

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

3 IN THE MATTER OF:)
4 CITY OF NORTH POWDER,) MUTUAL AGREEMENT
) AND ORDER
5 Permittee.) NO. WQ/M-ER-2023-045

6 WHEREAS:

7 1. On November 5, 2019, the Department of Environmental Quality (DEQ) and the
8 City of North Powder (Permittee) entered into Mutual Agreement and Order (MAO) No. WQ/M-
9 ER-2019-259. The MAO established enforceable requirements to bring Permittee into
10 compliance with its National Pollutant Discharge Elimination System (NPDES) permit number
11 102209 (Permit).

12 2. Permittee has violated the MAO and the Permit as follows:

13 A. Paragraph 6.C of the MAO limits the monthly average concentration
14 biochemical oxygen demand (BOD₅) in Permittee’s effluent to 67 milligrams per liter (mg/L).
15 During the January 2021, Permittee discharged effluent with a monthly average BOD₅
16 concentration of 69 mg/L. This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A).
17 Pursuant to Paragraph 6.D.2 of the MAO, DEQ assesses a \$75 civil penalty for this violation.

18 B. Permittee violated the monitoring requirements of Schedule B of the Permit
19 as follows:

20 i. Schedule B, Condition 3 of the Permit requires Permittee to monitor
21 its effluent for ammonia twice monthly. In December 2021, monitored its effluent for ammonia
22 only once.

23 ii. Schedule B, Condition 2 of the Permit requires Respondent to
24 monitor its wastewater influent for total flow daily. Respondent did not accurately monitor its
25 total influent flow during the period November 2021 through February 2023.

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1 iii. Schedule B, Condition 3 of the Permit requires Respondent to
2 monitor its effluent twice monthly for biochemical oxygen demand (BOD₅) and total suspended
3 solids (TSS) during the period November 1 through May 31. Respondent did not monitor its
4 effluent BOD₅ and TSS during December 2022, while discharging.

5 These are Class I violations pursuant to OAR 340-012-0055(1)(o). DEQ assesses a \$4,417
6 penalty for these violations.

7 C. Schedule B, Condition 1.d requires Respondent to develop and implement a written
8 QA/QC program that conforms to the requirements of 40 CFR Part 136.7. Respondent has not
9 developed and implemented a written 40 CFR Part 136.7-compliant QA/QC plan as of April 21,
10 2022, through at least September 21, 2023. These are Class II violations pursuant to OAR 340-
11 012-0053(2)(a). DEQ assesses a \$2,250 civil penalty for these violations.

12 D. Schedule D, Condition 11 of the Permit requires Respondent to conduct an
13 industrial user survey to determine the presence of any industrial users discharging wastewaters
14 to Respondent's system subject to pretreatment and submit a report on the findings to DEQ
15 within 24 months of the permit effective date, which was May 15, 2018. To date, Respondent
16 has not conducted the industrial survey. These are Class II violations pursuant to OAR 340-012-
17 0053(2). These are Class II violations pursuant to OAR 340-012-0053(2)(a). DEQ assesses a
18 \$2,250 civil penalty for these violations.

19 E. Respondent violated the Permit's effluent limits for *E. coli* bacteria as follows:

20 i. Schedule A, Condition 1.c limits the concentration of *E. coli*
21 bacteria in any single sample of Permittee's effluent to 406 colonies per 100 milliliters (mL) of
22 effluent. On January 11, 2023, analysis of a sample of Permittee's effluent found *E. coli* at a
23 concentration greater than 2,419 colonies per 100 mL. This is a Class II violation pursuant to
24 OAR 340-012-0055(2)(a).

25 ii. Schedule A, Condition 1.c limits the concentration of *E. coli*
26 bacteria in Respondent's effluent to a monthly geometric mean of 126 colonies per 100 mL. In

1 January 2023, Permittee discharged effluent with a monthly geometric mean concentration of
2 345 colonies per 100 mL. This a Class III violation pursuant to OAR 340-012-0055(3)(b).

