



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

July 2, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 3466

Hitner Investments LLC
c/o Pamela J. Hitner, Registered Agent
94975 Quiet Valley Lane
Myrtle Point, OR 97458

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-WR-2020-044

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 \$36,238 for failing to comply with your NPDES 1200-A general permit and Oregon's water quality standards when your facility at MP 2.2 of Lee Valley Road repeatedly discharged highly turbid stormwater to Gray Creek and you failed to take prompt corrective action.

DEQ issued this penalty because permit requirements and the state's water quality standards are intended to protect aquatic life and human health. Compliance with the terms of your permit and Oregon's water quality standards are essential to protecting the quality of our public waters and the beneficial uses they support, such as aquatic habitat for fish and other organisms. Gray Creek provides critical habitat for threatened Oregon Coast Coho Salmon. The discharge of sediment can degrade water quality and may harm aquatic life, including salmonids, by covering up food sources, abrading fish gills, and smothering fish eggs and invertebrate organisms living in the creek. Your prior efforts to control turbidity leaving the facility were not functioning and resulted in high levels of turbidity entering Gray Creek between October 2019 and April 2020. Moreover, despite being aware of turbid discharges and permit requirements, you failed to take prompt corrective action.

DEQ appreciates your more recent efforts to address the facility's turbid discharges. DEQ considered these efforts when determining the amount of civil penalty.

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.

If you have any questions, please contact Anzie St. Clair at 971-808-7368 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Lisa Reinhart, DOGAMI
Zach Loboy, DEQ, Western Region
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 HITNER INVESTMENTS LLC,) NOTICE OF CIVIL PENALTY
an Oregon limited liability corporation,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ/SW-WR-2020-044

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 468B, ORS Chapter 183, and Oregon Administrative Rules (OAR) Chapter 340, Divisions
10 011, 012, 041, and 045.

11 II. FINDINGS OF FACT

12 1. Respondent is the owner of an open pit gravel mine known as the “Lee Valley Quarry,”
13 located at MP 2.2 Lee Valley Road, in Coos County, Oregon (the Facility). The Facility has a Standard
14 Industrial Classification (SIC) code of 1429 and has approximately a 4-acre disturbance area.

15 2. Stormwater from the Facility collects into settling ponds and discharges through two
16 separate outfalls to Gray Creek, a tributary to the Coquille River. Outfall #1 collects and discharges
17 stormwater from the western side of the Facility, and Outfall #2 from the eastern side. Discharges from
18 Outfall #1 enter Gray Creek approximately 200 linear feet downstream from Outfall #2. In
19 approximately January of 2020, Respondent installed buried pipe in an effort to divert a stream around
20 the western side of its Facility. On February 12, 2020, due to construction and its configuration, the
21 buried pipe conveyed Facility stormwater commingled with the diverted stream water. The buried pipe
22 discharges at the bottom of the hill, commingling with Outfall #1 discharge before flowing under Lee
23 Valley Road through a conveyance pipe and discharging to Gray Creek.

24 3. On May 16, 2014, DEQ assigned Respondent renewal coverage under the National
25 Pollution Discharge Elimination System General Permit Number 1200-A to discharge wastes from its
26 gravel mining activities through two outfalls (the Permit). DEQ’s agent, the Department of Geology
27 and Mineral Industries (DOGAMI) administers the Permit.

1 4. The Permit, effective at all material times, authorizes Respondent to discharge to surface
2 waters from its two outfalls only in conformance with the conditions and limitations of the Permit.

3 5. Schedule A, conditions 7, 8, and 9 of the Permit require Respondent to prepare, implement,
4 and update as necessary a stormwater pollution control plan (SWPCP) that describes how Respondent
5 will meet the technology- and water quality-based requirements described in conditions A.1 through
6 A.6 of the Permit.

7 6. Schedule A, condition 4.a. of the Permit requires Respondent to not cause or contribute to a
8 violation of instream water quality standards as established in OAR 340-041. Pursuant to water quality
9 standards for turbidity, promulgated at OAR 340-041-0036 and in effect at all material times, no more
10 than a ten percent cumulative increase in background turbidities is allowed in waters of the state, with
11 limited exceptions not applicable here.

12 7. If Respondent, DEQ, or DOGAMI determines that Respondent's discharge causes or
13 contributes to an exceedance of water quality standards, Schedule A, condition 4.b. of the Permit
14 requires Respondent to take corrective actions. As a part of those corrective actions, within 30 days of
15 an exceedance, Respondent must submit a report to DEQ or DOGAMI documenting Respondent's
16 investigation of the possible causes, a description of the corrective actions taken, and what SWPCP
17 revisions were necessary. If necessary, Respondent must also submit a revised SWPCP.

