



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

March 3, 2021

CERTIFIED MAIL: 7017 0530 0000 7760 3093

J.H. Baxter & Co., Inc.
c/o C T Corporation System, Registered Agent
780 Commercial St SE Ste 100
Salem OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-WR-2020-204

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 \$223,440 for multiple violations of Oregon's hazardous waste law and your National Pollutant Discharge Contamination (NPDES) wastewater discharge permit at your wood preserving facility in Eugene.

DEQ issued this penalty because the violations cited in the enclosed Notice posed risks to the environment and public health. DEQ takes especially seriously the two unpermitted discharges of untreated stormwater in 2019, and the illegal treatment of an estimated 1.7 million gallons of hazardous waste during 2015-2019. Further, DEQ is concerned about past releases and threatened releases of hazardous waste from secondary containment at the facility.

Included in Section IV of the enclosed Notice is an order requiring you to provide and implement plans to characterize the process wastewater, assess contamination resulting from unsound secondary containment, and make improvements to your procedures regarding prevention, detection, and reporting of unpermitted stormwater discharges. Your prompt responsive action to these requirements may mitigate the civil penalty. Additionally, please note in the case of future malfunctions, spills, or releases, that your NPDES permit requires certain recordkeeping and reporting.

DEQ appreciates your efforts to address some of the violations to date and considered these efforts when determining the amount of civil penalty. Additionally, DEQ appreciates your continuing work on site

assessment and Cleaner Air Oregon requirements, as well as your participation in the cross-agency work group investigating the impacts of facility operations.

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 Sarah Wheeler at 503-229-6927 or toll free in Oregon at 800-452-4011, extension 6927.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Steve McMillian, DEQ Water Quality
Killian Condon, DEQ Hazardous Waste
Ann Farris, DEQ Cleanup
Accounting, DEQ
Laura Maffei, lmaffei@cablehuston.com
Georgia Baxter-Krause, President, gbaxter@jhbaxter.com

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
J.H. BAXTER & CO., INC.,)	ASSESSMENT AND ORDER
)	
Respondent.)	CASE NO. LQ/HW-WR-2020-204

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, 465.255 and 465.260(4), ORS Chapters 468B and 183, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 045, and 100-102.

II. FINDINGS OF FACT

1. At all material times, Respondent owned and operated and continues to own and operate a wood preserving business at 85 N Baxter Road in Eugene, Oregon (the Facility).

2. On November 30, 2010, DEQ issued Respondent National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit Number 102432 for the Facility (the Permit). The Permit was administratively extended when Respondent submitted a timely permit renewal application to DEQ on April 29, 2015. The Permit authorizes Respondent to operate a stormwater and non-process wastewater collection, treatment, control and disposal system and discharge to waters of the state only in compliance with the terms of the Permit.

3. The Permit allows Respondent to collect contaminated stormwater in a pond at the Facility for treatment through flocculation, filters, and granular activated carbon, prior to discharging treated stormwater through Outfall 001.

4. On February 25, 2019, Respondent's stormwater treatment pond overflowed and discharged an unknown amount of untreated stormwater into the south storm ditch at the Facility from approximately 8:30 a.m. to 2:00 p.m.

5. On April 8, 2019, Respondent's stormwater treatment pond overflowed and discharged untreated stormwater into the south ditch at the Facility until approximately 4:00 p.m. on April 9, 2019,

1 discharging a total of approximately 50,000 gallons of untreated stormwater into the south storm ditch.

2 6. The south storm ditch discharges to Amazon Creek.

3 7. Schedule A, Condition 1.a of the Permit provides permitted limits for concentrations of
4 parameters in discharges of treated stormwater effluent at Outfall 001. The water quality-based
5 permitted limits for copper are a monthly average of 0.0063 milligrams per liter (mg/L) and a daily
6 maximum of 0.011mg/L of copper.