3 DEQ assesses a \$975 civil penalty for these violations.

4 F. Respondent violated Schedule B of the Permit when it submitted inaccurate
5 monitoring results on its required monthly discharge monitoring reports as follows: BOD₅
6 monthly average loading, January 2023; BOD₅ weekly average loading, week of January 4,
7 2023; and BOD₅ daily maximum loading, January 4, 2023. These are Class I violations pursuant
8 to OAR 340-012-0053(1)(b). DEQ assesses a \$1,725 civil penalty for these violations.

9 3. Respondent agrees to pay a total civil penalty of \$11,692 for the violations cited in
10 Paragraph 2, above.

11 4. Due to solids accumulation in Respondent's wastewater lagoons, DEQ and
12 Permittee recognize that Permittee may continue to exceed permit effluent limitations until solids
13 removal can be completed.

14 5. The U.S. Environmental Protection Agency appropriately delegated the federal
15 NPDES permitting program to DEQ, making DEQ the primary administrator and enforcer of
16 NPDES permits. DEQ believes that this MAO furthers the goals of the NPDES permitting
17 program by ensuring progress towards compliance and is consistent with DEQ's goal of
18 protecting human health and the environment. However, DEQ and Permittee recognize that this
19 MAO does not eliminate the possibility of additional enforcement of Permit requirements by the
20 U.S. Environmental Protection Agency or citizens under the federal citizen suit provisions.

21 6. This MAO is not intended to limit, in any way, DEQ's right to proceed against
22 Permittee in any forum for any past or future violations not expressly settled herein.

23 NOW THEREFORE, it is stipulated and agreed that:

24 7. The Environmental Quality Commission shall issue a final order:

25 A. Terminating MAO WQ/M-ER-2019-259.

26 B. Requiring the Permittee to comply with the following schedule:

1 (1) By January 31, 2024, Permittee must complete evaporative wetland
2 construction in accordance with DEQ-approved final plans and specifications and the modified
3 construction schedule.

4 (2) By January 31, 2024, Permittee must submit a letter to DEQ
5 documenting completion of the construction and include statement that the facility is complying
6 with the assigned WPCF permit.

7 (3) By no later than November 1, 2023, the Permittee must submit to
8 DEQ a draft Lagoon Solids Removal Plan and Schedule. The plan must identify the methods of
9 solids removal, end use of the solids, and schedule for removal. At a minimum, the plan must
10 identify one of the following methods for removal:

11 a. Landfill disposal of lagoon solids: Summary of proposed
12 methods for removing, dewatering, storing, and transporting lagoon solids; proposed timeline for
13 work; and location and contact information for landfill; or

14 b. Land application of biosolids: Summary of proposed method
15 for removing, storing, transporting, and land application of biosolids; and proposed timeline for
16 work; proposed land application site authorization request.

17 (4) By no later than thirty days after DEQ provides written comments
18 on the draft Lagoon Solids Removal Plan, the Permittee must revise the plan consistent with
19 DEQ's comments and submit for DEQ approval.

20 (5) Upon issuance of DEQ written approval, Permittee must implement
21 the Lagoon Solids Removal Plan in accordance with the schedule.

22 (6) By no later than 180 days after approval of the final Lagoon Solids
23 Removal Plan, the Permittee must obtain funding for the solids removal work identified in the
24 plan.

25 (7) By no later than September 15, 2024, the Permittee must complete
26 the solids removal in accordance with the approved plan.

1 C. Requiring Permittee to meet the following effluent limitations, measured as
2 specified in the Permit, until January 31, 2024.

3

4 Interim effluent limits for outfall 001 (Powder River) during
discharge period: November 1 – May 31

5 Parameter	6 Effluent Limitation
7 5-day Biochemical Oxygen Demand (BOD ₅) concentration	8 90 mg/L weekly average
	9 68.5 mg/L monthly average
10 5-day Biochemical Oxygen Demand (BOD ₅) loading	11 236 lbs/day daily maximum
	12 212 lbs/day weekly average
	13 188 lbs/day monthly average
14 BOD ₅ percent removal	15 56 %
16 TSS percent removal	17 35 %
18 pH limit	19 6.0 – 9.7 SU
20 Ammonia	21 46 mg/L daily maximum
	22 45 mg/L monthly average

23

24 D. Requiring Permittee, upon receipt of a written Penalty Demand Notice from DEQ,
25 to pay the following civil penalties:

26 (1) \$600 for each day violation of the corrective action schedule set forth
in Paragraph 7.B.

