



Oregon

Kate Brown, Governor

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June 17, 2022

CERTIFIED MAIL: 7018 1830 0001 6172 5963

Port of Morrow
c/o Lisa Mittelsdorf, Executive Director
P. O. Box 200
2 East Marine Drive
Boardman, OR, 97818

Re: Amended Notice of Civil Penalty Assessment and Order
Case No. WQ/I-ER-2021-106

On January 10, 2022, DEQ issued the Port of Morrow (the Port) a Notice of Civil Penalty Assessment and Order (the Notice) assessing a \$1,291,551 civil penalty for failing to comply with the conditions of its wastewater permit intended to protect groundwater from nitrate contamination. The attached Amended Notice of Civil Penalty Assessment and Order (the Amended Notice) supersedes the previously issued Notice, cites additional violations, and assesses a total civil penalty of \$2,100,351.

In addition to the violations cited previously in the Notice, the Amended Notice cites the Port for additional occurrences of applying nitrogen containing wastewater to fields where the soil residual nitrate-nitrogen level exceeded 30 pounds per acre at the fourth and fifth foot level. The Amended Notice also cites the Port for applying nitrogen containing wastewater to fields where the soil moisture content was too high. These violations occurred during non-growing seasons as defined by the permit, from November through February, and are likely to cause additional adverse impacts to nitrate-nitrogen levels in the Lower Umatilla Basin Groundwater Management Area (LUBGWMA). DEQ expects that the Port will be in compliance during growing season due to uptake of nitrogen by agricultural crops.

DEQ acknowledges that the Port is committed to finding a long-term solution to the management of its wastewater that both promotes beneficial reuse and is protective of public health and the environment. However, since DEQ issued the Notice, the Port has not submitted to DEQ for review and approval a plan to achieve compliance with the nitrogen loading limits in the permit. The Amended Notice expands the scope of the order requiring the Port to develop and implement an approved plan to achieve compliance with both the nitrogen loading and moisture content limits in the permit. DEQ remains committed to assisting the Port achieve compliance.

The Port may resolve up to 80% of the total civil penalty assessed in the Amended Notice by contributing to an approved Supplemental Environmental Project (SEP). DEQ encourages the Port to collaborate with local partners to complete a SEP that addresses high nitrate concentrations in drinking water in the LUBGWMA.

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The Port filed a timely appeal of the Notice and need not submit a new appeal. However, the Port may submit an amended request for hearing as the law provides.

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

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Justin Sterger, DEQ
Shannon Davis, DEQ
Accounting, DEQ
Michael Campbell, Stoel Rives, LLP

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) AMENDED NOTICE OF CIVIL PENALTY
PORT OF MORROW,) ASSESSMENT AND ORDER
a port district of the state of Oregon,)
Respondent.) CASE NO. WQ/I-ER-2021-106

I. AUTHORITY

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

II. FINDINGS OF FACT

1. In 1990, DEQ declared the Lower Umatilla Basin a Groundwater Management Area (GWMA) because nitrate-nitrogen concentrations exceeded 7 milligrams per liter (mg/L) in many area groundwater samples. This level is 70% of the Oregon maximum measurable level of 10 mg/L (Federal Safe Drinking Water Standard) and is the trigger level for declaring a GWMA. Under the Oregon Groundwater Protection laws (ORS 468B.180), DEQ is required to declare a GWMA if area-wide groundwater contamination is present as a result of suspected non-point source activities.

2. Respondent operates industrial facilities in Boardman, Oregon, and disposes of wastewater generated by those facilities pursuant to Water Pollution Control Facilities Permit No. 102325 (the Permit). The Permit authorizes Respondent to construct, install, modify or operate a wastewater collection, treatment and control system and dispose of wastewater through land application in conformance with the requirements, limits and conditions of the Permit. The Permit was in effect at all material times.

3. Respondent's facilities and wastewater land application sites that were cited for violations are located in the Lower Umatilla Basin Ground Management Area.

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4. Respondent's wastewater contains nitrogen from industrial sources and Schedule A of the Permit limits the amount of nitrogen which may be applied to land application sites.

