



# Oregon

Kate Brown, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
(503) 229-5696  
FAX (503) 229-5100  
TTY 711

January 21, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 2537

Hydro Extrusion Portland, Inc.  
c/o Corporation Service Company, Registered Agent  
1127 Broadway Street NE, Suite 310  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-NWR-2021-507

***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 you a civil penalty of \$16,356 for water quality violations at your extruded aluminum surface coating facility known as the "Coatings Division" located at 5321 and 5325 NE Skyport Way in Portland, Oregon. Specifically, the enclosed Notice of Civil Penalty Assessment and Order (Notice) cites you for the unauthorized discharge of air compressor condensate and air dryer condensate that contained oil as well as trace amounts of cadmium and lead to waters of the state. During an inspection on May 21, 2020, DEQ observed two black hoses from your air compressors and air dryers placed in a broken stormwater pipe that discharges to the Columbia Slough. One of the black hoses was routed through a container labeled "oil/water separator." Sampling during the May 2020 site visit detected chromium in a combined swab of the stormwater pipe and the two black hoses. DEQ is requiring additional investigation of the source of the chromium as described in greater detail below.

In addition, the Notice cites you for two violations of your 1200-Z Industrial Stormwater NPDES General Permit. First, you failed to implement your Stormwater Pollution Control Plan (SWPCP) by failing to ensure that downspout filters installed to remove zinc from your stormwater were consistently replaced. Second, the attached Notice cites you, without penalty, for failing to maintain a complete and accurate SWPCP that includes all of the stormwater conveyance and discharge structures at the facility.

Included in Section IV of the attached Notice is an order requiring you to, within 60 days of the order becoming final by operation of law or on appeal, submit to DEQ for review and approval a Chromium

Source Identification and Analysis Plan to determine any sources of chromium in your stormwater discharge from the Facility. This is just a summary of the order and you must review Section IV of the Notice for the order's detailed requirements.

DEQ issued this penalty because these violations pose a risk of harm to human health and the environment. Unauthorized discharges of wastewater containing pollutants such as used oil to the Columbia Slough can create a risk of harm to fish, aquatic life and other beneficial uses. While the discharge of contaminated condensate did pass through your AQUIP stormwater treatment system prior to entering the slough, the system is not designed or authorized to treat oil-containing condensate from your air compressor or air dryer. In addition, failing to replace downspout filters, as required under your SWPCP, reduces the efficacy of the stormwater treatment measures in place at the facility. Failing to maintain a complete and accurate SWPCP inhibits proper stormwater management at the facility, as well as DEQ and the City of Portland's ability to evaluate the facility's compliance with water quality requirements.

DEQ appreciates your efforts to ensure that the unauthorized discharge violation would not be repeated by permanently reconfiguring the discharge from the air compressors and air dryers promptly after DEQ's May 21, 2020 inspection. In addition, you replaced the downspout filters following the City of Portland's February 2020 inspection. DEQ considered these efforts when determining the amount of civil penalty.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov)

Via fax – 503-229-6762

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty online via e-check (ACH) by following the instructions on the enclosed payment slip and logging in to Your DEQ Online here: <https://ydo.oregon.gov>. If you pay by check or money order, please include the enclosed payment slip with your payment.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.



Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

Cc via email: Jeremy Basler, Regional HSE Manager – West, Hydro Extrusion North America  
(jeremy.basler@hydro.com)  
Nancy Cisek, Senior Legal Counsel, Hydro Extrusion North America  
(Nancy.Cisek@hydro.com)  
Jess Alosio, City of Portland (Jessica.Alosio@portlandoregon.gov)  
Stacy Hibbard, City of Portland (Stacy.Hibbard@portlandoregon.gov)  
Daria Gneckow, DEQ  
Christine Svetkovich, DEQ  
Tiffany Yelton-Bram, DEQ  
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: )  
HYDRO EXTRUSION PORTLAND, INC., )  
an Oregon corporation, )  
Respondent. )

NOTICE OF CIVIL PENALTY  
ASSESSMENT AND ORDER

CASE NO. WQ/SW-NWR-2021-507

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapter 468.B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 045.

