



# 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

May 4, 2022

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

Senior Administrative Law Judge Samantha Fair  
Office of Administrative Hearings  
PO Box 14020  
Salem, OR 97309

Sent Certified Mail: 7018 1830 0001 6172 5772      Sent by First Class Mail

Re: Amended Notice of Civil Penalty Assessment and Order  
DEQ Case No. LQ/HW-WR-2020-204  
OAH Case No. 2021-ABC-04953

This letter is to issue the enclosed Amended Notice of Civil Penalty Assessment and Order (Amended Notice), pursuant to OAR 137-003-0530(4), in the above-referenced case, which is currently set for hearing on August 2-4, 2022. The Amended Notice updates the order to comply and includes additional violations and penalties.

J.H. Baxter & Co., Inc., filed a timely appeal to the Notice issued in 2021. Information on filing an appeal to the Amended Notice is provided in Section V of the Amended Notice.

If you have any questions, please contact Ms. Wheeler at 971-301-0622.

Sincerely,

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosure

cc: Steve McMillian, DEQ Water Quality  
Killian Condon, DEQ Hazardous Waste  
Michael Kucinski, DEQ Cleanup  
Accounting, DEQ  
Laura Maffei, [lmaffei@cablehouston.com](mailto:lmaffei@cablehouston.com)  
Georgia Baxter, President, [gbaxter@jhbaxter.com](mailto:gbaxter@jhbaxter.com)  
Rebeka Dawit, [rebeka@crag.org](mailto:rebeka@crag.org)  
Maura Fahey, [maura@crag.org](mailto:maura@crag.org)  
Office of Administrative Hearings, [REFERRAL.OED\\_OAH\\_REFERRAL@oregon.gov](mailto:REFERRAL.OED_OAH_REFERRAL@oregon.gov)

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

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

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Amended Notice of Civil Penalty  
8 Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126  
9 through 468.140, ORS 466.990, 465.255 and 465.260(4), ORS Chapters 468B and 183, and Oregon  
10 Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 045, and 100-102.

11 II. FINDINGS OF FACT

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

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

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

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

26 5. On April 8, 2019, Respondent's stormwater treatment pond overflowed and discharged  
27 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

<b>Date</b>	<b>Statistic</b>	<b>Copper (mg/L)</b>
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

10  
11  
12  
13  
14  
15  
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. At all material times, Respondent generated more than 2,200 pounds of hazardous waste per  
25 month at the Facility and annually reported to DEQ as a large-quantity generator of hazardous waste  
26 since at least 1991.

27 ////

1 11. At all material times, Respondent operated five retorts at the Facility to pressure-treat wood  
2 products with various chemicals.

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

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

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

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

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

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

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

1 19. On September 2, 2020, Respondent stored a 30-gallon container of waste parts washer  
2 solution containing 2.850 mg/l of tetrachloroethylene outside at the Facility. Respondent had not  
3 determined whether the waste parts washer solution was hazardous waste, and the container was not  
4 labeled or managed as hazardous waste. On November 12, 2020, Respondent sent this container off-site  
5 for disposal without listing it on a uniform hazardous waste manifest.

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

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

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

15 23. On February 1, 2022, Respondent stored one five-gallon used oil container in the petroleum  
16 storage area at the Facility. This container was not labeled as "used oil."

17 24. From approximately July 12, 2019, to April 23, 2021, (approximately 20 months), Respondent  
18 stored spent carbon from the vapor adsorption unit associated with the retorts at the Facility.

19 25. From approximately June 17, 2020, to April 23, 2021, (approximately nine months),  
20 Respondent stored spent carbon from the vapor adsorption unit associated with the retorts at the Facility.

21 26. On April 23, 2021, Respondent shipped twenty-four supersacks (32,000 pounds) of spent  
22 carbon from the vapor adsorption unit associated with the retorts and on the wastewater treatment unit, on  
23 hazardous waste manifests, labeled as hazardous waste code K001, to a permitted hazardous waste  
24 disposal facility where the wastes were incinerated. On August 10, 2021, Respondent shipped 7,000  
25 pounds, and on December 9, 2021, Respondent shipped 4,500 pounds, of this same waste stream as K001  
26 hazardous waste to a permitted hazardous waste disposal facility for incineration. In addition to creosote  
27 and pentachlorophenol, these wastes also contained arsenic and chromium, from wood preservatives used

1 at the Facility.