7 8. In 2020, Respondent discharged stormwater from Outfall 001 with the following
8 concentrations of copper:

9

Date	Statistic	Copper (mg/L)
February 11, 2020	Daily Maximum	0.026
February 2020	Monthly Average	0.0165
March 2, 2020	Daily Maximum	0.023
March 26, 2020	Daily Maximum	0.014
March 2020	Monthly Average	0.0185

16

17 9. Schedule B, Condition 1 of the Permit requires Respondent to take a monthly grab sample
18 and monitor discharges of treated stormwater at Outfall 001 for concentrations of specified parameters.
19 Schedule F, Section C.1 requires that samples shall be representative of the volume and nature of the
20 monitored discharge, and shall be taken at the monitoring points specified in the Permit. In October
21 2019, Outfall 001 discharged on October 29, 30, and 31. Respondent did not collect samples on these
22 dates. On October 7 and 16, 2019, Respondent collected and analyzed samples from a port into a pipe
23 storing treated stormwater prior to discharging, and not at Outfall 001 during a discharge.

24 10. Respondent generates more than 2,200 pounds of hazardous waste per month at the Facility
25 and has annually reported to DEQ as a large-quantity generator of hazardous waste since at least 1991.

26 11. Respondent operates five retorts at the Facility to pressure-treat wood products with various
27 chemicals.

1 12. At all material times, as a result of Respondent's manufacturing of pressure-treated wood
2 products, Respondent generates liquid process waste containing mixtures of at least the following
3 chemicals: pentachlorophenol (PCP), creosote and creosote/oil blends, arsenic, Chemonite and
4 Ammoniacal Copper Zinc Arsenate (ACZA).

5 13. Respondent operates a dedicated evaporator to treat the liquid process waste at the Facility.
6 From approximately March through October 2019, and at other intermittent times, the Facility's
7 dedicated evaporator was not functional.

8 14. On 175 days from approximately December 2015 through October 2019, Respondent
9 pumped approximately 1.7 million gallons of liquid process waste containing the chemical mixtures
10 described above to retorts 81, 82, 83, and 85 at the Facility, bypassed the pollution controls on the
11 retorts, and operated the retorts to heat and "boil off," or evaporate, the waste. Respondent filled the
12 retorts between one-half to two-thirds full of waste for each event, and on 24 of the 175 days
13 Respondent evaporated waste in multiple retorts on the same day. Retort 81 has a capacity of 50,766
14 gallons, Retort 82 has a capacity of 45,903 gallons, Retort 83 has a capacity of 32,999 gallons, and
15 Retort 85, has a capacity of 30,081 gallons.

16 15. At all material times, the retorts were not dedicated for process waste evaporation. Between
17 events of evaporating waste, the retorts were used for wood treatment.

18 16. Respondent does not have a hazardous waste treatment permit for the Facility.

19 17. Respondent operates the Facility under Standard Air Contaminant Discharge Permit
20 (ACDP) Number 200502. The ACDP does not permit Respondent to use the retorts at the Facility as
21 waste evaporation units. Additionally, the ACDP requires Respondent to operate environmental
22 controls including the vacuum pumps and carbon adsorption system when the retorts are in use.

23 18. On September 2, 2020, Respondent had not provided 2019 annual training to employees that
24 was specific to hazardous waste management requirements, additional and independent of worker
25 health and safety requirements of Occupational Safety and Health Administration laws.

26 19. On September 2, 2020, Respondent stored a 30-gallon container of waste parts washer
27 containing 2.850 mg/l of tetrachloroethylene outside at the Facility. Respondent had not determined

1 whether the waste parts washer was hazardous waste, and the container was not labeled or managed as
2 hazardous waste. On November 12, 2020, Respondent sent this container off-site for disposal without
3 listing it on a uniform hazardous waste manifest.

4 20. Since approximately December 2015, Respondent has not conducted a complete or accurate
5 characterization of the liquid process waste upon generation to determine whether it is a hazardous
6 waste.

7 21. On at least May 28, 2020 and September 2, 2020, Respondent stored several thousand gallons
8 of liquid process waste in a storage area. There was staining on the outside of the containment wall and
9 surrounding gravel. In addition, on or about December 1, 2020, the floor of the containment area was
10 cracked and structurally deficient.

