



# 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

November 3, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5376

Andrew Bornstein  
Bornstein Seafoods, Inc.  
P.O. Box 188  
Bellingham, WA 98227

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/I-NWR-2022-103

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Bornstein Seafoods, Inc. a civil penalty of \$32,000 for violating the technology-based effluent limits set forth in the National Pollutant Discharge Elimination Permit (NPDES) Seafood Processing General Permit No. 900-J (the Permit) at its seafood processing facility located at 9 Portway Drive, in Astoria. Specifically, from April 2022 through July 2022, Bornstein Seafoods exceeded the effluent limitations set forth in its permit a total of 41 times, 32 of which were Class I violations.

DEQ issued this penalty because Bornstein continues to have serious, repeated, and ongoing issues meeting the applicable effluent limitations. Dating back to 2016, Bornstein repeatedly violated the interim effluent limits in a previously applicable Mutual Agreement and Final Order and now it has failed to meet the conditions of the Permit. Compliance with the effluent limitations set forth in the Permit is essential in protecting water quality. Bornstein must comply with the state and federal requirements that protect water quality. However, DEQ remains committed to work with Bornstein to find near- and long-term compliance solutions. At any time, Bornstein may apply for coverage under an individual NPDES permit.

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/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: Suzanne Lacampagne, Miller Nash LLP, [suzanne.lacampagne@millernash.com](mailto:suzanne.lacampagne@millernash.com)  
Randall Bailey, DEQ NWR  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:  
4 BORNSTEIN SEAFOODS, INC.

5 Respondent.

) NOTICE OF CIVIL PENALTY  
) ASSESSMENT AND ORDER

) CASE NO. WQ/I-NWR-2022-103  
)

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, and 045.

11 II. FINDINGS OF FACT

12 1. Respondent is the owner and operator of a seafood processing facility located at 9  
13 Portway Drive, Astoria, OR 97103 (the Facility). The Facility discharges wastewater to the Columbia  
14 River, a water of the state.

15 2. On March 22, 2022, Respondent was issued coverage under the National Pollutant  
16 Discharge Elimination System (NPDES) Seafood Processing General Permit No. 900-J (the Permit)  
17 with Facility ID# 113905, as a Tier 1 source. Permit coverage took effect on April 1, 2022.

18 3. The Facility processes crab, shrimp, bottom fish-conventional, bottom fish-mechanized  
19 (hake), salmon-hand butchered, sardines, sturgeon, and tuna.

20 4. Because the Facility discharges wastewater from all its processing operations through a  
21 single outfall, the applicable Daily Maximum and Monthly Average Technology-Based Effluent  
22 Limitations (TBELs) under the Permit are calculated using a "Compliance Calculator" spreadsheet  
23 developed by DEQ (Spreadsheet). The Spreadsheet calculates the applicable limits based on the total  
24 pounds of seafood processed on a given day/month, how much of each type of seafood was processed  
25 on a given day/month, and the limits for each type set forth in the Permit.

26 5. The Discharge Monitoring Reports (DMRs) submitted by Respondent for April 2022  
27 through August 2022, identified the following violations of the BOD<sub>5</sub>, TSS, and Oil & Grease Daily

1 Maximum Limits:

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Date	Pollutant	Load lb/klb	Limit lb/klb	% Exceedance	Violation Class
4/8/2022	BOD <sub>5</sub>	41	38	8%	3
4/25/2022	BOD <sub>5</sub>	100	5	1900%	1
4/27/2022	BOD <sub>5</sub>	8.1	5	62%	1
5/2/2022	BOD <sub>5</sub>	43	32	34%	2
6/22/2022	BOD <sub>5</sub>	3.3	1.2	175%	1
4/25/2022	TSS	89	2.7	3196%	1
4/27/2022	TSS	13	2.7	381%	1
5/2/2022	TSS	40	9.1	340%	1
5/3/2022	TSS	15	9.2	63%	1
5/31/2022	TSS	37	36	3%	3
6/7/2022	TSS	26	16	63%	1
7/26/2022	TSS	37	33	12%	3
8/23/2022	TSS	19	14	36%	2
8/30/2022	TSS	48	20	140%	1
4/8/2022	O&G	5.8	3.4	71%	1
4/14/2022	O&G	15	11	36%	2
4/25/2022	O&G	52	0.43	11993%	1
4/27/2022	O&G	4.8	0.44	991%	1
5/2/2022	O&G	19	2.9	555%	1
5/3/2022	O&G	3.9	3	30%	2
5/31/2022	O&G	17	13	31%	2
6/7/2022	O&G	11	5.5	100%	1
6/21/2022	O&G	0.56	0.48	17%	2
6/22/2022	O&G	0.19	0.077	147%	1
7/26/2022	O&G	38	12	217%	1
8/2/2022	O&G	24	11	118%	1
8/9/2022	O&G	12	9.9	21%	2
8/16/2022	O&G	11	6.8	62%	1
8/23/2022	O&G	15	4.8	213%	1
8/30/2022	O&G	18	7.1	154%	1

