



Oregon

Tina Kotek, 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
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May 18, 2023

CERTIFIED MAIL: 7018 1830 0001 5906 2933

Amy Wentworth
Director of Environmental Health & Safety
Pacific Seafood – Warrenton, LLC
16797 SE 130th Ave
Clackamas, OR 97015

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-NWR-2022-136

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Pacific Seafood – Warrenton, LLC a civil penalty of \$41,200 for discharging wastewater from an unauthorized discharge point and for violating the technology-based effluent limitations set forth in the 2006 National Pollutant Discharge Elimination System (NPDES) Seafood Processing General Permit No. 900-J (the Permit) at its facility located at 450 NE Skipanon Drive in Warrenton. Specifically, from December 2018 through March 2023, Pacific Seafood – Warrenton, LLC exceeded the effluent limitations set forth in the Permit a total of 68 times, 48 of which were Class I violations.

DEQ issued this penalty because Pacific Seafood – Warrenton, LLC continues to have ongoing issues meeting the effluent limitations set forth in the Permit. In the five years immediately preceding the violations alleged in the attached Notice, the company experienced 48 Class I violations at the facility it operated in Astoria prior to the rebuilding of its Warrenton facility. Compliance with the effluent limitations set forth in the Permit is essential to protecting water quality.

DEQ appreciates the efforts Pacific Seafood – Warrenton, LLC has taken to prevent further unauthorized discharges off the dock. DEQ considered those efforts when calculating the penalty for the relevant violation.

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: Randall Bailey, DEQ NWR
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
PACIFIC SEAFOOD – WARRENTON, LLC)
an Oregon limited liability company)
Respondent.)

NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER

CASE NO. WQ/I-NWR-2022-136

I. AUTHORITY

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

II. FINDINGS OF FACT

1. Respondent is the owner and operator of a seafood processing facility located at 450 NE Skipanon Dr. in Warrenton, Oregon (the Facility).

2. The Facility has coverage under the National Pollutant Discharge Elimination System (NPDES) 900-J General Permit issued in 2006 under Facility ID #82880 (the 900-J Permit). The 2006 900-J Permit expired on May 31, 2011 and was renewed on October 1, 2020. Rather than seeking coverage under the renewed 900-J Permit, the Facility submitted a timely application for an individual NPDES permit. Until the individual permit is issued, the Facility’s coverage under the 2006 900-J Permit has been administratively extended.

3. Pursuant to Respondent’s November 15, 2004, application for 900-J Permit coverage, the Facility applied for and obtained approval to discharge from a single discharge point: Outfall 001.

4. On October 14, 2022, Respondent discharged untreated wastewater contaminated with fish detritus off the dock outside the Facility into the Skipanon River. This is not an approved discharge point.

5. The Skipanon River is a water of the state pursuant to ORS 468B.005(10).

6. Pursuant to ORS 468B.050(1)(e), no person may construct or use any new outlet for the discharge of any wastes into the waters of the state without permit coverage that authorizes the use of that outlet.

7. Schedule A of the 900-J Permit establishes effluent limits applicable to the specific species being processed. Because the Facility discharges wastewater from all its processing operations through a single outfall, the applicable Daily Maximum and Monthly Average Technology-Based Effluent Limitations (TBELs) under the Permit are calculated based on the total pounds of seafood processed on a given day/month, how much of each type of seafood was processed on a given day/month, and the limits for each type of seafood, as set forth in Schedule A of the 900-J Permit.

8. Respondent discharged effluent from December 2018 through November 2019 with the following values for BOD₅, TSS, and Oil & Grease (O&G) Daily Maximum Limits (which, at that time, Respondent reported as pounds (lbs) of pollutant discharged vs lbs of pollutant allowed per production day):

Month	Pollutant	Load lbs/day	Limit lbs/day	% Exceedance	Violation Class
December 2018	BOD ₅	76	35	117%	1
January 2019	BOD ₅	374	62	503%	1
February 2019	BOD ₅	233	46	407%	1
December 2018	TSS	54	37	46%	2
January 2019	TSS	157	77	104%	1
February 2019	TSS	93	58	60%	1
December 2018	O&G	6.4	2.3	178%	1
January 2019	O&G	37	3.9	849%	1
February 2019	O&G	22	3	633%	1

