



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

August 19, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5048

K&E Excavating, Inc.
c/o Kerry Kuenzi
3871 Langley St. SE
Salem, OR 97317

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-ER-2022-051

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued K&E Excavating, Inc. a civil penalty of \$57,387 for violating multiple provisions of Oregon's water pollution control laws at Buckland Mine located near Bridgeport, Oregon. Specifically, K&E Excavating violated the technology based effluent limit established in the mine's permit for pH fourteen times; discharged wastewater into waters of the state without a permit; discharged stormwater into waters of the state without a permit; made false representations on documents required to be submitted to DEQ as part of the permit renewal process; and modified its wastewater disposal system without first obtaining approval from DEQ.

DEQ issued this penalty because wastewater and stormwater from mining operations can introduce pollutants—including, but not limited to, turbidity, metals, solids, and increased pH levels—to nearby waterways causing harm to aquatic organisms. Buckland Mine has been discharging uncontrolled wastewater and stormwater to Clarks Creek, which is impaired for fish, aquatic life, and temperature. Additionally, K&E Excavating's failure to submit accurate information to DEQ during the permit renewal process has not only created an administrative burden for the agency but has eroded DEQ's ability to timely draft an accurate and environmentally protective permit. The penalty was exacerbated by K&E Excavating's prior water quality violations at High Bar Mine (Case No. WQ/P-ER-2021-004).

Section IV.2. of the enclosed Notice is an order requiring K&E Excavating to cease all wastewater discharges, apply for 1200-Z Permit coverage, identify and map all waters of the state within the mining boundary and immediate vicinity using the definition of "waters of the state" set forth in ORS 468B.005(10), and update and submit to DEQ for approval an accurate Facility Plan. \$19,984 of the civil penalty represents the estimated economic benefit K&E Excavating gained by avoiding application fees, annual fees, monitoring expenses, and inspection fees over the two years it has operated the Buckland Mine without the necessary permits.

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 Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Scott Kuenzi, K&E Excavating, Inc. (via email: skuenzi@keex.net)
James Swenson, K&E Excavating, Inc. (via email: jims@keex.net)
Michael Kennedy, DEQ NWR
Anna Morgan-Hayes, DEQ ER
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 K&E EXCAVATING, INC.) ASSESSMENT AND ORDER
5 an Oregon company,)
6 Respondent.) CASE NO. WQ/I-ER-2022-075

7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

13 1. Respondent is the owner and operator of the Buckland Mine located on Clarks Creek
14 Road, approximately three miles east of Bridgeport, OR (the Facility). The mine is divided into two
15 sites: Site 1 (the eastern unit) is located on Tax Lot 3100, Sections 27 and 28, Township 12S, Range
16 41E south of Clarks Creek Road; Site 2 (the western unit) is located on Tax Lot 3100, Sections 28 and
17 29, Township 12S, Range 41E north of Clarks Creek Road. Both units are located on the right bank of
18 Clarks Creek.

19 2. Clarks Creek is a “water of the state,” pursuant to ORS 468B.005(10). Clarks Creek is
20 impaired for fish, aquatic life, and temperature.

21 3. The Facility mines alluvial deposits for extraction of placer gold under an operation
22 permit (#01-0192) from the Oregon Department of Geology and Mineral Industries (DOGAMI).

23 4. On February 23, 2012, DEQ issued Water Pollution Control Facilities (WPCF) Permit
24 #103019 (the Permit) to Western Mine Development, LLC for the Facility. The Permit expired on
25 December 31, 2021.

26 5. On June 16, 2016, the Permit was transferred from Western Mine Development, LLC to
27 316 Mining, LLC.

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1 6. On January 16, 2018, the Permit was transferred from 316 Mining, LLC back to
2 Western Mine Development, LLC.

3 7. On June 26, 2020, the Permit was transferred from Western Mine Development, LLC to
4 Respondent. Upon transfer of the Permit to Respondent, the legal responsibilities and conditions of the
5 Permit were assumed by Respondent.

6 8. On December 29, 2021, Respondent submitted an application to renew the Permit. The
7 Permit has been administratively extended since that date.