5. Schedule A, Condition 13(C)(ii) of the Permit states: "Application sites where the sum of soil nitrate (N), in the 4th and 5th foot, is greater than or equal to 30 lbs/ac [pounds per acre] are prohibited from receiving winter irrigation."

6. Schedule A, Condition 13 of the Permit defines the winter irrigation season as November through February.

7. During the 2018-2019, 2019-2020, 2020-2021 and 2021-2022 winter irrigation seasons, Respondent applied nitrogen in wastewater during the winter irrigation season after soil nitrate present at the 4th + 5th foot level had reached 30 pounds per acre as follows:

Farm Name	Field Number	Days Nitrogen Applied
Farm 1 – Portview	138	40
Farm 1 – Portview	139(1)	25
Farm 1 – Portview	139(3)	13
Farm 1 - Portview	140	5
Farm 1 – Portview	141	4
Farm 1 – Portview	142	35
Farm 1 - Portview	144	3
Farm 1 – Portview	147	14
Farm 1 – Portview	148	11
Farm 1 – Portview	152	7
Farm 1 – Portview	154 (3)	31
Farm 1 – Portview	156	3
Farm 1 – Portview	157	5
Farm 2 – Southport	201	2
Farm 3 – Eastport	312	11
Farm 3 – Eastport	314	13
Farm 3 – Eastport	315	27
Farm 3 – Eastport	316	9
Farm 3 – Eastport	m316	5
Farm 3 – Eastport	317	45
Farm 3 – Eastport	318	31
Farm 3 – Eastport	319	26
Farm 3 – Eastport	m319	1
Farm 3 – Eastport	320	28
Farm 3 – Eastport	321	38
Farm 3 – Eastport	322	31
Farm 3 – Eastport	m322	11
Farm 3 – Eastport	323	41

1	Farm 3 – Eastport	324	15
	Farm 3 – Eastport	325	28
2	Farm 3 – Eastport	325 (2)	3
	Farm 3 – Eastport	326	18
3	Farm 3 – Eastport	326a	16
	Farm 3 – Eastport	327	8
4	Farm 3 - Eastport	m327	16
	Farm 3 – Eastport	328	21
5	Farm 3 – Eastport	329	32
	Farm 3 – Eastport	329a	15
6	Farm 3 – Eastport	329b	20
	Farm 3 – Eastport	329c	13
7	Farm 3 – Eastport	330	3
8	Farm 3 – Eastport	331	24
	Farm 3 – Eastport	332	24
9	Farm 3 – Eastport	333	34
10	Farm 3 – Eastport	333a	4
	Farm 3 – Eastport	333b	6
11	Farm 3 – Eastport	333c	17
	Farm 3 – Eastport	333d	8
12	Farm 3 – Eastport	m334	25
13	Farm 3 – Eastport	335	34
	Farm 3 – Eastport	336	27
14	Farm 3 – Eastport	338	28
	Farm 3 – Eastport	340	28
15	Farm 3 – Eastport	m340	2
16	Farm 3 – Eastport	341	1
	Farm 3 – Eastport	343	16
17	Farm 3 – Eastport	353	24
	Farm 3 – Eastport	353(2)	25
18	Farm 3 – Eastport	354	3
	Farm 3 – Eastport	355	8
19	Madison Farm	1	14
20	Madison Farm	98	21
	Madison Farm	99	24
21	Madison Farm	100	5
	Madison Farm	101	30
22	Madison Farm	102	24
	Madison Farm	103	28
23	Madison Farm	104	19
	Madison Farm	105	28
24	Madison Farm	106	15
	Madison Farm	108	23
25	Madison Farm	109	32
	Madison Farm	110	9
26	Madison Farm	114	25
27			

Madison Farm	115	39
Madison Farm	116	26
Madison Farm	117	43
Madison Farm	118	18
Madison Farm	119	48

8. Schedule A, Condition 13(C) (iii) of the Permit states: "Application sites with soil moisture in the 4th foot of the soil profile equal to or greater than 75% of the 4th foot water-holding capacity are prohibited from receiving additional winter irrigation."

