



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah St Ste 600

Portland, OR 97232-4100

(503) 229-5696

FAX (503) 229-5100

TTY: 711

April 18, 2017

CERTIFIED MAIL: 7014 2870 0001 3378 3624

Trident Seafoods Corporation  
c/o CT Corporation System, Registered Agent  
388 State Street, Suite 420  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/I-WR-2016-252

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$37,400 for exceeding wastewater permit effluent limits and for failing to conduct required effluent and other monitoring required by your permit for your facility at 623 Yaquina Bay Boulevard in Newport, Oregon.

DEQ issued this penalty because Trident Seafoods' obligation to fulfill mandatory monitoring and reporting conditions is important. Without monitoring data, DEQ and the public are unable to determine the effectiveness of the wastewater treatment systems in the facilities and whether you are meeting permit limits. This is the second penalty DEQ has issued Trident for missed monitoring in the last 12 months. You are also being penalized for exceeding the pollutant limits in the wastewater discharge. These limits are set to protect aquatic life and human health. Compliance with the permit terms is essential to protecting the quality of our public waters.

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](mailto: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>.

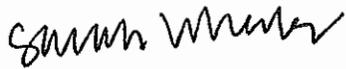


Trident Seafoods Corporation  
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DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Jeff Bachman at 503-229-5950 or toll free in Oregon at 800-452-4011, extension 5950.

Sincerely,



Sarah G. Wheeler, Acting Manager  
Office of Compliance and Enforcement

Enclosures

cc: Tim McFetridge, P.E., Salem Office, Western Region, DEQ  
Ranei Nomura, Salem Office, Western Region, DEQ  
Shaumae Hall, Accounting, DEQ  
John Koestler, WQ, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: )  
TRIDENT SEAFOODS CORPORATION, )  
a Washington corporation, )  
Respondent. )

NOTICE OF CIVIL PENALTY  
ASSESSMENT AND ORDER  
CASE NO. WQ/I-WR-2016-252

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 Chapters 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012 and 045.

II. FINDINGS OF FACT

1. At all relevant times, Respondent owned and operated a seafood processing plant at 623 Yaquina Bay Boulevard in Newport, Oregon (“the Surimi facility”).

2. Respondent is authorized to operate an industrial wastewater collection, treatment, control, and disposal system and discharge adequately treated wastewater in conformance with National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit Number 101805 for the Surimi facility (“the permit”), issued to Respondent by DEQ pursuant to ORS 468B.050 on December 29, 2005.

3. Schedule A of the permit establishes daily maximum and monthly average pollutant load limits not to be exceeded in Respondent’s discharged effluent.

4. Respondent has discharged pollutant loads from the Surimi facility to Yaquina Bay as follows:

Date or Month	Parameter	Limit in pounds	Loading in Pounds	% Over Limit
6/09/16	Biochemical Oxygen Demand (BOD) Daily Maximum	2,266	2,644	17%

Date or Month	Parameter	Limit in pounds	Loading in Pounds	% Over Limit
6/16/16	BOD Daily Maximum	2,266	3,006	33%
6/16/16	Total Suspend Solids (TSS) Daily Maximum	922	1,497	62%
6/21/16	BOD Daily Maximum	2,266	3,770	66%
6/21/16	TSS Daily Maximum	922	2,352	155%
6/30/16	BOD Daily Maximum	2,266	3,615	60%
6/30/16	TSS Daily Maximum	922	2,054	123%
June 2016	BOD Monthly Average	1,305	3,259	150%
June 2016	TSS Monthly Average	505	1,653	227%
7/11/16	TSS Daily Maximum	1,424	3,866	171%
7/11/16	Oil and Grease Daily Maximum	322	480	49%
7/18/16	TSS Daily Maximum	1,424	1,890	33%
7/18/16	Oil and Grease Daily Maximum	322	418	30%
7/21/16	BOD Daily Maximum	3,493	6,146	76%
7/26/16	Oil and Grease Daily Maximum	322	596	85%
July 2016	BOD Monthly Average	2,015	4,424	120%
July 2016	TSS Monthly Average	779	2,408	209%
July 2016	Oil and Grease Monthly Average	126	415	229%
9/7/16	TSS Daily Maximum	1,623	2,023	25%
9/14/16	TSS Daily Maximum	1,623	2,248	39%
9/14/16	Oil and Grease Daily Maximum	367	567	54%
9/27/16	TSS Daily Maximum	1,623	2,181	34%

Date or Month	Parameter	Limit in pounds	Loading in Pounds	% Over Limit
9/27/16	Oil and Grease Daily Maximum	367	538	47%
September 2016	BOD Monthly Average	2,297	3,277	43%
September 2016	TSS Monthly Average	888	1,936	118%
September 2016	Oil and Grease Monthly Average	144	386	166%

5. Schedule B, Condition 1.d of the permit requires Respondent to inspect wastewater screens and its dissolved air flotation (DAF) unit daily.

