continued growing: in 1999 Partner's Produce installed a second packing line in order to increase capacity; in 2000 Partner's Produce built an on-site raw onion storage facility; in 2003 Partner's Produce built a new peeling facility that was specifically designed to produce whole, peeled onions; in 2004 Partner's Produce built a 6,000 square foot processing facility adjacent to its existing buildings; and in 2006 Partner's Produce extended the existing whole-peeled processing line by installing a freezing line complete with a state-of-the-art blancher/cooler and freezing tunnel.

Today, Partner's Produce is the largest producer of whole peeled onions in the Idaho/Eastern Oregon growing area and packs, and processes onions at its facility near the community of Payette, Idaho. Throughout Partner's Produce's growth, it has remained a family operation.

As a part of the peeling process for its whole peeled onion product, Partner's Produce blanches diced and stripped onions. The facility uses water to do so and also to wash down its onion processing equipment. Once the water has been used for these purposes, Partner's Produce screens the solids out and places the remaining water into two 100,000-gallon tanks. The water is then further filtered to remove fine material using a reverse osmosis system and the resultant water is reused in the facility. The fine material is then trucked to Clay Peak Landfill in Payette County, Idaho for disposal. Partner's Produce does not land-apply wastewater resulting from the processes that occur at its facilities.

By reducing its wastewater using the filtration and reverse osmosis system, Partner's Produce has been able to keep the amount of wastewater it produces in check as it grows. Clay Peak Landfill has been able to take the wastewater Partner's Produce produces, eliminating Partner's Produce need to dispose of it onsite. Partner's Produce does not currently hold a wastewater reuse permit and, given its processes, does not believe one is required as it currently operates.

The operational difficulties giving rise to the Alleged Violations

As noted above, Partner's Produce uses a reverse osmosis filtration system to ensure that water is suitable for reuse within its facility. The membranes on this system must be replaced periodically. In November or December of 2019, Partner's Produce experienced some clogging in the membranes. It contacted Pure Aqua, which is a company located in California that provides Partner's Produce ongoing support and information regarding the reverse osmosis filtration system, including the membranes. At Pure Aqua's suggestion, Partner's Produce purchased cleaning chemicals that were then used to clean the membranes. Unfortunately, that

process did not fully resolve the issue so Partner's Produce ordered new membranes in early 2020. After placing the order, Pure Aqua notified Partner's Produce that the product was manufactured overseas and was on backorder. Thereafter, Pure Aqua informed Partner's Produce that there would be further delays due to unforeseeable supply chain interruptions caused by the COVID-19 pandemic. Unfortunately, the membranes are manufactured by only one company, Dow Chemical, so Partner's Produce did not have the option of purchasing membranes from another supplier. The COVID-19-related delays created a period of disruption to its normal operations, during which Partner's Produce could not internally reuse much of its process water. In such a situation, typically Partner's Produce would truck any additional water to Clay Peak Landfill. However, at the time Clay Peak was not in a position to accept additional water from Partner's Produce. In light of these unforeseen and unprecedented circumstances, Partner's Produce placed some process water in stormwater basins on its property.

Partner's Produce fully complied with IDEQ's ensuing investigation, including granting IDEQ personnel access to the property, taking the follow-up actions requested by IDEQ, and providing the additional information and documents requested by IDEQ.

Partner's Produce's corrective actions

In response to the operational difficulties it experienced, Partner's Produce took corrective actions, including contracting with Master Environmental to pump the water from the storage basins, contracting with West-Tech and Mountain Water Works engineers to assist in revising operations to ensure this situation does not re-occur, and continuing discussions with Clay Peak Landfill about Clay Peak's plans to expand its capacity to accept process water. Following the September 21, 2020 compliance conference, the President of Partner's Produce, George A. Rodriguez, met with a manager of Clay Peak to discuss its capacity and to tour the expansion facility. During that meeting, Clay Peak assured Mr. Rodriguez that not only was it planning to complete its expansion in November, it is also engaged in a pilot project which will allow Clay Peak to land apply the process water from Partner's Produce on Clay Peak's roadways. Following the meeting with Mr. Rodriguez, Clay Peak sent a letter confirming what was told to Mr. Rodriguez, that Clay Peak fully expects to accept all the process water Partner's Produce delivers.