11 22. On September 2, 2020, Respondent stored one five-gallon used oil container in the petroleum
12 storage area at the Facility. This container was not labeled as "used oil."

13 III. CONCLUSIONS

14 Based upon the foregoing Findings of Fact, DEQ has determined that Respondent violated the
15 following provisions of Oregon law, including hazardous waste and used oil laws adopted by OAR
16 340-100-0002.

17 1. On February 25, 2019, and April 8 and 9, 2019, Respondent violated ORS 468B.025(2) by
18 discharging untreated stormwater to waters of the state in violation of the Permit. The Permit only
19 allows discharges of treated stormwater and boiler blowdown from Outfall 001 and treated
20 groundwater from Outfall 002. The Permit expressly prohibits any other direct or indirect discharge of
21 waste. Outfall 001 discharges to the storm ditch, which leads to Amazon Creek, both of which are
22 waters of the state as defined in ORS 468B.005(10). The overflows from the stormwater treatment
23 pond to the storm ditch on February 25 and April 8 and 9, 2019, were not discharges of treated
24 stormwater, or discharged from Outfall 001 or Outfall 002. These are Class I violations, according to
25 OAR 340-012-0055(1)(c). DEQ hereby assesses a \$14,735 civil penalty for these violations.

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2. In February and March of 2020, Respondent violated ORS 468B.025(2) and Schedule A, Condition 1.a of the Permit by discharging non-process wastewater that exceeded the water quality-based effluent limit for copper in the Permit, as described in paragraphs 7 and 8 in Section II above. These are Class I violations, according to OAR 340-012-0055(1)(l). DEQ hereby assesses an \$8,800 civil penalty for these violations.

3. Respondent violated OAR 468B.025(2) and Schedule B, Condition 1.a and Schedule F, Condition C.1 of the Permit by failing to monitor Outfall 001 for all required parameters when discharging treated stormwater during October 2019, as described in paragraph 9 of Section II above. Respondent's October 2019 samples were not representative of the effluent discharged during the month. In October of 2019, Respondent failed to monitor as required for temperature, BOD5, pH, hardness, arsenic, chromium, copper, zinc, and pentachlorophenol. These are Class I violations, according to OAR 340-012-0055(1)(o). DEQ has not assessed a civil penalty for these violations.

4. Respondent violated ORS 466.095(1)(c) by treating approximately 1.7 million gallons of hazardous waste without a permit, as detailed in paragraphs 11-17 of Section II above. The liquid process waste evaporated in the unpermitted retorts was hazardous waste as identified by United States Environmental Protection Agency (EPA) Hazardous Waste Numbers (Waste No.) F032, F034, and F035 pursuant to 40 CFR 261.31(a). According to OAR 340-012-0068(1)(h), these are Class I violations. DEQ hereby assesses a \$178,905 civil penalty for these violations.

5. Respondent violated 40 CFR 265.16(c) as referenced by 40 CFR 262.34(a)(4), by failing to provide annual training updates in 2019 for each employee associated with hazardous waste activities, that are sufficient to teach them to perform their duties in a way that ensures the Facility's compliance with hazardous waste regulations. Respondent's employees were not specifically trained in hazardous waste management regulations in 2019, as described in paragraphs 10 and 18 of Section II above, and as demonstrated by the numerous instances of non-compliance with hazardous waste management regulations described in Section II. According to OAR 340-012-0068(2)(l), these are Class II violations. DEQ hereby assesses a \$5,700 civil penalty for this violation.

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1 6. Respondent violated OAR 340-102-0011(2) by failing to conduct a complete and accurate
2 hazardous waste determination on all residues, as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2,
3 that Respondent generated at the Facility. Specifically, Respondent failed to determine that one 30-gallon
4 container of waste parts washer containing tetrachloroethylene, the liquid process waste Respondent
5 generates prior to treatment, and approximately 1.7 million gallons of liquid process waste that Respondent
6 evaporated in the retorts during 2015-2019, were hazardous waste when generated at the Facility. The
7 waste parts washer was hazardous waste as identified by Waste No. D039 pursuant to 40 CFR 261.24, and
8 the liquid process waste was hazardous waste as identified by Waste No. F032, F034, and F035 pursuant
9 to 40 CFR 261.31(a). According to OAR 340-012-0068(1)(a), these are Class I violations. DEQ hereby
10 assesses a \$6,900 civil penalty for these violations.