6. Respondent did not inspect its wastewater screens at Outfall 001(B) on June 9, 13, 17, and 18, 2016, and did not inspect its DAF unit on June 9, 17 and 19, 2016.

7. Schedule B, Condition 1.c of the permit requires Respondent to monitor its wastewater from Outfall 001(B) for pH daily.

8. Respondent did not monitor for pH at Outfall 001(B) on June 13, 17 and 18; and July 26, 2016.

9. Schedule B, Condition 1.b of the permit requires Respondent to monitor its wastewater from Outfall 001(A) for pH daily.

10. Respondent did not monitor for pH at Outfall 001(A) June 13 and 17, 2016.

11. Schedule B, Condition 1.b of the permit requires Respondent to monitor its wastewater from Outfall 001(A) for BOD weekly.

12. During the week of July 11-16, Respondent did not monitor its wastewater from Outfall 001(A) for BOD.

13. Schedule B, Condition 1.c of the permit requires Respondent to monitor its wastewater from Outfall 001(B) for BOD weekly.

14. During the week of July 11-16, Respondent did not monitor its wastewater from Outfall 001(B) for BOD.

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1 III. CONCLUSIONS

2 1. Respondent violated ORS 468B.025(2) by violating a condition of its wastewater  
3 discharge permit. Specifically, Respondent violated Schedule A of its permit when it discharged BOD  
4 in excess of the permitted level to Yaquina Bay, a water of the state, from its Surimi facility as  
5 described in Section II above. Those occurrences that exceeded the limit by 50% or more are Class I  
6 violations pursuant to OAR 340-012-0055(1)(k)(A). Those occurrences that exceeded the limit by 20%  
7 or more, but less than 50%, are Class II violations pursuant to OAR 340-012-0055(2)(a)(A). The  
8 occurrence that exceeded the limit by less than 20% is a Class III violation pursuant to OAR 340-012-  
9 0055(3)(b)(A). DEQ assesses a \$5,000 civil penalty for these violations.

10 2. Respondent violated ORS 468B.025(2) by violating a condition of its wastewater  
11 discharge permit. Specifically, Respondent violated Schedule A of its permit when it discharged TSS  
12 in excess of the permitted level to Yaquina Bay, a water of the state, from its Surimi facility as  
13 described in Section II above. Those occurrences which exceeded the limit by 50% or more are Class I  
14 violations pursuant to OAR 340-012-0055(1)(k)(A). Those occurrences that exceeded the limit by 20%  
15 or more, but less than 50% are Class II violations pursuant to OAR 340-012-0055(2)(a)(A). DEQ  
16 assesses a \$5,000 civil penalty for these violations.

17 3. Respondent violated ORS 468B.025(2) by violating a condition of its wastewater  
18 discharge permit. Specifically, Respondent violated Schedule A, of its permit when it discharged oil  
19 and grease in excess of the permitted level to Yaquina Bay, a water of the state, from its Surimi facility  
20 as described in Section II above. Those occurrences which exceeded the limit by 50% or more are  
21 Class I violations pursuant to OAR 340-012-0055(1)(k)(A). Those occurrences that exceeded the limit  
22 by 10% or more, but less than 50% are Class II violations pursuant to OAR 340-012-0055(2)(a)(A).  
23 DEQ assesses a \$5,000 penalty for these violations.

24 4. Respondent violated Schedule B, Condition 1 of and ORS 468B.025(2), by failing to  
25 conduct effluent monitoring and inspections as required by the permit, as described in Section II  
26 above. These are Class I violations, according to OAR 340-012-0055(1)(o). DEQ hereby assesses a  
27 \$22,400 civil penalty for these violations.

