



# Oregon

Kate Brown, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
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May 8, 2020

CERTIFIED MAIL 7017 1450 0000 8310 4982

Westside Redi-Mix & Rock Inc.  
Larry D. Moomaw, Registered Agent  
415 Elm Street  
Forest Grove, OR 97116

Re: Amended Notice of Civil Penalty Assessment and  
Order Case No. Westside Redi-Mix & Rock Inc.

***DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.***

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued an Amended Notice of Civil Penalty Assessment and Order (Amended Notice), in case No. WQ/SW-NWR-2019-171, pursuant to OAR 137-003-0530(4)(a). The Amended Notice and accompanying Exhibits are attached.

In February 2020, DEQ issued to you a Notice of Civil Penalty Assessment and Order (the Notice) for violations of the National Pollutant Discharge Elimination System Stormwater Discharge General Permit No.1200-A (the Permit) for your facility located at 6655 S.W. Hergert Road in Cornelius. After issuing the Notice, DEQ identified additional violations at the facility, including allowing the illegal disposal of solid waste and failing to implement adequate measures to stabilize exposed areas and minimize erosion and sedimentation. The Amended Notice assesses a civil penalty in the amount of \$56,463.

DEQ issued this penalty because the Permit requires that you select, design, install, implement and maintain control measures to ensure that you minimize the potential for erosion of soil, the discharge of significant amounts of sediment, and the contamination of stormwater discharges with other pollutants. These measures must be incorporated into a Stormwater Pollution Control Plan (SWPCP) that reflects current activities at your facility. Because of the amount of appreciable deposits shown in the conveyance ditch downstream from your discharge location at the entrance to the facility, you have not selected, designed, installed, or implemented adequate control measures to minimize erosion of soil and the discharge of significant amounts of sediment. Additionally, a spring located downgradient of your settling pond shows impacts from iron-oxidizing bacterium. Because properties immediately adjacent to

your facility rely upon groundwater for their drinking water, you must conduct a groundwater investigation to ensure that your practices are not impacting their wells.

Included in Section IV of the attached Amended Notice is an order requiring you to submit a revised SWPCP which complies with the Permit and demonstrates adequate control measures necessary to ensure the potential for the discharge of sediment and other pollutants have been selected for the facility. You must also immediately cease accepting any solid waste except that which meets the definition of clean fill (such as dirt, rock and concrete). \$31,500 of the civil penalty represents the economic benefit you gained by failing to develop a SWPCP and to take actions to stabilize exposed areas at the facility. If you complete these requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

You have already submitted to DEQ a timely request for a contested case hearing in this matter. You may amend your request for hearing pursuant to OAR 137-003-0530.

If you have any questions, please contact Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Lisa Reinhart, DOGAMI, 229 Broadalbin Street SW, Albany OR 97312-2246  
Amber L. Hudspeth, Hudspeth Land+Water, 61514 SE Hillridge Road, Bend OR 97702



1 5. Sometime prior to 2018, Respondent ceased mining at the Facility and initiated reclamation  
2 by accepting dirt, rock and other materials as backfill from trucks entering the Facility. Approximately  
3 60 pieces of large equipment including backhoes and loaders are stored in an area at the Facility  
4 containing asphalt shingle waste.

5 6. Schedule B, condition 2.f and Table 5 of the Permit require Respondent to monitor its  
6 stormwater discharge for pollutants; specifically Respondent must analyze its samples for pH, total  
7 suspended solids (TSS), total oil and grease, and settleable solids (SS). Schedule B, condition 8 of the  
8 Permit requires Respondent to submit a discharge monitoring report to DEQ or DEQ's agent by July  
9 31<sup>st</sup> of each year that identifies the sampling results for the previous monitoring year and includes the  
10 laboratory results from the testing laboratory.

11 7. On July 31, 2019, DEQ's agent, DOGAMI, received a discharge monitoring report from  
12 Respondent for the 2018/2019 monitoring year. Respondent collected and analyzed samples on  
13 October 29, 2018, December 28, 2018, April 9, 2019 and May 21, 2019 from outfall B only.