18 8. Schedule A, condition 6.a. of the Permit requires Respondent to prevent the discharge of
19 significant amounts of sediment to surface waters or to conveyance systems leading to surface waters.
20 Conditions indicating significant amounts of sediment are leaving the Facility include visibly turbid or
21 sediment-laden flows of stormwater that are not filtered or settled to remove sediments or turbidity.
22 (Permit, Schedule A, condition 6.a.iii).

23 9. If significant amounts of sediment or turbidity are visibly detected in the discharge to
24 conveyance systems, or the discharge in surface waters where more than one-half of the width of the
25 receiving surface waters are affected, then Schedule A, condition 6.b. of the Permit require Respondent
26 to take corrective actions. As a part of those corrective actions, within 24 hours of the event,
27 Respondent must ensure significant amounts of sediment or turbidity are no longer visually detected.

1 Within 30 days of the incident, Respondent must submit to DEQ or DOGAMI a report that describes
2 the noncompliance, the corrective actions taken, and whether SWPCP revisions are necessary.

3 10. On October 17, November 19, 26, 27, 29, December 20, 23, 24, 26, 27, and 30 of 2019, the
4 Facility discharged visibly turbid water from Outfall #1 to the conveyance system and Gray Creek.
5 Respondent documented the turbidity in its daily and weekly inspection reports. After three months of
6 turbid discharges from Outfall #1, Respondent finally purchased a turbidity curtain for “the pond” on or
7 about January 1, 2020. Respondent described no other corrective actions in its inspection reports.

8 11. On December 11 and 12, 2019, the Facility discharged visibly turbid water from Outfall #2
9 to Gray Creek. Respondent documented the turbid discharges but reported no corrective actions in its
10 inspection reports.

11 12. On February 12, 2020, DOGAMI inspected the Facility and observed Facility conditions
12 including stormwater management and its discharge points. During the inspection, DOGAMI collected
13 and analyzed water samples of: (a) the discharge at Outfall #1, (b) the discharge from the buried pipe
14 before it comingled with Outfall #1, (c) Gray Creek just downstream from where comingled water from
15 Outfall#1 and the buried pipe met, (d) the discharge point at Outfall #2, (e) Gray Creek at a location
16 between Outfalls #1 and #2, and (f) Gray Creek just upstream of Outfall #2.

17 13. On February 12, 2020, the Facility discharged visibly turbid water from Outfall #1.
18 Discharge from Outfall #1 measured 356 nephelometric turbidity units (NTU). Discharge from Outfall
19 #2 measured 16.2 NTU. Discharge from the buried pipe measured 86 NTU. Gray Creek turbidity
20 upstream between Outfall #1 and #2 measured 10.9 NTU, and upstream of Outfall #2 measured 11
21 NTU. Gray Creek turbidity immediately downstream of Outfall 1 measured 171 NTU.

22 14. On February 12, 2020, turbidity in Gray Creek immediately below the Facility’s discharges
23 was approximately 1,469% higher than Gray Creek turbidity upstream of discharges from Outfall #1
24 and the buried pipe. On February 12, 2020, turbidity in Respondent’s discharge from Outfall #2 was
25 approximately 47% higher than Gray Creek turbidity upstream of Outfall #2. Respondent’s discharge
26 from Outfall #1 and #2 each caused more than a ten percent increase in turbidity in Gray Creek.

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1 DOGAMI informed Respondent that its discharge caused a water quality standard violation on or
2 before February 18, 2020.

3 15. On February 13, 14, 17, 19, 20, 21, 25, 26, and March 2, 2020, the Facility continued to
4 discharge visibly turbid water from Outfall #1 to the conveyance system and to Gray Creek.
5 Respondent documented the turbid discharges in its inspection reports, but reported no corrective
6 actions.

7 16. On April 1, 2020, the Facility discharged visibly turbid stormwater to Gray Creek.

8 17. Silt, suspended solids, and associated turbidity in stormwater runoff that enter waters are
9 likely to harm resident aquatic life through abrasion and by interfering with respiration, feeding, and
10 reproduction. Suspended solids absorb and concentrate trace metals and other contaminants, increasing
11 their bioavailability to aquatic life. Increases in sediment inputs to waters decrease pH and harm
12 resident aquatic life by covering food sources, eggs, and smothering invertebrate organisms. High
13 turbidity causes light to be scattered and absorbed, reducing light penetration and photosynthetic
14 activity, and increasing water temperatures.