8 9. Site 2 (the western unit) contains the processing unit for extracting gold from the mined
9 alluvium. Process wastewater is managed through three settling ponds. As set forth in the Permit,
10 wastewater from the gold extraction unit is managed through a closed-loop system. Wastewater is
11 discharged first into unlined Settling Pond 1; from there it is discharged to lined Settling Pond 2; then
12 to the recently constructed lined Settling Pond 3 before it is routed back to the extraction processing
13 unit for reuse. Settling Ponds 2 and 3 are lined with native clay and bentonite.

14 10. Pursuant to Schedule B of the Permit, Respondent must monitor its process wastewater
15 in each pond and report the monitoring results to DEQ each calendar quarter.

16 11. Schedule A.8 of the Permit sets a technology-based effluent limit (TBEL) for pH that
17 requires pH levels in each pond to be maintained between 6.0 and 9.0 standard units (s.u.).

18 12. On March 31, 2022, DEQ reviewed the discharge monitoring reports (DMRs) submitted
19 by Respondent for the third and fourth quarters of 2021, which reported wastewater samples taken at
20 the Facility between August 16, 2021, and December 8, 2021. During its review, DEQ identified the
21 following 14 exceedances of the pH TBEL set forth in Schedule A.8 of the Permit:

- 22 a. August 16, 2021: Respondent reported a daily pH value of 3.1 s.u. (a 2.9 s.u.
23 exceedance);
- 24 b. August 17, 2021: Respondent reported a daily pH value of 4.1 s.u. (a 1.9 s.u.
25 exceedance);
- 26 c. August 23, 2021: Respondent reported a daily pH value of 4.1 s.u. (a 1.9 s.u.
27 exceedance);

- d. September 7, 2021: Respondent reported a daily pH value of 5.5 s.u. (a 0.5 s.u. exceedance);
- e. September 8, 2021: Respondent reported a daily pH value of 5.1 s.u. (a 0.9 s.u. exceedance);
- f. September 9, 2021: Respondent reported a daily pH value of 5.2 s.u. (a 0.8 s.u. exceedance);
- g. September 10, 2021: Respondent reported a daily pH value of 5.9 s.u. (a 0.1 s.u. exceedance);
- h. September 20, 2021: Respondent reported a daily pH value of 5.2 s.u. (a 0.8 s.u. exceedance);
- i. October 25, 2021: Respondent reported a daily pH value of 5.9 s.u. (a 0.1 s.u. exceedance);
- j. November 1, 2021: Respondent reported a daily pH value of 4.6 s.u. (a 1.4 s.u. exceedance);
- k. November 6, 2021: Respondent reported a daily pH value of 4.6 s.u. (a 1.4 s.u. exceedance);
- l. November 15, 2021: Respondent reported a daily pH value of 5.6 s.u. (a 0.4 s.u. exceedance);
- m. November 24, 2021: Respondent reported a daily pH value of 4.7 s.u. (a 1.3 s.u. exceedance);
- n. November 30, 2021: Respondent reported a daily pH value of 5.7 s.u. (a 0.3 s.u. exceedance).

13. On January 21, 2022, a representative for Respondent, Mr. Swenson, submitted a proposal to construct Settling Pond 3. The Permit had always contemplated that Settling Pond 3 would be included as part of the Facility's process wastewater system, though the pond was not constructed until Spring 2022. Mr. Swenson provided a map showing the planned location of the proposed pond. The map referenced only the three settlement ponds for which Respondent is permitted as part of a

1 closed-loop system, and made no mention of a pump that would discharge overflow water from Settling
2 Pond 3 to another nearby pond.

3 14. On January 24, 2022, Mr. Swenson provided an aerial photo, engineering design and
4 narrative for the proposed Settling Pond 3. Mr. Swenson noted that two additional ponds visible in the
5 aerial photo were “test sites dug by the previous mining company.” None of the documents submitted
6 described these ponds as being part of the Facility’s process wastewater system, nor did they describe a
7 pump that would discharge overflow water from Settling Pond 3 to the additional ponds.

8 15. On February 24, 2022, Mr. Swenson provided a modified facility plan to DEQ that
9 continued to describe a closed-loop, three settling pond system. The plan did not describe a pump that
10 would discharge overflow water from Settling Pond 3 or the inclusion of additional ponds as part of the
11 process wastewater system.