14 8. Attached to the monitoring report was the laboratory results from the testing laboratory for  
15 samples collected from outfall B as follows:

16 Oil and Grease	October 29, 2018 December 28, 2018 April 9, 2019 May 21, 2019
18 TSS	October 29, 2018 December 28, 2018 April 9, 2019 May 21, 2019
20 SS	December 28, 2018 April 9, 2019 May 21, 2019
22 pH	October 26, 2018 December 28, 2018 April 9, 2019 May 21, 2019

25 9. The laboratory results of the October 29, 2018 sample state that the sample exceeded the  
26 hold time for pH.

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1 10. The monitoring report did not list results for the oil and grease analysis of any samples, for  
2 TSS analysis of the sample collected on October 29, 2018, and for SS analysis of the samples collected  
3 on December 28, 2018 and April 9, 2019.

4 11. On July 15, 2019, DOGAMI conducted an inspection of the Facility.

5 12. During the July 2019 inspection, the wheel wash at the Facility was discharging turbid water  
6 into the ditch which runs parallel to the Facility's entrance road, through outfall B, into the roadside  
7 ditch which runs parallel to Hergert Road and into the unnamed creek.

8 13. During the July 2019 inspection, DOGAMI collected a sample from the ditch which  
9 parallels the entrance road. The sample had a turbidity reading of over 1,000 nephelometric turbidity  
10 units (NTU).

11 14. During the July 2019 inspection, DOGAMI collected a sample from the unnamed creek  
12 directly downstream of its confluence with the roadside ditch (downstream of outfall B) which had a  
13 turbidity reading of 176 NTU.

14 15. During the July 2019 inspection, DOGAMI collected a sample from the unnamed creek  
15 directly upstream of its confluence with the roadside ditch which had a turbidity reading of 4.24 NTU.

16 16. On July 16, 2019, Respondent informed DOGAMI that it was no longer utilizing the wheel  
17 wash and had begun using a street vacuum to control loose dirt and other materials at the Facility exit.

18 17. In an inspection report dated July 16, 2019, DOGAMI requested that Respondent update its  
19 SWPCP to accurately reflect the activities occurring at the Facility.

20 18. On February 28, 2020, DOGAMI conducted an inspection at the Facility.

21 19. During the February 2020 inspection, DOGAMI noted gullies, rivets and erosion on steep  
22 slopes throughout the Facility including along ditches and drainage ways, along with exposed bare soil  
23 throughout most of the Facility as a result of backfilling.

24 20. During the February 2020 inspection, rock check dams within the ditch alongside the  
25 entrance road into the Facility were laden with sediment. Respondent informed DOGAMI that it cleans  
26 the rock check dams bi-weekly.

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1 21. During the February 2020 inspection, there were stains from oil and grease leaking from the  
2 large equipment referenced in paragraph 5 above, along with a sheen on several access roads. None of  
3 these leaks or spills had been cleaned up nor was there absorbent materials placed on the leaks or spills.

4 22. During the February 2020 inspection, the roadside ditch parallel to Hergert Road into which  
5 outfall B discharges was full of sediment approximately 500 feet downstream from the entrance to the  
6 Facility.

7 23. During the February 2020 inspection, a vacuum truck was disposing of drilling process  
8 wastewater (which was not generated at the Facility) into an area that drains downhill into the  
9 settling pond. Drilling wastewater typically contains high levels of suspended solids.

10 24. During the February 2020 inspection, the settling pond was seeping water into a ditch which  
11 was reaching the culvert downstream.

12 25. During the February 2020 inspection, Respondent was operating a new wheel wash at the  
13 exit to the Facility which was not using either detergent or hot water but was using a flocculant  
14 treatment system. The wheel wash was discharging into the ditch that runs parallel to the Facility's  
15 entrance road and through outfall B.

16 26. During the February 2020 inspection, a spring located downgradient of the culvert into  
17 which the settling pond discharges, was bubbling with iron-oxidizing bacterium.

18 27. Properties immediately adjacent to the Facility use groundwater for their drinking water.

### 19 III. CONCLUSIONS

20 1. Respondent violated ORS 468B.025(1)(b), OAR 340-041-0036 and Schedule A, Condition 4  
21 of the Permit by reducing the water quality of waters of the state below a water quality standard.  
22 Specifically, in July 2019, Respondent created more than a ten percent cumulative increase in natural  
23 stream turbidity of the unnamed creek from 4.24 NTU to 176 NTU, or by approximately 4,150%, as  
24 alleged in Section II, paragraphs 11 through 15. The unnamed creek is waters of the state, as that term  
25 is defined in ORS 468B.005(10). This is a Class I violation according to OAR 340-012-0055(1)(b). DEQ  
26 hereby assesses a \$6,562 civil penalty for this violation.

