



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 15, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 0595

Rogers Northwest, Inc.
c/o Roger L. Metcalf, Registered Agent
21455 SW 120th Ave.
Tualatin, OR 97062

CERTIFIED MAIL: 7017 1450 0000 8310 0601

Rogers Northwest, Inc.
c/o Roger L. Metcalf
P.O. Box 4180
Tualatin, OR 97062-4180

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-NWR-2019-272

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$16,800 for exceeding the particulate matter limits in the General Air Contaminant Discharge Permit for your asphalt hot mix batch plant at 21455 SW 120th Avenue in Tualatin, Oregon.

DEQ issued this penalty because you have exceeded three separate particulate matter emission limits in your permit during a source test on July 19, 2019. DEQ is particularly concerned because these are repeat violations. The plant also failed to meet the same emission limits during a source test on October 25, 2017. One of the asphalt plant emission limits was set pursuant to the National Standards of Performance for New Stationary Sources (NSPS), which were promulgated by the federal government and adopted by Oregon to ensure that particulate matter emissions are kept to minimum levels to protect public health and the environment. Based on the data you have submitted, DEQ has concluded that you

have operated the plant in violation of the NSPS limit on at least three hundred and thirty three (333) days or occasions between October 26, 2017 and the date of this Notice. Particulate matter is known to affect the functioning of the heart and lungs, impacts visibility, and where it is deposited, it can change the acidity or nutrient balance of water bodies and soil.

Included in Section IV of the enclosed Notice is an order requiring you to take the following corrective actions:

- By no later than October 1, 2020 or within 30 days after the order becomes final by operation of law or on appeal, whichever comes later, conduct a repeat source test to demonstrate compliance with the particulate emission limits of your air quality permit on the first available job with enough production to complete three one hour test runs.
- In the event that the repeat source tests fails to demonstrate compliance with any of the emission limits in the permit, prepare a corrective action plan and implement the corrective action plan after approval by DEQ.

Please note that the above is a summary of the Order and you must review Section IV carefully for the full content of the Order. Please contact Weston Li at 503-229-5332 if you have any questions about how to comply.

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

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.state.or.us

Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

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

Rogers Northwest, Inc.
Case No. AQ/ACDP-NWR-2019-272
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If you have any questions, please contact Becka Puskas at 503-229-5332 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Weston Li, DEQ
Suzanne Blackburn, DEQ
Matt Hoffman, DEQ
Accounting, DEQ
Donald Hendrix, AQ, DEQ
US EPA, Region 10, c/o Katie McClintock, 1200 Sixth Avenue, Seattle, WA 98101

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 ROGERS NORTHWEST, INC.,) ASSESSMENT AND ORDER
an Oregon corporation,)
5 Respondent.) CASE NO. AQ/ACDP-NWR-2019-272

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9 ORS Chapter 183 and 468A and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,
10 and 216, 226 and 238.

11 II. FINDINGS OF FACT

12 1. Respondent owns an asphalt hot mix batch plant at 21455 SW 120th Avenue in Tualatin,
13 Oregon (the Plant).

14 2. On April 4, 2003, DEQ assigned Respondent coverage under General Air Contaminant
15 Discharge Permit No. AQGP-007 (the Permit) for the Plant. On May 2, 2008, and again on March 28,
16 2018, DEQ renewed Respondent's coverage under the Permit.

17 3. The Permit authorizes Respondent to discharge air contaminants from the Plant in
18 conformance with the requirements, limitations and conditions set forth in the Permit.

19 4. Respondent's Plant is subject to the National Standards of Performance for New Stationary
20 Sources (NSPS) in 40 CFR Part 60, subpart I (Hot Mix Asphalt Facilities), adopted and incorporated by
21 reference in OAR 340-238-0060(1).

22 5. The NSPS standard for asphalt processing plants is incorporated in Condition 2.4 of the
23 Permit, which prohibits Respondent from emitting filterable particulate matter from the Plant in excess
24 of 0.04 grains per dry standard cubic foot (gr/dscf), as measured by EPA Method 5.

25 6. Condition 2.2.b.i of the Permit prohibits Respondent from emitting total particulate matter
26 from the Plant in excess of 0.10 gr/dscf, as measured by DEQ Method 5.

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1 7. Condition 2.3.b of the Permit prohibits Respondent from operating the Plant within any
2 special control area without installing and operating systems or processes for the control of particulate
3 matter emissions so as to comply with the emissions limits established by the process weight table for
4 asphalt plants, Table 1 of OAR 340-236-0410, and incorporated as Condition 13.0 of the Permit.
5 Compliance is determined through a source test using DEQ Method 5.

6 8. Condition 13.0 of the Permit prohibits Respondent from emitting particulate matter from the
7 Plant in excess of 40.0 pounds of total particulate matter per hour when the production rate is greater
8 than 60,000 pounds per hour.

