



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

February 24, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 2605

Rose Agri-Seed Inc., dba Pure Seed
c/o Jessica Christensen, Registered Agent
29975 S. Barlow Rd.
Canby, OR 97013

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-NWR-2019-165

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$22,500 for hazardous waste violations relating to the characterization, handling, and disposal of pesticide wastes generated at your facility in Canby, Oregon.

DEQ issued this penalty because improper management and disposal of hazardous waste threatens human health and the environment. To protect against such threats, the legislature has enacted statutes and DEQ has adopted rules establishing strict requirements for the identification, storage, handling, treatment, and disposal of hazardous waste, including pesticides. Your failure to comply with these requirements increased the risk that human health and the environment could be harmed by mismanagement of hazardous wastes.

Additionally, in the attached Notice of Civil Penalty Assessment and Order (Notice), DEQ has cited you without penalty for multiple other violations of hazardous waste law, and included in Section IV of the Notice is an order requiring you to, within 30 days of the final order:

1. Provide written notice to all known recipients of your seed treatment waste mixed with fungicides distributed from your facility in Canby, Oregon, notifying each recipient that the mixture contained one or more fungicides and include a copy of the attached Notice.
2. Provide copies of the above written notice(s) to DEQ, Attn: Jay Collins and Zeb Bates, 700 NE Multnomah St., Suite 600, Portland, Oregon, 97232.

DEQ appreciates your efforts to address the violations by promptly removing and properly disposing of pesticide wastes originally disposed on property in Estacada, Oregon, cleaning up pesticide wastes spilled at your Canby Facility, and improving your pesticide waste management practices. DEQ considered these efforts when determining the amount of the 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.state.or.us

Via fax – 503-229-5100

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 by sending a check or money order to the above address.

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 Anzie St. Clair at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jay Collins, DEQ, NW Region
Zeb Bates, DEQ, NW Region
Audrey O'Brien, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
ROSE AGRI-SEED INC., an Oregon)
corporation,)
Respondent.)

NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER
CASE NO. LQ/HW-NWR-2019-165

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 466.990, ORS Chapters 60, 183, 466, and 648, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 100, 101, 102, 109, 111, 113, and 142.

II. FINDINGS OF FACT

1. Respondent, doing business as Pure Seed, owns and operates a seed processing business at 29975 South Barlow Road in Canby, Clackamas County, Oregon (the Canby Facility).

2. From at least December 31, 2014 to at least November 7, 2018, as part of its business activities, Respondent commingled green colored dye, lime, and fungicides and applied the mixture onto seed at the Canby Facility. The process generates seed treatment waste which Respondent collected and stored onsite. Respondent does not have a use for its seed treatment waste. In 2018, Respondent generated approximately 9,000 pounds per week of seed treatment waste mixed with fungicides for approximately 33 weeks.

3. From at least December 31, 2014 through to on or about October 31, 2018, as its pattern and practice, Respondent offered its seed treatment waste to farmers for free or a nominal cost, advertised as a limestone and seed mixture. Respondent did not disclose to farmers whether it contained pesticides or more specifically, fungicides.

4. In treatment mixtures applied to seeds at the Canby Facility, Respondent primarily used the fungicide Apron XL (EPA Registration Number 100-799), which has an active ingredient of mefenoxam, also known as metalaxyl-M. The Apron XL label states that the fungicide is harmful to humans or domestic animals if swallowed, may impact water quality, must be immediately cleaned up,

1 and instructs that any waste resulting from use of the fungicide be disposed of onsite or at an approved
2 waste facility. The label states that contaminating water, food, or feed by storage and disposal and the
3 open dumping of waste material is prohibited. The label further directs the buyer to consult state
4 agencies responsible for pesticide regulation for specific state requirements and informs that the failure
5 to follow directions and precautions on the label may result in illegal residues.

6 5. On or about May 3, 2018, Respondent shipped from the Canby Facility approximately 60
7 cubic yards of seed treatment waste to William Hilands in totes labeled as "limestone + seed." The
8 totes were not labeled as "hazardous waste" or "waste pesticides." William Hilands then deposited the
9 seed treatment waste on land in a large pile at the Hilands Farm located adjacent to 29640 SE Eagle
10 Creek Road in Estacada, Clackamas County, Oregon (the Disposal Site).

11 6. Neither Respondent, William Hilands, nor the Hilands Farm have permits to treat, store, or
12 dispose of hazardous wastes at the Canby Facility or the Disposal Site.

13 7. On or about October 26, 2018, the Oregon Department of Agriculture (ODA) inspected the
14 large pile of seed treatment waste at the Disposal Site, collected samples, and sent the samples to
15 ODA's lab for analysis. On or before October 26, 2018, cattle located at the Disposal Site had grazed
16 on and near the seed treatment waste pile.

