



# Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters  
811 SW 6th Ave  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY: 711

April 5, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5623

Stone NW, Inc  
c/o Leslie A. Cates  
12635 SE 105<sup>th</sup> Ave.  
Clackamas, OR 97015

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-NWR-16-012

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$32,987 for multiple violations of the National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge General Permit 1200-Z (the Permit), under which you are registered. The violations include: 1) Failing to properly monitor stormwater outfalls for the 2014-2015 monitoring year; 2) Failing to substantially implement a stormwater plan in accordance with your permit; 3) discharging stormwater from an un-permitted outfall; 4) failing to timely submit your discharge monitoring report for 2014-2015, and 5) causing wastes to be placed in a location where such wastes are likely to be carried to waters of the state.

\$1,787 of this penalty represents the economic benefit experienced by your company through non-compliance. Economic benefit is calculated to ensure that a violator of environmental statutes and regulations does not gain an undue economic advantage over those competitors who spend the money necessary to comply. If you can demonstrate your company has come into compliance with the relevant statutes and regulations, DEQ will consider recalculating the economic benefit.

In addition to an order to pay your civil penalty, DEQ is ordering you to comply with Schedule A.12 of the Permit by submitting a revised Stormwater Pollution Control Plan (SWPCP) based on second year geometric mean benchmark exceedences. In addition to Tier II corrective actions, the updated SWPCP should identify the third, unpermitted outfall as an additional sample location.

DEQ issued this penalty because fulfilling the mandatory monitoring and reporting conditions of your stormwater discharge permit is an important obligation. Without monitoring, your company, DEQ, and the public are unable to evaluate the effectiveness of your stormwater controls in protecting water quality and public health. Similarly, operating an unpermitted, unmonitored outfall creates a risk that pollutants are being discharged into the surrounding waters without any monitoring or treatment. Other violations constituting a general disregard for the controls set forth in your Stormwater Pollution Control Plan create even more risk of pollution to waters of the state. An abundance of wastes exposed to the elements in a manner that risks their release into the surrounding waters also increases the risk of pollution. DEQ is particularly concerned because you were penalized through an Expedited Enforcement Offer for similar violations following the 2013-2014 year.

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



Stone NW, Inc.  
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Via mail - 811 S.W. 6<sup>th</sup> Ave., Portland, OR 97204  
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 it 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 in lieu of paying your penalty. Further detail regarding SEPs may be found on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Courtney Brown, at (503) 229-6839. You may call toll-free within Oregon at 1-800-452-4011, extension 6839.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Michael Kennedy, Water Quality Specialist, NWR  
Christine Svetkovich, WQ, NWR  
Danial Cates, Stone NW, Inc., 15903 South Park Place, Oregon City, OR 97045

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:	)	NOTICE OF CIVIL PENALTY
4	STONE NW, INC.	)	ASSESSMENT AND ORDER
5	A Washington corporation,	)	
6		)	CASE NO. WQ/SW-NWR-16-012
7	Respondent.	)	

7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

13 1. Respondent, Stone NW, Inc., a Washington corporation, owns and operates a facility  
14 located at 15903 Park Place Ct. in Oregon City, Oregon (the "Facility").

15 2. On or about July 1, 2012, the Department of Environmental Quality (DEQ) granted  
16 Respondent coverage under National Pollutant Discharge Elimination System Storm Water Discharge  
17 General Permit Number 1200-Z (the "Permit") for stormwater discharges from the Facility. On or about  
18 July 25, 2013, a revised Permit was assigned to Respondent. DEQ issued the Permit pursuant to ORS  
19 468B.050 and the Federal Clean Water Act. The Permit was in effect at all material times.

20 3. The Permit authorizes Respondent to construct, install, modify or operate stormwater  
21 treatment and/or control facilities, and to discharge stormwater to waters of the state in conformance  
22 with the requirements, limitations and conditions set forth in the Permit.

23 4. Pursuant to Schedule A.6(c) of the Permit, Respondent is required to implement a  
24 Stormwater Pollution Control Plan (SWPCP).

25 5. SWPCP Section 3.2 specifies two point sources for stormwater drainage as sampling  
26 locations (called SL-1 and SL-2).

27 6. In accordance with Schedule B.2.e.i of the Permit, a monitoring year runs from July 1 to

1 June 30.

2 7. Schedule B.8 of the Permit requires Respondent to submit a DEQ-approved Discharge  
3 Monitoring Report (DMR) to DEQ by July 31 of each year. The DMR must identify the sampling  
4 results for the previous monitoring year and include the laboratory results from the testing laboratory.