9 9. On October 25, 2017, Respondent conducted a source test to measure particulate matter
10 emissions from the Plant. The Plant's particulate matter emissions measured:

- 11 a. 0.25 gr/dscf of filterable particulate matter, as measured by EPA Method 5;
- 12 b. 0.26 gr/dscf of total particulate matter, as measured by DEQ Method 5; and
- 13 c. 66.0 pounds per hour of total particulate matter.

14 10. On October 25, 2017, the production rate of the plant averaged 260,000 pounds per hour
15 (130 tons per hour).

16 11. On April 25, 2018, DEQ issued case no. AQ/AC-NWR-2018-002, assessing a civil penalty
17 of \$5,600 for violating the filterable particulate matter emission limit in the Permit and requiring
18 Respondent to conduct a repeat source test to demonstrate compliance with all the particulate matter
19 emission limits.

20 12. Between April 25, 2018 and July 19, 2019, Respondent evaluated the baghouse on the Plant
21 and made some improvements.

22 13. On July 19, 2019, Respondent conducted a source test to measure particulate matter
23 emissions from the Plant. The Plant's particulate matter emissions measured:

- 24 a. 0.12 gr/dscf of filterable particulate matter, as measured by EPA Method 5;
- 25 b. 0.12 gr/dscf of total particulate matter, as measured by DEQ Method 5; and
- 26 c. 41.3 pounds per hour of total particulate matter.

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1 14. On July 19, 2019, the production rate of the Plant averaged 240,000 pounds per hour (120
2 tons/hour).

3 15. Based on production data that Respondent has submitted to DEQ, Respondent has produced
4 asphalt at the Plant on at least three hundred thirty-three (333) days between October 26, 2017 and the
5 date of this Notice.

6 16. Between October 26, 2017 and the date of this Notice, Respondent has not provided any
7 data to DEQ which demonstrates that the Plant's filterable particulate matter emissions would be lower
8 than the concentration-based limit of 0.04 gr/dscf while the Plant is producing asphalt.

9 III. CONCLUSIONS

10 1. On at least three hundred thirty-three (333) days or occasions between October 26, 2017 and
11 the date of this Notice, Respondent violated Condition 2.4 of the Permit and ORS 468A.045(2) by
12 exceeding the 0.04 gr/dscf filterable particulate matter emission limit for the Plant, as described in
13 Section II, above. These are Class I violations, according to OAR 340-012-0054(1)(i). DEQ hereby
14 assesses a \$9,200 civil penalty for these violations.

15 2. On July 19, 2019, Respondent violated Condition 2.2.b.i of the Permit and ORS
16 468A.045(2) by exceeding the 0.10 gr/dscf total particulate matter emission limit for the Plant, as
17 described in Section II, above. This is a Class II violation, according to OAR 340-012-0054(2)(b). DEQ
18 hereby assesses a \$3,800 civil penalty for this violation.

19 3. On July 19, 2019, Respondent violated Conditions 2.3.b and 13.0 of the Permit and ORS
20 468A.045(2) by exceeding the 40.0 pounds per hour total particulate matter limit for the
21 Plant, when its production rate was greater than 60,000 pounds per hour, as described in Section II,
22 above. Respondent's Plant is located within a special control area of the State as defined by OAR 340-
23 204-0070 and in Condition 2.3.c.i and 2.1.f of the Permit because the Plant is located in Washington
24 County, Oregon. This is a Class II violation, according to OAR 340-012-0054(2)(b). DEQ hereby
25 assesses a \$3,800 civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

4 1. Pay a total civil penalty of \$16,800. The determination of the civil penalties are attached as
5 Exhibits 1-3 and are incorporated as part of this Notice.

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

9 2. By no later than October 1, 2020 or within 30 days after the order becomes final by
10 operation of law or on appeal, whichever comes later, retest the Plant according to the source test
11 procedures in Condition 6.0 of the Permit and the DEQ Source Sampling Manual, and submit source
12 test results to DEQ to: Suzanne Blackburn, Oregon Department of Environmental Quality, Western
13 Region – Salem Office, 4026 Fairview Industrial Drive, Salem, Oregon 97302. The repeat source test
14 must demonstrate compliance with the following emission limits:

15 a. 0.04 gr/dscf of filterable particulate matter as Measured by EPA Method 5 (Condition
16 2.4 of the Permit);

17 b. 0.10 gr/dscf of total particulate matter, as measured by DEQ Method 5 (Condition 2.2.b.i
18 of the Permit); and

19 c. 40.0 pounds of total particulate matter per hour when the production rate is greater than
20 60,000 pounds per hour (Conditions 2.3.b and 13.0 of the Permit).