17 8. On November 2, 2018, the ODA lab reported the results of its analyses, confirming that the
18 samples of the seed treatment waste pile at the Disposal Site contained mefenoxam.

19 9. On November 7, 2018, DEQ inspected the Canby Facility and observed the types,
20 conditions, and quantities of wastes generated, stored, and disposed of at the Canby Facility.

21 10. On November 7, 2018, Respondent stored seed treatment wastes mixed with fungicides
22 outdoors at the Canby Facility in two open containers ("super sacks," each with a storage capacity of
23 one cubic yard), placed below baghouse dust collection hoppers. The two containers were not labeled
24 with the words "hazardous waste," "waste pesticide," or "universal waste," or with an accumulation
25 start date.

26 11. On or before November 7, 2018, the Canby Facility had spilled and accumulated seed
27 treatment wastes mixed with fungicides both indoors on the floor and on top of equipment, and

1 outdoors on the paved and unpaved ground and adjacent to the super sacks and the building's
2 ventilation fan.

3 12. On November 7, 2018, Respondent stored used oil in two containers that were not labeled
4 with the words "used oil."

5 13. In 2018 until on or about November 7, 2018, Respondent was a large quantity generator of
6 hazardous waste and was not managing its waste pesticides as universal wastes.

7 14. On November 13, 2018, Respondent sent photographs to DEQ showing that it had labeled
8 its waste pesticides as "universal waste" and its used oil as "used oil," and that it had cleaned up spills
9 of its seed treatment wastes at the Canby Facility.

10 15. On or about March 1, 2019, Respondent reported to DEQ that it was a large quantity
11 generator for 2018, reporting that it generated more than 2,200 pounds of hazardous waste in a calendar
12 month during 2018.

13 16. On or about March 4, 2019, in coordination with DEQ, Respondent over-excavated the seed
14 treatment waste pile from the Disposal Site, weighing approximately 428,580 pounds, and shipped it
15 offsite for disposal at a licensed disposal facility.

16 III. CONCLUSIONS

17 1. At all material times, Respondent is a generator (as defined by OAR 340-100-0010(1) and
18 (2)(r) and 40 CFR 260.10, as adopted by OAR 340-100-0002) of hazardous waste (as defined by ORS
19 466.005(7)(a) and (b), OAR 340-100-0010(2)(t)) and is subject to the hazardous waste management
20 requirements referenced in Section III, paragraphs 2 through 8, pursuant to OAR 340-100-0002, OAR
21 340-109-0010(3), OAR 340-102-0010(3) and (4), and OAR 340-102-0034(2). The seed treatment wastes
22 described in Section II, paragraphs 2 through 5, 10, and 11 are "pesticide residues" as defined by OAR
23 340-100-0010(3)(h) and (3)(j), and are "hazardous wastes" pursuant to OAR 340-101-0033(6), 340-109-
24 0010(3), and ORS 466.005(7)(a) and (b) because they are discarded, useless, and unwanted fungicide-
25 containing substances generated from the formulation, mixing, repackaging, and spilling of fungicides.
26 From at least December 31, 2014 through to at least November 7, 2018, Respondent was not managing its
27 pesticide residues pursuant to OAR 340-109-0010(2).

2. Respondent has violated OAR 340-102-0011(2) by failing to accurately determine if Respondent's residues (as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2 as adopted by OAR 340-100-0002) were hazardous waste. Specifically, as described above in Section II, paragraphs 1 through 8, 10, and 11, Respondent did not accurately characterize its seed treatment wastes, which were "residues" and were "hazardous wastes" as described in Section III, paragraph 1 above. These are Class I violations, according to OAR 340-012-0068(1)(a). DEQ hereby assesses a \$4,500 civil penalty for these violations.

3. Respondent has violated ORS 466.100(1) by illegally disposing of hazardous wastes at a waste disposal site not permitted to receive hazardous waste. Specifically, as described in Section II, paragraphs 2 through 6, and 8, Respondent disposed of hazardous waste by shipping the seed treatment wastes to the Disposal Site. As described in Section III, paragraph 1, Respondent's pesticide residues are "hazardous waste." This is a Class I violation according to OAR 340-012-0068(1)(h). DEQ hereby assesses a \$13,200 civil penalty for this violation.

4. Respondent violated ORS 466.645(1), OAR 340-142-0060(1), and OAR 340-109-0010(6)(a) by failing to immediately clean up spills or releases and threatened spills or releases of hazardous materials. On November 7, 2018, as described in Section II, paragraph 2, 4, and 11, Respondent had not immediately cleaned up the seed treatment waste that had spilled and accumulated both inside and outside the building at the Canby Facility. The materials are "hazardous wastes" as described in Section III, paragraph 1 above, and are "hazardous materials" pursuant to ORS 466.605(7)(b) as it references ORS 466.005(7)(a), and OAR 340-142-0005(9)(h). This is a Class I violation according to OAR 340-012-0068(1)(r). DEQ hereby assesses a \$4,800 civil penalty for this violation.