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24 6. The Discharge Monitoring Reports (DMRs) submitted by Respondent for April 2022 through

25 July 2022, identified the following violations of the BOD<sub>5</sub>, TSS, and Oil & Grease Monthly Maximum

26 Limits:

27 \\\

Month	Pollutant	Load lb/klb	Limit lb/klb	% Exceedance	Violation Class
April - 2022	BOD <sub>5</sub>	32	23	39%	2
May - 2022	BOD <sub>5</sub>	35	29	21%	2
April - 2022	TSS	18	6.2	190%	1
May - 2022	TSS	15	7.4	103%	1
July - 2022	TSS	13	8.1	60%	1
August -2022	TSS	16	8.5	88%	1
April - 2022	O&G	11	2.1	424%	1
May - 2022	O&G	6.7	2.6	158%	1
June - 2022	O&G	4.0	3.2	25%	2
July - 2022	O&G	9.2	2.9	217%	1
August - 2022	O&G	10	3.1	223%	1

7. Pursuant to Schedule F, Section A.1. of the Permit, failure to comply with any permit condition is a violation of ORS 468B.025.

8. Pursuant to ORS 468B.025(2), no person shall violate the conditions of any waste discharge permit issued under ORS 468B.050.

### III. CONCLUSIONS

1. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the TBELs for BOD<sub>5</sub> a total of seven times. Specifically:

- a. On three occasions Respondent exceeded the TBEL for BOD<sub>5</sub> by 50% or more. These are Class I violations pursuant to OAR 340-012-0055(1)(k)(A);
- b. On three occasions Respondent exceeded the TBEL for BOD<sub>5</sub> by 20% or more but less than 50%. These are Class II violations pursuant to OAR 340-012-0055(2)(a)(A); and
- c. On one occasion Respondent exceeded the TBEL for BOD<sub>5</sub> by less than 20%. This is a Class III violation pursuant to OAR 340-012-0055(3)(b)(A).

DEQ hereby assesses a \$5,400 civil penalty for these violations.

2. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the TBELs for TSS a total of thirteen times. Specifically:

- a. On ten occasions Respondent exceeded the TBEL for TSS by 50% or more. These are Class I violations pursuant to OAR 340-012-0055(1)(k)(A);

- 1 b. On one occasion Respondent exceeded the TBEL for TSS by 20% or more but less than 50%.  
2 This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A); and  
3 c. On two occasions Respondent exceeded the TBEL for TSS by less than 20%. These are Class  
4 III violations pursuant to OAR 340-012-0055(3)(b)(A).

5 DEQ hereby assesses a \$10,400 civil penalty for these violations.

6 3. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the  
7 TBELs for Oil & Grease a total of twenty-one times. Specifically:

- 8 a. On fifteen occasions Respondent exceeded the TBEL for Oil & Grease by 50% or more. These  
9 are Class I violations pursuant to OAR 340-012-0055(1)(k)(A); and  
10 b. On six occasions Respondent exceeded the TBEL for Oil & Grease by 10% or more but less  
11 than 50%. These are Class II violations pursuant to OAR 340-012-0055(2)(a)(A);

12 DEQ hereby assesses a \$16,200 civil penalty for these violations.

#### 13 IV. ORDER TO PAY CIVIL PENALTY

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

16 1. Pay a total civil penalty of \$32,000. The determination of the civil penalty is attached as  
17 Exhibits 1–3 and is incorporated as part of this Notice.

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

#### 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](mailto: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.

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23 11/13/2022  
24 Date


23   
24 Kieran O'Donnell, Manager  
25 Office of Compliance and Enforcement  
26  
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EXHIBIT 1

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

VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the TBELs for BOD<sub>5</sub> set forth in Schedule A, Table A1 of the Permit seven times.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) because Respondent exceeded the permit limit by 50 percent or more.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because the receiving stream flow at the time of the exceedances was more than 10 times the flow of Respondent's discharge.

