
Date: April 21, 2020

To: Environmental Quality Commission

From: Leah Feldon, Deputy Director

Subject: Item F: Contested Case No. WQ/SW-NWR-2018-063 regarding NW Metals, Inc. (Action)
May 7, 2020, EQC meeting

Introduction DEQ implements environmental protection laws. DEQ may assess civil penalties and orders to compel compliance and create deterrence. When persons or businesses do not agree with DEQ's enforcement action, they may appeal the order and request a contested case hearing before an Administrative Law Judge. Either party may appeal the judge's decision to the commission.

On Aug. 30, 2018, DEQ issued a Notice of Civil Penalty Assessment and Order to NW Metals Inc. The Notice alleged that NW Metals committed the following seven violations:

1. Causing a prohibited Class V Underground Injection Control system in violation of OAR 340-044-0015(2)(c).
2. Placing wastes in a location where they are likely to enter waters of the state by any means in violation of ORS 468B.025(1)(a).
3. Failing to perform a hazardous waste determination on antifreeze and used oil mixed with antifreeze in violation of OAR 340-102-0011(2).
4. Operating a waste tire storage site without a permit in violation of OAR 340-064-0015(1).
5. Storing waste tires in violation of applicable storage standards at OAR 340-064-0035(4).
6. Making used oil less recyclable in violation of OAR 340-111-0010(2).
7. Operating a metal shredder without notifying DEQ in violation of OAR 340-210-0215(1).

The Notice assessed a total civil penalty of \$52,854 and included corrective actions to bring NW Metals into compliance. On Sept. 19, 2018, NW Metals filed a timely request for a contested case hearing with an Administrative Law Judge through the Oregon Court of Administrative Hearings.

On Dec. 3, 2018, DEQ issued an Amended Notice of Civil Penalty Assessment and Order to NW Metals. This first Amended Notice added two additional alleged violations: operating a metal shredder without an Air Contaminant Discharge Permit in violation of OAR 340-216-0020(3) and violating a Removal Action Order issued by DEQ on March 28, 2018 in violation of ORS

465.235(1)(a). The first Amended Notice assessed a total civil penalty of \$77,419, because of the additional violations, and included corrective actions.

On May 21, 2019, DEQ issued a Second Amended Notice of Civil Penalty Assessment and Order proposing to assess civil penalties in the amount of \$60,265. The reduction in penalty reflects adjustments to two violations alleged by DEQ.

On May 28, 29 and 30, 2019, Administrative Law Judge Samantha Fair presided over the contested case hearing requested by NW Metals. Judge Fair reviewed numerous exhibits from DEQ and NW Metals and heard testimony from nine witnesses.

On Aug. 29, 2019, Judge Fair issued a Proposed and Final Order that found NW Metals liable for all of the violations set forth in the Second Amended Notice and for the full penalty amount DEQ sought to recover at the hearing \$59,015.¹

NW Metals filed a timely petition for review with the Oregon Environmental Quality Commission Sept. 27, 2019.

**Findings of Fact
and Conclusions
of Law
as Determined
by the
Administrative
Law Judge**

Findings of Fact

After considering the evidence in the record, Judge Fair made seventy-four Findings of Fact regarding the alleged violations. These are on pages three through 21 of Attachment B1.

Conclusions of Law

Based on the Findings of Fact, Judge Fair made the following Conclusions of Law, listed on page 21 of Attachment B1:

1. NW Metals allowed a Class V injection system to inject hazardous substances.
2. NW Metals placed wastes in a location where they were likely to enter waters of the state.
3. NW Metals failed to completely and accurately determine if residue at the facility was hazardous waste, and NW Metals mixed antifreeze with used oil.
4. NW Metals established, operated, and expanded a waste tire storage site at its facility without a waste tire storage permit.
5. NW Metals failed to operate a waste tire storage site in conformance with applicable standards.