11 7. Respondent violated 40 CFR 265.31, as referenced by 40 CFR 262.34(a)(4), by failing to
12 maintain and operate the Facility in a manner that minimizes the possibility of a release of hazardous waste
13 or hazardous waste constituents, as described in paragraph 21 of Section II above. Specifically,
14 Respondent's secondary containment area was structurally deficient. Any liquid process waste released
15 from the secondary containment would be hazardous waste as identified by identified by Waste Nos. F032,
16 F034, and F035 pursuant to 40 CFR 261.31(a). According to OAR 340-012-0068(2)(o), this is a Class II
17 violation. DEQ hereby assesses an \$8,400 civil penalty for this violation.

18 8. On November 12, 2020, Respondent violated 40 CFR 262.201(a)(1) by offering 30 gallons of
19 hazardous waste for transport without accounting for it on the accompanying hazardous waste manifest.
20 The waste parts washer solution was hazardous waste as identified by Waste No. D039 pursuant to 40
21 CFR 261.24. According to OAR 340-012-0068(2)(f), this is a Class II violation. DEQ has not assessed a
22 civil penalty for this violation.

23 9. Respondent violated 40 CFR 279.22(c)(1) by failing to label one five-gallon used oil container
24 in the petroleum storage area at the Facility with the words "used oil." According to OAR 340-012-
25 00072(3)(b), this is a Class III violation. DEQ has not assessed a civil penalty for this violation.

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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 \$223,440. The determinations of the civil penalties are attached as
5 Exhibits 1-6 and are incorporated as part of this Notice.

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

9 2. Within 60 days of the Notice becoming final by operation of law or on appeal, provide a
10 plan to DEQ, including timelines for implementation, to improve procedures for prevention, detection,
11 and public notification of stormwater system overflows at the Facility. The plan must include, at a
12 minimum, the following: installation of an alarm system to notify personnel of capacity issues,
13 protocols for responding to overflows or spills during the week and weekends, and for training
14 personnel on those protocols, and a written public notification plan. Within 90 days of receiving DEQ
15 approval of the plan, implement the approved plan and submit a revised Operations & Maintenance
16 Plan to reflect any new procedures, equipment, and personnel responsibilities. All submittals required
17 in this paragraph must be provided to Steve McMillan, DEQ, 165 East 7th Avenue, Suite 100, Eugene,
18 OR 97401, or at mcmillan.steve@deq.state.or.us.

19 3. Within 30 days of this Notice becoming final by operation of law or on appeal, provide a
20 plan to sample and accurately characterize the liquid process waste at the Facility, upon generation and
21 prior to any treatment, as well as post-treatment but prior to evaporation. The plan must account for the
22 variability in this waste stream such that the sampling will be representative of the liquid process waste
23 generated at the Facility. Within 45 days of receiving DEQ's approval of the plan, implement the plan
24 and provide all sampling results generated in implementing the plan to DEQ within seven calendar days
25 of receipt of results. All submittals required in this paragraph must be provided to Killian Condon,
26 DEQ, 165 East 7th Avenue, Suite 100, Eugene, OR 97401, or at condon.killian@deq.state.or.us.

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1 4. Within 30 days of this Notice becoming final by operation of law or on appeal, provide a
2 plan, including proposed samples and timelines, to investigate soil and groundwater contamination
3 beneath the gravel area adjacent to the J-press roll-off box and any other areas at the Facility where
4 secondary containment walls have allowed a release or threat of release of hazardous waste or
5 hazardous waste constituents. Upon DEQ approval of the plan, implement the plan as approved and
6 provide documentation of implementation to DEQ within 30 days of completion of the plan or as
7 otherwise approved by DEQ. All submittals required in this paragraph must be provided to Ann Farris,
8 DEQ, 165 East 7th Avenue, Suite 100, Eugene, OR 97401, or at ann.m.farris@deq.state.or.us.