2 27. From approximately March 2017 to October 2021, Respondent applied treated groundwater to  
3 roadways at the Facility for purposes of dust suppression. Prior to treatment, this groundwater came into  
4 contact with pentachlorophenol, arsenic, and creosote wood preservative formulations containing  
5 pentachlorophenol, creosote, arsenic, and chromium. Respondent did not characterize the treated  
6 groundwater as hazardous waste.

7 28. On February 1, 2022, Respondent spilled liquid process waste from secondary containment  
8 around the wastewater treatment unit onto the ground at the Facility during transfer of the waste to storage  
9 containers. Respondent had placed absorbent spill pads on the ground but not yet cleaned up and  
10 containerized the pads or the waste on the ground.

11 29. From approximately 1:30 p.m. on December 19, 2021, to 7:00 a.m. on December 20, 2021, and  
12 again from approximately 4:00 p.m. on January 3, 2022, to 7:00 a.m. on January 4, 2022, a stormwater  
13 storage tank overflowed and released unknown amounts of untreated stormwater onto the ground at the  
14 Facility.

15 30. From approximately 8:30 a.m. to 1:00 p.m. on January 5, 2022, the stormwater pond at the  
16 Facility overflowed and released an unknown amount of untreated stormwater into the south storm ditch.

### 17 III. CONCLUSIONS

18 Based upon the foregoing Findings of Fact, DEQ has determined that Respondent violated the  
19 following provisions of Oregon law, including the hazardous waste and used oil laws in the Code of  
20 Federal Regulations (CFRs) as adopted by OAR 340-100-0002<sup>1</sup>.

21 1. On February 25, 2019, and April 8 and 9, 2019, Respondent violated ORS 468B.025(2) by  
22 discharging untreated stormwater to waters of the state in violation of the Permit. The Permit only  
23 allows discharges of treated stormwater and boiler blowdown from Outfall 001 and treated  
24 groundwater from Outfall 002. The Permit expressly prohibits any other direct or indirect discharge of  
25

---

26 <sup>1</sup> On November 17, 2021, the Environmental Quality Commission adopted new hazardous waste regulations,  
27 which became effective in Oregon as of January 1, 2022. Therefore, for violations that occurred after January 1,  
2022, this Amended Notice references the current CFRs. For the violations cited in this Amended Notice that  
occurred prior to January 1, 2022, the cited CFRs are those that were in effect at the prior time, enacted through  
June 30, 2015.

1 waste. Outfall 001 discharges to the storm ditch, which leads to Amazon Creek, both of which are  
2 waters of the state as defined in ORS 468B.005(10). The overflows from the stormwater treatment  
3 pond to the storm ditch on February 25 and April 8 and 9, 2019, were not discharges of treated  
4 stormwater, or discharged from Outfall 001 or Outfall 002. These are Class I violations, according to  
5 OAR 340-012-0055(1)(c)<sup>2</sup>. DEQ hereby assesses a \$14,335 civil penalty for these violations.

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

11 3. Respondent violated OAR 468B.025(2) and Schedule B, Condition 1.a and Schedule F,  
12 Condition C.1 of the Permit by failing to monitor Outfall 001 for all required parameters when discharging  
13 treated stormwater during October 2019, as described in paragraph 9 of Section II above. Respondent's  
14 October 2019 samples were not representative of the effluent discharged during the month. In October of  
15 2019, Respondent failed to monitor as required for temperature, BOD5, pH, hardness, arsenic, chromium,  
16 copper, zinc, and pentachlorophenol. These are Class I violations, according to OAR 340-012-0055(1)(o).  
17 DEQ has not assessed a civil penalty for these violations.