5 8. Schedules B.1.a and B.2.e, Table 4 of the Permit require Respondent to monitor its  
6 stormwater for benchmark parameters listed in Schedule A.9 at least four times per year, with two  
7 samples from each sampling location taken on or before December 31, and two samples from each  
8 sampling location taken on or after January 1 of each stormwater monitoring year.

9 9. Schedule B.2.e Table 4 of the Permit and SWPCP Section 3.3 outline sampling protocol  
10 for monitoring stormwater for common pollutants. Both specify that Respondent will sample each  
11 outfall four times per year, with two samples from each sampling location taken on or before December  
12 31, and two samples from each sampling location taken on or after January 1 of each stormwater  
13 monitoring year.

14 10. On or about October 19, 2015, DEQ sent an email to Respondent informing it that its  
15 Discharge Monitoring Report (DMR) for the monitoring year 2014-2015 was due on July 31, 2015, and  
16 had not been received. Respondent responded by providing the required DMR the same day.

17 11. Respondent's DMR only listed testing results for one of the two sampling sites without  
18 noting which sampling site had been tested.

19 12. Respondent's DMR states that all the tests for the 2014-2015 year were conducted  
20 between April 22, 2015, and June 8, 2015.

21 13. Schedule A.12.c.i.3 and SWPCP Section 3.3.2 outlines the Tier II corrective actions that  
22 Respondent must take based on a 2<sup>nd</sup> year geometric mean benchmark exceedences, and state that in  
23 response to 2<sup>nd</sup> year exceedences permittee must submit a revised SWPCP to DEQ by December 31st  
24 of the 3<sup>rd</sup> year of permit coverage. At the request of Respondent, DEQ extended the December 31, 2015  
25 deadline to March 1, 2016.

26 14. Respondent's DMR for the 2014-2015 monitoring year reported 2<sup>nd</sup> year exceedences of  
27 total suspended solids and total copper on May 6, 2015; and exceedences for total suspended solids,

1 total copper, and total zinc on June 8, 2015.

2 15. As of the date of this Notice, Respondent has not submitted to DEQ a revised SWPCP  
3 pursuant to their Tier II requirements.

4 16. On or about December 14, 2015, DEQ conducted an inspection of the Facility. At that  
5 time, in addition to the two stormwater outfalls identified in SWPCP Section 3.2 and covered by the  
6 Permit, there was a third pipe draining Drainage Basin 3, formerly designated as unmonitored sheet  
7 flow by SWPCP Section 2.5, and discharging stormwater into the drainage ditch south of the Facility.  
8 Stormwater was flowing from this pipe and vegetation growth around the pipe indicated it had been an  
9 active stormwater outfall for a period of time more than 28 days.

10 17. SWPCP Section 4.1.4 states that Respondent implemented a clean and orderly work  
11 environment program. In relevant part, this section states that the Respondent will implement careful  
12 material storage practices, schedule routine cleaning operations, maintain organized work areas, train  
13 employees on good housekeeping practices, address spills quickly, properly cover all containers and  
14 drums, store liquid containing drums inside when possible, and reduce or prevent stormwater run on to  
15 containment and loading areas.

16 18. During the December 14, 2015 inspection, the following conditions were present at the  
17 Facility: uncovered rocks exposed to the elements and covered in fines, allowing for water to wash fine  
18 sediment into the stormwater; the piling of oil and grease containers on the property in a manner that  
19 does not protect from or prevent spills; overflowing and leaky waste containers on site; open or leaking  
20 hazardous material containers left outside; a non-functioning dust control system; spilled petroleum  
21 products as evidenced by petroleum sheen on mud and standing water; and generally poor  
22 housekeeping evidenced by debris around the facility. Stormwater exposed to these pollutants all drains  
23 into the Facility's storm sewer system.

24 19. The Facility's storm sewer system conveys water to a drainage ditch south of the  
25 Facility. The drainage ditch runs directly into the Clackamas River. Both the drainage ditch and the  
26 Clackamas River are waters of the state as defined by ORS 468B.005(10).

27 20. SWPCP Section 4.5 states that all employees shall receive, within 30 days of hire and

1 once per year, training in proper spill prevention and maintenance; health and safety issues; good  
2 housekeeping; scheduled maintenance, monitoring, and inspection; best management practice  
3 implementation; and proper handling of significant materials.