¹ At the contested case hearing DEQ sought to recover \$1,250 less than the civil penalty assessed in the Second Amended Notice. This was because DEQ withdrew the avoided “economic benefit” portion of the civil penalty assessed for Violation #4 (unpermitted waste tire storage), as NW Metals had corrected that violation shortly before the hearing.

6. NW Metals constructed, installed and operated an air contaminant source without obtaining an Air Contaminant Discharge Permit.
7. NW Metals violated the terms and conditions of a previously issued DEQ Removal Action Order.
8. NW Metals should be assessed civil penalties in the total amount of \$59,015 for its violation of ORS 468B.025(1)(a), Chapter 340 of the Oregon Administrative Rules, and a DEQ order.

Issues on appeal NW Metals' arguments are fully presented in its Brief and Exceptions on Review (Attachment A8) and its Reply Brief (Attachment A1). DEQ summarizes here the issues NW Metals has appealed to the commission:

1) Operation of unpermitted UIC system

A Class V Underground Injection Control, or UIC, is a drywell designed to discharge stormwater underground. Class V UICs are prohibited if they inject fluids from industrial areas where hazardous substances or toxic materials, including petroleum products are stored, used or handled.

NW Metals argues that DEQ did not prove that it caused hazardous substances to enter the UIC system on the property. In addition, NW Metals argues that Judge Fair failed to distinguish between discharges to the UIC caused by fire fighters responding to the March 2018 fire at NW Metals and the industrial activities at NW Metals.

DEQ argues that Judge Fair's finding that NW Metals allowed hazardous substances to be injected into the UICs is supported by substantial evidence on the Record. In particular, volatile organic compounds were found in water sampled from *inside* the one UIC that was able to be analyzed, the other UIC at NW Metals became plugged with molten metal during the fire and couldn't be analyzed. Sludge samples taken from inside the UIC also showed the presence of ten different metals, petroleum hydrocarbons and semi-volatile organic compounds. Given that the detections of VOCs were higher in the soil beneath the UIC than in the water *within* the UIC, DEQ's Senior Hydrogeologist testified that contaminants attributable to NW Metals' operations could have been migrating downward from the drywell prior to the fire-fighting efforts. In addition, the hydrogeologist testified that the contaminants found within and below the UICs were attributable to car fluids, not to fire-fighting foam. These findings and citations to hearing testimony are in DEQ's Answering Brief. (Attachment A2, pages 4-6). Judge Fair appropriately concluded that the "testing of the sludge, water and subsurface soils of the [UICs] demonstrated that the petroleum products from the Facility are draining into the [UICs] and have been draining into the [UICs] prior to the March 12, 2018 fire." (Attachment B1, page 24)

2) Placing wastes where likely to enter groundwater

NW Metals argues that even if DEQ proved NW Metals caused hazardous substances to be injected into the UICs, DEQ did not prove that NW Metals placed those substances in locations where they are likely to enter groundwater, which are waters of the state.

DEQ argues that Judge Fair's conclusion that NW Metals placed wastes in a location where they are likely to enter waters of the state is supported by substantial evidence on the Record. Specifically, Judge Fair relied on testimony by DEQ staff that UICs can act as a "conduit" to groundwater and the contamination discovered *within* the UICs and in the soil beneath the UICs will continue to migrate downward in soil towards the groundwater aquifer approximately 52 feet below the NW Metals facility if not remediated. (Attachment A2, page 8)

3) Mishandling of used antifreeze and used oil

NW Metals does not contest either of the violations relating to its handling of used oil and used antifreeze. Rather, NW Metals argues for a reduced civil penalty for the violation of failing to perform a hazardous waste determination. NW Metals argues that DEQ failed to prove that it had a mental state of "negligent" for purposes of applying the "M" factor in calculating the civil penalty. In addition, NW Metals argues that because it stopped mixing used antifreeze and used oil after being told to by DEQ, it should get some mitigating "C" factor credit in the civil penalty DEQ assessed for its failure to perform a hazardous waste determination. (Attachment A8, page 4).

