



Oregon

Tina Kotek, 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

July 11, 2023

CERTIFIED MAIL NO. 9589 0710 5270 0110 6009 68

Intel Corporation
c/o CT Corporation System, Registered Agent
780 Commercial Street SE, Suite 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-NWR-2023-039

This letter is to inform you that DEQ has issued Intel Corporation (Intel) a \$30,816 civil penalty for violations of Air Contaminant Discharge Permit No. 34-2681-ST-01. From July 7, 2022, through September 9, 2022, at the Ronler Acres facility, Intel failed to operate an acid gas scrubber within the required minimum scrubber solution pH set point, failed to conduct continuous pH monitoring of the scrubber, and failed to report the majority of these permit deviations to DEQ within 15 days of their occurrence.

DEQ issued this penalty because the alleged violations posed a risk of harm to human health and the environment. Failing to operate an acid gas scrubber at the required minimum pH set point resulted in operating the scrubber with no caustic injection to treat the acid gases, thereby reducing the scrubber removal efficiency and increasing hydrogen fluoride, total fluorides and hydrogen chloride (and possibly fluorine, chlorine and hydrogen bromide) emissions, in this case, for at least 63 days. Even short-term exposure to these chemicals, in high enough concentrations, can cause severe health effects including respiratory damage and irritation and lung edema, skin burns, and eye irritation.

You may pay the penalty by mailing a check or money order to the address below. 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.

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

Intel Corporation
Case No. AQ/ACDP-NWR-2023-039
Page 2

of paying a portion of your 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 Jenny Root at 503-229-5874 or toll free in Oregon at 800-452-4011, extension 5874.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

cc: Patty Jacobs, Northwest Region office, DEQ
Josh Alexander, Northwest Region office, DEQ
Don Hendrix, AQ, HQ, DEQ
Accounting, DEQ
Mike Anders, Intel Corporation, Oregon Environmental Compliance
RS5 M/S 115, 5200 NE Elam Young Parkway, Hillsboro, OR 97124

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:
4 INTEL CORPORATION,
a Delaware corporation,

5 Respondent.

) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER

) CASE NO. AQ/ACDP-NWR-2023-039

6 I. AUTHORITY

7 This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126
8 through 468.140, ORS Chapters 183 and 468A, and Oregon Administrative Rules (OAR) Chapter 340,
9 Divisions 011, 012, 200, and 216.

10 II. FINDINGS OF FACT

11 1. Respondent owns and operates a semiconductor manufacturing facility at 2501 NW
12 229th Avenue, Hillsboro, Oregon, known as the “Ronler Acres Facility” (the Facility).

13 2. At the Facility, Intel manufacturers semiconductor chips in buildings called “fabs” that
14 contain process equipment. “Wafers” are turned into semi-conductor chips through thousands of wafer
15 processes in equipment referred to as “tools.” Many of these tools are coupled to Point-of Use (POU)
16 pollution abatement devices. The exhaust from specific POU is routed to wet scrubbers, which are
17 used to further treat the exhaust gas to remove Hazardous Air Pollutants (HAPs) and Toxic Air
18 Contaminants (TACs), specifically, total fluorides, hydrogen fluoride and hydrogen chloride (acid
19 gases).

20 3. On January 22, 2016, the Department of Environmental Quality (DEQ) issued
21 Respondent Major New Source Review Air Contaminant Discharge Permit No. 34-2681-ST-01 (the
22 Permit). The Permit was in effect at all material times.

23 4. The Permit authorizes Respondent to discharge air contaminants from processes and
24 activities at the Facility in conformance with the requirements, limitations and conditions set forth in
25 the Permit.

26 5. Condition 39.a of the Permit requires that Respondent operate each scrubber treating
27 acid gas exhaust from process equipment with a minimum scrubber solution pH set point of 7.0, unless

1 Respondent has demonstrated and DEQ has approved that an alternate minimum scrubber solution pH
2 set point is equal or more effective.

