



Oregon

Tina Kotek, Governor

Department of Environmental Quality

700 NE Multnomah Street, Suite 600

Portland, OR 97232

(503) 229-5696

FAX (503) 229-5100

TTY 711

May 23, 2024

Jeffrey Rhoades, Chief Administrative Law Judge
Office of Administrative Hearings
4600 25th Ave. NE, Suite 140
Salem, OR 97301

Monika Whitaker, Presiding Administrative Law Judge
Office of Administrative Hearings
7995 SW Mohawk St., Entrance B
Tualatin, OR 97062

Samantha Fair, Administrative Law Judge
Office of Administrative Hearings
7995 SW Mohawk St., Entrance B
Tualatin, OR 97062

RE: *In the Matter of Bio-Oregon Protein, Inc., nka Pacific Bio Products – Warrenton, LLC*, OAH Case No. 2022-ABC-05366

Dear Judges Rhoades, Whitaker, and Fair,

On behalf of the Environmental Quality Commission (EQC), pursuant to OAR 137-003-0650(3) I am writing to request that the Office of Administrative Hearings (OAH) review and respond to one of the written exceptions received by the agency in the Respondent's appeal of the Proposed and Final Order ALJ Fair issued on October 17, 2023, *In the Matter of Bio-Oregon Protein, Inc., nka Pacific Bio Products – Warrenton, LLC* (OAH Case No. 2022-ABC-05366).

Specifically, on August 15, 2023, the matter was reassigned from ALJ Jennifer H. Rackstraw, who presided over the hearing, to ALJ Samantha Fair. Neither party was notified of the reassignment until the Proposed and Final Order was issued by Judge Fair on October 17, 2023. In its Exceptions and Brief, Respondent argued that the reassignment of the ALJ between the hearing and the issuance of the Proposed and Final Order, as well as the OAH's failure to provide notice to the parties of the reassignment, were "fatal procedural errors" that warrant a new contested case hearing.

Pursuant to OAR 137-003-0650(3), the EQC requests that OAH review Respondent's exception to the ALJ reassignment as presented in pages 55–61 of Respondent Bio-Oregon's Exceptions and Brief, attached hereto as Attachment A, and provide a written response to the exception that will be made a part of the record. DEQ's Answer to Respondent's Exceptions and

Brief is attached as Attachment B; the Department's response to the relevant exception is found on pages 10–13.

The EQC respectfully requests that OAH's written response be submitted to the EQC and the parties by July 23, 2024.

Sincerely,

Kathleen George, Chair
Environmental Quality Commission

Attachments

cc: Misha Isaak, Stoel Rives LLP (via email to misha.isaak@stoel.com)
Aaron Courtney, Stoel Rives LLP (via email to aaron.courtney@stoel.com)
Erin Saylor, Oregon DEQ (via email to Erin.Saylor@deq.oregon.gov)
Diane Lloyd, Oregon DOJ (via email to diane.lloyd@doj.state.or.us)