DEQ argues that the factors it assigned in its civil penalty formula were supported by substantial evidence on the Record. Specifically, Judge Fair made findings of fact regarding DEQ's communications during the March 2018 inspections where DEQ advised NW Metals of the best management practices for handling used oil. Judge Fair concluded NW Metals was "negligent" and deserving of the M factor of 4 because NW Metals "ignored the foreseeable risk that failing to perform a hazardous waste determination would result in ongoing violations of its handling of its recovered antifreeze and used oil." Lastly, it would be inappropriate to give NW Metals C factor credit for having stopped the practice of mixing used oil and antifreeze because DEQ did not assess a penalty for that violation.

4) Unpermitted storage of waste tires

NW Metals argues that DEQ did not prove that it operated an unpermitted waste tire storage site because DEQ did not show that NW Metals had more than 1500 waste tires at the facility at any one time, which would otherwise trigger the permitting requirement. NW Metals argues that DEQ failed to examine and distinguish which tires were waste tires and which could be re-sold. NW Metals

argues that many of the tires were still serviceable used tires, with dimensions and characteristics embossed in the rubber, making them easily sortable into matching sets for sale. (Attachment A1, page 1)

DEQ argues that Judge Fair correctly considered the evidence regarding characteristics of the tires at NW Metals and the manner in which NW Metals stored them. She made findings of fact and conclusions of law supported by substantial evidence on the Record and specifically addressed tire markings. Judge Fair found that during a March 14, 2018, DEQ inspection “[m]ultiple tire piles failed to include any identification so that sizes or types of tires could not be identified. Some tire piles were overgrown with vegetation.... Most of the areas at the Facility where used tires were stored were inaccessible... Used tires were also buried with the vehicle husks and other scrap throughout the Facility.” (Attachment B1, page 10).

In addition, Judge Fair found that during a July 12, 2018, inspection, “stacked tires had no visible signs denoting tire sizes” and there were areas of the Facility that were inaccessible but tires were visible. (Attachment B1, Finding of Fact #44, pages 13-14). Judge Fair concluded that the “evidence failed to support [NW Metals’] assertion that the tires stored at its Facility were not waste tires because they intended to sell them for reuse.” (Attachment B1, page 29). She reasoned that the distinction between waste and used does not matter given the evidence demonstrating the way NW Metals “threw used tires into the large scrap piles that covered the southern scrap yard, which demonstrated the lack of intent to reuse these tires. Several used tire piles had vegetation growing over them, indicating that the tires had been kept for multiple growing seasons” *Id.*

Further, Judge Fair found that the used tires were “waste tires” according to the definition of “waste tires generated in Oregon” in OAR 340-064-0010(34)(b). Under that definition, “waste tires” include “tires removed from a junked auto at an auto wrecking yard in Oregon.”

In its Reply Brief NW Metals raises five specific arguments why DEQ’s application of the “waste tires generated in Oregon” definition at OAR 340-064-0010(34)(b) and Judge Fair’s ruling that the waste tire definition applies to NW Metals’ tires, are inappropriate in this case. (Attachment A1, pages 2-3).

Regardless of whether OAR 340-064-0010(64) applies, DEQ argues that NW Metals committed the violation because Judge Fair correctly concluded that it stored more than 1500 waste tires and thus needed a waste tire storage permit. The commission may find that the evidence supported Judge Fair’s conclusion without deciding the question of law regarding the application of the definition of “waste tires generated in Oregon” at OAR 340-064-0010(34)(b).

5) Improper storage of waste tires

NW Metals argues that the waste tire storage standards, set forth in OAR 340-064-0035, do not apply to its waste tire piles because it is not a permitted waste tire storage site. Also, NW Metals argues that the waste tire storage standards do not apply to it because OAR 340-064-0015(2) requires that persons without waste tire storage permits comply with “all other regulations regarding waste tire management” and the “standards for waste tire storage” set forth in OAR 340-064-0035 do not contain the word “management.”