9. During the 2021-2022 winter irrigation seasons, Respondent applied nitrogen in wastewater at sites where soil moisture in the 4th foot of the soil profile was equal to or greater than 75% of the 4th foot water-holding capacity as follows:

Farm Name	Field Number	Days Nitrogen Applied
Madison Farms	103	3
Madison Farms	108	5
Madison Farms	109	10
Madison Farms	110	3
Farm 1 – Portview	138	2
Farm 2 – Southport	201	6
Farm 2 – Southport	202	6
Farm 2 – Southport	203	10
Farm 2 – Southport	204	9
Farm 2 – Southport	205	10
Farm 2 – Southport	206	9
Farm 2 – Southport	207	8
Farm 2 -Southport	208	9
Farm 2 – Southport	209	8
Farm 2 – Southport	213	9
Farm 2 – Southport	214	10
Farm 3 – Eastport	312	2
Farm 3 – Eastport	m312	2
Farm 3 – Eastport	314	10
Farm 3 – Eastport	316	5
Farm 3 – Eastport	m316	2
Farm 3 – Eastport	318	9
Farm 3 – Eastport	m318	9
Farm 3 – Eastport	321	5
Farm 3 – Eastport	324	15
Farm 3 – Eastport	325	9
Farm 3 – Eastport	329	14
Farm 3 – Eastport	330	7
Farm 3 – Eastport	331	3

Farm 3 – Eastport	332	6
Farm 3 – Eastport	333	12
Farm 3 – Eastport	333a	7
Farm 3 – Eastport	333b	6
Farm 3 – Eastport	340	7
Farm 3 – Eastport	m353	11

10. Schedule B, Condition 9 of the Permit requires Respondent to monitor and record crop information for nitrogen removal (plant tissue) at harvest for each authorized application site each year.

11. Respondent did not monitor crops at harvest for nitrogen removal on 121 separate occasions each year in 2018, 2019 and 2020.

12. Schedule B, Condition 6(G) of the Permit states: “Total Dissolved Solids (TDS) loading from wastewater must be totalized monthly as lbs/ac/month.”

13. Schedule B, Condition 14 of the Permit states: The Permittee must submit an annual report on or before April 15 of the succeeding calendar year. The report will provide annual summary statistics and performance analysis for the land application system as a whole, for each crop utilized and for each individual application site. The Annual Report format and content must be in accordance with the approved OM&M Plan, and must include, but not be limited to: ... (D) Monitoring results as required by Schedule B- Condition (6)(A)-(I).”

14. Respondent’s 2018 and 2019 Annual Reports did not include TDS loading from wastewater totalized monthly as lbs/ac/month.

III. CONCLUSIONS

1. Respondent violated ORS 468B.025(2) by violating a condition of its Permit. Specifically, in violation of Schedule A, Condition 13.C(ii) of the Permit, Respondent applied wastewater containing nitrogen during the winter irrigation season to fields where soil nitrate in the 4 feet to 5 feet soil level was equal to or greater than 30 lbs/ac, as described in Section II, Paragraphs 5-7 above. These are Class I violations, according to OAR 340-012-0055(1)(m). DEQ assesses a \$1,469,400 civil penalty for these violations.

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1 2. Respondent violated ORS 468B.025(2) by violating a condition of its Permit. Specifically,
2 Respondent violated Schedule A, Condition 13.C(iii) of the Permit, by applying wastewater containing
3 nitrogen during the winter irrigation season to fields where soil moisture in the 4th foot of the soil
4 profile was equal to or greater than 75% of the 4th foot water-holding capacity as detailed in Section II,
5 Paragraphs 8 and 9, above. These are Class I violations, according to OAR 340-012-0055(1)(m). DEQ
6 assesses a \$567,000 civil penalty for these violations.

7 3. Respondent violated ORS 468B.025(2) by violating a condition of its Permit. Specifically,
8 Respondent violated Schedule B, Condition 9 of the Permit by failing to monitor nitrogen uptake in crops
9 at each of its land application sites, as described in Section II, Paragraphs 10 and 11 above. These are
10 Class I violations of the Permit, pursuant to OAR 340-012-0055(1)(o). DEQ assesses a \$63,951 civil
11 penalty for these violations.