II. FINDINGS OF FACT

1. Respondent owns and operates an extruded aluminum surface coating facility known as the “Coatings Division” located at 5321 and 5325 NE Skyport Way (the Facility).
2. The Facility (DEQ file number 104692) is registered under the National Pollutant Discharge Elimination System Stormwater Discharge General Permit No. 1200-Z (the Permit).
3. The Permit authorizes Respondent to discharge industrial stormwater to waters of the state only in conformance with the terms and conditions of the Permit.
4. The Permit was in effect at all material times.<sup>1</sup>
5. The Facility discharges stormwater to the Columbia Slough.

SWPCP Implementation

6. Schedule A.6 through A.8 require Respondent to prepare and maintain a Stormwater Pollution Control Plan (SWPCP).
7. Schedule A.6.d of the Permit requires Respondent to implement the SWPCP. Failure to implement any of the control measures or practices described in the SWPCP is a violation of the Permit.

<sup>1</sup> References to the “Permit” in this Notice refer to the 1200-Z permit (October 22, 2018 Reissuance) in effect through June 30, 2021. The 1200-Z permit was renewed effective July 1, 2021 and is referred to in this Notice as the “Renewal Permit.”

1 8. On May 30, 2018, Respondent submitted a SWPCP for the Facility (the 2018 SWPCP) to  
2 the City of Portland (City).

3 9. The 2018 SWPCP states that roof drains nos. 4, 7 and 8 at the Facility are fitted with Clean  
4 Way downspout filters that use a Metal Zorb media pack to help remove zinc from Respondent's  
5 stormwater (the Downspout Filters).

6 10. The 2018 SWPCP states that Respondent must replace the Downspout Filters once every  
7 three months (2018 SWPCP, page 12).

8 11. The 2018 SWPCP states that Respondent must conduct monthly preventative maintenance  
9 inspections, including "inspections in areas where potential releases of significant materials could  
10 impact stormwater runoff, control structures and any treatment facilities." The 2018 SWPCP states that  
11 the inspections must be documented and that the inspection forms must be available on site at the  
12 Facility for review by regulatory agencies (2018 SWPCP, pages 16-17).

13 12. On March 15, 2019, the City inspected the Facility.

14 13. On March 15, 2019, there were no media packs in the downspouts for roof drains nos. 4, 7  
15 and 8. Respondent did not know when the Downspout Filters had last been maintained and did not have  
16 any maintenance records for the filters.

17 14. In June 2019, Respondent submitted an updated SWPCP for the Facility to the City (the  
18 2019 SWPCP).

19 15. Like the 2018 SWPCP, the 2019 SWPCP describes Downspout Filters in roof drains nos. 4,  
20 7 and 8 and states that Respondent must replace Downspout Filters once every three months (2019  
21 SWPCP, page 11).

22 16. The 2019 SWPCP states that monthly inspections must be conducted and documented, and  
23 that "maintenance activities such as cleaning and repairing stormwater control and any treatment  
24 facilities should also be documented and recorded." (2019 SWPCP, p. 20).

25 17. On February 27, 2020, the City inspected the Facility.

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1 18. On February 27, 2020, there were media packs in the downspouts for roof drains nos. 4  
2 through 9. However, Respondent did not know when the Downspout Filters had last been replaced and  
3 did not have any maintenance records for the Downspout Filters.

4 19. On March 31, 2020, Respondent replaced the Downspout Filters.

5 Unauthorized Discharge

6 20. In addition to the Permit, Respondent's Facility has an industrial wastewater pre-treatment  
7 permit from the City of Portland (permit no. 433.035, the Industrial Pretreatment Permit). The  
8 Industrial Pretreatment Permit authorizes Respondent to discharge process wastewater from the Facility  
9 to the sanitary sewer after treatment.

10 21. Schedule A.8.b of the Permit requires Respondent to separate process wastewater discharge  
11 points from the storm drainage system to prevent unpermitted discharge of pollutants to waters of the  
12 state.

13 22. Neither the Permit nor the Industrial Pretreatment Permit authorize the discharge of process  
14 wastewater from the Facility to waters of the state.

15 23. On May 21, 2020, DEQ inspected the Facility.