DEQ argues that under a plain language interpretation of the rules, the phrase “all other regulations regarding waste tire management” in OAR 340-064-0015(2) requires persons to comply with the waste tire storage standards in OAR 340-064-0035. The waste tire storage standards of OAR 340-064-0035 are precisely what is intended by the rule requirement that non-permitted sites must comply with “all other regulations regarding waste tire management.”

Whether the “standards for waste tire storage” rules apply to unpermitted sites like NW metals is a question of law. It must be reviewed to determine whether DEQ has erroneously interpreted a provision of law and whether a correct interpretation compels a particular action. ORS 183.482(8)(a). DEQ’s exercise of discretion in applying the waste tire storage standards to NW Metals’ unpermitted site is reviewed for whether it is: a) outside the range of discretion delegated to the agency by law; b) inconsistent with an agency rule, an officially stated agency position, or prior agency practice; or c) otherwise in violation of a constitutional or statutory provision. ORS 183.482(8)(b). DEQ argues that NW Metals has failed to demonstrate that DEQ’s interpretation of the waste tire storage standards rule is an erroneous interpretation.

6) Unpermitted use of replacement shredding machine

NW Metals argues that its metal shredder does not need an Air Contaminant Discharge Permit (ACDP) because the shredder hardly worked and its actual emissions of criteria pollutants were below the 10 tons per year permitting threshold set at OAR 340-216-8010, Table 1, part B, #85. NW Metals argues that it should be allowed to avoid obtaining a permit by voluntarily controlling its emissions below the permitting threshold.

DEQ argues that Judge Fair’s conclusion that NW Metals is required to obtain an ACDP was correct. Specifically, according to OAR 340-216-8010, Table 1, part B, #85 a permit is required where a source would have “actual emissions, if the source were to *operate uncontrolled*, of ...10 or more tons per year of any single criteria pollutant.” DEQ interprets “operate uncontrolled” to mean the maximum capacity of the source at full operations; in other words, 24 hours per day, 365 days per year. DEQ performed calculations of NW Metal’s shredder emissions and found that if it were to operate uncontrolled it would emit more than 10 tons

per year of several criteria pollutants² and thereby trigger the permitting threshold at Table 1, part B, #85.

NW Metals argues that the phrase “operate uncontrolled” in the rule is ambiguous and that the definition of “potential to emit” in OAR 340-200-0020(124)(b)³ allows a pollutant emission calculation *not* based on 24 hours per day usage where a lesser use limitation is enforceable. NW Metals argues that it offered to limit its hours of shredder use and that DEQ could have entered into an agreement with NW Metals placing limitations on its shredder usage, which agreement could then be enforceable, making an ACDP unnecessary. In August 2018 DEQ sent a letter to NW Metals requesting that NW Metals limit its hours of shredder operation to between 8 a.m. and 5 p.m.; moreover, NW Metals argues that this letter should be treated as a limitation. Lastly, NW Metals argues that its shredder had a visible hour counter that documented its actual hours of operation and that DEQ could use the counter to determine compliance.

By challenging DEQ’s interpretation of “operate uncontrolled” in the rule, NW Metals is raising a question of law which must be reviewed to determine whether the agency “has erroneously interpreted a provision of law and that a correct interpretation compels a particular action.” ORS 183.482(8)(a).

DEQ argues that Judge Fair found DEQ’s interpretation of the phrase “operate uncontrolled” valid, concluding that “[t]his interpretation is plausible in light of the actual [rule] language, particularly the word ‘uncontrolled’ which indicates no limitations.” (Attachment B1, page 33). Judge Fair specifically rejected the notion that the DEQ letter to NW Metals requesting that it limit its hours of shredder operations was any kind of limitation, noting that it was “not an enforceable order or an enforceable condition on a permit.” *Id.* In an apparent rejection of the shredder’s hour counter as a compliance tool, Judge Fair also concluded that the shredder did not have “any actual or legal way to restrict the hours of [the shredder’s] use.” *Id.* In doing so, Judge Fair upheld DEQ’s interpretation of its rule language that emissions could only be controlled via a permit with enforceable limitations.