4 21. During the December 14, 2015 inspection, Facility records indicated only 4 of the  
5 Facility's 15 employees received training in the above areas since July 3, 2014. There were no new  
6 hires indicated at the time of the inspection.

### 7 III. CONCLUSIONS

8 1. Respondent has violated ORS 468B.025(2) by violating Schedule B.2.c of the Permit.  
9 Specifically, as described above in Section II paragraphs 1-11, Respondent only monitored one of two  
10 sampling locations as identified in section 3.2 of the SWPCP. Respondent has also failed to take any  
11 samples prior to December 31, 2014 as outlined in Schedule B.2.e, Table 4 of their Permit. This  
12 amounts to six missed monitoring events. These are Class I violations, according to OAR 340-012-  
13 055(1)(o). DEQ hereby assesses a \$9,069 civil penalty for these violations. The determination of the  
14 civil penalty is attached as Exhibit 1 and is incorporated as part of this Notice.

15 2. Respondent has violated ORS 468B.025(2) by failing to substantially implement a  
16 stormwater pollution control plan in accordance with Schedule A.6 of the Permit. Specifically, as  
17 described in Section II paragraphs 1 through 21, Respondent failed to implement multiple requirements  
18 included in the SWPCP including: failing to submit a revised SWPCP outlining Tier II corrective  
19 measures as required in Schedule A.12.c of the Permit and SWPCP section 3.3.2 by the December 31,  
20 2015 deadline or by the extended deadline; failing to follow sampling protocol as outlined in section  
21 3.3; operating a stormwater outfall not addressed in section 3.2; failing to implement the clean and  
22 orderly work environment program outlined in section 4.14; and failing to effectively implement the  
23 employee training outlined in section 4.5. These violations show a general disregard for Respondent's  
24 duties under the SWPCP. This constitutes a Class I violation, according to OAR 340-012-0055(1)(r).  
25 DEQ hereby assesses an \$8,718 civil penalty for this violation. The determination of civil penalty is  
26 attached as Exhibit 2 and is incorporated as part of this Notice.

27 ///



1 | **State of Oregon"** and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon**  
2 | **97204.** Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

3 | 2. Respondent is hereby ORDERED to submit an updated SWPCP with corrective actions  
4 | compliant with their Tier II requirements to DEQ within 30 days of DEQ obtaining a Final Order. In  
5 | addition to the Tier II corrective actions the updated SWPCP should identify the third, unpermitted  
6 | outfall as an additional sampling location. Submit the updated SWPCP to Michael Kennedy, DEQ, 700  
7 | NE Multnomah Street, Suite 600, Portland, OR 97232.

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

9 | You have a right to a contested case hearing on this Notice, if you request one in writing. You  
10 | must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you  
11 | receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in  
12 | this Notice or attached exhibits, you must include them in your request for hearing, as factual matters  
13 | not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
14 | (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request  
15 | for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**  
16 | **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the  
17 | Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR  
18 | Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
19 | attorney at the hearing, or you may represent yourself unless you are a corporation, agency or  
20 | association.

21 | Active duty service-members have a right to stay proceedings under the federal  
22 | Servicemembers Civil Relief Act. For more information, please call the Oregon State Bar at 1(800)  
23 | 452-8260 or the Oregon Military Department at 1(800) 452-7500. Additional information can be found  
24 | online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website,  
25 | <http://legalassistance.law.af.mil/content/locator.php>.

26 | If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
27 | Notice, the Notice will become a final order by default without further action by DEQ, as per OAR

1 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing,  
2 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
3 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
4 information submitted by you, as the record for purposes of proving a prima facie case.  
5  
6  
7

8 April 5, 2016

9 Date

Susan Muckler for

Leah K. Feldon, Manager  
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION 1: Failing to monitor stormwater as required by Schedule B of Permit 1200-Z, in violation of ORS 468B.025(2) during the 2014-2015 monitoring year.

CLASSIFICATION: This is a Class I violation 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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent was issued an Expedited Enforcement Offer (EEO) for violating their 1200-Z Permit in the 2013-2014 monitoring year which included one Class I violation and became a final order upon Respondent's acceptance on November 4, 2014.

"H" is Respondent's history of correcting prior significant actions and receives an initial value of 0 according to OAR 340-012-0145(3)(b), because Respondent has not addressed their previous failures in monitoring from the 2013-2014 year, and such failures in monitoring have persisted into the 2014-2015 monitoring year.

