

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF)	MUTUAL AGREEMENT
ZENITH ENERGY TERMINALS)	AND FINAL ORDER
HOLDINGS, LLC,)	
Respondent.)	CASE NO. AQ-V-NWR-2024-635

WHEREAS:

1. On December 6, 2024, the Department of Environmental Quality (DEQ) issued Notice of Civil Penalty Assessment and Order No. AQ-V-NWR-2024-635 (Notice) to Respondent. DEQ assessed a \$372,600 civil penalty against Respondent for violations alleged in the Notice.

2. On December 23, 2024, Respondent filed a timely request for hearing.

I. AGREEMENT

Respondent and DEQ hereby agree that:

1. This Mutual Agreement and Final Order (MAO) shall be effective upon the date fully executed (the MAO Effective Date).

2. Section III, Paragraph 1 of the Notice is amended by changing the classification for Violation 1 from a Class II violation, according to OAR 340-012-0054(2)(c), to a Class III violation, according to OAR 340-012-0054(3)(c).

3. Exhibit 1 and the associated civil penalty of \$5,400 for Violation 1 is removed from the Notice.

4. Exhibit 2 of the Notice is amended by reducing the civil penalty for Violation 2 to \$129,600 as described in Amended Exhibit No. 2, which is attached and incorporated into this MAO.

5. The total civil penalty is reduced from **\$372,600** to **\$129,600**.

6. Pursuant to OAR 340-012-0030(19) and OAR 340-012-0145(2), the violations alleged in the Notice and as amended by this MAO, will be treated as prior significant actions in the event a future violation occurs. Specifically, the prior significant actions (PSAs) in this case include

one Class III violation and 34 Class II violations. In any future enforcement case, DEQ will reduce the P factor over time according to OAR 340-012-0145(2)(d)(A). PSAs that are more than 10 years old are not included in the value of P according to OAR 340-012-0145(2)(f).

7. DEQ and Respondent understand and agree that by entering into this MAO, paying any sum due pursuant to this MAO, or taking any other action required or agreed to pursuant to this MAO, Respondent does not admit and nothing in this MAO is to be construed as an admission by Respondent of any factual allegations, legal conclusions, or liability herein or otherwise related to this MAO or the Notice and the exhibits thereto.

8. Respondent waives any and all rights and objections Respondent may have to the form, content, manner of service and timeliness of the Notice; to a contested case hearing and judicial review of the Notice; and to service of a copy of this MAO.

9. This MAO resolves all civil claims of DEQ, based upon the facts alleged, for the violations expressly alleged in the Notice and/or as amended by the MAO. This MAO is not intended to limit, in any way, DEQ's right to proceed against Respondent in any forum for any past or future violations not expressly settled herein.

10. Respondent releases and waives any and all claims of any kind, known or unknown, past or future, against the State of Oregon or its agencies, instrumentalities, employees, officers, or agents, arising out of the matters and events relating to the matter set out in the Notice and this MAO. Any and all claims includes but is not limited to any claim under 42 USC § 1983 et seq., any claim under federal or state law for damages, declaratory, or equitable relief, and any claim for attorney's fees or costs.

11. This MAO shall be binding on Respondent and its respective successors, agents, and assigns. The undersigned representative of Respondent certifies that he or she is fully authorized to execute and bind Respondent to this MAO.

12. Facsimile or scanned signatures on this MAO shall be treated the same as original signatures.

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13. Respondent agrees to refrain from using the value of the Supplemental Environmental Project (SEP) described in Section II, paragraph 2, as a tax deduction or as part of a tax credit application; and, whenever Respondent publicizes the SEP or the results of the SEP, Respondent will state in a prominent manner that the project was undertaken as settlement of a DEQ enforcement action. An approved SEP will be incorporated into this MAO by amendment. Respondent will be deemed to have completed the SEP when the DEQ Office of Compliance and Enforcement receives a final report documenting the completion of the SEP.