21 3. In the event the results from the source test described above in Section IV, Paragraph 2 fail
22 to demonstrate compliance with any of the particulate matter emission limits described above in
23 Section IV, Paragraphs 2(a)-2(c), within 30 days of DEQ's source test review memo, submit a
24 Corrective Action Plan II to DEQ for approval that includes:

25 a. Corrective actions to be taken by Respondent to address particulate matter emissions
26 from the Plant;

27 b. Specific dates for the corrective actions described above in Section IV, Paragraph 3(a);

1 c. A schedule for conducting an additional source test to demonstrate that the Plant
2 complies with the particulate matter emission limits of the Permit; and

3 d. A source test plan for the repeat source test.

4 4. Implement the DEQ-approved Corrective Action Plan II described above in Section IV,
5 Paragraph 3.

6 Written documentation demonstrating Respondent's compliance with the requirements of
7 Section IV, Paragraphs 3-4, above must be sent to: Weston Li, Oregon Department of Environmental
8 Quality, 700 NE Multnomah Street, Suite 600, Portland, OR 97232-4100 or
9 Li.Weston@deq.state.or.us.

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

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

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

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

Date

5/15/2020


Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION No. 1: Exceeding the 0.04 gr/dscf filterable particulate matter emission limit for the Plant on July 19, 2019, in violation of Condition 2.4 of the Permit and ORS 468A.045(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(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)(A) because Respondent has a General ACDP 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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has one Class I violation and two Class II violations in case no. AQ/AC-NWR-2018-002 issued on April 12, 2018.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. On October 25, 2017, the Plant's filterable particulate matter emissions measured 0.25 gr/dscf, which is 625% over the 0.04 gr/dscf limit. Despite Respondents efforts to evaluate the Plant's baghouse and make improvements, on July 19, 2019, the Plant's filterable particulate matter emissions measured 0.12 gr/dscf, which is 300% over the 0.04 gr/dscf limit. Respondent's Plant has produced asphalt on at least three hundred thirty-three (333) days between October 26, 2017 and the date of this Notice, without providing any data to DEQ that demonstrates that the Plant is operating in compliance with the 0.04 gr/dscf limit. Therefore, there were at least 333 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. Negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. In a prior source test, Respondent's Plant exceeded the limit for filterable particulate matter on October 25, 2017. Following the 2017 source test, Respondent did not retest the facility until July 19, 2019 and did not take sufficient corrective actions to ensure that the Plant would meet the emission limit in the 2019 test. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a 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)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not retested the Plant to demonstrate compliance with the emission limit.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ has insufficient information to calculate an economic benefit for this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (3 + 0 + 4 + 4 + 2)] + \$0
= \$4,000 + (\$400 x 13) + \$0
= \$4,000 + \$5,200 + \$0
= \$9,200

EXHIBIT 2

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

- VIOLATION No. 2: Exceeding the 0.10 gr/dscf total particulate matter emission limit for the Plant on July 19, 2019, in violation of Condition 2.2.b.i of the Permit and ORS 468A.045(2).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(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)(A) because Respondent has a General ACDP 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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has one Class I violation and two Class II violations in case no. AQ/AC-NWR-2018-002 issued on April 12, 2018.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. The violation occurred on at least one day, on July 19, 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. Negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. In a prior source test, Respondent's Plant exceeded the limit for total particulate matter on October 25, 2017. Following the 2017 source test, Respondent did not retest the facility until July 19, 2019 and did not take sufficient corrective actions to ensure that the Plant would meet the emission limit in the 2019 test. Thus, Respondent failed to

take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a 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)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not retested the Plant to demonstrate compliance with the emission limit.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ has insufficient information to calculate an economic benefit for this violation.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (3 + 0 + 0 + 4 + 2)] + \$0 \\ &= \$2,000 + (\$200 \times 9) + \$0 \\ &= \$2,000 + \$1,800 + \$0 \\ &= \$3,800 \end{aligned}$$

EXHIBIT 3

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

VIOLATION No. 3: Exceeding the 40.0 pounds per hour total particulate matter limit for the Plant, when its production rate was greater than 60,000 pounds per hour on July 19, 2019, in violation of Conditions 2.3.b and 13.0 of the Permit and ORS 468A.045(2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(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)(A) because Respondent has a General ACDP 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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has one Class I violation and two Class II violations in case no. AQ/AC-NWR-2018-002 issued on April 12, 2018.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. The violation occurred on at least one day, on July 19, 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. Negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. In a prior source test, Respondent's Plant exceeded the production-based particulate matter on October 25, 2017. Following the 2017 source test, Respondent did not retest the facility until July 19, 2019 and did not take sufficient corrective actions to ensure that the Plant would meet the emission limit in the 2019 test. Thus, Respondent failed to

take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a 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)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not retested the Plant to demonstrate compliance with the emission limit.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ has insufficient information to calculate an economic benefit for this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$2,000 + [(0.1 \times \$2,000) \times (3 + 0 + 0 + 4 + 2)] + \0
 $= \$2,000 + (\$200 \times 9) + \$0$
 $= \$2,000 + \$1,800 + \$0$
 $= \$3,800$