9. Respondent discharged effluent from December 2019 through March 2023, with the following values for BOD₅, TSS, and O&G Daily Maximum Limits (which, at that time, Respondent reported as lbs. per 1000lbs (lb/klb) of pollutant discharged vs lb/klb of pollutant allowed):

Month	Pollutant	Load lb/klb	Limit lb/klb	% Exceedance	Violation Class
March 2019	BOD ₅	3.4	1.2	183%	1
April 2019	BOD ₅	5.6	1.2	367%	1
April 2020	BOD ₅	6.7	6.3	6%	3
April 2019	TSS	2.6	1.5	73%	1

1	January 2020	TSS	4.7	2.7	74%	1
2	February 2020	TSS	13	12	8%	3
3	April 2020	TSS	2.8	2.5	12%	3
4	September 2021	TSS	10	2.9	245%	1
5	March 2019	O&G	0.11	0.08	38%	2
6	April 2019	O&G	0.11	0.08	38%	2
7	September 2019	O&G	0.98	0.67	46%	2
8	December 2019	O&G	0.65	0.37	76%	1
9	March 2020	O&G	1.8	0.5	260%	1
10	April 2020	O&G	2.5	0.42	495%	1
11	May 2020	O&G	15	2.7	456%	1
12	July 2020	O&G	1.3	1.2	8%	3
13	November 2020	O&G	0.5	0.08	525%	1
14	September 2021	O&G	2.4	0.57	321%	1
15	May 2022	O&G	2	1.4	43%	2
16	October 2022	O&G	2.6	2	30%	2

10. Respondent discharged effluent from December 2018 through November 2019, with the following values for BOD₅, TSS, and O&G Monthly Maximum Limits (which, at that time, Respondent reported as pounds (lbs) of pollutant discharged vs lbs of pollutant allowed per production day):

Month	Pollutant	Load lb/day	Limit lb/day	% Exceedance	Violation Class
December 2018	BOD ₅	54	27	100%	1
January 2019	BOD ₅	253	31	716%	1
February 2019	BOD ₅	195	28	596%	1
January 2019	TSS	109	33	230%	1
February 2019	TSS	70	28	150%	1
June 2019	TSS	477	408	17%	3
July 2019	TSS	945	903	5%	3
December 2018	O&G	3.9	0.94	315%	1
January 2019	O&G	21	1.9	1005%	1
February 2019	O&G	20	1.6	1150%	1
July 2019	O&G	213	143	49%	2
October 2019	O&G	271	113	140%	1
November 2019	O&G	152	96	58%	1

11. Respondent discharged effluent from December 2019 through March 2023, with the following values for BOD₅, TSS, and O&G Monthly Maximum Limits (which, at

that time, Respondent reported as lb/klb of pollutant discharged vs lb/klb of pollutant allowed):

Month	Pollutant	Load lb/klb	Limit lb/klb	% Exceedance	Violation Class
March 2019	BOD ₅	2.8	0.7	300%	1
April 2019	BOD ₅	3.8	0.7	443%	1
April 2020	BOD ₅	6.2	4.9	27%	2
April 2019	TSS	1.9	0.7	171%	1
January 2020	TSS	4.8	2.9	66%	1
February 2020	TSS	3.1	2	55%	1
April 2020	TSS	2.8	1.5	87%	1
March 2019	O&G	0.08	0.04	100%	1
April 2019	O&G	0.08	0.04	100%	1
August 2019	O&G	0.51	0.42	21%	2
December 2019	O&G	0.42	0.25	68%	1
February 2020	O&G	0.51	0.3	70%	1
March 2020	O&G	0.84	0.19	342%	1
April 2020	O&G	1.7	0.21	710%	1
May 2020	O&G	0.36	0.17	112%	1
July 2020	O&G	0.51	0.46	11%	3
September 2020	O&G	0.74	0.49	51%	1
October 2020	O&G	0.57	0.43	33%	2
November 2020	O&G	0.35	0.17	106%	1
August 2021	O&G	0.64	0.52	23%	2
October 2021	O&G	0.88	0.51	73%	1
May 2022	O&G	1.3	0.56	132%	1
August 2022	O&G	0.82	0.65	26%	2
September 2022	O&G	0.79	0.57	39%	2
October 2022	O&G	1	0.4	150%	1
November 2022	O&G	0.8	0.5	60%	1

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

13. 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.050(1)(e) by discharging wastewater from an unauthorized discharge point. Specifically, Respondent discharged wastewater contaminated with fish

1 detritus off the side of the dock into the Skipanon River, a water of the state. This is a Class I violation
2 pursuant to OAR 340-012-0055(1)(c). DEQ hereby assesses a \$9,200 civil penalty for this violation.