16 24. On May 21, 2020, there were two air compressors located in an exterior fenced area on the  
17 west side of the Facility building (the Air Compressor Area). The condensate from the air compressors  
18 was piped to at least one blue polyethylene container labeled "oil/water separator" that was also located  
19 in the Air Compressor Area. The blue container was connected to a black hose that was placed in a  
20 broken spot in a subgrade stormwater pipe (Stormwater Pipe).

21 25. On May 21, 2020, the condensate from two air dryer units inside the Facility was connected  
22 to a hard vertical pipe on the exterior of the east side of the building. The hard vertical pipe was  
23 connected to a black hose that was placed in the same broken spot in the Stormwater Pipe. Thus, there  
24 were two black hoses—one originating from the air compressors, and one originating from the air  
25 dryers—discharging the Stormwater Pipe.

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1 26. On May 21, 2020, there were also two roof drains discharging to the Stormwater Pipe. More  
2 specifically:

3 a. There was roof drain (RD-10) that collects stormwater from part of the Facility's roof  
4 that has powered roof vents and is included in Drainage Area 1 (DA-1). On May 21, 2021, RD-  
5 10 was connected directly to the Stormwater Pipe at a location right above the break in the  
6 Stormwater Pipe. As of the date of this Notice, RD-10 remains connected to the Stormwater  
7 Pipe.

8 b. There was a roof drain (RD-17) that collects stormwater from a rectangular asphalt-  
9 shingled portion of the Facility's roof that is included in Drainage Area 2 (DA-2). On May 21,  
10 2021, RD-17 was discharging to the pavement surface in DA-2 in the vicinity of the break in the  
11 Stormwater Pipe.

12 27. From the break in the Stormwater Pipe referenced in Section II, Paragraphs 24, 25 and 26,  
13 above, the Stormwater Pipe continues underground north and then east beneath the pavement where it  
14 connects with other subgrade stormwater pipes and ultimately discharges to the Facility's AQUIP  
15 stormwater treatment system, which discharges to the Columbia Slough.

16 28. On May 21, 2020, there was stormwater flowing into the AQUIP system at a rate of  
17 approximately five to six gallons per minute.

18 29. On May 21, 2020, DEQ's contractor collected a single (combined) swipe sample of the two  
19 black hoses attached to the First Blue Container and the Second Blue Container, and from the inside of  
20 the broken Stormwater Pipe. From that swipe sample, chromium was detected at 0.0401 milligrams per  
21 wipe.

22 30. On May 21, 2020, Respondent removed the two black hoses from the Stormwater Pipe.

23 31. On May 22, 2020, Respondent installed a new Donaldson oil/water separator for the  
24 condensate from the air compressors described in Paragraph 24, above. The new Donaldson oil/water  
25 separator separates the oil and discharges treated condensate to a tote, which is disposed of off-site as  
26 non-hazardous waste.

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1 32. On May 28, 2020, Respondent repaired the Stormwater Pipe and applied an asphalt patch  
2 over the top.

3 33. On May 29, 2020, Respondent sent dye test results to DEQ confirming the connection  
4 between the Stormwater Pipe and the AQUIP system.

5 34. On or before October 7, 2020, Respondent reconfigured the air dryer condensate lines,  
6 described in Paragraph 25 above, so that they connect to the new Donaldson oil/water separator  
7 described in Paragraph 31, above, along with the air compressor condensate.

8 35. The material collected in the new Donaldson oil/water separator which receives condensate  
9 from the air compressors and the air dryers includes used oil as well as treated condensate which  
10 contains 1-5% used oil as well as trace amounts of cadmium and lead.

#### 11 SWPCP Revisions

12 36. Schedule A.7.b.i(3) of the Permit and Schedule A.10.b.i(3) of the 1200-Z renewal permit  
13 effective July 1, 2021 (Renewal Permit) require Respondent to include conveyance and discharge  
14 structures, such as piping or ditches, in the SWPCP site map.

15 37. Schedule A.6.e of the Permit and Schedule A.8.f of the Renewal Permit require Respondent  
16 to keep the SWPCP current and revised it as necessary to reflect applicable changes to the site.