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

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

24 Active duty Service members have a right to stay proceedings under the federal Service
25 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
26 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
27 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military

1 Department does not have a toll free telephone number.

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

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10
11 3/3/2021

12 Date

11 

12 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 Discharging untreated stormwater to waters of the state in violation of the Permit and ORS 468B.025(2).
- CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(c).
- 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)(ii), as Respondent has a Tier 2 industrial source NPDES 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 10 according to OAR 340-012-0145(2)(a)(C) and (D) and (b), because Respondent has 10 Class I violations and two Class III violations in case no. WQ/I-WR-2018-015, issued May 8, 2018 and as amended by the Mutual Agreement and Order signed September 10, 2018.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of -10 according to OAR 340-012-0145(3)(b) because the violations were uncorrectable and Respondent took reasonable 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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. The violation occurred on three days. Respondent illegally discharged untreated stormwater on February 25, 2019, and April 8 and 9, 2019.
- "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. The unpermitted discharges occurred during periods of heavy precipitation; however, Respondent is aware of the capacity of the treatment pond and should have taken measures to more effectively prevent, detect, and respond to overflows. By failing to ensure these overflows and illegal discharges

did not occur or were mitigated to the maximum extent practicable, Respondent failed to take reasonable care to avoid the foreseeable risk of committing these violations.

"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).

"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 \$4,735. This is the amount Respondent gained by avoiding spending the following estimated costs to prevent the violations: \$2,162 to install and respond to an overflow alarm at the stormwater pond, and \$3,507 to rent three tanks for three days to store untreated stormwater for three days instead of discharging it. 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 x \$4,000) x (10 + (-1) + 2 + 4 + 0)] + \$4,735
= \$4,000 + (\$400 x 15) + \$4,735
= \$4,000 + \$6,000 + \$4,735
= \$14,735

EXHIBIT 2

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

VIOLATION NO. 2 Discharging non-process wastewater that exceeded the water quality-based effluent limit for copper, in violation of Schedule A, Condition 1.a of the Permit and ORS 468B.025(2).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(I).

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)(ii), as Respondent has a Tier 2 industrial source NPDES 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 10 according to OAR 340-012-0145(2)(a)(C) and (D) and (b), because Respondent has 10 Class I violations and two Class III violations in case no. WQ/I-WR-2018-015, issued May 8, 2018 and as amended by the Mutual Agreement and Order signed September 10, 2018.

"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 took reasonable 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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. There were five occurrences of the violation. Respondent violated the daily maximum limit for copper on February 11, March 2, and March 26, 2020, and the monthly average limit for copper in February and March of 2020.

"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. The effluent limits are expressly stated in the Permit.

"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. In response to the exceedances, Respondent conducted routine maintenance and purchased and installed a new ferric chloride pump and caustic pump in March of 2020. April 2020 samples at the Facility were within the Permit limits for copper.

"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, pursuant to OAR 340-012-0150(3), "EB" receives a value of \$0, as DEQ does not have enough information on which to base a finding that the economic benefit Respondent gained in committing this violation is more than de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (10 + (-1) + 2 + 2 + (-1))] + \$0 \\ &= \$4,000 + (\$400 \times 12) + \$0 \\ &= \$4,000 + \$4,800 + \$0 \\ &= \$8,800 \end{aligned}$$

EXHIBIT 3

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

- VIOLATION NO. 4 Treating hazardous waste without a permit, in violation of ORS 466.095(1)(c).
- 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)(1), because Respondent illegally treated more than 55 gallons of hazardous waste. Respondent illegally treated an estimated 1.7 million gallons of hazardous waste in four of the five retorts 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 \$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 violated a hazardous waste statute and is a large quantity generator of hazardous waste at the Facility.
- "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 within the past 10 years per OAR 340-012-0145(2)(d)(B), and receives a value of 8 according to OAR 340-012-0145(2)(a)(C) and (D), and as defined in OAR 340-012-0030(2), because Respondent has one Class I, seven Class II, and 4 Class III violations in Expedited Enforcement Offer (EEO) #2019-EEO-5176, issued December 13, 2019 and accepted January 6, 2020, and four Class II violations in EEO #2020-EEO-5577, issued June 12, 2020, and accepted June 29, 2020.
- "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 took reasonable 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 because DEQ has assessed separate penalties for each year of violation, as detailed below, and pursuant to OAR 340-012-0145(4)(e). 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. Respondent illegally treated hazardous waste in the retorts on 175 days from 2015 to 2019, including 24 days where multiple retorts operated on the same day, for a total of 198 occurrences of the violation. In lieu of a penalty for each occurrence, or an O

