



# Oregon

Kate Brown, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232  
(503) 229-5382  
FAX (503) 229-5787  
TTY 711

August 28, 2018

CERTIFIED MAIL: 70160750000034702718

International Paper Company  
c/o C T Corporation System, Registered Agent  
780 Commercial St., Suite 100  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SP-WR-2018-084

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a total civil penalty of \$20,800 for spilling or releasing hydraulic oil into the McKenzie River, waters of the state, from your paper mill in Springfield. The release occurred on March 12, 2018, and a sheen was observed in the river on March 13-14, 2018. You also failed to immediately report the spill to the Oregon Emergency Response System, which caused a delay in the spill response and cleanup effort.

DEQ issued this penalty because spilling oil into waters of the state is a serious violation of Oregon environmental law. The introduction of oil or petroleum products into state waters has negative environmental impacts on aquatic life and ecosystems. DEQ is concerned with the adverse impacts and cumulative effects that numerous spills of this kind have on the water quality of the McKenzie River and on Oregon's water quality in general. Once a spill has occurred, immediate reporting is necessary to ensure a prompt and effective response.

DEQ appreciates your efforts to minimize the impacts of the violations by cleaning up the spilled oil. 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](mailto: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/administrative-rules.aspx> or by calling the number below.

If you have any questions, please contact DEQ Environmental Law Specialist Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Kally Hodgson, Mill Manager, International Paper, 801 42<sup>nd</sup> St., Springfield, OR 97478  
Geoff Brown, Eugene Office, DEQ  
Shaumae Hall, Accounting, DEQ  
John Koestler, WQ, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 INTERNATIONAL PAPER COMPANY, ) ASSESSMENT AND ORDER  
a New York corporation, )  
5 Respondent. ) NO. WQ/SP-WR-2018-084  
6

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty  
9 Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through  
10 468.140, ORS Chapters 183, 466 and 468B, and Oregon Administrative Rules (OAR) Chapter 340,  
11 Divisions 011, 012, and 142.

12 II. FINDINGS OF FACT

13 1. Respondent operates a paper mill located at 801 North 42<sup>nd</sup> Street in Springfield,  
14 Lane County, Oregon (the Facility).

15 2. On March 12, 2018 at around 9:00 pm, Respondent spilled or released approximately  
16 1,000 gallons of hydraulic oil from a broken hydraulic line at the Facility. Some of the hydraulic  
17 oil was captured by the wastewater treatment system at the Facility, and the remainder flowed  
18 into a catch basin that discharges into a mixing box and then to a concrete pipe which discharges  
19 into the McKenzie River two miles downstream from the Facility.

20 3. On or about March 13, 2018, at least 95 gallons of hydraulic oil entered the  
21 McKenzie River from the Facility's outfall diffuser.

22 4. On March 13, 2018, there was a sheen on the McKenzie River, which was observed  
23 approximately 7.5 miles downstream from the Facility's outfall diffuser. A sheen was observed  
24 on the river through March 14, 2018.

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1 5. On March 13, 2018 at around 1:00 or 2:00 pm, a fisherman on the McKenzie River  
2 near the Harvest Lane boat landing approximately 2.5 miles downstream of the outfall noticed  
3 the oil sheen and notified Jeffrey Ziller at the Oregon Department of Fish and Wildlife. Mr.  
4 Ziller immediately notified Respondent of the sheen near its outfall.

5 6. Any quantity of oil spilled into waters of the state that would produce a visible film,  
6 sheen or oily slick is a “reportable quantity” as defined OAR 340-142-0050(1)(b).

7 7. On March 13, 2018, after receiving reports of a gasoline or oil spill in the McKenzie  
8 River, Lane County Sherriff’s Office investigated the sheen and reported it to the Oregon Office  
9 of Emergency Management’s Emergency Response System (OERS) at 5:50 pm.

10 8. After receiving the report from OERS, DEQ contacted Respondent at around 7:00 pm  
11 and advised it of the duty to report the spill.

12 9. Respondent reported the spill to OERS at 7:26 pm on March 13, 2018.

13 10. Hydraulic oil is a petroleum product, and is defined as “oil” under ORS 466.605(8).

14 11. The McKenzie River is “waters of the state” as defined in ORS 468B.005(10).

15 III. CONCLUSIONS

16 1. On or about March 13, 2018, Respondent caused pollution by spilling or releasing oil  
17 which entered waters of the state, in violation of ORS 468B.025(1)(a), as described in Section II,  
18 Paragraphs 1-4 and 10-11 above. This is a Class I violation pursuant to OAR 340-012-  
19 0081(1)(c). DEQ hereby assesses a \$14,400 civil penalty for this violation.

20 2. On March 13, 2018, Respondent violated ORS 466.635 by failing to immediately notify  
21 OERS of a spill or release of oil as soon as it knew the spill or release was a reportable quantity, as  
22 described in Section II, Paragraphs 1-11 above. This is a Class I violation according to OAR 340-  
23 012-0081(1)(b). DEQ hereby assesses a \$6,400 civil penalty for this violation.

24 IV. ORDER TO PAY CIVIL PENALTY

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

27 ///

1 Pay a total civil penalty of \$20,800. The determinations of the civil penalties are attached as  
2 Exhibit Nos. 1 and 2, and are incorporated as part of this Notice.