17 38. On October 1, 2020, Respondent submitted an updated SWPCP (dated September 11, 2020)  
18 to the City (2020 SWPCP). The site map in the 2020 SWPCP showed a stormwater connection between  
19 RD-10 and the AQUIP system, and also showed a connection between the Facility's regenerative  
20 thermal oxidizer (RTO), an air pollution control device, and the same stormwater line. The 2020  
21 SWPCP did not identify RD-17, which discharges to the ground surface in DA-2, in the site map or  
22 otherwise.

23 39. On or about August 21, 2021, Respondent submitted an updated SWPCP to the City (the  
24 August 2021 SWPCP). The site map in the August 2021 SWPCP did not show RD-10, or its  
25 connection via the Stormwater Pipe via the AQUIP system. The site map in the August 2021 SWPCP  
26 showed a single roof drain in the "air compressor area" discharging to the ground surface in DA-2.

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1 40. On October 22, 2021, DEQ requested information from Respondent to clarify the  
2 discrepancies between the site features observed during the May 21, 2020 inspection, the 2020 SWPCP  
3 and the August 2021 SWPCP.

4 41. On November 19, 2021, Respondent provided information in response to DEQ's request and  
5 on November 24, 2021, Respondent submitted an updated SWPCP to the City (November 2021  
6 SWPCP). The information submitted by Respondent to DEQ and the City, including the November  
7 2021 SWPCP, states that there is no connection from the RTO to the Stormwater Pipe, and there is no  
8 evidence there was ever such a connection. The November 2021 SWPCP includes RD-10, which  
9 discharges to the Columbia Slough via the Stormwater Pipe and the AQUIP system, as described in  
10 Section II, Paragraphs 26.a and 27, above. The November 2021 SWPCP also includes RD-17, which  
11 discharges to the ground surface in DA-2 as described in Section II, Paragraphs 26.b and 27, above.

### 12 III. CONCLUSIONS

13 1. Respondent violated ORS 468B.025(2) and Schedule A.6.d of the Permit by failing to  
14 implement control measures or practices described in the SWPCP, as described in Section II,  
15 Paragraphs 6-19, above. Specifically, from March 15, 2019 to March 31, 2020, Respondent failed to  
16 consistently maintain the filters in the downspouts to roof drains nos. 4 through 9 at the Facility by  
17 replacing the media packs at least once every three months as required by the SWPCP. This is a Class I  
18 violation, according to OAR 340-012-0055(1)(r). DEQ hereby assesses an \$8,756 civil penalty for this  
19 violation.

20 2. On at least one day on May 21, 2020, Respondent violated ORS 468B.050(1)(a) by discharging  
21 wastes into waters of the state from an industrial establishment or activity without holding a permit from  
22 DEQ authorizing those discharges, as described in Section II, Paragraphs 20-35, above. Specifically, on at  
23 least one day on or before May 21, 2020, Respondent was discharging air compressor condensate and air  
24 dryer condensate that contained oil as well as trace amounts of cadmium and lead through blue  
25 containers labeled "oil/water separator" via the Stormwater Pipe to the Columbia Slough. The  
26 contaminated condensate is "waste" according to 468B.005(9) because it is an industrial waste that will or  
27 may cause pollution or tend to cause pollution of waters of the state. The Columbia Slough is a water of

1 the state according to 468B.005(10). This is a Class I violation, according to OAR 340-012-0055(1)(c).  
2 DEQ hereby assesses a \$7,600 civil penalty for this violation.

3 3. From at least May 21, 2020 to November 24, 2021, Respondent violated ORS 468B.025(2),  
4 Schedule A.6.e and A.7.b.i(3) of the Permit and Schedule A.8.f and A.10.b.i(3) of the Renewal Permit  
5 by failing to maintain a complete and accurate SWPCP for the Facility as described in Section II,  
6 Paragraphs 36-41, above. Specifically, until the November 2020 SWPCP, Respondent's SWPCP for the  
7 Facility did not consistently show the connection between the Stormwater Pipe and the AQUIP, nor did  
8 it consistently and accurately show the two roof drains in the Air Compressor Area of the Facility, one  
9 (RD-10) which is directly connected to the Stormwater Pipe, and another (RD-17) which discharges to  
10 the ground surface. This is a Class II violation according to OAR 340-012-0053(2). DEQ has not  
11 assessed a civil penalty for this violation.