(2) For exceedance of the interim effluent limits in Paragraph 7.C,
i. For the BOD₅ and TSS limits, \$300 for any exceedance of
50% or more of the limit, \$150 for any exceedance of 20% or more, but less than 50% of the
limit, and \$75 for an exceedance of less than 20% of the limit;

ii. \$300 for any exceedance of the ammonia limits; and

iii. For pH, \$300 for an exceedance of the limit by two or more
standard units, \$150 for any exceedance of the limit by one or more but less than two standard
units, and \$75 for any exceedance of less than one standard unit.

1 E. On February 1, 2024, violations of the Permit effluent limits are subject to
2 civil penalties calculated pursuant to Oregon Administrative Rules Chapter 340, Division 12.

3 F. Imposing upon Respondent a civil penalty of \$11,617 for the violations listed
4 in Paragraph 2, above.

5 8. In accordance with DEQ's Internal Management Directive on Supplemental
6 Environmental Projects (SEPs), DEQ agrees to mitigate the \$11,692 civil penalty to \$5,846 on the
7 condition Respondent completes a Supplemental Environmental Project (SEP) approved by DEQ.
8 To receive the mitigation, Respondent must submit an SEP proposal within 45 days of the date this
9 MAO is fully executed. If DEQ approves the proposal, the SEP will be incorporated into this MAO
10 by amendment.

11 9. If Respondent fails to timely submit an SEP application, the portion of the civil
12 penalty, \$5,846, subject to mitigation through the SEP is due 45 days from the date this MAO is
13 fully executed. If DEQ does not approve an SEP proposal submitted by Respondent, the mitigable
14 portion of the penalty is due within 14 days of DEQ issuing a written demand for payment.

15 10. The portion of the civil penalty not subject to mitigation through an SEP, \$5,846, is
16 due within 30 days of the date this MAO is fully executed.

17 11. All payments made pursuant to this MAO must be by check or money order payable
18 to "State Treasurer, State of Oregon" and sent to DEQ, Revenue Section, 700 NE Multnomah
19 Street, Suite 600, Portland, Oregon 97232.

20 12. If any event occurs that is beyond Permittee's reasonable control and that causes or
21 may cause a delay or deviation in performance of the requirements of this MAO, Permittee shall
22 immediately notify DEQ verbally of the cause of delay or deviation and its anticipated duration,
23 the measures that have been or will be taken to prevent or minimize the delay or deviation, and
24 the timetable by which Permittee proposes to carry out such measures. Permittee shall confirm
25 in writing this information within five (5) working days of the onset of the event. It is
26 Permittee's responsibility in the written notification to demonstrate to DEQ's satisfaction that the

1 delay or deviation has been or will be caused by circumstances beyond the control and despite
2 due diligence of Permittee. If Permittee so demonstrates, DEQ shall extend times of
3 performance of related activities under this MAO as appropriate. Circumstances or events
4 beyond Permittee's control include, but are not limited to, acts of nature, unforeseen strikes, work
5 stoppages, fires, explosion, riot, sabotage, or war. Increased cost of performance or a
6 consultant's failure to provide timely reports are not considered circumstances beyond
7 Permittee's control.

8 13. Violations of the Permit's effluent limits for BOD₅ weekly and month average
9 concentrations, BOD₅ weekly and monthly average loadings, BOD₅ and TSS removal
10 efficiencies, pH, and daily maximum and monthly average ammonia concentrations that do not
11 exceed the interim effluent limits in Paragraph 7.C will be addressed per DEQ's Enforcement
12 Guidance Internal Management Directive in effect at the time of the violation.

13 14. Pursuant to OAR 340-012-0030(19) and OAR 340-012-0145(2), the violations
14 expressly settled in this MAO, will be treated as prior significant actions in the event a future
15 violation occurs.