14. Civil penalty payments pursuant to this MAO may be made as follows:

a. Pay online with e-check (ACH) or credit card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Reference Number and FIMS Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges, or

b. Pay by check or money order: Make check payable to “Department of Environmental Quality” and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order and note the case number on your check.

II. FINAL ORDER

The Environmental Quality Commission hereby enters a final order:

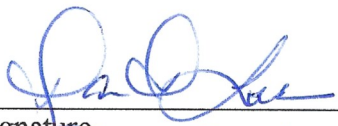
1. Imposing upon Respondent a total civil penalty of \$129,600 for the violations alleged in the Notice, as amended by this MAO, \$25,920 of which is due within 30 days of the MAO Effective Date.

2. By no later than 90 days after the MAO Effective Date, requiring Respondent to submit to DEQ a Supplemental Environmental Project (SEP) application for a project or projects that meet DEQ SEP approval criteria and contribute no less than \$103,680 to a third-party organization(s) to implement one or more SEPs that will benefit air quality in the vicinity of Respondent's Portland Facility. Within 30 days of DEQ's approval of the SEP application,

Respondent must transmit payment of no less than \$103,680 to the third-party organization(s) and provide DEQ with documentation of the transmittal(s). If a SEP application is not timely submitted, then the balance of the civil penalty (\$103,680) is due and owing within 30 days of the SEP application deadline. If DEQ disapproves Respondent's SEP application in writing, then the balance of the civil penalty (\$103,680) is due and owing within 30 days of DEQ's written disapproval.

ZENITH ENERGY TERMINALS HOLDINGS, LLC
(RESPONDENT)

4/29/2025
Date


Signature
Dana D. Love
Name (print)
Secretary & General Counsel
Title (print)

DEPARTMENT OF ENVIRONMENTAL QUALITY and
ENVIRONMENTAL QUALITY COMMISSION

05/01/2025
Date

Shannon Davis
Shannon Davis, Deputy Director
on behalf of DEQ pursuant to OAR 340-012-0170
on behalf of the EQC pursuant to OAR 340-011-0505

AMENDED EXHIBIT 2

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

- VIOLATION NO. 2** Operating air contaminant sources without authorization under the Title V Permit, in violation of ORS 468A.045(1)(b).
- CLASSIFICATION:** DEQ alleges that these are Class I violations according to OAR 340-012-0054(1)(e). For purposes of settlement, the civil penalty is assessed as Class II violations, according to the default classification in OAR 340-012-0053(2).
- MAGNITUDE:** The magnitude of the violations is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to these violations, 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 \$3,000 for a Class II, 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)(A) because Zenith has a Title V 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. According to OAR 340-012-0145(4), each repeated occurrence of the same violation and each day of a violation with a duration of more than one day is a separate occurrence. In this case, DEQ alleges that there were 34 occurrences of the violation based on 34 loading events that were not authorized under Respondent's Title V permit. For purposes of penalty assessment, O receives a value of 0 according to OAR 340-012-0145(4)(e) because DEQ is assessing a separate penalty for each of the 27 marine loading events that Zenith conducted at the McCall dock between April 8, 2021 and April 5, 2024, 2024, when Zenith submitted a Notice of Approval for the McCall Connection Project.
- "M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d).

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d). Respondent submitted a Notice of Approval on April 5, 2024, in response to DEQ's Warning Letter.

"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 because DEQ has insufficient information to calculate an economic benefit for this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 0 + 8 + -2)] + \0
 $= \$3,000 + (\$300 \times 6) + \$0$
 $= \$3,000 + \$1,800 + \$0$
 $= \$4,800$

Zenith conducted 27 marine loading events at the McCall dock between April 8, 2021 and April 5, 2024, when Zenith submitted a Notice of Approval to DEQ for the McCall Connection Project. DEQ is assessing a separate civil penalty for each of these unauthorized loading events. Therefore, the total civil penalty is: $\$4,800 \times 27 = \mathbf{\$129,600}$