18 4. Respondent violated ORS 466.095(1)(c) by treating approximately 1.7 million gallons of  
19 hazardous waste without a permit, as detailed in paragraphs 11-17 of Section II above. The liquid process  
20 waste evaporated in the unpermitted retorts was hazardous waste as identified by United States  
21 Environmental Protection Agency (EPA) Hazardous Waste Numbers (Waste Nos.) F032, F034, and F035  
22 pursuant to 40 CFR 261.31(a), and D004 and D037 pursuant to 40 CFR 261.24. According to OAR 340-  
23 012-0068(1)(h), these are Class I violations. DEQ hereby assesses a \$202,905 civil penalty for these  
24 violations.

25 ///

26 \_\_\_\_\_  
27 <sup>2</sup> The adopted rule revisions described in footnote 1 also included revisions to OAR 340-012-0068, Hazardous  
Waste Management and Disposal Classification of Violations. Pursuant to OAR 340-012-0028, the applicable  
classifications are those in effect as of the date of this Amended Notice.

1           5. Respondent violated 40 CFR 265.16(c) as referenced by 40 CFR 262.34(a)(4), by failing to  
2 provide annual training updates in 2019 for each employee associated with hazardous waste activities, that  
3 are sufficient to teach them to perform their duties in a way that ensures the Facility's compliance with  
4 hazardous waste regulations. Respondent's employees were not specifically trained in hazardous waste  
5 management regulations in 2019, as described in paragraphs 10 and 18 of Section II above, and as  
6 demonstrated by the numerous instances of non-compliance with hazardous waste management  
7 regulations described in Section II. According to OAR 340-012-0068(2)(l), these are Class II violations.  
8 DEQ hereby assesses a \$5,100 civil penalty for this violation.

9           6. Respondent violated OAR 340-102-0011(2) by failing to conduct a complete and accurate  
10 hazardous waste determination on all residues, as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2,  
11 that Respondent generated at the Facility. Specifically, Respondent failed to completely and accurately  
12 make hazardous waste determinations on the following wastes when generated at the Facility: 1) one 30-  
13 gallon container of waste parts washer solution containing tetrachloroethylene, 2) the liquid process waste  
14 Respondent generates prior to treatment, 3) approximately 1.7 million gallons of liquid process waste that  
15 Respondent evaporated in the retorts during 2015-2019, 4) spent carbon generated from the vapor  
16 adsorption units on the retorts, 5) spent carbon generated from the wastewater treatment unit, and 6) treated  
17 groundwater used for dust suppression at the Facility. The waste parts washer was hazardous waste as  
18 identified by Waste No. D039 pursuant to 40 CFR 261.24, the liquid process waste was hazardous waste  
19 as identified by Waste Nos. F032, F034, and F035 pursuant to 40 CFR 261.31(a), the spent carbon sludges  
20 were hazardous waste as identified by Waste Nos. K001, F032, F034, and F035 pursuant to 40 CFR  
21 261.32 and 261.31(a), and the treated groundwater was hazardous waste as identified by Waste Nos. F032,  
22 F024, and F035 pursuant to 40 CFR 261.31(a). According to OAR 340-012-0068(1)(a), these are Class I  
23 violations. DEQ hereby assesses a \$25,200 civil penalty for these violations.

24           7. Respondent violated 40 CFR 265.31, as referenced by 40 CFR 262.34(a)(4), by failing to  
25 maintain and operate the Facility in a manner that minimizes the possibility of a release of hazardous waste  
26 or hazardous waste constituents, as described in paragraph 21 of Section II above. Specifically,  
27 Respondent's secondary containment area was structurally deficient. Any liquid process waste released



1 from the secondary containment would be hazardous waste as identified by Waste Nos. F032, F034, and  
2 F035 pursuant to 40 CFR 261.31(a). According to OAR 340-012-0068(2)(o), this is a Class II violation.  
3 DEQ hereby assesses an \$3,900 civil penalty for this violation.

4 8. On November 12, 2020, Respondent violated 40 CFR 262.20(a)(1) by offering 30 gallons of  
5 hazardous waste for transport without accounting for it on the accompanying hazardous waste manifest.  
6 The waste parts washer solution was hazardous waste as identified by Waste No. D039 pursuant to 40  
7 CFR 261.24. According to OAR 340-012-0068(2)(f), this is a Class II violation. DEQ has not assessed a  
8 civil penalty for this violation.