12 16. On March 3, 2022, Mr. Swenson provided a revised Facility Plan to DEQ that again
13 described a closed-loop, three settling pond system. The plan did not describe a pump that would
14 discharge overflow water from Settling Pond 3 or the inclusion of additional ponds as part of the
15 process wastewater system.

16 17. On March 12, 2022, Mr. Swenson provided an updated engineering report for the 2022
17 operational year for DEQ’s approval. DEQ approved the report, based on the closed-loop, three-pond
18 system described in the facility plan that was submitted by Mr. Swenson on March 3, 2022.

19 18. On April 18, 2022, DEQ provided Respondent with a draft permit fact sheet for
20 Respondent’s review. The draft permit was based on the closed-loop, three-pond system described in
21 the March 3, 2022, facility plan provided by Mr. Swenson.

22 19. On April 29, 2022, Respondent provided DEQ with comments on the draft permit.
23 Respondent did not notify DEQ that a pump had been installed in Settling Pond 3 to discharge overflow
24 water.

25 20. OAR 340-45-0015(5)(d) prohibits any person from making false statements,
26 representations, or certifications in any required documents submitted to DEQ, including permit
27 applications.

1 21. Pursuant to OAR 340-045-0010(32), a WPCF Permit is a permit to construct and operate
2 a disposal system with no discharge to navigable waters.

3 22. Schedule A.2 of the Permit prohibits the direct discharge of wastewater to surface
4 waters.

5 23. Schedule A.3 of the Permit prohibits the discharge of stormwater. Under the terms of the
6 Permit, all stormwater runoff from the mining operation must be managed on site by seepage and
7 evaporation.

8 24. Pursuant to ORS 468B.050(1)(a), no person may discharge any wastes into a water of
9 the state from any industrial or commercial establishment or activity or any disposal system without a
10 permit.

11 25. Pursuant to OAR 340-045-0015(2) a person must obtain a valid National Pollutant
12 Discharge Elimination System (NPDES) permit prior to discharging pollutants or stormwater into
13 navigable waters.

14 26. "Pollutant" is defined by OAR 340-045-0010(18) as "dredged spoil, solid waste,
15 incinerator residue, sewage, garbage, sewerage sludge, munitions, chemical wastes, biological
16 materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and
17 industrial municipal, and agricultural waste discharged into water."

18 27. On May 11, 2022, DEQ conducted an inspection of the Facility.

19 28. At the time of the inspection, there were two additional ponds at Site 2, located south of
20 the process wastewater ponds described in paragraph 9 above, that are not part of the permitted Facility:
21 a "western pond" and an eastern "infiltration pond." Neither Respondent's renewal application
22 materials nor preliminary engineering reports proposed that these ponds be included as part of the
23 Facility's process wastewater system.

24 29. The "western pond" is located immediately adjacent to a mine haul road that leads to the
25 extraction unit. This pond is a water of the state pursuant to ORS 468B.005(10) because it is
26 groundwater fed and has a surface connection to Clarks Creek via a conveyance/stream channel.

27 30. The eastern "infiltration pond" is also a water of the state pursuant to ORS

1 468B.005(10) due to its groundwater connection.

2 31. At the time of the inspection, a pipe was actively pumping turbid water into the
3 “infiltration pond.” A Facility representative on site indicated that the pipe was pumping overflow
4 water from Settling Pond 3. Evidence of massive stormwater discharges into the “infiltration pond”
5 from multiple locations was also apparent. No erosion or sediment controls were in place. At least one
6 fish was observed attempting to swim in the turbid water.

7 32. At the time of the inspection, turbid water was flowing into the “western pond” from the
8 “infiltration pond” through a constructed trench, causing a turbidity plume in the “western pond.” There
9 were rills and gullies indicating past stormwater discharges into the “western pond.” No erosion or
10 sediment controls were in place. Water was discharging from the “western pond” through a series of
11 wetlands, channels, and other conveyances associated with Clarks Creek before eventually discharging
12 to Clarks Creek.

13 33. At the time of the inspection, mining activity at Site 1 (the eastern unit) was occurring
14 immediately adjacent to the wetland area abutting Clarks Creek. Respondent had constructed an
15 incomplete stormwater intercept trench between the mining operation and the wetlands. No other
16 erosion or sediment controls were apparent that would prevent stormwater discharges to Clarks Creek
17 and its associated wetlands.