3 6. DEQ has not approved an alternate minimum scrubber solution pH set point for
4 Respondent's acid gas scrubbers.

5 7. During the period of July 7, 2022 to September 9, 2022, the pH transmitter of acid gas
6 scrubber #4 in D1X fab, Mod 2 (Mod 2, Acid Gas Scrubber 4) at the Facility was placed and left in a
7 "hold" status during and after Respondent performed preventative maintenance on the scrubber on July
8 7, 2022. This resulted in the transmitter failing to measure actual pH of Mod 2, Acid Gas Scrubber 4's
9 scrubber solution and therefore, loss of sodium hydroxide (caustic) injection to the scrubber solution to
10 maintain the operating pH of Mod 2, Acid Gas Scrubber 4's scrubber solution at or above the required
11 7.0 pH set point value. Because the transmitter was in "hold" status, no actual minimum scrubber
12 solution pH set point value was established for Mod 2, Acid Gas Scrubber 4 during this time period.

13 8. At all material times, Respondent continued to operate the process that Mod 2, Acid Gas
14 Scrubber 4 controls.

15 9. Upon returning the scrubber pH transmitter off of hold status and back into operation on
16 September 9, 2022, the pH of Mod 2, Acid Gas Scrubber 4's scrubber solution was 2.72.

17 10. Condition 40.b of the Permit requires that during all hours of operation of Mod 2, Acid
18 Gas Scrubber 4, Respondent must continuously monitor the scrubber solution pH and reduce the pH
19 data to an hourly average.

20 11. During the period of July 7, 2022 through September 9, 2022, Respondent did not
21 continuously monitor Mod 2, Acid Gas Scrubber 4's scrubber solution pH, nor reduce the pH data to an
22 hourly average, because the probe transmitter was kept in hold status, freezing the transmitter's pH
23 reading at 8.52 instead of measuring the actual pH of Mod 2, Acid Gas Scrubber 4's pH.

24 12. Condition 72 of the Permit requires Respondent to report to DEQ, all deviations from
25 Permit requirements that do not cause excess emissions, within 15 days of the deviation occurring.

26 13. Respondent first notified and submitted a deviation report to DEQ for the permit
27 deviations described in Paragraphs 7 and 11 above on September 23, 2022.

1 III. CONCLUSIONS

2 1. From July 7, 2022 to September 9, 2022, Respondent violated Condition 39.a of the
3 Permit by failing to operate Mod 2, Acid Gas Scrubber 4 with a minimum scrubber solution pH set
4 point of 7.0 as further described in Section II, Paragraphs 5 through 9 above. These are Class II
5 violations according to OAR 340-012-0054(2)(b). DEQ hereby assesses a \$14,466 civil penalty for
6 these violations.

7 2. From July 7, 2022 to September 9, 2022, Respondent violated Condition 40.b of the
8 Permit by failing to continuously monitor Mod 2, Acid Gas Scrubber 4's scrubber solution pH and
9 reduce the pH data to an hourly average as further described in Section II, Paragraphs 10 and 11 above.
10 These are Class II violations according to OAR 340-012-0054(2)(b). DEQ hereby assesses a \$13,800
11 civil penalty for these violations.

12 3. Respondent violated Condition 72 of the Permit by failing to report to DEQ, the acid gas
13 scrubber pH set point and pH monitoring deviations described in Section II, Paragraphs 5 through 9 and
14 Paragraphs 10 and 11 above, within 15 days of occurrence, as further described in Section II,
15 Paragraphs 12 and 13 above. Specifically, the deviations began on July 7, 2022 and continued each day
16 until September 9, 2022, yet none were reported to DEQ until September 23, 2022. Only the deviations
17 on September 8 and 9, 2022, were reported within 15 days of the deviations occurring. These are Class
18 II violations according to OAR 340-012-0054(2)(b). DEQ hereby assesses a \$2,550 civil penalty for
19 these violations.