5. Respondent violated 40 CFR 262.34(a)(1)(i) as it references 40 CFR 265.171 and 40 CFR 265.173(a) and (b), all as adopted by OAR 340-100-0002(1) and applicable pursuant to OAR 340-109-0010(3), by failing to store hazardous wastes in closed containers at the Canby Facility, as described in Section II, paragraphs 2, 4, and 10. The wastes in open containers were "hazardous wastes" as described in Section III, paragraph 1 above. These are Class II violations, according to OAR 340-012-0068(2)(m). DEQ has not assessed a civil penalty for these violations.

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1 6. Respondent violated 40 CFR 262.34(a)(2), both as adopted by OAR 340-100-0002 and
2 applicable pursuant to OAR 340-109-0010(3), by failing to mark at least two containers of hazardous
3 waste described in Section II, paragraphs 2, 4, and 10 with the dates when the period of accumulation
4 began. The seed treatment wastes in the containers lacking accumulation start dates were hazardous as
5 described in Section III, paragraph 1 above. These are Class II violations according to OAR 340-012-
6 0068(2)(a). DEQ has not assessed a civil penalty for these violations.

7 7. Respondent violated 40 CFR 262.34(a)(3), both as adopted by OAR 340-100-0002 and
8 applicable pursuant to OAR 340-109-0010(3), by failing to label at least two containers of hazardous waste
9 with the words "hazardous waste," as described in Section II, paragraph 2, 4, 5, and 10 above. The seed
10 treatment wastes in the containers were hazardous wastes as described in Section III, paragraph 1 above.
11 These are Class II violations according to OAR 340-012-0068(2)(b) because Respondent failed to label
12 two "super sack" containers with a total combined capacity of at least 200 gallons. DEQ has not assessed
13 a civil penalty for these violations.

14 8. Respondent violated 40 CFR 279.22(c)(1), as adopted by OAR 340-100-0002, by failing to
15 label two containers of used oil with the words "used oil," as described in Section II, paragraph 12. These
16 are Class III violations, according to OAR 340-012-0072(3)(c). DEQ has not assessed a civil penalty for
17 these violations.

18 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

21 1. Pay a total civil penalty of \$22,500. The determination of the civil penalties are attached as
22 Exhibits 1 through 3 and are incorporated as part of this Notice.

23 If you do not file a request for hearing as set forth in Section V below, your check or money
24 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
25 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

26 2. Within 30 days of this order becoming final by operation of law or on appeal, provide
27 written notice to all known recipients of Respondent's seed treatment wastes mixed with fungicides,

described in Section II, paragraphs 2 and 3, notifying each recipient that the mixture contained one or more fungicides and include a copy of this Notice.

3. Within 30 days of this order becoming final by operation of law or on appeal, provide copies of Respondent's written notice(s) pursuant to Section IV, paragraph 2 above to DEQ, Attn: Jay Collins and Zeb Bates, 700 NE Multnomah St., Suite 600, Portland, Oregon, 97232.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

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

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1 If you fail to file a timely request for hearing, the Notice will become a final order by default
2 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
3 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
4 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
5 the relevant portions of its files, including information submitted by you, as the record for purposes of
6 proving a prima facie case.
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10 2/24/2020
11 Date

10 Kieran O'Donnell
11 Kieran O'Donnell, Manager
Office of Compliance and Enforcement
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EXHIBIT 1

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

VIOLATION 1: Failing to accurately determine if Respondent's residues (as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2 as adopted by OAR 340-100-0002) were hazardous wastes, in violation of OAR 340-102-0011(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0068(1)(a).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(a)(C) because Respondent failed to make a hazardous waste determination on one waste stream, namely the seed, lime, and mefenoxam mixture generated by its seed coating activities.

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 I, minor magnitude violation in the matrix listed in OAR 340-012-0140(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) because Respondent is a large quantity generator of hazardous waste and violated a hazardous waste rule.

"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 time Respondent generated a waste, Respondent was required to make an accurate hazardous waste determination, and each failure to do so is a separate occurrence. Respondent has failed to make an accurate hazardous waste determination of its periodically generated seed treatment waste between December 31, 2014 and November 7, 2018. For example, Respondent generated seed treatment waste mixed with fungicides in 2018 at least 33 times and each time failed to make an accurate hazardous waste determination, as described in Section II, paragraphs 2 through 4 of the Notice. Accordingly, Respondent failed to make an accurate hazardous waste determination at least 28 times.