In addition, Partner's Produce intends to undertake a pilot project, in conjunction with West-Tech and Mountain Water Works,¹ to place a clarifier in its production line. The intent of this project is to clean Partner's Produce's process water such that all, or nearly all, the water can be reused in the facility. The clarifier should also extend the life of the membranes. This will greatly reduce, or completely eliminate, the need to dispose of process water outside the facility. Depending on the results of the pilot project, Partner's Produce intends to construct lined evaporation ponds on its property with sufficient capacity to store any process water that may be produced in case of an operational difficulty. This three-step process—first, reuse all or nearly all

¹ West-Tech manufactures the clarifier and Mountain Water Works provides engineering support.

water; second, store in evaporation ponds, and third, truck to Clay Peak's expanded capacity—will ensure that the situation that occurred in the spring of 2020 will not occur again.

In response to IDEQ's observations regarding oil storage and staining, Partner's Produce promptly remedied the issue, as reflected in the April 22 and 24, 2020 emails from Partner's Produce to IDEQ.

THE ALLEGED VIOLATIONS AND PENALTY ASSESSMENT

In its NOV, IDEQ alleges seven violations:

- (1) Partner's Produce failed to use best management practices and best practical methods when discharging industrial wastewater to the unlined storm water impoundments in violation of IDAPA 58.01.11.301.02.a;
- (2) Partner's Produce discharged contaminants in the form of a waste, specifically industrial wastewater, without obtaining a permit or following best management practices, best methods available, or best practical methods in violation of IDAPA 58.01.11.400.01.c;
- (3) Partner's Produce land-applied industrial wastewater without a reuse permit in violation of IDAPA 58.01.17.300.01;
- (4) Partner's Produce constructed non-municipal wastewater disposal facilities without prior IDEQ review and approval of plans and specifications for said facilities for the discharge of industrial wastewater produced at its facilities in violation of IDAPA 58.01.16.401.01;
- (5) Partner's Produce discharged treated industrial wastewater into unlined impoundments in violation of IDAPA 58.01.17.614;
- (6) Partner's Produce stored used oil in containers that were not labelled "Used Oil" in violation of IDAPA 58.01.05.015 and 40 CFR § 279.22(c); and
- (7) Partner's Produce failed to stop, contain, clean up, and properly manage used oil releases in violation of IDAPA 58.01.05.105 and 40 CFR § 279.22(d).

IDEQ assessed a total penalty of \$38,750 (the "Assessed Penalty") against Partner's Produce for violations 1-5 above. Because Partner's Produce addressed violations (6) and (7) expeditiously, IDEQ did not assess a penalty for them.

Partner's Produce recognizes that the proper disposal of industrial wastewater is an important responsibility of industrial operators in Idaho. Currently, and at the time the Alleged Violations occurred, Partner's Produce had a wastewater process in place that complied with applicable rules. In fact, by reusing the majority of process water in the plant, Partner's Produce's operations are designed to reduce the production of wastewater. This process included the backup

option to place wastewater with Clay's Peak Landfill. Partner's Produce was forced to place process water in the stormwater basins only as the result of unforeseeable, unprecedented business disruptions caused by supply-chain difficulties caused by COVID-19, combined with the unavailability of additional capacity at Clay's Peak. Partner's Produce respectfully submits that IDEQ take into account these circumstances when considering violations and penalties.

Several of the Alleged Violations are duplicative. For example, Alleged Violations 1 and 2 allege that Partner's Produce did not undertake appropriate and required practices, in part by discharging industrial wastewater into unlined impoundments. Alleged Violation 3 alleges that Partner's Produce discharged industrial wastewater improperly without a permit, and Alleged Violation 5 alleges that the same discharge, into the same ponds, violates the Groundwater protection rule. It appears that these violations seek to impose duplicative penalties for the same actions.

Alleged Violation 3 is factually incorrect. It alleges that discharged water "was discharged via land application into the impoundments on the Facility property." The term "land application," as used in the context of reuse permitting, refers to the practice of applying water to an area of land, typically to provide irrigation or nutrient to crops. No land-application occurred here; the process water was stored in stormwater basins. Partner's Produce acknowledges that the basins were not designed or permitted to store process water. However, this is recognized (and penalized) in Alleged Violations 1, 2, and 5. No land application occurred here and Alleged Violation 3 is not supported by the facts.

Alleged Violation 3 is also legally untenable. IDEQ's rules require a permit for construction, modification, and operation of "a reuse facility." IDAPA 58.01.17.300.01. A reuse facility is "[a]ny structure of system designed or used *for reuse of* . . . industrial wastewater." IDAPA 58.01.17.36 (emphasis added). In this case, Partner's Produce did not "reuse" its process wastewater; it stored the wastewater in stormwater ponds for eventual disposal. Because Partner's Produce does not own or operate a system "designed or used for reuse of industrial wastewater"—other than in-plant reuse, which does not require a permit—no permit was required. Again, Partner's Produce acknowledges that the stormwater ponds were not designed or permitted to store process water. But this is recognized and penalized in Alleged Violations 1, 2, and 5. Because Partner's Produce did not design or use a facility for reuse of industrial wastewater, it cannot be penalized for failing to obtain a permit or the associated design review.