factor of 4 as provided under OAR 340-012-0145(4)(d), DEQ assesses a separate penalty for each of the five years of violation.

"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 in treating the hazardous waste in the retorts was intentional, as defined in OAR 340-012-0030(13). When Respondent put hazardous waste in the retorts with the intention of evaporating it, 198 times, Respondent acted with a conscious objective to cause the result of the conduct (reducing the volume of waste through evaporation).

"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 that the violation would not be repeated. Respondent reports that as of October of 2019, Respondent ceased treating hazardous waste in the retorts.

"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 \$34,905. This is the amount Respondent gained by delaying spending \$452,000 from March 1, 2019, to October 1, 2019, to install a new evaporator, and avoiding spending a total of \$6,720 from December 31, 2015 to February 29, 2019, to rent storage tanks instead of illegally treating hazardous waste in the retorts. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$12,000 + [(0.1 x \$12,000) x (8 + (-1) + 0 + 8 + (-1))] + \$34,905
= \$12,000 + (\$1,200 x 14) + \$34,905
= \$12,000 + \$16,800 + \$34,905
= \$28,800 + \$34,905

Pursuant to OAR 340-012-0145(4)(e), DEQ assesses a separate base penalty for each of the five years during which the violations occurred (2015-2019). The penalty calculation is therefore as follows:

\$28,800 (gravity-based penalty) * 5 (years) = \$144,000

\$144,000 + \$34,905 (EB) = **\$178,905** total civil penalty

EXHIBIT 4

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

VIOLATION 5: Failing to provide required annual hazardous waste training for Facility personnel, in violation of 40 CFR 265.16(c) as referenced by 40 CFR 262.34(a)(4).

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0068(2)(l).

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 \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) 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 within the past 10 years per OAR 340-012-0145(2)(d)(B), and receives a value of 8 according to OAR 340-012-0145(2)(a)(C) and (D), and as defined in OAR 340-012-0030(2), because Respondent has one Class I, seven Class II, and 4 Class III violations in Expedited Enforcement Offer (EEO) #2019-EEO-5176, issued December 13, 2019 and accepted January 6, 2020, and four Class II violations in EEO #2020-EEO-5577, issued June 12, 2020, and accepted June 29, 2020.

"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 took reasonable 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 one occurrence of the violation. Respondent did not provide annual training for 2019.

"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, as defined by OAR 340-012-0030(15). Respondent is a highly-regulated large quantity generator of hazardous waste. By

repeatedly failing to take measures to ensure all Facility personnel that handle hazardous waste were trained annually in specific hazardous waste management requirements, Respondent failed to take reasonable care to avoid the foreseeable risk of committing this 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 minimize the effects of the violation by providing the required annual training to Facility personnel in January of 2021.

"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 has insufficient information on which to base an estimate of more than a de minimus 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 (8 + (-1) + 0 + 4 - 2)] + \0
 $= \$3,000 + [\$300 \times (9)] + \$0$
 $= \$3,000 + \$2,700 + \$0$
 $= \$5,700$