² “Criteria pollutants” are defined in OAR 340-200-0020(36) and include nitrogen oxide, carbon monoxide, and VOCs.

³ “Potential to emit” at OAR 340-200-0020(124) “means the lesser of: a) The regulated pollutant emissions capacity of a stationary source; or b) The maximum allowable regulated pollution emissions taking into consideration any physical or operational limitation, including use of control devices and restrictions on hours of operation . . . , if the limitation is enforceable by the Administrator.”

DEQ argues that the definition of “potential to emit” is not relevant to this case (it was not cited in DEQ’s enforcement action), and that it does not stand for the proposition that NW Metals claims. To the contrary, that definition says that an air emissions source’s “potential to emit” may be the lesser of its capacity but only if there is an enforceable limitation placed on its emissions. As with the “operate uncontrolled” language in Table 1, part B, #85, it is DEQ’s position that the only way to place an enforceable limitation on a source or prevent it from operating uncontrolled is with a permit. DEQ argues that its interpretation of its rule is entitled to deference.

NW Metals argues that if it is subject to a civil penalty for this violation the magnitude of the violation should be lowered from “moderate” to “minor,” based on the low levels of its shredder’s actual emissions.

The applicable rule governing magnitudes specifies that the default magnitude is moderate unless evidence shows that the magnitude should be “major” or “minor,” per OAR 340-012-0130(1).

OAR 340-012-0130(2) allows the person against whom the violation is alleged the opportunity to prove that a different magnitude is “more probable than the alleged magnitude.” To prove the violation had a “minor” magnitude NW Metals must show that the violation “had no more than a de minimis adverse impact on human health or the environment and posed no more than a de minimis threat to human health or the environment.” OAR 340-012-0130(4).

Judge Fair found that “the evidence failed to support a finding of major or minor magnitude.” (Attachment B1, page 42).

NW Metals also argues that the M factor assigned for the mental state in the civil penalty calculation for this violation should be lowered from 8 for “reckless” because NW Metals “had every reason to believe a permit was not required.” (Attachment A8, page 8). In response, DEQ argues that this claim contradicts the evidence and testimony presented at the hearing, which demonstrated DEQ’s exhaustive efforts to get NW Metals to obtain a permit. Since October 2019, NW Metals has been operating its third shredder and has neither submitted a “Notice of Intent to Construct” per rule requirements or submitted a complete application for a permit. (Attachment B1, finding of fact #56, #60, #67, #68).

7) Non-compliance with Removal Action Order deadlines

After the March 2018 fire at NW Metals, DEQ issued a Removal Action Order to NW Metals and the property owner requiring full assessment of the contamination at the site. The RAO required that a work plan be developed and submitted to DEQ for approval. The work plan would guide the assessment of soil and groundwater contamination and the removal of fire debris.

NW Metals argues that it is not in violation of the deadlines in the RAO issued by DEQ after the March 2018 fire because, according to NW Metals, the RAO did not set any deadlines and any purported deadlines were superseded by DEQ's approval of a work plan which did not have any deadlines.

In response, DEQ argues that NW Metals' argument ignores the plain language of the RAO. Specifically, the RAO contains deadlines that were triggered by DEQ's approval of the work plan. The RAO states that NW Metals was required to "implement the sampling and analysis plan within 10 working days of DEQ approval of the work plan" and complete fire debris removal within five days of DEQ approval of the work plan. Judge Fair found that DEQ issued its final approval of the work plan on July 12, 2018, making the deadline for soil sampling July 22, 2018, and the deadline for fire debris removal July 17, 2018. (Attachment B1, page 35). Neither requirement was completed.