1 IV. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
3 hereby ORDERED TO: Pay a total civil penalty of \$37,400. The determinations of the civil penalties are  
4 attached as Exhibit 1, 2, 3 and 4 and are incorporated as part of this Notice.

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

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 exhibit(s), 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, please call the Oregon State Bar at 1-800-  
26 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
27 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
<http://legalassistance.law.af.mil/content/locator.php>.

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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9  
10 April 18, 2017

11 Date

Sarah Wheeler

12 Sarah G. Wheeler, Acting Manager  
13 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: Exceeding permit effluent limits for BOD in violation of ORS 468B.025(2).
- CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(k)(A) and OAR 340-012-0145(4)(e).
- MAGNITUDE: The magnitude of the violations is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving water.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii).
- "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 pursuant to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of more than eight Class I equivalent violations stemming from Case No. WQ/I-WR-16-024.
- "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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were eight occurrences of the violation.
- "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 BOD limits are express conditions of Respondent's permit.
- "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 the violation could not be corrected or its effects minimized.
- "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. DEQ does not have a reasonable basis for estimating delayed or avoided costs.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 3 + 2 + 0)] + \$0 \\ &= \$2,000 + (\$200 \times 15) + \$0 \\ &= \$2,000 + \$3,000 + \$0 \\ &= \$5,000 \end{aligned}$$

EXHIBIT 2

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

- VIOLATION 2: Exceeding permit effluent limits for TSS in violation of ORS 468B.025(2).
- CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(k)(A) and OAR 340-012-0145(4)(e).
- MAGNITUDE: The magnitude of the violations is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving water.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii).
- "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 pursuant to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of more than eight Class I equivalent violations stemming from Case No. WQ/I-WR-16-024.
- "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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(b) because there were 10 occurrences of the violation.
- "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 TSS limits are express conditions of Respondent's permit.
- "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 the violation could not be corrected or its effects minimized.
- "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. DEQ does not have a reasonable basis for estimating delayed or avoided costs.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 3 + 2 + 0)] + \$0 \\ &= \$2,000 + (\$200 \times 15) + \$0 \\ &= \$2,000 + \$3,000 + \$0 \\ &= \$5,000 \end{aligned}$$

### EXHIBIT 3

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

- VIOLATION 3: Exceeding permit effluent limits for oil and grease in violation of ORS 468B.025(2).
- CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(k)(A) and OAR 340-012-0145(4)(e).
- MAGNITUDE: The magnitude of the violations is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving water.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii).
- "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 pursuant to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of more than eight Class I equivalent violations stemming from Case No. WQ/I-WR-16-024.
- "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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were eight occurrences of the violation.
- "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 oil and grease limits are express conditions of Respondent's permit.
- "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 the violation could not be corrected or its effects minimized.
- "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. DEQ does not have a reasonable basis for estimating delayed or avoided costs.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 3 + 2 + 0)] + \$0$   
 $= \$2,000 + (\$200 \times 15) + \$0$   
 $= \$2,000 + \$3,000 + \$0$   
 $= \$5,000$

EXHIBIT 4

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

VIOLATION 4: Failing to conduct monitoring and inspections required by Schedule B of the permit in violation of ORS 468B.025(2).

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

"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 pursuant to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of more than eight Class I equivalent violations stemming from Case No. WQ/I-WR-16-024.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(e) because DEQ is assessing penalties for separate occurrences of the 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 was reckless. Respondent was penalized less than one year ago for failing to conduct required monitoring. Respondent's failure to take the steps necessary to ensure that monitoring requirements were met after having recently been penalized for this violation demonstrates a conscious disregard for the substantial and unjustifiable risk that the violation would occur.

"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 the violation could not be corrected or its effects minimized.

"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 any economic benefit was de minimis.

PENALTY FORMULA:

Gravity Based Penalty x Number of Violations Penalized + Economic Benefit = Total Penalty

GRAVITY BASED PENALTY CALCULATION

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (10 + 0 + 0 + 8 + 0)] \\ &= \$4,000 + (\$400 \times 18) \\ &= \$4,000 + \$7,200 \\ &= \$11,200 \end{aligned}$$

Of the 15 occurrences of the violation identified in Section II, paragraphs 5-14 of the Notice, DEQ elects to assess separate penalties for two occurrences of the violation.

TOTAL PENALTY CALCULATION

$$\$11,200 \times 2 + 0 = \$22,400$$