EXHIBIT 5

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

- VIOLATION 6: Failing to accurately determine if Respondent's residues (as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2 were hazardous waste, in violation of OAR 340-102-0011(2).
- CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0068(1)(a).
- MAGNITUDE: The magnitude of the violations is minor pursuant to OAR 340-012-0135(4)(a)(C) because Respondent failed to make a hazardous waste determination on two waste streams (waste parts washer solution and liquid process 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 \$3,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(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 within the past 10 years per OAR 340-012-0145(2)(d)(B), and receives a value of 8 according to OAR 340-012-0145(2)(a)(C) and (D), and as defined in OAR 340-012-0030(2), because Respondent has one Class I, seven Class II, and 4 Class III violations in Expedited Enforcement Offer (EEO) #2019-EEO-5176, issued December 13, 2019 and accepted January 6, 2020, and four Class II violations in EEO #2020-EEO-5577, issued June 12, 2020, and accepted June 29, 2020.
- "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 took reasonable 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 2 according to OAR 340-012-0145(4)(b), because Respondent failed to accurately make two hazardous waste determinations, on the waste parts washer and liquid process waste, for two occurrences of the violation.
- "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, as defined by OAR 340-012-0030(15). Respondent is a highly-regulated large quantity generator of hazardous waste and

reports to DEQ annually on the hazardous wastes generated at the Facility. By failing to accurately characterize these two waste streams –including 1.7 million gallons of the liquid process waste Respondent boiled off in the unpermitted retorts – Respondent failed to take reasonable care to avoid the foreseeable risk of committing these violations.

"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 on which to make a finding under paragraphs (6)(a) through (6)(e) or (6)(g). Respondent properly characterized the waste parts washer solution after DEQ's inspection and has ceased treating the liquid process waste in the retorts; however, Respondent has not conducted a hazardous waste determination on the process waste, which it continues to generate.

"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 has insufficient information on which to base an estimate of more than a de minimus 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 x \$3,000) x (8 + (-1) + 2 + 4 + 0)] + \$0
= \$3,000 [\$300 x (13)] + \$0
= \$3,000 + \$3,900 + \$0
= \$6,900

EXHIBIT 6

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

- VIOLATION 7: Failing to maintain and operate the Facility in a manner that minimizes the possibility of a release of hazardous waste or hazardous waste constituents, in violation of 40 CFR 265.31, as referenced by 40 CFR 262.34(a)(4).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0068(2)(o).
- 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 \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) 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 within the past 10 years per OAR 340-012-0145(2)(d)(B), and receives a value of 8 according to OAR 340-012-0145(2)(a)(C) and (D), and as defined in OAR 340-012-0030(2), because Respondent has one Class I, seven Class II, and 4 Class III violations in Expedited Enforcement Offer (EEO) #2019-EEO-5176, issued December 13, 2019 and accepted January 6, 2020, and four Class II violations in EEO #2020-EEO-5577, issued June 12, 2020, and accepted June 29, 2020.
- "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 took reasonable 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 of a violation with a duration of more than one day is a separate occurrence. This violation was ongoing from at least May 28, 2020 through approximately January 5, 2021, when Respondent repaired cracks in the containment.

- "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, as defined by OAR 340-012-0030(20). On May 28, 2020, in response to a complaint alleging the secondary containment was leaking, DEQ requested Respondent provide an engineered assessment of the integrity of the containment. Respondent hired an engineer to conduct a visual inspection of the containment on December 1, 2020. By failing to thoroughly and promptly evaluate the soundness of the containment for at least several months after DEQ's request, and by failing to make routine efforts (such as inspecting and maintaining the containment and promptly repairing cracks, and managing the amount of liquid process waste accumulating in containment) to minimize the risk of releases from the secondary containment, Respondent consciously disregarded a substantial and unjustifiable risk that the releases or threatened releases of waste would occur. Given that Respondent is a highly-regulated large quantity generator of hazardous waste, that Respondent repeatedly allowed several thousand gallons of liquid process waste to accumulate in secondary containment, and that this waste contains toxic constituents such as pentachlorophenol, creosote, and arsenic, disregarding this risk was a gross deviation from the standard of care 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 that the violation would not be repeated. On or about January 5, 2021, Respondent made repairs to the secondary containment.
- "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 has insufficient information on which to base a reasonable estimate of the 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 (8 + (-1) + 4 + 8 - 1)] + \0
 $= \$3,000 + [\$300 \times (18)] + \$0$
 $= \$3,000 + \$5,400 + \$0$
 $= \$8,400$