#### 12 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

15 1. Pay a total civil penalty of \$16,356. The determinations of the civil penalties are attached as  
16 Exhibits 1-2 and are incorporated as part of this Notice.

17 If you do not file a request for hearing as set forth in Section V below, please pay the penalty  
18 online via e-check (ACH) by following the instructions on the attached payment slip and logging in to  
19 Your DEQ Online here: <https://ydo.oregon.gov>. Alternatively, if you pay by check or money order, please  
20 make checks payable to "Department of Environmental Quality" and include the attached payment slip  
21 with your payment.

22 2. Within 60 days of the order becoming final by operation of law or on appeal, submit to DEQ  
23 for review and approval a Chromium Source Identification and Analysis Plan to determine any sources  
24 of chromium in Respondent's stormwater discharges from the Facility. The Plan must include, at a  
25 minimum:

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- 1 a. Identification and description of possible sources of chromium in Respondent's  
2 stormwater discharge, including an updated site map that includes all of the Facility's  
3 roof vents;
- 4 b. A proposal and schedule for sampling and analysis of the following pollutants:  
5 Chromium (total), Chromium III (total and dissolved), and Chromium VI (dissolved);
- 6 c. A sampling plan that includes at least the following locations:
- 7 i. each of the monitoring points identified in the SWPCP in effect at the time of the  
8 sampling;
- 9 ii. the discharge of stormwater from roof drains no. RD-8, RD-9, RD-10 and RD-17  
10 before the discharge from those roof drains comingles with other stormwater;
- 11 iii. the point just before stormwater enters the AQUIP Filtration Unit;
- 12 iv. the discharge of condensate from the air dryers,
- 13 v. the discharge of condensate from the air compressors, and
- 14 vi. any other identified potential sources of chromium;
- 15 d. A schedule for submitting a report to DEQ that presents the findings of the chromium  
16 source identification and analysis, identifies feasible and appropriate actions to address  
17 chromium in stormwater discharges and timeframe(s) for doing so, or the reasons why  
18 no actions are recommended.

19 3. Respondent must implement the Chromium Source Identification and Analysis Plan once  
20 approved by DEQ according to the timelines therein.

21 4. Written documentation to demonstrate compliance with the requirements of Section IV,  
22 Paragraphs 2 and 3 must be sent to Daria Gneckow at [daria.gneckow@deq.oregon.gov](mailto:daria.gneckow@deq.oregon.gov) or 700 NE  
23 Multnomah Street, Suite 600, Portland, OR 97232, with a copy to Jess Aloisio at  
24 [Jessica.Aloisio@portlandoregon.gov](mailto:Jessica.Aloisio@portlandoregon.gov) and Becka Puskas at [becka.puskas@deq.oregon.gov](mailto:becka.puskas@deq.oregon.gov).

#### 25 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

26 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
27 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If



1 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
2 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
3 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
4 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
5 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
6 it to **503-229-6762** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge  
7 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
8 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
9 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
10 you may represent yourself. If you are a corporation, partnership, limited liability company,  
11 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
12 authorized representative, as set forth in OAR 137-003-0555.

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

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

24  
25  
26 1 / 21 / 2022  
27 Date


  
Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION NO. 1 Failing to implement control measures or practices described in the SWPCP, in violation ORS 468B.025(2) and Schedule A.6.d of the Permit.

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

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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent has covered under a NPDES General 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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has two Class II violations in Expedited Enforcement Offer No. WQ-SW-NWR-2020-219, issued on October 26, 2021 and one Class I violation in Expedited Enforcement Offer No. WQ-SW-HQ-15-190, issued on December 3, 2015.

"H" is Respondent's history of correcting prior significant actions, and receives a value of -1 according to OAR 340-012-0145(3)(b) because the violations were uncorrectable and Respondent to reasonable affirmative efforts to minimize the effects of the violations cited as prior significant actions.