Indeed, Alleged Violations 3 and 4 appear to be mutually exclusive. Alleged Violation 3 attempts to penalize Partner's Produce for failing to obtain a wastewater reuse permit under the recycled wastewater rules. But Alleged Violation 4 attempts to penalize Partner's Produce for failing to obtain design review for a "nonmunicipal wastewater *disposal*" facility under the wastewater rules. *See* NOV, Alleged Violation 4 ("Partner's Produce constructed nonmunicipal wastewater *disposal* facilities" (emphasis added)). These allegations are mutually exclusive. Either Partner's Produce was operating a reuse facility, or Partner's Produce was operating a disposal facility. It must be one or the other, not both. As noted above, the recycled water rules do not apply because Partner's Produce did not reuse its process water. Alleged Violation 3, and the associated penalty, must therefore be removed.

Partner's Produce also questions the statement, made in Alleged Violations 3 and 4, that the alleged failure to obtain a permit or seek design review have a "major potential for harm." The

Alleged Violations that relate to the actual on-the-ground-activity—storing process water in the impoundments—are assessed only at a “moderate” potential for harm. It is not clear why the failure to obtain a permit, and the failure to obtain design review, poses a “major” potential for harm, where the actual activity itself posed only a “moderate” potential for harm. Partner’s Produce respectfully submits that, at most, all violations should be assessed at “moderate” potential for harm.²

All this said, Partner’s Produce acknowledges that it was not authorized to store process water in the stormwater basins. In light of this situation, as described above, Partner’s Produce quickly took corrective actions to ensure that it would not occur again, including engaging West-Tech engineers, obtaining assurances about capacity from Clay Peak Landfill, and devising a pilot program to further reduce and possibly even eliminate wastewater in its processes.

In short, the violations resulted from unforeseeable and unprecedented business disruptions caused in part by COVID-19, a number of the Alleged Violations overlap, and Partner’s Produce promptly took corrective actions. In light of these circumstances, Partner’s Produce requests that IDEQ remove Alleged Violation 3, and reduce the remaining assessed penalty from \$28,750 to \$14,375. In the alternative, Partner’s Produce requests that Alleged Violation 3 be removed, and that the remaining civil penalty be held in abeyance pending the outcome of the pilot project, to be released once the results of the pilot project are provided to IDEQ.

COMPLIANCE PLAN PROPOSALS

Partner’s Produce and IDEQ had an initial compliance conference on September 21, 2020. At that compliance conference, it was decided that IDEQ would draft a consent decree to resolve the NOV, which would be refined after follow-up with Partner’s Produce. Partner’s Produce and IDEQ have since agreed that Partner’s Produce would propose a compliance plan for IDEQ to include in its consent decree.

As discussed with IDEQ, Partner’s Produce offers to undertake the following actions in light of the alleged violations:

First, Partner’s Produce will install a clarifier to Partner’s Produce’s water treatment processes as a pilot program. Partner’s Produce expects that the clarifier will significantly reduce, and might entirely eliminate, wastewater that cannot be reused within Partner’s Produce’s facility itself.

Second, after the pilot project is complete, Partner’s Produce will evaluate the volume and quality of residual wastewater, if any, and propose a plan to manage that wastewater. Options include, but are not limited to, (a) trucking residual process water to the Clay Peak Landfill, (b) constructing evaporation ponds, or (c) some combination of these two options. The intent is to have sufficient capacity to handle residual wastewater in the case of business

² Partner’s Produce notes that the word “potential” is doing a lot of work here. Partner’s Produce is not aware of, and IDEQ does not identify, any *actual* harm to human health or the environment.

disruption. Partner's Produce will provide IDEQ with both notice of the results of the pilot project and the plan to deal with any residual wastewater before implementing that plan.

As discussed above, in light of this compliance plan, Partner's Produce proposes that IDEQ either reduces the Assessed Penalty by half or to hold half of the Assessed Penalty in abeyance pending the outcome of the pilot project, to be released once the results of the pilot project are provided to IDEQ.

Thank you for this opportunity to provide input and information as IDEQ drafts the consent decree for this matter. We look forward to speaking with you about the proposals contained in this letter. If you have any questions, or if you would like additional information, please do not hesitate to contact us.

Sincerely,



Preston N. Carter