9 9. On September 2, 2020, and February 1, 2022, Respondent violated 40 CFR 279.22(c)(1) by  
10 failing to label five-gallon used oil containers in the petroleum storage area at the Facility with the words  
11 “used oil” as described in Paragraphs 22 and 23 of Section II above. According to OAR 340-012-  
12 0072(3)(b), these are Class III violations. DEQ hereby assesses a \$500 civil penalty for these violations.

13 10. On February 1, 2022, Respondent violated 40 CFR 262.17(a)(5)(i)(C), by failing to label three  
14 55-gallon containers storing hazardous waste within the secondary containment at the evaporator with the  
15 date the waste first began accumulating in the containers. The waste in the containers was hazardous waste  
16 as identified by Waste Nos. F032, F034, and F035 pursuant to 40 CFR 261.31(a), and K001 pursuant to 40  
17 CFR 261.32. These are Class II violations, according to OAR 340-012-0068(2)(a). DEQ has not assessed a  
18 civil penalty for these violations.

19 11. On February 1, 2022, Respondent violated 40 CFR 262.17(a)(5)(i)(A), by failing to label three  
20 55-gallon containers storing hazardous waste in the secondary containment at the evaporator with the  
21 words “hazardous waste.” The waste in the containers was hazardous waste as identified by Waste Nos.  
22 F032, F024, and F035 pursuant to 40 CFR 261.31(a). These are Class II violations, according to OAR 340-  
23 012-0068(2)(b). DEQ has not assessed a civil penalty for these violations.

24 12. On February 1, 2022, Respondent violated 40 CFR 262.251, by failing to maintain and operate  
25 the Facility in a manner that minimizes the possibility of a release of hazardous waste or hazardous waste  
26 constituents, as described in paragraph 28 of Section II above. The wastewater residue released to the  
27 ground was hazardous waste as identified by Waste Nos. F032, F034, and F035 pursuant to 40 CFR

1 261.31(a). According to OAR 340-012-0068(2)(o), this is a Class II violation. DEQ hereby assesses a  
2 \$2,700 civil penalty for this violation.

3 13. From approximately October 13, 2019 through April 23, 2020, and from September 18, 2020  
4 through April 23, 2020, Respondent stored hazardous waste at the Facility for more than 90 days without a  
5 hazardous waste storage permit, in violation of ORS 466.095(1) and as described in Paragraphs 24-26 of  
6 Section II above. The spent carbon sludges stored at the Facility were hazardous waste as identified by  
7 Waste Nos. K001, F032, F034, and F035 pursuant to 40 CFR 261.32 and 261.31(a). These are Class II  
8 violations, according to OAR 340-012-0068(2)(d). DEQ hereby assesses a \$27,600 civil penalty for  
9 these violations.

10 14. On January 5, 2022, Respondent violated ORS 468B.025(2) by discharging untreated  
11 stormwater to waters of the state in violation of the Permit, as described in Paragraph 30 of Section II  
12 above. The Permit only allows discharges of treated stormwater and boiler blowdown from Outfall 001  
13 and treated groundwater from Outfall 002. The Permit expressly prohibits any other direct or indirect  
14 discharge of waste. Outfall 001 discharges to the storm ditch, which leads to Amazon Creek, both of  
15 which are waters of the state as defined in ORS 468B.005(10). The overflow from the stormwater  
16 treatment pond to the storm ditch on January 5, 2022, was not a discharge of treated stormwater, or  
17 discharged from Outfall 001 or Outfall 002. This is a Class I violation, according to OAR 340-012-  
18 0055(1)(c). DEQ hereby assesses a \$14,400 civil penalty for this violation.

19 15. On December 19, 2021, and January 3, 2022, Respondent violated ORS 468B.025(2) by  
20 discharging untreated stormwater to the ground at the Facility, as described in Paragraph 29 of Section II  
21 above. The Permit only allows discharges of treated stormwater and boiler blowdown from Outfall 001  
22 and treated groundwater from Outfall 002. The Permit expressly prohibits any other direct or indirect  
23 discharge of waste. These are Class II violations, according to OAR 340-012-0053(2). DEQ has not  
24 assessed a civil penalty for these violations.