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1           2. Respondent violated ORS 468B.025(2) and Schedule A, Condition 8.e of the Permit by  
2 failing to keep its SWPCP current and updated as necessary to reflect changes to the Facility.  
3 Specifically, as alleged in Section II, paragraphs 4, 5, 16, 20 and 25, Respondent is no longer  
4 actively mining the Facility, is storing heavy equipment at the Facility, is accepting fill and other  
5 wastes, and is using a flocculant treatment system at the wheel wash. None of these conditions are set  
6 forth in its SWPCP. Additionally, the SWPCP does not reflect that Respondent is discharging and  
7 monitoring from outfall B. These are Class II violations according to OAR 340-012-0055(2)(b). DEQ  
8 hereby assesses a \$7,469 civil penalty for these violations.

9           3. Respondent violated ORS 468B.025(2) and Schedule A, condition 1 of the Permit by failing  
10 to meet the narrative technology based effluent limits. As alleged in Section II, paragraph 21,  
11 Respondent failed to promptly clean up spills and leaks as required by Schedule A, condition 1.f of the  
12 Permit. As alleged in Section II, paragraph 19, Respondent failed to stabilize exposed areas to  
13 minimize erosion of soil at the Facility, as required by Schedule A, condition 1.a of the Permit. These  
14 are Class II violations according to OAR 340-0120-0053(2). DEQ hereby assess a \$31,631 civil penalty  
15 for these violations.

16           4. Respondent violated ORS 459.205(1) and OAR 340-093-0050(1) by establishing a disposal  
17 site without obtaining a permit from DEQ. The asphalt shingle waste described in Section II, paragraph  
18 5 and the drilling process wastewater described in Section II, paragraph 23 are solid waste (as that term  
19 is defined in ORS 459.005(24) and OAR 340-093-0010(85)) as both are useless or discarded and are  
20 not clean fill (as that term is defined in OAR 340-093-0010(18)), as each may contain contaminants  
21 (including suspended solids and petroleum) which could adversely impact waters of the State. The  
22 Facility is a disposal site (as that term is defined in OAR 340-093-0010(38)) as solid waste was  
23 disposed of at the Facility. Respondent does not have a permit for a disposal site from DEQ for the  
24 Facility. This is a Class I violation according to OAR 340-012-0065(1)(a). DEQ assesses a \$10,800 civil  
25 penalty for this violation.

26           5. Respondent violated ORS 468B.025(2) and Schedule A, condition 6.a. of the Permit by  
27 failing to prevent the discharge of significant amounts of sediment to surface waters or conveyances

1 systems leading to surface waters. Per Schedule A, condition 6.a.v, the deposit of sediment on a  
2 property outside of the permitted mining site is defined as significant amounts of sediment. As alleged  
3 in Section II, paragraph 22, Respondent deposited sediment into the roadside ditch along Hergert Road  
4 which is not covered by the mining permit. This is a Class II violation according to OAR 340-012-  
5 0053(2). DEQ did not assess a civil penalty for this violation.

6 6. Respondent violated ORS 468B.025(1)(a) by causing to be placed wastes in a location where  
7 such wastes are likely to escape or be carried into waters of the state by any means. Specifically,  
8 as alleged in Section II, paragraph 23, Respondent allowed the discharge of drilling process wastewater  
9 into a location where it could flow downhill into the settling pond. As alleged in Section II, paragraph  
10 24, during the February 2020 inspection, the settling pond was discharging. This is a Class II violation  
11 according to OAR 340-012-0055(2)(c). DEQ did not assess a civil penalty for this violation.

12 7. Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to monitor  
13 its stormwater discharge. Specifically, Respondent failed to analyze the sample collected from outfall  
14 B on October 26, 2018 for SS and did not conduct a valid analysis of that sample for pH, as alleged in  
15 Section II, paragraphs 6 through 10. Additionally, Respondent did not collect and analyze samples from  
16 outfall A during the 2018/2019 sampling year. These are Class I violations according to OAR 340-012-  
17 0055(1)(o). DEQ did not assesses a civil penalty for these violations.