16 15. Permittee and DEQ hereby waive any and all of their rights to any and all notices,
17 hearing, judicial review, and to service of a copy of the final order herein. DEQ reserves the
18 right to enforce this order through appropriate administrative and judicial proceedings.

19 16. Regarding the schedule set forth in Paragraph 7.B above, Permittee acknowledges
20 that Permittee is responsible for complying with that order regardless of the availability of any
21 federal or state grant monies.

22 17. The terms of this MAO may be amended by mutual agreement of the Department
23 and Permittee.

24 18. DEQ may amend or terminate this MAO upon finding that such modification or
25 termination is necessary because of changed circumstances or to protect public health and the
26 environment. DEQ shall provide Permittee a minimum of thirty (30) days written notice prior to

1 issuing an order amending or terminating the MAO. If Permittee contests the order, the
2 applicable procedures for conduct of contested cases in such matters shall apply.

3 19. This MAO shall be binding on the parties and their respective successors, agents,
4 and assigns. The undersigned representative of each party certifies that he or she is fully
5 authorized to execute and bind such party to this MAO. No change in ownership or corporate or
6 partnership status relating to the facility shall in any way alter Permittee's obligations under this
7 MAO, unless otherwise approved in writing by DEQ.

8 20. All reports, notices and other communications required under or relating to this
9 MAO should be directed to Anna Morgan-Hayes, DEQ Eastern Region Water Quality Section,
10 475 NE Bellevue Dr #210, Bend, OR 97701, (541) 246-4562. The contact person for Permittee
11 shall be Beth Wendt, City Recorder, PO Box 309. North Powder, Oregon 97867, (541) 898-
12 2185.

13 21. Permittee acknowledges that it has actual notice of the contents and requirements of
14 this MAO and that failure to fulfill any of the requirements hereof will constitute a violation of
15 this MAO and subject Permittee to payment of civil penalties pursuant to Paragraph 7.C above.

16 22. Any stipulated civil penalty imposed pursuant to Paragraph 7.C shall be due upon
17 written demand. Stipulated civil penalties shall be paid by check or money order made payable
18 to the "Oregon State Treasurer" and sent to: Business Office, Department of Environmental
19 Quality, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232. Within 20 days of
20 receipt of a "Demand for Payment of Stipulated Civil Penalty" Notice from DEQ, Permittee may
21 request a hearing to contest the Demand Notice. At any such hearing, the issue shall be limited
22 to Permittee's compliance or non-compliance with this MAO. The amount of each stipulated
23 civil penalty for each violation and/or day of violation is established in advance by this MAO
24 and shall not be a contestable issue.

25: ///

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EXHIBIT 1

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

VIOLATION NO. 1 Failure to conduct monitoring required by Schedule B of the Permit in violation of ORS 468B.025(2).

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

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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) as Respondent's facility has a permitted flow of less than two million gallons per day.

"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 10 according to OAR 340-012-0145(2) because Respondent has prior significant actions consisting of nine or more Class I equivalent violations established in Case Nos. WQ/M-ER-2021-039 and WQ/M-ER-2020-105.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. In addition to failing to conduct ammonia once and BOD₅ and TSS twice each, Respondent failed to correctly monitor its influent flow daily for a period of 15 months with each day constituting a separate occurrence of the violation.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The monitoring requirements are express conditions of Respondent's Permit. By failing to take the action necessary to conduct the monitoring, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"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 \$217. This is the amount Respondent gained by avoiding the \$216 costs of conducting the missed BOD₅, TSS and ammonia monitoring. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,500 + [(0.1 x \$BP) x (10 + 0 + 4 + 4 + 0)] + \$217
= \$1,500 + (\$150 x 18) + \$217
= \$1,500 + \$2,700 + \$217
= \$4,417

EXHIBIT 2

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

VIOLATION NO. 2 Failure to comply with the permit condition requiring completion and implementation of a laboratory QA/QC plan in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) as Respondent's facility has a permitted flow of less than two million gallons per day.