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

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

1           1. Pay a total civil penalty of \$305,440. The determinations of the civil penalties are attached as  
2 Exhibits 1-10 and are incorporated as part of this Notice.

3           If you do not file a request for hearing as set forth in Section V below, your check or money order  
4 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**  
5 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

6           2. Within 30 days of the Notice becoming final by operation of law or on appeal, provide  
7 documentation to DEQ that the alarm system for stormwater overflows was completely installed and is  
8 fully operational. Additionally, within 90 days of the Notice becoming final by operation of law or on  
9 appeal, submit an engineered proposed plan, including a timetable for implementation, to evaluate and  
10 improve the stormwater treatment system such that the equalization tanks and pond can handle capacity  
11 of up to a 25-year, 24-hour storm. The plan must also include proposed interim activities to minimize  
12 overflow. All submittals required in this paragraph must be provided to Steve McMillan, DEQ, 165  
13 East 7<sup>th</sup> Avenue, Suite 100, Eugene, OR 97401, or at [mcmillan.steve@deq.state.or.us](mailto:mcmillan.steve@deq.state.or.us).

14           3. Within 30 days of this Notice becoming final by operation of law or on appeal, provide  
15 results of analysis of representative samples of the liquid process waste at the Facility for 2,4,5-  
16 Trichlorophenol and 2,4,6-Trichlorophenol, prior to any treatment, as well as post-treatment but prior  
17 to evaporation. The samples must be analyzed according to the procedures required by 40 CFR  
18 261.24(a). Analytical results must be provided to Killian Condon, DEQ, 165 East 7<sup>th</sup> Avenue, Suite  
19 100, Eugene, OR 97401, or at [condon.killian@deq.state.or.us](mailto:condon.killian@deq.state.or.us).

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


21           You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
22 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
23 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
24 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
25 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
26 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
27 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232, fax**

1 it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge  
2 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
3 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
4 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
5 you may represent yourself. If you are a corporation, partnership, limited liability company,  
6 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
7 authorized representative, as set forth in OAR 137-003-0555.

8 Active duty Service members have a right to stay proceedings under the federal Service  
9 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
10 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
11 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
12 Department does not have a toll free telephone number.

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

19  
20  
21  
22 5/4/2022  
23 Date

22   
23 Kieran O'Donnell, Manager  
24 Office of Compliance and Enforcement

AMENDED 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 -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. 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 -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure that the violation would not be repeated by preparing a Stormwater Overflow Action Plan and installing an alarm to notify Respondent of overflows.

"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 + (-1))] + \$4,735  
= \$4,000 + (\$400 x 14) + \$4,735  
= \$4,000 + \$5,600 + \$4,735  
= \$14,335

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:  $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$   
= \$4,000 + [(0.1 x \$4,000) x (10 + (-1) + 2 + 2 + (-1))] + \$0  
= \$4,000 + (\$400 x 12) + \$0  
= \$4,000 + \$4,800 + \$0  
= \$8,800



AMENDED 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 4 pursuant to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. 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. As provided under OAR 340-012-0145(4)(e), DEQ assesses five separate penalties. To arrive at "O," DEQ divides the total number of violations (198)

by the number of violations penalized (five). Therefore, each assessed penalty represents 39.6 occurrences for an “O” factor value of 4.

"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:  $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$   
 $= \$12,000 + [(0.1 \times \$12,000) \times (8 + (-1) + 4 + 8 + (-1))] + \$34,905$   
 $= \$12,000 + (\$1,200 \times 18) + \$34,905$   
 $= \$12,000 + \$21,600 + \$34,905$   
 $= \$33,600 + \$34,905$

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

$$\$33,600 \text{ (gravity-based penalty)} \times 5 = \$168,000$$

$$\$168,000 + \$34,905 \text{ (EB)} = \mathbf{\$202,905} \text{ total civil penalty}$$

AMENDED 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 -4 according to OAR 340-012-0145(6)(b), because Respondent made extraordinary efforts to ensure that the violation would not be repeated. In January 2021, Respondent provided tailored, in-person professional training at the Facility, during Covid-19 challenges, for training specific to the violations.