NW Metals argues for a lower civil penalty for its violation of the RAO, claiming that delays in doing the work required by the RAO and the work plan have not created any new or additional harm and that it "struggled in good faith to complete the work as soon as possible." (Attachment A8, page 12)

DEQ argues that it is impossible to determine whether or not delays in doing the work required by the RAO have created any new or additional harm since a full assessment of the site has yet to be completed. NW Metals' claim that it has struggled "in good faith" is not supported by the Record. NW Metals continued to carry on its auto dismantling and shredding business in the months after the fire. Judge Fair found that since May 2018, NW Metals "has resumed its regular business operations and the scrap yard now contains even more vehicles and other scrap than it did at the time of the [fire]." Judge Fair concluded that NW Metals "has not demonstrated any reduction in its business operations. Instead, [NW Metals] has demonstrated that resuming and increasing its business operations is its priority, not compliance with the RAO." (Attachment B1, page 35).

8) Other failings of the Administrative Law Judge

NW Metals argues generally about the "failings" of Judge Fair. It accuses her of bias because she ruled against it on all violations and takes issue with her refusal to admit into the record NW Metals' hearing brief.

DEQ argues that Judge Fair carefully and thoughtfully reviewed the testimony and evidence presented over three days of contested case hearing and thoroughly laid out findings of fact that supported her conclusions. DEQ and NW Metals had established with the Judge an agreed-upon briefing schedule, which included generous deadlines for exchanging submissions before the hearing. The briefing schedule did not contemplate any party submitting hearing briefs, yet NW Metals

submitted one at 5 p.m. on the eve of the hearing. Furthermore, there was no actual prejudice to NW Metals in Judge Fair's decision to exclude NW Metals hearing brief because she allowed NW Metals' manager to read the brief into the hearing record at the conclusion of the hearing.

9) Aggravating/mitigating factors in general

NW Metals argues that the aggravating factors DEQ assigned in calculating the civil penalties were done to "punish" NW Metals. It specifically takes issue with the "M" factor assigned in calculating six of the seven penalties. NW Metals argues that its mental state should not be aggravated based on its noncompliance because it disagrees with DEQ's application of the laws.

DEQ's civil penalties are calculated pursuant to a civil penalty formula codified in rule at OAR 340-012-0045. The rules require that the base penalty is adjusted by the application of aggravating or mitigating factors such as an M factor for mental state or a C factor for efforts to correct. These factors are also set out in rule at OAR 340-012-0145.

DEQ argues that there is substantial evidence in the Record showing DEQ's exhaustive efforts to communicate the legal requirements to NW Metals and to get NW Metals to comply with applicable laws. DEQ gave NW Metals numerous warnings, deadline extensions, and sent multiple correspondence citing the rules and laws that controlled. NW Metals' failure to act, after multiple notifications from DEQ support a finding of a "reckless" mental state because it demonstrated "a conscious disregard for a substantial and unjustifiable risk that the violation would occur and that the disregard constituted a gross deviation from the standard of care a reasonable person would observe in that situation." OAR 340-012-0030(20). DEQ argues that Judge Fair correctly found that "[o]n at least four occasions including one [Pre-Enforcement Notice], DEQ informed [NW Metals] of the requirement for it to file an application for an ACDP for its use of the Arjes shredder. [NW Metals] has refused to file any such application, consciously disregarding the substantial and unjustifiable risk that it will continue to violation the [air permitting rule]. Because [NW Metals'] behavior was a gross deviation from the standard of care a reasonable persons would exercise, its conduct was reckless and the M factor is 8." (Attachment B1, page 47). Furthermore, regarding NW Metals' on-going noncompliance with the RAO, Judge Fair found that NW Metals' "delays in completing the requirements of the RAO and its actions that *actually prevent* it from completing those requirements demonstrate the Company's conscious disregard of the substantial and unjustifiable risk that it will continue to violate the RAO." (Attachment B1, page 48, with emphasis added).