"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 is the failure to take

reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent used Apron XL in its seed treatments, where the product label described the necessary handling and disposal measures. Respondent had been using Apron XL and other fungicides to treat its seeds since 2014. Other aspects of Respondent's business involve the use of pesticides. A reasonable person in Respondent's situation would have known that fungicides were regulated and required specific waste handling and disposal, when at least one of the fungicides (Apron XL) were labeled as such. It was foreseeable that not investigating the regulatory status of fungicide waste residues would result in a violation of hazardous waste laws and regulations.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. As described in Section II of the Notice, Respondent excavated and properly disposed of the inaccurately characterized waste.

"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. Respondent did not gain any economic advantage because the costs Respondent incurred to remove and properly dispose of the hazardous waste exceeded the cost Respondent avoided by not performing a hazardous waste determination and properly handling the pesticide residues.

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 x \$3,000) x (0 + 0 + 4 + 4 + -3)] + \$0
= \$3,000 + (\$300 x 5) + \$0
= \$3,000 + \$1,500 + \$0
= \$4,500

EXHIBIT 2

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

- VIOLATION 2: Illegally disposing of hazardous wastes at a waste disposal site not permitted to receive hazardous waste, in violation of ORS 466.100(1).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0068(1)(h).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(b)(A)(i) because Respondent disposed of more than 330 pounds of hazardous waste. Specifically, Respondent disposed of at least 60 cubic yards of a seed mixture (or approximately 17,820 pounds, where one cubic foot of grass seed is approximately 11 pounds) of hazardous waste.
- 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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) because Respondent is a large quantity generator of hazardous waste and violated a hazardous waste rule.
- "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 is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d). As described in Section II of the Notice, Respondent disposed of its pesticide residues through at least one shipment to the Disposal Site. Respondent also provided its seed treatment wastes, which contained fungicides, to other members of the public.
- "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 is the failure to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent used Apron XL in its seed treatments, where the product label described the necessary disposal measures. The label specified that open dumping of waste Apron XL

was prohibited. Respondent had been using Apron XL and other fungicides to treat its seeds since 2014. Other aspects of Respondent's business involve the use of pesticides. A reasonable person in Respondent's situation would have known that fungicides were regulated and required specific waste disposal methods, when at least one of the fungicides (Apron XL) were labeled as such. It was foreseeable that not investigating the regulatory status of fungicide waste residues would result in a violation of hazardous waste laws and regulations.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation. As described in Section II of the Notice, Respondent removed the seed treatment wastes from the Disposal Site and properly disposed of them at a licensed disposal 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 \$0. Respondent did not gain any economic advantage because the costs Respondent incurred to remove and properly dispose of the hazardous waste exceeded the cost Respondent avoided by illegally disposing of the pesticide residues.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$12,000 + [(0.1 x \$12,000) x (0 + 0 + 0 + 4 + -3)] + \$0
= \$12,000 + (\$1,200 x 1) + \$0
= \$12,000 + \$1,200 + \$0
= \$13,200

EXHIBIT 3

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

VIOLATION 2: Failing to immediately clean up spills or releases and threatened spills or releases of hazardous materials, in violation of ORS 466.645 and OAR 340-142-0060(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0068(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)(K) because Respondent violated an oil and hazardous material spill and release statute and Respondent is engaged in commercial activity and is not a person listed in OAR 340-012-0140(2)(a)(N).

"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 is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d). On and before November 7, 2018, seed treatment waste mixed with fungicides had been accumulating on the ground outdoors near super sacks, as described in Section II, paragraph 11 of the Notice. The violation occurred on at least one day, constituting at least one occurrence.

"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 is the failure to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent used Apron XL in its seed treatments, where the product label stated spills must be cleaned up immediately. Respondent had been using Apron XL and other fungicides to

treat its seeds since 2014. Other aspects of Respondent's business involve the use of pesticides. A reasonable person in Respondent's situation would have known that fungicides were regulated and likely required spill response, when at least one of the fungicides (Apron XL) were labeled as such. It was foreseeable that not cleaning up spilled seed treatment wastes mixed with fungicides would result in a violation of laws and regulations regarding spills of hazardous materials.

"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 minimize the effects of the violation. On March 4, 2019, Respondent sent photographs to DEQ indicating that spilled material had been removed from unpaved ground and cleaned from the floor at the Canby Facility, and that Respondent had attached the super sacks to the baghouse dust collection hoppers.

"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. Pursuant to OAR 340-012-0150(4) the economic benefit gained by Respondent was de minimis where it delayed paying a facility employee to more thoroughly clean the Canby Facility, containing the spills and threatened spills of hazardous materials.

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 x \$4,000) x (0 + 0 + 0 + 4 + -2)] + \$0
= \$4,000 + (\$400 x 2) + \$0
= \$4,000 + \$800 + \$0
= \$4,800