

Date: May 13, 2024

To: Environmental Quality Commission

From: Leah Feldon, Director

Subject: Agenda item F, Action item: Procedural Item Related to the Contested Case *In the Matter of Bio-Oregon Protein, Inc., nka Pacific Bio Products – Warrenton, LLC*
May 23, 2024, EQC meeting

Purpose of item To consider whether to submit a request to the Office of Administrative Hearings asking the Office of Administrative Hearings to review and provide a written response to be included in the case record of *In the Matter of Bio-Oregon Protein, Inc., nka Pacific Bio Products – Warrenton, LLC*, regarding an exception raised by Bio-Oregon in its Petition for Commission Review. The exception relates to the interpretation of the Office of Administrative Hearing’s own rules, regulations, and personnel management policies.

Background On Feb. 17, 2022, DEQ issued a renewal National Pollutant Discharge Elimination System Permit to Bio-Oregon Protein, Inc. nka Pacific Bio Products – Warrenton, LLC (Bio-Oregon). On March 9, 2022, Bio-Oregon requested a contested case hearing, contesting several of the Permit’s effluent limits and monitoring requirements. Administrative Law Judge (ALJ) Jennifer Rackstraw presided over a contested case hearing on the matter from Feb. 28–March 3, 2023. On Aug. 15, 2023, unbeknownst to either party, the Office of Administrative Hearings reassigned the matter to ALJ Samantha Fair, who issued a Proposed and Final Order on Oct. 17, 2023. On Nov. 14, 2023, Bio-Oregon submitted a Petition for Commission Review to the Environmental Quality Commission. On Feb. 16, 2024, Bio-Oregon submitted its Exceptions and Brief in support of its Petition. DEQ submitted an Answer to Bio-Oregon’s Exceptions and Brief on April 5, 2024.

In the Matter of Bio-Oregon Protein, Inc., nka Pacific Bio Products – Warrenton, LLC, will be presented in its entirety to the EQC for the Commission’s review later this year. However, in the Exceptions and Brief Bio-Oregon filed in support of its Petition, Bio-Oregon included an exception related to the Office of Administrative Hearing’s reassignment of the case from ALJ Jennifer Rackstraw, who presided over the contested case hearing, to ALJ Fair, who issued the Proposed and Final Order. Neither DEQ nor Bio-Oregon were notified of the reassignment prior to the issuance of the Proposed and Final Order. Pursuant to OAR 137-003-0650(3), the Commission may request that the ALJ review any written exceptions received by the Commission and provide a written response that will be made a part of the record.

DEQ recommendation Because the exception relates to the interpretation of the Office of Administrative Hearing’s own rules, regulations, and personnel management policies, DEQ recommends that the Commission submit a request to the Office of Administrative Hearings requesting a written response to the exception Bio-Oregon raised regarding the ALJ reassignment. This written response will become part of the case record the commission will review later this year.

Proposed motion language *“I move that the Environmental Quality Commission send the request in Attachment 1 to the Office of Administrative Hearings.”*

Supporting materials Attachment 1: Letter from Chair George to the Office of Administrative Hearings

*Report prepared by Erin Saylor
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Translation or other formats

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