"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 fewer than seven occurrences of the violation. In the 2014-2015 monitoring year, respondent failed to monitor any of its two outfalls prior to December 31 of 2014, accounting for four violations, and only monitored one outfall after January 1 of 2015. Failing to monitor the second outfall in the latter half of the monitoring year accounts for two violations. In total, there were six violations.

"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 has coverage under

the 1200-Z Permit, which specifically requires that Respondent monitor its stormwater discharge for additional and impairment pollutants. In addition, respondent was issued an EEO in 2013-2014 for failing to monitor, showing that Respondent had actual knowledge of the requirement to monitor outfalls. By failing to monitor their outfalls for a second year in a row, respondent consciously disregarded a substantial and unjustifiable risk that they would violate their 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)(a)(D), because the violation or the effects of the violation could not be corrected or 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 \$269. This is the amount Respondent gained by avoiding spending \$440 to monitor both outfalls prior to December 31, 2014, and avoiding spending \$264 to monitor one of two outfalls identified in their Stormwater Pollution Control Plan after January 1, 2015. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (2 + 0 + 2 + 8 + 0)] + \$269 \\ &= \$4,000 + [\$400 \times 12] + \$269 \\ &= \$4,000 + \$4,800 + \$269 \\ &= \$9,069 \end{aligned}$$

EXHIBIT 2

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

VIOLATION 1: Failing to substantially implement a stormwater pollution control plan in accordance with Schedule A.6 of the Permit, in violation of ORS 468B.025(2).

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii).

"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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent was issued an Expedited Enforcement Offer for violating their 1200-Z Permit in the 2013-2014 monitoring year which included one Class I violation and became a final order upon Respondent's acceptance on November 4, 2014.

"H" is Respondent's history of correcting prior significant actions and receives an initial value of 0 according to OAR 340-012-0145(3)(b), because Respondent has not addressed their previous failures in monitoring from the 2013-2014 year, and such failures in monitoring have persisted into the 2014-2015 monitoring year.

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(a), because there were more than 28 occurrences of the violation. Each day of a violation with a duration of more than one day is counted as a separate occurrence of the violation. In this case, Respondent should have submitted an updated SWPCP complying with their Tier II requirements by March 1, 2016, but has not done so as of the date of this Notice.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(b). Respondent has coverage under the 1200-Z Permit, which specifically requires that Respondent develop and comply with a SWPCP. Respondent developed a SWPCP,

but by failing to take measures to comply with multiple requirements outlined in the plan, and failing to timely submit their updated SWPCP, Respondent failed to take reasonable care to avoid violating their permit.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(f), because Respondent eventually made some efforts to correct the violation. Following receipt of DEQ's Pre-Enforcement Notice, Respondent began implementing housekeeping practices, implementing a spill response plan, and instituted employee education. However, because Respondent has not submitted an updated SWPCP in compliance with their Tier II requirement, "C" cannot be given a lower value.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$1,518. This is the amount Respondent gained by avoiding an approximate \$2,500 expenditure to develop and submit a revised SWPCP pursuant to Tier II Corrective Action requirements. This amount should have been spent by March 1, 2016. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (2 + 0 + 4 + 4 + -2)] + \$1,518 \\ &= \$4,000 + [\$400 \times 8] + \$1,518 \\ &= \$4,000 + \$3,200 + \$1,518 \\ &= \$8,718 \end{aligned}$$

EXHIBIT 3

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

VIOLATION 1: Operating a discharge source not covered by Respondent's 1200-Z Permit in violation of ORS 468B.050(1)(b)(2).

CLASSIFICATION: This is a Class I violation 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)(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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent was issued an Expedited Enforcement Offer for violating their 1200-Z Permit in the 2013-2014 monitoring year which included one Class I violation and became a final order upon Respondent's acceptance on November 4, 2014.

"H" is Respondent's history of correcting prior significant actions and receives an initial value of 0 according to OAR 340-012-0145(3)(b), because Respondent has not addressed their previous failures in monitoring from the 2013-2014 year, and such failures in monitoring have persisted into the 2014-2015 monitoring year.