18 8. Respondent violated ORS 468B.025(2) and Schedule B of the Permit by submitting a  
19 monitoring report that did not identify the sampling results. Specifically, as alleged in Section II,  
20 paragraphs 7 through 10, Respondent failed to include the laboratory results for oil and grease, for TSS  
21 from October 28, 2018, and for SS from December 28, 2018 and April 9, 2019 on its monitoring report.  
22 This is a Class III violation according to OAR 340-012-0055(3)(a). DEQ did not assess a civil penalty  
23 for this violation.

24 9. Respondent violated ORS 468B.025(2) and Condition 7 of the Permit by failing to submit a  
25 name change transfer application form within 30 calendar days of the name change, as alleged in  
26 Section II, paragraphs 1 and 2. This is a Class II violation according to OAR 340-012-0053(2). DEQ  
27 did not assess a civil penalty for this violation.

1 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

4 1. Pay a total civil penalty of \$56,462. The determination of the civil penalties are attached as  
5 Exhibits 1 through 4, and are incorporated as part of this Notice. If you do not file a request for hearing as  
6 set forth in Section V below, your check or money order must be made payable to "**State Treasurer,**  
7 **State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600,**  
8 **Portland, Oregon 97232.**

9 2. Immediately stop accepting solid waste unless it is clean fill (as that term is defined in OAR  
10 340-093-0010(18)) at the Facility, and within 30 days of this order becoming final by operation of law  
11 or on appeal, submit a written plan to remove all solid waste from the Facility. Once DEQ approves  
12 the plan, dispose of the waste at a solid waste disposal site that is permitted by DEQ to accept the waste  
13 and submit documentation of that disposal. The documentation must be sent to: Jeremy Fleming, DEQ,  
14 700 N.E. Multnomah Boulevard, Suite 600, Portland OR 97219.

15 3. Within 30 days of this order becoming final by operation of law or on appeal, submit to Lisa  
16 Reinhart, DOGAMI, 229 Broadalbin Street SW, Albany OR 97312-2246

- 17 a. an updated SWPCP that meets all the requirements set forth in Schedule A,  
18 Condition 7 of the Permit including improved control measures to stabilize exposed  
19 areas at the Facility;
- 20 b. a work plan for performing a groundwater investigation to determine if activities at  
21 Respondent's Facility have adversely impacted the wells used by properties adjacent  
22 to the Facility, as required by Schedule A, condition 3.f of the Permit; and
- 23 c. a name change application form.

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

25 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
26 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
27 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached

1 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
2 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
3 about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and**  
4 **Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-**  
5 **5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge employed by the  
6 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR  
7 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
8 attorney at the hearing, however you are not required to be. If you are a corporation, partnership,  
9 limited liability company, unincorporated association, trust or government body, you must be  
10 represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

11 Active duty Service members have a right to stay proceedings under the federal Service  
12 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
13 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
14 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
15 Department does not have a toll free telephone number.

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

22  
23  
24 5/8/2020  
25 Date

24   
25 Kieran O'Donnell, Manager  
26 Office of Compliance and Enforcement  
27

EXHIBIT 1

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

VIOLATION 1: Reducing the water quality of the state below a water quality standard, in violation of ORS 468B.025(1)(b) and OAR 340-041-0036.

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(2)(b)(A)(v) because Respondent increased turbidity 50 or more NTU over background.

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 \$8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii). Respondent has coverage under the NPDES 1200-A Permit.

"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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. DOGAMI documented the increase in turbidity on one day only.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. During an inspection in October 2018, DOGAMI informed Respondent that turbid water was being discharged from outfall B into the roadside ditch. Additionally, the 1200A Permit specifically states that Respondent cannot cause or contribute to a violation of water quality standards. Respondent reasonably should have known that allowing turbid water to discharge into the roadside ditch could result in a violation of a water quality standard in the unnamed creek into which it discharges.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -4 according to OAR 340-012-0145(6)(b) because Respondent made extraordinary efforts to ensure the violation would not be repeated. Respondent immediately discontinued use of

the wheel wash and purchased a commercial street vacuum to control dirt and other materials from vehicles exiting the Facility.