20 IV. ORDER TO PAY CIVIL PENALTY

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

23 Pay a total civil penalty of \$30,816. The determination of the civil penalty is attached as Exhibits 1
24 through 3 and is incorporated as part of this Notice.

25 If you do not file a request for hearing as set forth in Section V below, your check or money order
26 must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business Office,**
27 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

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

16 Active-duty service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll-free telephone number.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

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7/11/2023
Date



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION NO. 1: Failing to operate Mod 2, Acid Gas Scrubber 4 with a minimum scrubber solution pH set point of 7.0 in violation of Condition 39.a of the Permit.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(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 \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(A) because Respondent operates the facility under an Air Contaminant Discharge Permit issued pursuant to New Source Review regulations.

"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 Respondent, and receives an initial value of 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had one Class I violation and two Class II violations (Class I equivalent) in Mutual Agreement and Final Order No. AQ/AC-NWR-14-027 issued April 23, 2014. According to 340-012-0145(2)(d)(A)(ii), DEQ will reduce the value of "P" by 4 if all of the formal enforcement actions containing prior significant actions were issued more than five years before the date the current violation occurred. According to OAR 340-012-0145(2)(e), in applying subsection (2)(d)(A), the value of "P" may not be reduced below zero. Therefore, the value of "P" is 0.

"H" is Respondent's history of correcting prior significant actions and receives an initial value of -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited as prior significant actions. According to OAR 340-012-0145(3)(d), this value is increased to 1 because the sum of the "P" and "H" factors may not be less than 1 unless Respondent took extraordinary efforts to correct or minimize the effects of all PSAs. Respondent took reasonable but not extraordinary efforts to correct or minimize the effects of the prior significant actions.

- "O" is whether the violation was repeated or ongoing and receives a value of 4 pursuant to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. In accordance with OAR 340-012-0145(4), each day of violation with a duration of more than one day is a separate occurrence. Respondent operated the scrubber without a minimum scrubber solution pH set point of 7.0 for more than 28 days out of each month that DEQ is assessing a penalty for.
- "M" is the mental state and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Condition 39.a of the Permit expressly requires that Respondent operate all acid gas scrubbers with a minimum scrubber solution pH set point of 7.0. Respondent is an environmentally sophisticated company that has environmental compliance staff and has operated under a DEQ air quality permit for many years. As such, Respondent is aware of and familiar with the acid gas scrubber operating requirements in the Permit. The violation occurred when Respondent's employee set the scrubber's pH probe transmitter into a hold status to perform maintenance and then failed to return the instrument to normal operation, yet Respondent continued to operate the process that Mod 2, Acid Gas Scrubber 4 controls. For 63 days, the raw pH data for Mod 2, Acid Gas Scrubber 4 indicated a frozen and false pH reading of 8.52, but in actuality, the pH probe was not measuring pH of the scrubber solution. Meanwhile, other operational data showed that zero sodium hydroxide was added to Mod 2, Acid Gas Scrubber 4's scrubber solution during that time to maintain the operating pH at or above the required 7.0 pH set point value. By failing to respond to a frozen pH value and data showing that no sodium hydroxide was added to the scrubber solution during that time, known indicators that the transmitter was not operating or measuring pH correctly, for a period of 63 days, Respondent consciously disregarded a substantial and unjustifiable risk that Respondent would violate the pH set point requirement for the scrubber in violation of the Permit. The risk was of such a nature and degree that disregarding that 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 or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because the effects of the violation (increased emissions), once they occurred, 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 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 \$666. This is the amount of economic benefit Respondent gained by avoiding spending approximately \$842 to use approximately 218 gallons of sodium hydroxide in Mod 2, Acid Gas Scrubber 4 during the period of violation. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$= \$3,000 + [(0.1 \times \$3,000) \times (0 + 1 + 4 + 8 + 0)] + \$666$$

$$= \$3,000 + (300 \times 13) + \$666$$

$$= \$3,000 + \$3,900 + \$666$$

$$= \$6,900 \text{ per violation} + \$666 \text{ EB}$$

In accordance with ORS 468.140(2), each day of violation constitutes a separate offense and is subject to a civil penalty up to \$25,000 per day. Respondent operated without the minimum pH set point to Mod 2, Acid Gas Scrubber 4 for 63 days. DEQ elects to assess two separate gravity penalties, one for each full month that Respondent operated in violation of this requirement.