NW Metals argues that it deserves some credit for actions it has taken to mitigate or remediate the damage resulting from the fire and that it has spent a lot of money on environmental engineers and other workers. (Attachment A1, page 8).

In response, DEQ points out that, except for enforcement of the RAO requirement regarding removal of fire debris, none of the violations cited in DEQ's enforcement action have to do with cleaning up damages resulting from the fire. Further, there is no evidence in the record to demonstrate what, if any, consultant or other costs NW Metals has incurred.

EQC authority

The commission has the authority to hear this appeal under OAR 340-011-0575. The commission may substitute its judgment for that of Administrative Law Judge Fair in making any particular finding of fact, conclusion of law, or order except as limited by ORS 183.650 and OAR 137-003-0665. The major limitations are as follows:

1. If the commission modifies a proposed order in any substantial manner, it must identify the modification and explain to the parties why the commission made the modification.⁴
2. The commission may modify a finding of historical fact made by the judge only if it determines that there is clear and convincing evidence in the record that the finding was wrong.⁵
3. The commission may not consider evidence that was not presented to the judge. The commission may, based upon the filing of a motion and a showing of good cause, remand the matter to the judge to consider the evidence.⁶
4. If the commission remands the matter to the judge, the commission shall specify the scope of the hearing and the issues to be addressed.⁷

Alternatives

The commission may:

1. As requested by DEQ, issue a final order adopting Judge Fair's Proposed and Final Order; or
2. Issue a Final Order determining that the findings of fact were not based on a preponderance of the evidence, explain why and amend Judge Fair's Proposed and Final Order accordingly; or
3. Take any other action within the commission's authority.

⁴ ORS 183.650(2) and OAR 137-003-0665(3). "Substantial manner" is when the modification would change the outcome or the basis for the order or change a finding of fact.

⁵ ORS 183.650(3). A historical fact is a determination that an event did or did not occur or that a circumstance or status did or did not exist either before or at the time of the hearing.

⁶ OAR 340-011-0575(5) and OAR 137-003-0655(5).

⁷ OAR 137-003-0655(2).

Attachments

- A. Documents regarding Petition for Review
 - 1. NW Metals Reply Brief, dated Jan. 30, 2020
 - 2. DEQ's Answering Brief, Dec. 3, 2019
 - 3. E-mail from Stephanie Caldera granting NW Metals' request for Extension, Dec. 2, 2019
 - 4. E-mail from Stephanie Caldera granting DEQ's request for Extension, Nov. 27, 2019
 - 5. NW Metals' Brief and Exceptions on Review, dated Sept. 27, 2019
 - 6. Letter from Stephanie Caldera, dated Oct. 1, 2019
 - 7. NW Metals Petition for Review, dated Sept. 27, 2019
- B. Hearing Record
 - 1. Proposed and Final Order, dated Aug. 29, 2019
 - 2. Proposed and Final Order attachments
 - 3. DEQ's Exhibits A1 through A47 and A51 through A65 admitted into record
 - 4. NW Metals Exhibits R1 through R25 admitted into the record
 - 5. NW Metals Motion to Reconsider Ruling as to Respondent's Brief
- C. Pre-Hearing Documents
 - 1. Notice of In-Person Hearing
 - 2. Post Pre-Hearing Conference Correspondence, dated Dec. 28, 2018
 - 3. Notice of Prehearing Conference
 - 4. Second Amended Notice of Civil Penalty Assessment and Order, dated May 21, 2019
 - 5. Answer to Notice; Request for Hearing; Request for Informal Discussion, dated Dec. 23, 2018
 - 6. Amended Notice of Civil Penalty Assessment and Order, dated Dec. 3, 2018
 - 7. Answer to Notice; Request for Hearing, Request for Informal Discussion, dated Sept. 19, 2018
 - 8. Notice of Civil Penalty Assessment and Order, dated Aug. 30, 2018
- D. Audio Recordings of Prehearing Conference and Hearing (MP3 file format, posted online)

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