"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 lasting more than one day is a separate occurrence when determining the "O" factor. Based on the observations of the inspector, the pipe has been in place for an period of time well over a 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 acted negligently. Respondent has coverage under the 1200-Z Permit, which specifically requires that Respondent develop and comply with a Storm Water Pollution Control Plan (SWPCP). A SWPCP was developed, but only included two point sources for stormwater outflow. Whether the SWPCP was developed

without considering the third point source, or whether a new point source was constructed without modifying the SWPCP and 1200-Z permit, Respondent did not take reasonable care to ensure that the SWPCP accurately portrayed the outflows on the site and that it would be in compliance with the SWPCP and Oregon law.

"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 has not addressed the violation.

"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 de minimis value of \$0. This is because there was no economic benefit to operating the point source as opposed to allowing for the sheet run off outlined in the SWPCP. The outfall may be brought into compliance through the employment of a consultant to revise the SWPCP, however the economic benefit associated with hiring a consultant for this purpose was already considered in Exhibit 2 of this Notice. Pursuant to OAR 340-012-0150(1), economic benefits are not intended to be duplicated.

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 (2 + 0 + 4 + 4 + 2)] + 0  
= \$4,000 + [\$400 x 12] + \$0  
= \$4,000 + \$4,800 + \$0  
= \$8,800

EXHIBIT 4

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

VIOLATION 1: Failing to timely submit a Discharge Monitoring Report (DMR), in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(b).

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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent was issued an Expedited Enforcement Offer for violating their 1200-Z Permit in the 2013-2014 monitoring year which included one Class I violation and became a final order upon Respondent's acceptance on November 4, 2014.

"H" is Respondent's history of correcting prior significant actions and receives an initial value of 0 according to OAR 340-012-0145(3)(b), because Respondent has not addressed their previous failures in monitoring from the 2013-2014 year, and such failures in monitoring have persisted into the 2014-2015 monitoring year.

"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 only one occurrence of the violation. For the purposes of ongoing violations, a late DMR is counted as a single violation.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(b), because Respondent's conduct was negligent. Respondent has coverage under the 1200-Z Permit, which specifically requires that Respondent submit their DMR By July 31<sup>st</sup> of each year. By failing to take measures to ensure that Respondent completed and submitted their DMR on time, Respondent failed to take reasonable care to ensure it did not violate its permit.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to correct the violation. Respondent eventually submitted a DMR, however the DMR was filled out incorrectly because it did not include both of the testing sites listed under Respondent's permit.

"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. While Respondent did delay filing their DMR, there is no clear economic benefit that comes with a delayed filing.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (2 + 0 + 0 + 4 + -2)] + \$0 \\ &= \$2,000 + [\$200 \times 4] + \$0 \\ &= \$2,000 + \$800 + \$0 \\ &= \$2,800 \end{aligned}$$

EXHIBIT 5

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

VIOLATION 1: Causing wastes to be placed in a location where such wastes are likely to be carried into waters of the state, in violation of ORS 468B.025(1)(a).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent was issued an Expedited Enforcement Offer for violating their 1200-Z Permit in the 2013-2014 monitoring year which included one Class I violation and became a final order upon Respondent's acceptance on November 4, 2014.

"H" is Respondent's history of correcting prior significant actions and receives an initial value of 0 according to OAR 340-012-0145(3)(b), because Respondent has not addressed their previous failures in monitoring from the 2013-2014 year, and such failures in monitoring have persisted into the 2014-2015 monitoring year.

"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 more than one day is a separate occurrence. Based on the observations of the inspector, the poor state of housekeeping which would allow various pollutants to be released into waters of the state was commonplace and ongoing, leading to the reasonable conclusion that the Facility had been in that state for more than 28 days.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(b), Respondent has coverage under the 1200-Z Permit, which in Schedule A(1)(a) requires Respondent to minimize the exposure of pollutants to rain, snow, snowmelt, and

runoff. By storing debris covered in fine sediment, unsealed waste drums, and oil and grease containers uncovered and exposed to weather and run off, Respondent failed to take reasonable care to avoid a foreseeable risk of violating its permit.

"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). Following the receipt of the Pre-Enforcement Notice, Respondent has taken more comprehensive housekeeping measures to avoid exposure of wastes to stormwater.

"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 has insufficient information to calculate an economic benefit resulting from this violation, and the fact that Respondent has taken actions to come into compliance would likely bring the economic benefit down to a de minimis value.

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 x \$2,000) x (2 + 0 + 4 + 4 + -2)] + \$0  
= \$2,000 + [\$200 x 8] + \$0  
= \$2,000 + \$1,600 + \$0  
= \$3,600