3 If you do not file a request for hearing as set forth in Section V below, your check or money  
4 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ,**  
5 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.** Once you  
6 pay the penalty, the Findings of Fact, Conclusions and Order become final.

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

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

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

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

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8  
9 8/28/18

10 Date



11 Kieran O'Donnell, Manager  
12 Office of Compliance and Enforcement  
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EXHIBIT 1

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

- VIOLATION 1: Causing pollution by spilling or releasing oil which entered waters of the state, in violation of ORS 468B.025(1)(a).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0081(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)(K)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(K) because Respondent violated an oil and hazardous material spill and release statute, rule, or related order, is not a person listed in OAR 340-012-0140(2)(a)(N), and the violation occurred during a commercial activity. Pursuant to OAR 340-012-0155(1)(b), because Respondent negligently caused or permitted the discharge of oil into waters of the state, DEQ will add the values set forth in 340-012-0155(1)(b)(B) to determine the multiplier for the base penalty. The violation was caused negligently, therefore a value of 2 is assigned according to 340-012-0155(1)(b)(B)(i). The violation impacted an area of particular environmental value, because the McKenzie River is designated Critical Habitat for both Willamette Spring Chinook salmon and Willamette Bull Trout, a recreation area, and a significant fishery resource, which are included in the definition of "sensitive environment" under OAR 340-122-0115(50), therefore a value of 1 is assigned according to 340-012-0155(1)(b)(B)(iv). This results in a base penalty of \$12,000.
- "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 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "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 no prior history.
- "O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation. Each day of violation constitutes a separate occurrence. Respondent spilled or released hydraulic oil that entered the McKenzie river on one day, March 13, 2018.

- "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. An equipment malfunction at the Facility caused the initial release of approximately 1,000 gallons of hydraulic oil. Because Respondent did not have the drainage system at the Facility properly mapped, Respondent's employees assumed that all of the released oil was captured in the Facility's wastewater treatment system. However, at least gallons of oil flowed into the Facility's clean water sewer and through an outfall pipe into the McKenzie River. Although Respondent checked the river near the outfall in the late morning on March 13, 2018, it did not take any measures to boom the river near the outfall pipe in case oil was discharged. If Respondent had thoroughly and immediately investigated and responded to the initial release, it could have prevented the oil from reaching the McKenzie River or at least contained the spill. Additionally, if Respondent had reported the initial release to OERS, DEQ and other agencies would have been notified earlier and could have provided assistance. By failing to take these measures, Respondent failed to take reasonable care to avoid a foreseeable risk that it would spill oil into the McKenzie River.
- "C" is Respondent's efforts to correct the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to minimize the effects of the violation. Respondent knew about the spill around 2:00 pm on March 13, 2018 or earlier, but it did not initiate response measures until approximately 7:00 pm that evening and did not report the spill to OERS until almost 7:30 pm that evening, which hampered cleanup efforts since DEQ was not able to mount a response until the next morning, and likely resulted in less oil being captured or contained, thereby increasing the risk of harm to the environment. Respondent's efforts to minimize the effects of the violation included deploying boom in the river, cleaning up oil residue from the river and its banks, conducting river surveys and water quality monitoring, and cleaning the effluent pipe and wastewater treatment system at the Facility.
- "EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 does not have sufficient information on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 0 + 4 - 2)] + \$0$   
 $= \$12,000 + [\$1,200 \times 2] + \$0$   
 $= \$12,000 + \$2,400 + \$0$   
 $= \$14,400$



## EXHIBIT 2

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

VIOLATION 2: Failing to immediately notify OERS of a spill or release of oil as soon as Respondent knew the spill or release was a reportable quantity, in violation of ORS 466.635

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0081(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)(K)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(K) because Respondent violated an oil and hazardous material spill and release statute, rule, or related order, is not a person listed in OAR 340-012-0140(2)(a)(N), and the violation occurred during a commercial activity.

"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 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"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 no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation. Respondent should have reported the spill immediately after learning it had caused a sheen in the river, at around 2:00 p.m. or earlier on March 13, 2018.

"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 about the release at around 9:00 pm on March 12, 2018, and knew that it had reached the McKenzie River at around 2:00 pm or earlier on March 13, 2018. Respondent's Spill Prevention, Control and Countermeasure Plan specifically states: "If required by law, the operator will contact the National Response Center (NRC) and state and local emergency contacts listed in Section VI.I." The telephone number for OERS is listed as the first state agency contact. Additionally, DEQ contacted Respondent at around 7:00 pm and advised it of the duty to report the spill. Despite these circumstances, Respondent did not report

the spill to OERS until 7:26 pm on March 13, 2018. Respondent's delay in reporting the spill hampered cleanup efforts since DEQ was not able to mount a response until the next morning, and likely resulted in less oil being captured or contained, thereby increasing the risk of harm to the environment. Disregarding this risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"C" is Respondent's efforts to correct the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to minimize the effects of the violation. Respondent eventually reported the spill to OERS at 7:26 pm on March 13, 2018, which was the day after the release occurred and about 6 and ½ hours after the sheen was observed in the McKenzie River.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 does not have sufficient information on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 0 + 8 - 2)] + \$0  
= \$4,000 + [\$400 x 6] + \$0  
= \$4,000 + \$2,400 + \$0  
= \$6,400