12 4. Respondent violated ORS 468B.025 by violating a condition of its Permit. Specifically,
13 Respondent violated Schedule B, Condition 14(D) of the Permit by failing to report TDS loading totalized
14 as lbs/ac/month on its annual discharge monitoring reports for 2018 and 2019, as described in Section II,
15 Paragraphs 12-14 above. These are Class III violations pursuant to OAR 340-012-0055(3)(a). DEQ does
16 not assess a civil penalty for these violations.

17 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

20 1. Pay a total civil penalty of \$2,100,351. The determination of the civil penalties are attached
21 as Amended Exhibits 1, 2 and 3 and are incorporated as part of this Notice.

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

25 2. Within 45 days of this order becoming final by operation of law or on appeal, submit to
26 DEQ for review and approval a plan and schedule for achieving compliance with the winter irrigation
27 limits in Schedule A, Condition 13(C)(ii) and (iii) of Respondent's wastewater disposal permit.

1 3. Within 30 days of receiving DEQ comments on the plan and schedule, revise the plan
2 consistent with DEQ's comments and resubmit the plan and schedule to DEQ and begin
3 implementation.

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

5 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
6 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
7 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
8 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
9 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
10 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
11 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
12 it to **503-229-6762** or email it to DEQappeals@deq.state.or.us. An administrative law judge
13 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
14 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
15 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
16 you may represent yourself. If you are a corporation, partnership, limited liability company,
17 unincorporated association, trust or government body, you must be represented by an attorney or a duly
18 authorized representative, as set forth in OAR 137-003-0555.

19 Active duty Service members have a right to stay proceedings under the federal Service
20 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
21 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
22 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
23 Department does not have a toll free telephone number.

24 If you fail to file a timely request for hearing, the Notice will become a final order by default
25 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
26 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
27 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.
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6 6/17/2022

7 Date

8 Kieran O'Donnell

9 Kieran O'Donnell, Manager
10 Office of Compliance and Enforcement
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AMENDED EXHIBIT 1

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

VIOLATION NO. 1 Failure to comply with a wastewater permit condition in violation of ORS 468B.025(2) by failing to comply with Schedule A, Condition 13(c)(ii) of the Permit regarding winter irrigation of effluent.

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

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(E)(ii) because Respondent has a Tier 1 industrial source WPCF 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 pursuant to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of 9 or more Class I equivalent violations stemming from Case Nos. WQ/I-ER-15-105 and WQ/I-ER-2016-108.

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

"O" is whether the violation was repeated or ongoing and receives a value of 3 pursuant to OAR 340-012-0145(4)(c) because there were seven or more, but less than 28 occurrences of the violation. Each day of over application on each farm and field number represents a separate occurrence. Respondent applied on 1,532 occurrences in violation of the permit as detailed in the Notice. DEQ is assessing a separate penalty for 79 of the violations. To arrive at "O," DEQ divides the total number of violations by the number of violations penalized. Therefore, each assessed penalty represents 19.4 occurrences for an "O" factor value of 3.

"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 knew the Permit imposes limits on nitrogen in its land applied wastewater. Respondent intentionally applied

nitrogen in excess of the winter irrigation limit, knowing it would cause exceedance of the permitted limit.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation 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 \$0 as DEQ has insufficient information on which to arrive at reasonable estimation of compliance costs avoided or delayed.

SINGLE OCCURRENCE PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})]$
 $= \$6,000 + [(0.1 \times \$6,000) \times (10 + 0 + 3 + 8 + 0)]$
 $= \$6,000 + [\$600 \times 21]$
 $= \$6,000 + \$12,600$

MULTIPLE PENALTY CALCULATION

Single occurrence penalty calculation x number of violations penalized + economic benefit

In exercising its enforcement discretion, DEQ elects to assess separate base penalties for 79 of the 1,532 occurrences of the violation, assessing a separate base penalty for each of the 79 farm and field number locations where the violation occurred.