3 2. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the
4 TBELs for BOD₅ a total of 12 times. Specifically:

- 5 a. On 10 occasions Respondent exceeded the TBEL for BOD₅ by 50% or more. These are Class I
6 violations pursuant to OAR 340-012-0055(1)(k)(A);
- 7 b. On one occasion Respondent exceeded the TBEL for BOD₅ by 20% or more but less than 50%.
8 This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A); and
- 9 c. On one occasion Respondent exceeded the TBEL for BOD₅ by less than 20%. This is a Class III
10 violation pursuant to OAR 340-012-0055(3)(b)(A).

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

12 3. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the
13 TBELs for TSS a total of 16 times. Specifically:

- 14 a. On 11 occasions Respondent exceeded the TBEL for TSS by 50% or more. These are Class I
15 violations pursuant to OAR 340-012-0055(1)(k)(A);
- 16 b. On one occasion Respondent exceeded the TBEL for TSS by 20% or more but less than 50%. This
17 is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A); and
- 18 c. On four occasions Respondent exceeded the TBEL for TSS by less than 20%. These are Class III
19 violations pursuant to OAR 340-012-0055(3)(b)(A).

20 DEQ hereby assesses a \$10,800 civil penalty for these violations

21 4. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the
22 TBELs for Oil & Grease a total of 40 times. Specifically:

- 23 a. On 27 occasions Respondent exceeded the TBEL for Oil & Grease by 50% or more. These are
24 Class I violations pursuant to OAR 340-012-0055(1)(k)(A); and
- 25 b. On 11 occasions Respondent exceeded the TBEL for Oil & Grease by 20% or more but less
26 than 50%. These are Class II violations pursuant to OAR 340-012-0055(2)(a)(A);
- 27 c. On two occasions Respondent exceeded the TBEL for O&G by less than 20%. These are Class

1 III violations pursuant to OAR 340-012-0055(3)(b)(A).

2 DEQ hereby assess a \$10,800 civil penalty for these violations.

3 IV. ORDER TO PAY CIVIL PENALTY

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

6 1. Pay a total civil penalty of \$41,200. The determination of the civil penalty is attached as
7 Exhibits 1–4 and is incorporated as part of this Notice.

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

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

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

26 Active duty Service members have a right to stay proceedings under the federal Service
27 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-

1 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
2 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
3 Department does not have a toll-free telephone number.

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

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13 5/18/2023

14 Date

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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: Respondent violated ORS 468B.050(1)(e) by discharging wastewater from an unauthorized discharge point.

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 has coverage under the 2006 900-J NPDES 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) because in the preceding ten years Respondent had 46 Class I violations in Case No. WQ/I-NWR-14-109 and 2 Class I violations in Case No. WQ/I-NWR-2018-076. According to OAR 340-012-0145(2)(b) 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 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. By allowing wastewater to discharge off the pier, 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 -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to

ensure the violation would not be repeated by retraining dock workers and installing plywood over the potential discharge points.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (10 + 0 + 0 + 4 + -1)] + \$0 \\ &= \$4,000 + (\$400 \times 13) + \$0 \\ &= \$4,000 + \$5,200 + \$0 \\ &= \$9,200 \end{aligned}$$

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 BOD₅ set forth in Schedule A, Table A1 of the Permit 12 times.

CLASSIFICATION: Of the 12 violations, 10 are Class I violations pursuant to OAR 340-012-0055(1)(k)(A); one is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A); and one is a Class III violation pursuant to OAR 340-012-0055(3)(b)(A). Pursuant to OAR 340-012-0145(4)(e), the penalty is calculated as a Class I penalty.