15 18. On October 17, November 19, 26, 27, 29, December 11, 12, 20, 23, 24, 26, 27, and 30 of
16 2019 and February 12, 13, 14, 17, 19, 20, 21, 25, 26, March 2, and April 1 of 2020, Respondent's
17 discharges were likely to (and did) alter the physical, chemical, and biological properties of Gray
18 Creek.

19 19. On April 3, 2020, DOGAMI issued a suspension order to Respondent for violating
20 conditions in its DOGAMI-issued Operating Permit. The suspension order required Respondent to
21 immediately cease discharging Facility stormwater with turbidity above water quality standards, to
22 select and design adequate long-term treatment measures to meet water quality standards, and to
23 describe measures in a revised SWPCP before resuming operations.

24 20. On April 16, 2020, Respondent submitted a corrective action report and sediment reduction
25 plan to DOGAMI, outlining the measures Respondent planned to take to reduce turbidity in
26 Respondent's discharge. Other than Respondent's April 16, 2020 corrective action report, neither
27

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1 DOGAMI nor DEQ received corrective action reports for the discharges described in Section II,
2 paragraphs 10 through 16.

3 21. On April 16, 2020, DOGAMI rescinded its suspension order described in Section II,
4 paragraph 19 above based upon Respondent's submission of the sediment reduction plan and its
5 commitment to submit a revised SWPCP by May 16, 2020.

6 22. On May 15, 2020, Respondent submitted a revised SWPCP to DOGAMI, which DOGAMI
7 approved.

8 III. CONCLUSIONS

9 1. On February 12, 2020, Respondent violated ORS 468B.025(1)(a) and (1)(b), where
10 Respondent discharged wastes into waters of the state and that discharge caused a reduction in the quality
11 of the waters below water quality standards established by the Environmental Quality Commission.
12 Specifically, as described in Section II, paragraphs 12 through 14, Respondent's Facility discharged its
13 wastes through Outfall #1 and #2, where each discharge caused greater than a 10% cumulative increase in
14 the background levels of turbidity in Gray Creek which is a violation of water quality standards pursuant to
15 OAR 340-041-0036. Such activities are expressly prohibited by Schedule A, condition 4.a. of the Permit.
16 Gray Creek is "waters of the state" pursuant to ORS 468B.005(10). Discharge from the Facility is a
17 "waste" pursuant to ORS 468B.005(9). These are Class I violations according to OAR 340-012-
18 0055(1)(b). DEQ hereby assesses Respondent a \$24,238 penalty for these violations.

19 2. On October 17, November 19, 26, 27, 29, December 11, 12, 20, 23, 24, 26, 27, and 30 of
20 2019 and February 13, 14, 17, 19, 20, 21, 25, 26, March 2, and April 1 of 2020, Respondent violated
21 ORS 468B.025(1)(a) by causing pollution to Gray Creek, "waters of the state" pursuant to ORS
22 468B.005(10). Specifically, as described in Section II, paragraphs 10, 11, and 15 through 18,
23 Respondent's Facility discharged visibly turbid water into conveyance systems and through outfalls that
24 entered Gray Creek, which constitutes "pollution" as defined in ORS 468B.005(5). Such activities are
25 expressly prohibited by Schedule A, condition 6.a. of the Permit and are Class I violations according to
26 OAR 340-012-0055(1)(a). DEQ hereby assesses a \$12,000 civil penalty for these violations.

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1 3. Respondent has violated ORS 468B.025(2) by violating Schedule A, condition 4.b.ii. of the
2 Permit by failing to submit a corrective action report and, as necessary, a revised SWPCP to DOGAMI or
3 DEQ within 30 days of the discovery of a water quality standard exceedance, as described in Section II,
4 paragraphs 7, 14, and 20. This is a Class II violation according to OAR 340-012-0055(2)(b). DEQ has not
5 assessed a civil penalty for this violation.

6 4. Respondent has violated ORS 468B.025(2) by violating Schedule A, condition 6.b.ii. of the
7 Permit by failing to submit a corrective action report and, as necessary, a revised SWPCP to DOGMAI or
8 DEQ within 30 days of detecting visible turbidity discharging from the Facility to conveyance systems
9 leading to Gray Creek as described in Section II, paragraphs 9 through 11, 15, 16, and 20. These are Class
10 II violations according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for these
11 violations.

12 IV. ORDER TO PAY CIVIL PENALTY

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

15 1. Pay a total civil penalty of \$36,238. The determination of the civil penalties are attached as
16 Exhibits 1 and 2 and are incorporated as part of this Notice.