18 34. OAR 345-045-0033(6) requires any person operating a discharge source or conducting
19 an activity described in a general permit to apply for coverage under that general permit.

20 35. Certain industrial facilities that have the potential to discharge stormwater must seek
21 coverage under NPDES General Permit Number 1200-Z for Industrial Stormwater (1200-Z Permit)
22 which authorizes registrants to discharge stormwater from industrial facilities to waters of the state
23 during rain and snowmelt events. DEQ most recently renewed the 1200-Z Permit on March 25, 2021.

24 36. Among the facilities eligible for coverage under the 1200-Z Permit are facilities with
25 primary Standard Industrial Classification (SIC) codes beginning with 10 (Metal Mining).

26 37. The Facility is identified by SIC code 1041.

27 38. Schedule D.1 of the Permit requires Respondent to submit detailed plans and

1 specifications to DEQ for approval prior to constructing or modifying the Facility's wastewater
2 management, treatment or disposal facilities. Schedule D.4.a. of the Permit requires Respondent to
3 notify DEQ's Eastern Region office of any changes in operation prior to the change being
4 implemented. Pursuant to Schedule D.4.a. of the Permit, non-approved changes are a violation of the
5 Permit.

6 39. Pursuant to Schedule F, Section D.1 of the Permit, Respondent may not modify its
7 disposal system until plans and specifications are submitted to and approved in writing by DEQ. All
8 modifications must be in strict conformance with DEQ's written approval of the plans.

9 40. Pursuant to Schedule F, Section A.1, failure to comply with any permit condition is a
10 violation of Oregon Revised Statutes (ORS) 468B.025.

11 41. ORS 468B.025(2) prohibits any person from violating the conditions of any waste
12 discharge permit issued under ORS 468B.050.

13 III. CONCLUSIONS

14 1. Respondent violated ORS 468B.025(2) and Schedule A.8 of the Permit by exceeding the
15 TBEL for pH set forth in the Permit fourteen times between August 16, 2021, and December 8, 2021.
16 Respondent's TBEL violations include one Class I violation according to OAR 340-012-0055(1)(k)(B),
17 where the reported pH value was outside the permitted pH range by more than 2 pH units; five Class II
18 violations according to OAR 340-012-0055(2)(a)(B), where the reported pH value was outside the
19 permitted pH range by more than 1 pH unit but less than or equal to 2 pH units; and eight Class III
20 violations according to OAR 340-012-0055(3)(b)(B), where the reported pH value was outside the
21 permitted pH range by 1 pH unit or less. DEQ has chosen to assess a civil penalty only for the Class I
22 violation, and hereby assesses a \$5,400 civil penalty for this violation.

23 2. Respondent violated ORS 468B.050(1)(a) by discharging wastewater into waters of the state
24 from its mining operation without a permit. Specifically, Respondent has been pumping overflow process
25 wastewater from Settling Pond 3 to the "infiltration pond." Additionally, Respondent constructed a new
26 outlet for the discharge of wastes to a water of the state in the form of a trench dug to drain excess
27 wastewater from the "infiltration pond" to the "western pond." Water flows from the "western pond" to

1 Clarks Creek through the creek's associated wetlands, channels, and other conveyances. The "infiltration
2 pond," "western pond," and Clark's Creek are all waters of the state pursuant to ORS 468B.005(10). This
3 is a Class I violation pursuant to OAR 340-012-0055(1)(c). DEQ hereby assesses a \$16,800 civil penalty
4 for this violation.

5 3. Respondent violated ORS 468B.050(1)(a) by discharging stormwater to waters of the state
6 from its mining operation without a permit. Specifically, Respondent has been discharging stormwater into
7 the "infiltration pond," "western pond," and Clarks Creek as evidenced by rills, gullies and other signs of
8 erosion caused by stormwater flowing into those waters of the state. This is a Class I violation pursuant to
9 OAR 340-012-0055(1)(c). DEQ hereby assesses a \$23,187 civil penalty for this violation.