FINAL PENALTY CALCULATION

$\$18,600 \times 79 + \$0 = \$1,469,400$

AMENDED EXHIBIT 2

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

- VIOLATION NO. 2 Failure to comply with a wastewater permit condition in violation of ORS 468B.025(2) by failing to comply with condition of Schedule A, Condition 13(c)(iii) of the Permit regarding winter irrigation of effluent.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(m).
- 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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(E)(ii) because Respondent has a Tier 1 industrial source WPCF 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 6 pursuant to OAR 340-012-0145(2). P is assigned an initial value of 10 because Respondent has prior significant actions (PSAs) consisting of 9 or more Class I equivalent violations stemming from Case Nos. WQ/I-ER-15-105 and WQ/I-ER-2016-108. This value is reduced by 4 pursuant to OAR 340-012-0145(2)(d)(A)(ii) for a final value of 6 because the formal enforcement actions in which Respondent's PSAs were cited were issued more than five years before the violation.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing and receives a value of 3 pursuant to OAR 340-012-0145(4)(c) because there were seven or more but less than 28 occurrences of the violation. Each day of over application on each Farm and Field Number represents a separate occurrence. Respondent applied on 258 occurrences in violation of the permit as detailed in the Notice. DEQ is assessing a separate penalty for 35 occurrences of the violations. To arrive at "O" DEQ divides the total number of violations by the number of

violations penalized. Therefore, each assessed penalty represents 7.4 occurrences for an “O” factor value of 3.

"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 knew the Permit imposes limits on nitrogen in its land applied wastewater. Respondent intentionally applied nitrogen in excess of a winter irrigation limit, knowing it would cause exceedance of the permitted limit.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation 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 \$0 as DEQ has insufficient information on which to arrive at reasonable estimation of compliance costs avoided or delayed.

SINGLE OCCURRENCE PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})]$
 $= \$6,000 + [(0.1 \times \$6,000) \times (6 + 0 + 3 + 8 + 0)]$
 $= \$6,000 + [\$600 \times 17]$
 $= \$6,000 + \$10,200$
 $= \$16,200$

MULTIPLE PENALTY CALCULATION

Single occurrence penalty calculation x number of violations penalized + economic benefit

In exercising its enforcement discretion, DEQ elects to assess separate base penalties for 35 of the 258 occurrences of the violation, assessing a separate base penalty for each of the 35 farm and field number locations where the violation occurred.

FINAL PENALTY CALCULATION

$\$16,200 \times 35 + \$0 = \$567,000$

AMENDED EXHIBIT 3

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

VIOLATION NO. 3 Failure to comply with a wastewater permit condition in violation of ORS 468B.025(2) by failing to conduct monitoring required by Schedule B of the Permit.

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(E)(ii) because Respondent has an a Tier 1 industrial source WPCF 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 pursuant to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of 9 or more Class I equivalent violations stemming from Case Nos. WQ/I-ER-15-105 and WQ/I-ER-2016-108.

"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. Respondent failed to conduct annual plant tissue monitoring for nitrogen removal at 121 fields in 2018, 2019 and 2020 for a total of 363 occurrences of the violation. DEQ is assessing a separate penalty for three of the violations. To arrive at "O" DEQ divides the total number of violations by the number of violations penalized. Therefore, each assessed penalty represents 121 occurrences for an "O" factor value of 4.

"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 monitoring requirements are express conditions of Respondent's Permit. By failing to take the actions necessary to

conduct the monitoring, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation 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 \$13,551. This is the amount Respondent gained by avoiding \$19,602 in monitoring costs. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

SINGLE OCCURRENCE PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})]$
 $= \$6,000 + [(0.1 \times \$6,000) \times (10 + 0 + 4 + 4 + 0)]$
 $= \$6,000 + (\$600 \times 18)$
 $= \$6,000 + \$10,800$
 $= \$16,800$

MULTIPLE PENALTY CALCULATION

(Single occurrence penalty calculation x number of violations penalized) + economic benefit

In exercising its enforcement discretion, DEQ elects to assess separate base penalties for 3 of the 363 occurrences of the violation, assessing a separate base penalty for each year Respondent committed the violation.

FINAL PENALTY CALCULATION

$(\$16,800 \times 3) + \$13,551 = \$63,951$