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, moderate 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 has coverage under the 2006 900-J NPDES 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) because in the preceding ten years Respondent had 46 Class I violations in Case No. WQ/I-NWR-14-109 and two Class I violations in Case No. WQ/I-NWR-2018-076. According to OAR 340-012-0145(2)(b) 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) because there was more than one but less than seven occurrences of the violation. Each exceedance of a limit represents a separate occurrence. Respondent violated the BOD₅ limits in the Permit on 12 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 six 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. By repeatedly violating the BOD₅ limits, Respondent failed to take reasonable care to avoid the foreseeable risk additional violations 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 cannot be corrected.

"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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})]$
 $= \$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 2 + 4 + 0)]$
 $= \$2,000 + (\$200 \times 16)$
 $= \$2,000 + \$3,200$
 $= \$5,200$

MULTIPLE PENALTY CALCULATION: $\text{Penalty} = (\text{Single occurrence penalty calculation} \times \text{number of violations penalized}) + \text{economic benefit (EB)}$

In exercising its enforcement discretion, DEQ elects to assess a separate base penalty for two of the twelve 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 TSS set forth in Schedule A of the Permit 16 times.

CLASSIFICATION: Of the 16 violations, 11 are Class I violations pursuant to OAR 340-012-0055(1)(k)(A); one is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A); and four are Class III violations pursuant to OAR 340-012-0055(3)(b)(A). Pursuant to OAR 340-012-0145(4)(e), the penalty is calculated as a Class I penalty.

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 ten 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, moderate 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 has coverage under the 2006 900-J NPDES 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) because in the preceding ten years Respondent had 46 Class I violations in Case No. WQ/I-NWR-14-109 and two Class I violations in Case No. WQ/I-NWR-2018-076. According to OAR 340-012-0145(2)(b) 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 between seven and 28 occurrences of the violation. Each exceedance of a limit represents a separate occurrence. Respondent violated the TSS limits in the Permit on 16 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 eight 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. By repeatedly violating the TSS limits, Respondent failed to take reasonable care to avoid the foreseeable risk additional violations 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 cannot be corrected.

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

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

MULTIPLE PENALTY CALCULATION: $\text{Penalty} = (\text{Single occurrence penalty calculation} \times \text{number of violations penalized}) + \text{economic benefit (EB)}$

In exercising its enforcement discretion, DEQ elects to assess a separate base penalty for two of the 20 occurrences of the violation.

FINAL PENALTY CALCULATION

$$(\$5,400 \times 2) + \$0 = \$10,800$$

EXHIBIT 4

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 (O&G) set forth in Schedule A of the Permit 40 times.

CLASSIFICATION: Of the 40 violations, 27 are Class I violations pursuant to OAR 340-012-0055(1)(k)(A); 11 are Class II violations pursuant to OAR 340-012-0055(2)(a)(A); and two are Class III violations pursuant to OAR 340-012-0055(3)(b)(A). Pursuant to OAR 340-012-0145(4)(e), the penalty is calculated as a Class I penalty.

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, moderate 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 has coverage under the 2006 900-J NPDES 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) because in the preceding ten years Respondent had 46 Class I violations in Case No. WQ/I-NWR-14-109 and two Class I violations in Case No. WQ/I-NWR-2018-076. According to OAR 340-012-0145(2)(b) 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 between seven and 28 occurrences of the violation. Each exceedance of a limit represents a separate occurrence. Respondent violated the O&G limits in the Permit on 40 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 20 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. By repeatedly violating the O&G limits, Respondent failed to take reasonable care to avoid the foreseeable risk additional violations 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 cannot be corrected.

"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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})]$
= $\$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 3 + 4 + 0)]$
= $\$2,000 + (\$200 \times 17)$
= $\$2,000 + \$3,400$
= $\$5,400$

MULTIPLE PENALTY CALCULATION: $\text{Penalty} = (\text{Single occurrence penalty calculation} \times \text{number of violations penalized}) + \text{economic benefit (EB)}$

In exercising its enforcement discretion, DEQ elects to assess a separate base penalty for two of the 41 occurrences of the violation.

FINAL PENALTY CALCULATION

$(\$5,400 \times 2) + \$0 = \$10,800$