10 4. Respondent violated OAR 340-045-0015(5)(d) by making false representations on documents
11 required to be submitted to DEQ as part of the permit renewal process. Specifically, Respondent submitted
12 multiple facility plans to DEQ that failed to describe Respondent's use of a pump to discharge overflow
13 wastewater from Settling Pond 3 to the "infiltration pond," the "western pond," and ultimately Clarks
14 Creek, as part of its current process wastewater system. Respondent's failure to disclose the inclusion of
15 the pump and the use of these ponds in its process wastewater system masked a violation (as described in
16 Section III.5 below) and caused DEQ to misinterpret a substantive fact that impacted the permit renewal
17 process (i.e., that Respondent's wastewater system is not a closed system but in fact discharges to waters
18 of the state). This is a Class I violation pursuant to OAR 340-012-0053(b). DEQ hereby assesses a \$12,000
19 civil penalty for this violation.

20 5. Respondent violated ORS 468B.050(1)(b) by modifying its disposal system without first
21 obtaining approval from DEQ. Specifically, Respondent's Permit allows it to operate a three pond, closed-
22 loop disposal system. Respondent modified its disposal system to include a pump from Settling Pond 3 to
23 the "infiltration pond," as well as a trench that allows wastewater to discharge from the "infiltration pond"
24 to the "western pond," and ultimately to Clarks Creek. None of these modifications were approved by
25 DEQ prior to being implemented, nor would they have been approved because these changes make the
26 Facility ineligible for a WPCF permit. This is a Class I violation pursuant to OAR 340-012-0055(1)(g).
27 DEQ has not assessed a civil penalty for this violation.

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 \$57,387. The determinations of the civil penalties are attached as
5 Exhibits 1–4 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. Within 30 days of this order becoming final by operation of law or on appeal, written and
10 photo documentation demonstrating Respondent's compliance with the following must be sent to Anna
11 Morgan-Hayes at Anna.MORGAN-HAYES@deq.oregon.gov:

- 12 a. Respondent must cease all wastewater discharges;
- 13 b. Respondent must apply for 1200-Z Permit coverage;
- 14 c. Respondent must identify and map all waters of the state within the mining boundary
15 and immediate vicinity using the definition of waters of the state set forth in ORS
16 468B.005(10);
- 17 d. Update and submit to DEQ for approval a Facility Plan, including all items required by
18 Schedule D, Condition 8 of the Permit. The plan must accurately describe the proposed
19 treatment practices and identify how the permittee will eliminate wastewater discharges
20 to waters of the state.

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

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

1 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
2 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
3 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
4 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
5 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
6 you may represent yourself. If you are a corporation, partnership, limited liability company,
7 unincorporated association, trust or government body, you must be represented by an attorney or a duly
8 authorized representative, as set forth in OAR 137-003-0555.

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

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

20
21
22
23 8/19/2022
24 Date


23 
24 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: Respondent violated ORS 468B.025(2) by exceeding the pH technology based effluent limits (TBELs) in its WPCF permit by more than 2 pH units.

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

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving pond.

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 I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(ii) because Respondent holds a Tier 2 industrial source WPCF Permit.

"P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(b) because Respondent has 85 Class I equivalent violations stemming from Case No. WQ/P-ER-2021-004.

"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 constitutes a separate occurrence. Respondent exceeded its applicable TBEL on the following dates:

- Aug. 16, 2021: pH limit exceeded by 2.9 units (Class I)
- Aug. 17, 2021: pH limit exceeded by 1.9 units (Class II)
- Aug. 23, 2021: pH limit exceeded by 1.9 units (Class II)
- Sept. 7, 2021: pH limit exceeded by 0.5 units (Class III)
- Sept. 8, 2021: pH limit exceeded by 0.9 units (Class III)
- Sept. 9, 2021: pH limit exceeded by 0.8 units (Class III)
- Sept. 10, 2021: pH limit exceeded by 0.1 units (Class III)
- Sept. 20, 2021: pH limit exceeded by 0.8 units (Class III)
- Oct. 25, 2021: pH limit exceeded by 0.1 units (Class III)

- Nov. 1, 2021: pH limit exceeded by 1.4 units (Class II)
- Nov. 6, 2021: pH limit exceeded by 1.4 units (Class II)
- Nov. 15, 2021: pH limit exceeded by 0.4 units (Class III)
- Nov. 24, 2021: pH limit exceeded by 1.3 units (Class II)
- Nov. 30, 2021: pH limit exceeded by 0.3 units (Class III)

Therefore, there were 14 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. The pH limits are an express condition of Respondent's permit. By failing to take necessary actions to comply with the limit, Respondent failed to exercise reasonable care to avoid the foreseeable risk a permit violation would occur.