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

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

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

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

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

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

19
20
21
22
23 7/2/2020
24 Date


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 1: Violating ORS 468B.025(1)(a) and (1)(b) by causing an exceedance of state water quality standards as prohibited by Schedule A condition 4.a. of the Permit.

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(2)(b)(A)(v) because Respondent increased turbidity by 50 or more NTUs over background.

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

"BP" is the base penalty, which is \$8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent has coverage under an NPDES general 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 an initial value of 422 according to OAR 340-012-0145(2)(a)(C), because Respondent has three Class I violations in case no. WQ/SW-NWR-2018-204 and Respondent has four Class I violations and 828 Class II violations in case no. WQ/SQ-WR-2019-024, where each day of violation is a separate occurrence. According to OAR 340-012-0145(2)(b), this amount is reduced to 10 because the value of P will not exceed 10.

"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 2 according to OAR 340-012-0145(4)(b) and (4)(e) because there were more than one but less than seven occurrences of the violation. On February 12, 2020, Respondent's discharges from Outfalls #1 and #2 each caused more than a ten percent increase in background turbidity of waters of the state. This amounts to two occurrences.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. Respondent was previously cited in case no. WQ/SQ-WR-2019-024 for violating water quality standards at its Facility. On February 4, 2020, DEQ notified Respondent that its inspection reports demonstrated non-compliance with its Permit and that

chronic turbid discharges from the Facility were unacceptable. Nonetheless, Respondent continued to discharge visibly turbid water at concentrations that it knew were likely in violation of state water quality standards and in violation of its Permit. Respondent did not take prompt measures to correct or stop the turbid discharge, including either actions to slow or cease operations or to provide temporary containment of highly turbid stormwater. Respondent's inaction constitutes the conscious objective to continue discharging highly turbid water in violation of its Permit.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. DOGAMI issued Respondent a suspension order on April 3, 2020. In response and as described in the Notice, Respondent then submitted a sediment reduction plan and revised its SWPCP to describe its implementation of a chemical treatment system to reduce turbidity and its installation of a clay liner to reduce water requiring treatment.

"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 \$1,038. This is the amount Respondent gained by delaying spending \$55,206.64 to purchase and install a stormwater chemical treatment system to treat runoff and avoid highly turbid discharges. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$8,000 + [(0.1 \times \$8,000) \times (10 + 0 + 2 + 8 + -1)] + \$1,038$
 $= \$8,000 + (\$800 \times 19) + \$1,038$
 $= \$8,000 + \$15,200 + \$1,038$
 $= \$24,238$

EXHIBIT 2

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

VIOLATION 2: Violating ORS 468B.025(1)(a) by causing pollution as prohibited by Schedule A condition 6.a. of the Permit.

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

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) because Respondent has coverage under an NPDES general 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 an initial value of 422 according to OAR 340-012-0145(2)(a)(C), because Respondent has three Class I violations in case no. WQ/SW-NWR-2018-204 and Respondent has four Class I violations and 828 Class II violations in case no. WQ/SQ-WR-2019-024, where each day of violation is a separate occurrence. According to OAR 340-012-0145(2)(b), this amount is reduced to 10 because the value of P will not exceed 10.

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

"O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent caused pollution on October 17, November 19, 26, 27, 29, December 11, 12, 20, 23, 24, 26, 27, and 30 of 2019 and February 13, 14, 17, 19, 20, 21, 25, 26, March 2, and April 1 of 2020. This amounts to 23 occurrences.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. Respondent was previously cited in case no. WQ/SQ-WR-2019-024 for

failing to control turbidity at its Facility. On February 4, 2020, DEQ notified Respondent that its inspection reports demonstrated non-compliance with its Permit and that chronic turbid discharges from the Facility were unacceptable. Nonetheless, Respondent continued to discharge visibly turbid water at concentrations that it knew were likely in violation of its Permit. Respondent did not take prompt measures to correct or stop the turbid discharge, including either actions to slow or cease operations or to provide temporary containment of highly turbid stormwater. Respondent's inaction constitutes the conscious objective to continue discharging highly turbid water in violation of its Permit.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. DOGAMI issued Respondent a suspension order on April 3, 2020. In response and as described in the Notice, Respondent then submitted a sediment reduction plan and revised its SWPCP to describe its implementation of a chemical treatment system to reduce turbidity and its installation of a clay liner to reduce water requiring treatment.

"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, the "EB" receives a value of 0 as it is already captured in Exhibit 1.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (10 + 0 + 3 + 8 + -1)] + \$0 \\ &= \$4,000 + (\$400 \times 20) + \$0 \\ &= \$4,000 + \$8,000 + \$0 \\ &= \$12,000 \end{aligned}$$