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)(iii) because Respondent operates under the NPDES 900-J 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)(a), because Respondent has prior significant actions consisting of at least 15 Class I equivalent violations, as established in Case Nos. WQ/I-NWR-2014-085, WQ/I-NWR-2016-085; WQ/I-NWR-2017-132; and WQ/I-NWR-2018-060.

"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. Respondent's discharge exceeded the BOD<sub>5</sub> TBELs on seven occasions.

"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 has had ongoing issues achieving compliance with the effluent limitations set forth in both the prior applicable Mutual Agreement and Final Order and now the current Permit. By failing to take the actions necessary to ensure compliance with the Permit, or to seek coverage under



an individual permit, Respondent failed to take reasonable care to avoid the foreseeable risk that a 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 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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 3 + 4 + 0)] + \$0 \\ &= \$2,000 + [\$200 \times 17] + \$0 \\ &= \$2,000 + \$3,400 + \$0 \\ &= \$5,400 \end{aligned}$$

## EXHIBIT 2

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

VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the TBELs for TSS set forth in Schedule A, Table A1 of the Permit 13 times.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) because Respondent exceeded the permit limit by 50 percent or more.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because the receiving stream flow at the time of the exceedances was more than 10 times the flow of Respondent's discharge.

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)(iii) because Respondent operates under the NPDES 900-J 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)(a), because Respondent has prior significant actions consisting of at least 15 Class I equivalent violations, as established in Case Nos. WQ/I-NWR-2014-085, WQ/I-NWR-2016-085; WQ/I-NWR-2017-132; and WQ/I-NWR-2018-060.

"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 were more than one but less than seven occurrences of the violation. Each exceedance of a limit represents a separate occurrence. Respondent's discharge exceeded the TSS TBELs on 13 occasions. DEQ is assessing a separate penalty only for two 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 6.5 occurrences.

"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 has had ongoing

issues achieving compliance with the effluent limitations set forth in both the prior applicable Mutual Agreement and Final Order and now the current Permit. By failing to take the actions necessary to ensure compliance with the Permit, or to seek coverage under an individual permit, Respondent failed to take reasonable care to avoid the foreseeable risk that a 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 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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 2 + 4 + 0)] + \$0 \\ &= \$2,000 + [\$200 \times 16] + \$0 \\ &= \$2,000 + \$3,200 + \$0 \\ &= \$5,200 \end{aligned}$$

#### MULTIPLE PENALTY CALCULATION

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

In exercising its enforcement discretion, DEQ elects to assess a separate base penalty for two of the 13 occurrences of the violation.

#### FINAL PENALTY CALCULATION

$$\$5,200 \times 2 + \$0 = \$10,400$$

EXHIBIT 3

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

VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the TBELs for Oil & Grease set forth in Schedule A, Table A1 of the Permit 21 times.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) because Respondent exceeded the permit limit by 50 percent or more.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because the receiving stream flow at the time of the exceedances was more than 10 times the flow of Respondent's discharge.

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)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent operates under the NPDES 900-J 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)(a), because Respondent has prior significant actions consisting of at least 15 Class I equivalent violations, as established in Case Nos. WQ/I-NWR-2014-085, WQ/I-NWR-2016-085; WQ/I-NWR-2017-132; and WQ/I-WR-2018-060.

"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 exceedance of a limit represents a separate occurrence. Respondent's discharge exceeded the Oil & Grease TBELs on 21 occasions. DEQ is assessing a separate penalty only for three of the Class I violations. To arrive at "O," DEQ divides the total number of violations by the number of violations penalized. Therefore, each assessed penalty represents 7 occurrences.

"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 has had ongoing issues achieving compliance with the effluent limitations set forth in both the prior applicable Mutual Agreement and Final Order and now the current Permit. By failing to take the actions necessary to ensure compliance with the Permit, or to seek coverage under an individual permit, Respondent failed to take reasonable care to avoid the foreseeable risk that a 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 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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 3 + 4 + 0)] + \$0 \\ &= \$2,000 + [\$200 \times 17] + \$0 \\ &= \$2,000 + \$3,400 + \$0 \\ &= \$5,400 \end{aligned}$$

#### MULTIPLE PENALTY CALCULATION

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

In exercising its enforcement discretion, DEQ elects to assess a separate base penalty for three of the 21 occurrences of the violation.

#### FINAL PENALTY CALCULATION

$$\$5,400 \times 3 + \$0 = \$16,200$$