"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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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

$$= \$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 3 + 4 + 0)] + \$0$$

$$= \$2,000 + (\$200 \times 17) + \$0$$

$$= \$2,000 + \$3,400 + \$0$$

$$= \$5,400$$

EXHIBIT 2

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

VIOLATION 2: Respondent violated ORS 468B.050(1)(a) by discharging wastewater into waters of the state with a permit.

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 \$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)(D) because Respondent does not have a National Pollutant Discharge Elimination System (NPDES) permit.

"P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(b) because Respondent has 85 Class I equivalent violations stemming from Case No. WQ/P-ER-2021-004.

"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. Each day of violation is a separate occurrence. Respondent discharged wastewater to waters of the state from at least May 11, 2022, up through the date of this Order.

"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. Respondent's WPCF Permit expressly prohibits it from discharging wastewater to surface waters. By discharging excess wastewater to the "infiltration pond," "western pond," and ultimately Clarks Creek, Respondent failed to take reasonable care to avoid the foreseeable risk that a permit violation would occur.

"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 there is insufficient information on which to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (10 + 0 + 4 + 4 + 0)] + \$0 \\ &= \$6,000 + (\$600 \times 18) + \$0 \\ &= \$6,000 + \$10,800 + \$0 \\ &= \$16,800 \end{aligned}$$

EXHIBIT 3

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

VIOLATION 3: Respondent violated ORS 468B.050(1)(a) by discharging stormwater into waters of the state with a permit.

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) because Respondent should have applied for coverage under the National Pollutant Discharge Elimination (NPDES) 1200-Z General Permit.

"P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(b) because Respondent has 85 Class I equivalent violations stemming from Case No. WQ/P-ER-2021-004.

"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 is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).

"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. Respondent's WPCF Permit expressly prohibits it from discharging stormwater. By failing to install erosion and sediment controls to ensure all stormwater is managed on site by seepage and evaporation, Respondent failed to take reasonable care to avoid the foreseeable risk that a permit violation would occur.

"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 there is insufficient information on which to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 \$13,587 because Respondent avoided spending a total of \$19,984 as follows: \$2,224 on the initial permit application fee; \$6,000 in consulting expenses to develop a Stormwater Pollution Control Plan (SWPCP); \$5,206 for monitoring and inspection costs during the 2020/21 storm year; \$1,348 for the 2021/22 annual permit fee; and \$5,206 for monitoring and inspection costs during the 2021/22 storm year. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (10 + 0 + 0 + 4 + 0)] + \$13,587 \\ &= \$4,000 + (\$400 \times 14) + \$13,587 \\ &= \$4,000 + \$5,600 + \$13,587 \\ &= \$23,187 \end{aligned}$$

EXHIBIT 4

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

VIOLATION 1: Respondent violated OAR 340-45-0015(5)(d) by making false representations on documents required to be submitted to DEQ as part of the permit renewal process.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(ii) because Respondent holds a Tier 2 industrial source WPCF Permit.

"P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(b) because Respondent has 85 Class I equivalent violations stemming from Case No. WQ/P-ER-2021-004.

"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) because there was more than one but less than seven occurrences of the violation. On six separate occasions, Respondent submitted permit renewal application materials to DEQ that falsely described the Facility's process wastewater as being a completely closed-loop system—the materials submitted failed to disclose that overflow water would be pumped out of Settling Pond 3 to the nearby "infiltration" pond. Specifically, Respondent's representative submitted false and misleading information to DEQ on: January 21, 2022; January 24, 2022; February 24, 2022, March 3, 2022; March 12, 2022; and April 29, 2022.

- "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. By repeatedly submitting information to DEQ as part of the permit renewal process that obscured the fact that the Facility was discharging wastewater to waters of the state, Respondent consciously disregarded a substantial and unjustifiable risk that DEQ would be misled about the Facility's eligibility for coverage under a WPCF 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)(f) because there is insufficient information on which to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).
- "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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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

$$= \$4,000 + [(0.1 \times \$4,000) \times (10 + 0 + 2 + 8 + 0)] + \$0$$

$$= \$4,000 + [\$400 \times 20] + \$0$$

$$= \$4,000 + \$8,000 + \$0$$

$$= \$12,000$$