"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 is a separate occurrence of the violation. Respondent failed to consistently maintain the downspout filters as required by the SWPCP from March 15, 2019 to March 31, 2020.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(d) because Respondent's conduct was negligent. According to OAR 340-012-0030, negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of



conduct constituting or resulting in a violation. On April 19, 2019, the City of Portland issued a Warning Letter With Opportunity to Correct citing Respondent for failing to implement the SWPCP because when the City inspected the Facility on March 15, 2019, there were no media packs the roof drain downspouts and Respondent did not know when the last time the downspout filters had been maintained. Therefore, Respondent knew that failing to maintain the downspout filters was a violation of the Permit. Nevertheless, as of the February 2020 inspection, Respondent was still failing to consistently maintain the downspout filters as required under the SWPCP. Therefore, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

"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) because Respondent eventually made some efforts to correct the violation by replacing the downspout filters on March 31, 2020.

"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 \$1,556. This is the amount Respondent gained by avoiding spending approximately \$1,900 to replace the media packs in the downspout filters once every three months for a year. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$4,000 + [(0.1 \times \$4,000) \times (3 + -1 + 4 + 4 + -2)] + \$1,556$   
 $= \$4,000 + (\$400 \times 8) + \$1,556$   
 $= \$4,000 + \$3,200 + \$1,556$   
 $= \$8,756$

EXHIBIT 2

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

VIOLATION NO. 2 Discharging wastes into waters of the state from an industrial establishment or activity without holding a permit from DEQ authorizing those discharges, in violation of ORS 468B.050(1)(a).

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

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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent has covered under a NPDES General 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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has two Class II violations in Expedited Enforcement Offer No. WQ-SW-NWR-2020-219, issued on October 26, 2021 and one Class I violation in Expedited Enforcement Offer No. WQ-SW-HQ-15-190, issued on December 3, 2015.

"H" is Respondent's history of correcting prior significant actions, and receives a value of -1 according to OAR 340-012-0145(3)(b) because the violations were uncorrectable and Respondent to reasonable affirmative efforts to minimize the effects of the violations cited as prior significant actions.

"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 at least one occurrence of the violation on or before May 21, 2020.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. According to OAR 340-012-0030, reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard

of care that a reasonable person would observe in that situation. As an industrial facility that discharges stormwater to waters of the state under the 1200-Z permit, Respondent should know the location and destination of all of its stormwater infrastructure and also where all of its process wastewater discharges are going. In addition, Respondent should have known of the requirement in Schedule A.8.b of the Permit to separate process wastewater discharge points from the storm drainage system to prevent unpermitted discharge of pollutants to waters of the state. Nevertheless, on at least one day on May 21, 2020, Respondent had placed the black hose that discharged condensate from its air compressors through at least one container labeled “oil/water separator” and another black hose that discharged condensate from its air dryers (located inside the Facility but discharging condensate via a hard pipe to the outside), into a broken spot in the Stormwater Pipe. Due to the way the blue container was labeled, Respondent must have known that the discharge from that container may contain used oil. By placing the black hoses in the Stormwater Pipe, Respondent consciously disregarded a substantial and unjustifiable risk of an unauthorized discharge to waters of the state. Disregarding that risk constituted a gross deviation from the standard of care that a reasonable person would observe in that situation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. Specifically, on May 21, 2020, Respondent removed the two black hoses from the Stormwater Pipe. On May 22, 2020, Respondent installed a new Donaldson oil/water separator for the condensate from the air compressors. The new Donaldson oil/water separator discharges treated condensate to a tote, which is disposed of off-site as non-hazardous waste. On May 28, 2020, Respondent repaired the Stormwater Pipe and applied an asphalt patch over the top. On or before October 7, 2020, Respondent reconfigured the air dryer condensate lines so that they connect to the new Donaldson oil/water separator along with the air compressor condensate.

"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:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$4,000 + [(0.1 \times \$4,000) \times (3 + -1 + 0 + 8 + -1)] + \$0$   
 $= \$4,000 + (\$400 \times 9) + \$0$   
 $= \$4,000 + \$3,600 + \$0$   
 $= \$7,600$