\$6,900 per gravity penalty x 2 = \$13,800 total gravity penalty for these violations. \$13,800 + \$666 EB for the violation period (July 7, 2022 through September 9, 2022) = \$14,466 total civil penalty for these violations.

EXHIBIT 2

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

VIOLATION NO. 2: Failing to continuously monitor Mod 2, Acid Gas Scrubber 4's scrubber solution pH and reduce the pH data to an hourly average in violation of Condition 40.b of the Permit.

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0054(2)(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 \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(A) because Respondent operates the facility under a General Air Contaminant Discharge Permit issued pursuant to New Source Review regulations.

"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 Respondent, and receives an initial value of 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had one Class I violation and two Class II violations (Class I equivalent) in Mutual Agreement and Final Order No. AQ/AC-NWR-14-027 issued April 23, 2014. According to 340-012-0145(2)(d)(A)(ii), DEQ will reduce the value of "P" by 4 if all of the formal enforcement actions containing prior significant actions were issued more than five years before the date the current violation occurred. According to OAR 340-012-0145(2)(e), in applying subsection (2)(d)(A), the value of "P" may not be reduced below zero. Therefore, the value of "P" is 0.

"H" is Respondent's history of correcting prior significant actions and receives an initial value of -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited as prior significant actions. According to OAR 340-012-0145(3)(d), this value is increased to 1 because the sum of the "P" and "H" factors may not be less than 1 unless Respondent took extraordinary efforts to correct or minimize the effects of all PSAs. Respondent took reasonable but not extraordinary efforts to correct or minimize the effects of the prior significant actions.

- "O" is whether the violation was repeated or ongoing and receives a value of 4 pursuant to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. In accordance with OAR 340-012-0145(4), each day of violation with a duration of more than one day is a separate occurrence. Respondent failed to monitor Mod 2, Acid Gas Scrubber 4's scrubber solution pH for more than 28 days out of each month that DEQ is assessing a penalty for.
- "M" is the mental state and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Condition 40.b of the Permit expressly requires that Respondent continuously monitor Mod 2, Acid Gas Scrubber 4's scrubber solution pH and reduce the pH data to an hourly average. Respondent is an environmentally sophisticated company that has environmental compliance staff and has operated under a DEQ air quality permit for many years. As such, Respondent is aware of and familiar with the acid gas scrubber monitoring and reporting requirements in the Permit. The violation occurred when Respondent's employee set the scrubber's pH probe transmitter into a hold status to perform maintenance and then failed to return the instrument to normal operation. For 63 days, the raw pH data for Mod 2, Acid Gas Scrubber 4 indicated a frozen and false pH reading of 8.52, but in actuality, the pH probe was not measuring pH of the scrubber solution. Meanwhile, other operational data showed that zero sodium hydroxide was added to Mod 2, Acid Gas Scrubber 4's scrubber solution during that time. By failing to respond to a frozen pH value and data showing that no sodium hydroxide was added to the scrubber solution during that time, known indicators that the transmitter was not operating or measuring pH correctly, for a period of 63 days, Respondent consciously disregarded a substantial and unjustifiable risk that Respondent would violate the pH continuous monitoring requirement for the scrubber in violation of the Permit. The risk was of such a nature and degree that disregarding that 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 or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violations (missed monitoring), once they occurred, 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 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 as there is insufficient information on which to base a finding.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$3,000 + [(0.1 x \$3,000) x (0 + 1 + 4 + 8 + 0)] + \$0
= \$3,000 + (300 x 13) + \$0
= \$3,000 + \$3,900 + \$0
= \$6,900

In accordance with ORS 468.140(2), each day of violation constitutes a separate offense and is subject to a civil penalty up to \$25,000 per day. Respondent failed to continuously monitor Mod 2, Acid Gas Scrubber 4's scrubber solution pH for 63 days. DEQ elects to assess two separate gravity penalties, one for each full month, that Respondent operated in violation of this requirement.