"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 10 according to OAR 340-012-0145(2) because Respondent has prior significant actions consisting of nine or more Class I equivalent violations established in Case Nos. WQ/M-ER-2021-039 and WQ/M-ER-2020-105.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Respondent has been in daily violation since April 21, 2022, through at least the date of the Notice.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The requirements to prepare the QA/QC plan is an express condition of Respondent's Permit. By failing to take the action necessary to complete and implement the plan, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) as Respondent has not complied with the requirement.

"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 as DEQ has insufficient information as to the costs Respondent has avoided to arrive at a reasonable estimate.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$750 + [(0.1 \times \$750) \times (10 + 0 + 4 + 4 + 2)] + \0
= $\$750 + (\$75 \times 20) + \$0$
= $\$750 + \$1,500 + \$0$
= $\$2,250$

EXHIBIT 3

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

VIOLATION NO. 3 Failure to comply with the permit condition requiring completion of an industrial user survey in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) as Respondent's facility has a permitted flow of less than two million gallons per day.

"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 10 according to OAR 340-012-0145(2) because Respondent has prior significant actions consisting of nine or more Class I equivalent violations established in Case Nos. WQ/M-ER-2021-039 and WQ/M-ER-2020-105.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Respondent has been in daily violation since May 14, 2020, through at least the date of the Notice.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The requirement to conduct the industrial survey is an express condition of Respondent's Permit. By failing to take the action necessary to complete the survey, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) as Respondent has not complied with the requirement.

"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 as DEQ has insufficient information as to the costs Respondent has avoided to arrive at a reasonable estimate.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$750 + [(0.1 \times \$750) \times (10 + 0 + 4 + 4 + 2)] + \0
= $\$750 + (\$75 \times 20) + \$0$
= $\$750 + \$1,500 + \$0$
= $\$2,250$

EXHIBIT 4

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

VIOLATION NO. 4 Exceeding bacteria effluent limits in the Permit in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

MAGNITUDE: The magnitude of the violation minor pursuant to OAR 340-012-0135(2)(c)(A)(i) because Respondent's discharge was diluted by a factor of 10 or more in the receiving stream.

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 \$375 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) as Respondent's facility has a permitted flow of less than two million gallons per day.

"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 10 according to OAR 340-012-0145(2) because Respondent has prior significant actions consisting of nine or more Class I equivalent violations established in Case Nos. WQ/M-ER-2021-039 and WQ/M-ER-2020-105.

"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 two occurrences of the violation, an exceedance of the single simply limit on January 11, 2023, and an exceedance of the monthly geomean limit in January 2023.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The bacteria limits are express conditions of Respondent's Permit. By failing to take the action necessary to comply with the limit, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"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) as the violations could not be corrected or the effects 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 as DEQ has insufficient information as to the costs Respondent has avoided to arrive at a reasonable estimate.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$375 + [(0.1 \times \$\text{BP}) \times (10 + 0 + 4 + 4 + 0)] + \0
 $= \$375 + (\$37.50 \times 16) + \$0$
 $= \$375 + \$600 + \$0$
 $= \$975$

EXHIBIT 5

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

VIOLATION NO. 5 Submitting inaccurate results for monitoring required by Schedule B of the Permit in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(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 the Department 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 and the environment. In making this finding, the Department considered the following reasonably available information. The inaccurate reporting indicated that Respondent had exceeded effluent limits in the Permit where no exceedances had occurred.

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 \$750 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) as Respondent's facility has a permitted flow of less than two million gallons per day.

"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 10 according to OAR 340-012-0145(2) because Respondent has prior significant actions consisting of nine or more Class I equivalent violations established in Case Nos. WQ/M-ER-2021-039 and WQ/M-ER-2020-105.

"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 two or more but less than seven occurrences of the violation. There were three occurrences of the violation as detailed in the Notice.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The Permit expressly states the

formula by which BOD₅ loadings are to be calculated. By failing to use this formula, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation by resubmitting its discharge monitoring reports with the correct monitoring results.

"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 as any economic benefit Respondent received was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$750 + [(0.1 \times \$750) \times (10 + 0 + 2 + 4 + (-3))] + \0
 $= \$750 + (\$75 \times 13) + \$0$
 $= \$750 + \$975 + \$0$
 $= \$1,725$