"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:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$3,000 + [(0.1 \times \$3,000) \times (8 + (-1) + 0 + 4 - 4)] + \$0$   
 $= \$3,000 + [\$300 \times (7)] + \$0$   
 $= \$3,000 + \$2,100 + \$0$   
 $= \$5,100$

AMENDED 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 major pursuant to OAR 340-012-0135(4)(a)(A) because Respondent failed to make a hazardous waste determination on six waste streams (waste parts washer solution, process wastewater prior to treatment, process wastewater treated in the retorts, treated groundwater, spent carbon sludges from the retorts, and spent carbon sludges from the wastewater treatment unit).

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 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 there were more than one but less than seven occurrences of the violation. Respondent failed to accurately make six hazardous waste determinations, , for six 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 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 -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to correct the violations or to minimize the effects of the violations. Respondent properly characterized the waste parts washer solution after DEQ's inspection and conducted a hazardous waste determination on the process wastewater, . Additionally, Respondent corrected incomplete and inaccurate hazardous waste determinations on the spent carbon sludge wastes, upon DEQ's request.

"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:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$12,000 + [(0.1 x \$12,000) x (8 + (-1) + 2 + 4 + (-2))] + \$0  
= \$12,000 [\$1,200 x (11)] + \$0  
= \$12,000 + \$13,200 + \$0  
= \$25,200

AMENDED 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 minor pursuant to OAR 340-012-0135(4)(c)(C), because the violation involved 250 gallons or less 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 \$1,500 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(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 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 -31 according to OAR 340-012-0145(6)(c), because Respondent made reasonable efforts to correct and minimize effects of the violation. On or about January 5, 2021, Respondent made repairs to the secondary containment. Respondent also conducted additional evaluation of the secondary containment and additional sampling in areas of potential release.

"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:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$1,500 + [(0.1 \times \$1,500) \times (8 + (-1) + 4 + 8 - 3)] + \$0$   
 $= \$1,500 + [\$150 \times (16)] + \$0$   
 $= \$1,500 + \$2,400 + \$0$   
 $= \$3,900$



AMENDED EXHIBIT 7

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

VIOLATION 9: Failing to label containers of used oil with the words "used oil," in violation of 40 CFR 279.22(c)(1).

CLASSIFICATION: These are Class III violations pursuant to OAR 340-012-0072(3)(b).

MAGNITUDE: The magnitude of the violations is minor pursuant to OAR 340-012-0135(5)(a)(C) because Respondent failed to label used oil containers storing less than 250 gallons or less of used oil.

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 \$250 for a Class III, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(C) and applicable pursuant to OAR 340-012-0140(4)(a)(J) because Respondent is a used oil generator and violated a used oil rule, that was not related to a used oil spill or release.

"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 committed two occurrences of the violation. Respondent failed to label one container on September 2, 2020, and another container on February 1, 2022.

"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). DEQ cited Respondent for this violaton in 2019, 2020, and it was again repeated in 2022. By repeatedly failing to ensure used oil is properly labeled, 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 -3 according to OAR 340-012-0145(6)(c), because Respondent made reasonable efforts to correct the violations and minimize the effects of the violations. Respondent properly labeled the containers promptly after DEQ's inspections.

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

$$\begin{aligned} &= \$250 + [(0.1 \times \$250) \times (8 + (-1) + 2 + 4 - 3)] + \$0 \\ &= \$250 [\$25 \times (10)] + \$0 \\ &= \$250 + \$250 + \$0 \\ &= \$500 \end{aligned}$$

AMENDED EXHIBIT 8

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

- VIOLATION 12: 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 265.251.
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0068(2)(o).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(c)(C), because the violation involved 250 gallons or less 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 \$1,500 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(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 0 according to OAR 340-012-0145(4)(a), because there was one occurrence of the violation, on February 1, 2022.
- "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). DEQ has expressed concerns to Respondent about hazardous waste management in this secondary containment area since May of 2020, and previously cited Respondent for this violation. By allowing hazardous waste to spill during transfer from secondary

containment, Respondent failed to take reasonable care to prevent the foreseeable risk of committing this violation.