\$6,900 per base penalty x 2 = \$13,800 total civil penalty for these violations

EXHIBIT 3

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

VIOLATION NO. 3: Failing to report Mod 2, Acid Gas Scrubber 4's scrubber solution pH set point and pH monitoring permit deviations to DEQ within 15 days of the deviations occurring, in violation of Condition 72 of the Permit.

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0054(2)(b).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment and posed no more than a de minimis threat to human health or the environment. In making this finding, DEQ considered the following reasonably available information: The violation is a reporting violation. The underlying scrubber pH set point and monitoring deviations that were not reported timely did not result in Respondent actually exceeding emission limits in the Permit.

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 \$1,500 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(A) because Respondent operates the facility under an Air Contaminant Discharge Permit issued pursuant to New Source Review regulations.

"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 Respondent, and receives an initial value of 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had one Class I violation and two Class II violations (Class I equivalent) in Mutual Agreement and Final Order No. AQ/AC-NWR-14-027 issued April 23, 2014. According to 340-012-0145(2)(d)(A)(ii), DEQ will reduce the value of "P" by 4 if all of the formal enforcement actions containing prior significant actions were issued more than five years before the date the current violation occurred. According to OAR 340-012-0145(2)(e), in applying subsection (2)(d)(A), the value of "P" may not be reduced below zero. Therefore, the value of "P" is 0.

"H" is Respondent's history of correcting prior significant actions and receives an initial value of -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited

as prior significant actions. According to OAR 340-012-0145(3)(d), this value is increased to 1 because the sum of the “P” and “H” factors may not be less than 1 unless Respondent took extraordinary efforts to correct or minimize the effects of all PSAs. Respondent took reasonable but not extraordinary efforts to correct or minimize the effects of the prior significant actions.

- "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. In accordance with OAR 340-012-0145(4), each day of violation with a duration of more than one day is a separate occurrence. Respondent failed to report over 60 days of the scrubber solution pH and pH monitoring deviations of the Permit within 15 days of the deviations occurring.
- "M" is the mental state of Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent’s conduct was negligent. Respondent’s permit expressly requires that Respondent report to DEQ, all deviations of permit conditions to DEQ that do not result in excess emissions within 15 days of occurrence. Respondent is an environmentally sophisticated company that has environmental compliance staff and has operated under a DEQ air quality permit for many years. As such, Respondent is aware of and familiar with reporting requirements in the Permit. Respondent’s pH transmitter reading was frozen at the same pH value for over 60 days, an indication that something may be wrong with the pH system. In addition, respondent also had available data indicating that caustic was not being consumed by this scrubber system in accordance with normal operation. By failing to take reasonable care to investigate the frozen readings and the absence of caustic use to ensure Respondent was properly operating and monitoring the scrubber pH and reporting any deviations of those conditions to DEQ within 15 days of their occurrence, Respondent failed to take reasonable care to avoid the foreseeable risk Respondent would violate its Permit.
- "C" is Respondent’s efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to correct or minimize the effects of the violation. The deviations began on July 7, 2022, and occurred each day until September 9, 2022. Respondent eventually reported all the deviations to DEQ on September 23, 2022.
- "EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of 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 any economic benefit derived from the failure to timely report the permit deviations would be de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$1,500 + [(0.1 \times \$1,500) \times (0 + 1 + 4 + 4 + -2)] + \0
= $\$1,500 + (150 \times 7) + \0
= $\$1,500 + \$1,050 + \$0$
= $\$2,550$