"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 \$162. This is the amount Respondent gained by delaying until August 2019, spending \$85,000 on a commercial vacuum to reduce the tracking of dirt and other materials from vehicles exiting the Facility. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 0 + 2 - 4)] + \$162  
= \$8,000 + (\$800 x -2) + \$162  
= \$8,000 + \$-1,600 + \$162  
= \$6,562

EXHIBIT 2

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

VIOLATION 2: Failing to revise its SWPCP, in violation of ORS 468B.025(2) and Schedule A, Condition 8.e of the Permit.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(b).

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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iI) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii). Respondent has coverage under the NPDES 1200-A Permit.

"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. The violation has been on-going since at least 2018 when Respondent ceased mining at the Facility.

"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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting a violation. Following the inspection, DOGAMI informed Respondent that it needed to update its SWPCP. Additionally, the 1200A Permit specifically states that Respondent's SWPCP must be kept current to reflect current conditions at the Facility. By failing to address on-going changes at its Facility when those occurred, Respondent failed to take the same care than another person would take in the same situation, resulting in the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value 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). Respondent has not submitted a revised SWPCP to DOGAMI.

"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 \$3,469. This is the amount Respondent gained by avoiding spending \$5,000 to update its SWPCP since October 2018. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 4 + 4 + 2)] + \$3,469$   
 $= \$2,000 + (\$200 \times 10) + \$3,469$   
 $= \$2,000 + \$2,000 + \$3,469$   
 $= \$7,469$

EXHIBIT 3

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

VIOLATION 3: Failing to meet the narrative technology based effluent limits, in violation of ORS 468B.025(2) and Schedule A, condition 1 of the Permit.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii). Respondent has coverage under the NPDES 1200-A Permit.

"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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. On at least one day, February 28, 2020, the day of DOGAMI's inspection, Respondent was violating two separate narrative technology based effluent limitations at its Facility.

"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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conducting resulting in a violation. During an inspection in October 2018, DOGAMI noted several places with oil sheens and recommended to Respondent that it utilize booms to minimize exposure to stormwater contamination. Additionally, Respondent has been accepting fill for at least several years and reasonably should have known that it needed to take measures to stabilize areas which could erode.

"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). Respondent has not provided DEQ with documentation showing that it has addressed the violations of the effluent limitations.

"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 \$28,031. This is the amount Respondent gained by avoiding spending \$42,000 to hydromulch and seed approximately 6 acres of the Facility since at least July 2019. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$   
= \$2,000 + [(0.1 x \$2,000) x (0 + 0 + 2 + 4 + 2)] + \$28,031  
= \$2,000 + (\$200 x 8) + \$28,031  
= \$2,000 + \$1,600 + \$28,031  
= \$31,631

EXHIBIT 4

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

VIOLATION 4: Establishing, operating and maintaining a disposal site without obtaining a permit from DEQ, in violation of ORS 459.205(1) and OAR 340-093-0050(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(a).

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. DEQ is unable to make an estimate of the amount of solid waste that Respondent has accepted to be used as fill at the Facility.

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i). Respondent would be required to have a solid waste disposal permit to accept solid waste that is not clean fill.

"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 constitutes a separate occurrence. DOGAMI documented that Respondent accepted drilling process wastewater in February 2020. Once the wastewater was disposed of at the Facility, Respondent continues to maintain the unpermitted disposal site on an on-going basis. Therefore, the violation has been on-going for more than 28 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 conduct was negligent. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. For several years, Respondent has been accepting fill material at the Facility.

In October 2018, a fire occurred at the Facility as a result of land clearing debris being disposed of at the Facility. At that time, Respondent was reminded of the need to only accept clean fill, such as dirt, rock and concrete at the Facility. By failing to institute procedures for ensuring that loads of waste being disposed of at the Facility only contain clean fill, Respondent failed to take reasonable care to ensure that prohibited solid waste is not disposed of at the Facility.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g). It is unknown if Respondent has addressed the solid waste which was disposed of at the Facility or has taken measures to ensure that solid waste is not disposed of in the future.

"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 \$0 as DEQ is unable to make an estimate of any costs delayed or avoided as a result of this violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 4 + 4 + 0)] + \$0  
= \$6,000 + (\$600 x 8) + \$0  
= \$6,000 + \$4,800 + \$0  
= \$10,800