"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 and minimize effects of the violation. On the same day as the inspection, Respondent provided documentation to DEQ of cleanup of the area where the hazardous waste had been spilled and management of the excavated contaminated soil as hazardous 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, as DEQ has insufficient information on which to base a reasonable estimate of the economic benefit for this violation.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (8 + (-1) + 0 + 4 - 3)] + \$0 \\ &= \$1,500 + [\$150 \times (8)] + \$0 \\ &= \$1,500 + \$1,200 + \$0 \\ &= \$2,700 \end{aligned}$$

AMENDED EXHIBIT 9

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

VIOLATION 13: Storing hazardous waste at the Facility for more than 90 days without a hazardous waste storage permit, in violation of ORS 466.095(1).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(c)(A)(i) because Respondent illegally stored at least 1,000 gallons or 6,000 pounds of hazardous waste at the Facility for longer than 90 days. Respondent stored 32,000 pounds of spent carbon ha

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)(M)(i) because Respondent is a large quantity generator of hazardous waste, , and violated a hazardous waste statute.

"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). Respondent stored spent carbon from the vapor adsorption unit associated with the retorts from generation of that waste on or about July 12, 2019, until April 23, 2021. Additionally, Respondent generated more of that same waste stream on or about July 17, 2020 and stored it until April 23, 2021. 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 committed the violation for over 28 days.

"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 in 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 storing this waste stream onsite for several months beyond the allowed 90 days for unpermitted generator storage, 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 disposing of the waste at a permitted facility on April 23, 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 does not have sufficient information on which to base a reasonable estimate of costs delayed and any economic benefit gained as a result of this violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$12,000 + [(0.1 \times \$12,000) \times (8 + (-1) + 4 + 4 + (-2))] + \$0$   
 $= \$12,000 [\$1,200 \times (13)] + \$0$   
 $= \$12,000 + \$15,600 + \$0$   
 $= \$27,600$

AMENDED EXHIBIT 10

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

VIOLATION 14 Discharging untreated stormwater to waters of the state on January 5, 2022, in violation of the Permit and ORS 468B.025(2).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0130(3), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and DEQ finds that the violation had a significant adverse impact on human health or the environment. In making this finding, DEQ especially considered the concentration and toxicity of the materials involved. Respondent's sample of the unpermitted discharge demonstrated that the untreated stormwater contained the following: 0.0962 milligrams per liter (mg/L) of copper, 0.192 mg/L of zinc, and 0.039 mg/L of pentachlorophenol. These concentrations exceed Respondent's permitted daily maximum limits, which are: copper: 0.011 mg/L; zinc: 0.120 mg/L, and pentachlorophenol: 0.0238 mg/L. Additionally, the unpermitted discharge exceeded the ecological risk-based concentrations for these pollutants established by DEQ pursuant to ORS 465.315 and OAR 340-122-0115(5).

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 \$8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(i) 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 (PSAs), 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 an initial 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. The final "P" value is 8, after reducing it by two pursuant to OAR 340-021-0145(2)(d)(A)(i) because all PSAs cited were issued more than three years before the date the current violation occurred.

"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 illegally discharged untreated stormwater to waters of the state on January 5, 2022.
- "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 discharge occurred during a period of heavy precipitation; however, Respondent is aware of the capacity of the treatment pond and should have taken more effective measures to prevent this overflow. By failing to ensure the overflow and discharge to waters of the state did not occur, 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 -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation by following Respondent's overflow plan, reporting the discharge to OERS, DEQ, the City of Eugene, and neighboring downstream businesses, collecting some of the discharged stormwater, sampling the discharge, and sandbagging the area to prevent further releases to the ditch.
- "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 any economic benefit Respondent gained as a result of this violation was already calculated into the penalty for the prior discharges.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$8,000 + [(0.1 \times \$8,000) \times (8 + (-1) + 0 + 4 + (-3))] + \$0$   
 $= \$8,000 + (\$800 \times 8) + \$0$   
 $= \$8,000 + \$6,400 + \$0$   
 $= \$14,400$