

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

3 )  
4 IN THE MATTER OF ) MUTUAL AGREEMENT  
5 PORTLAND GENERAL ELECTRIC ) AND FINAL ORDER  
6 COMPANY, )  
7 Respondent. ) CASE NO. AQ-TV-HQ-2024-042

7 WHEREAS:

8 1. Respondent owns and operates two electrical power generation plants (the Beaver  
9 Plant and the Port Westward Plant, or together the Facility) located at 80997 and 81566 Kallunki  
10 Road in Clatskanie, Oregon, pursuant to Oregon Title V Operating Permit No. 05-2520 (the  
11 Permit).

12 2. On August 10, 2021, Respondent and the Oregon Department of Environmental  
13 Quality (DEQ) entered into a Stipulated Agreement and Final Order (the SAFO) pursuant to OAR  
14 340-223-0110(2). In the SAFO, Respondent accepted federally enforceable reductions of combined  
15 plant site emission limits (PSELs) of round II regional haze pollutants (defined in OAR 340-223-  
16 0020 to include SO<sub>2</sub>, PM<sub>10</sub> and NO<sub>x</sub>) to bring the Facility's Q/d (as defined in OAR 340-223-  
17 0100(2)) from 40.15 to below 5.

18 3. Section II, paragraph 1 of the SAFO requires Respondent to comply with PSELs  
19 according to the following schedule:

20 a. From August 1, 2021, to July 31, 2022, the Permittee's PSELs for the  
21 following pollutants are:

22 i. 99 tons for PM<sub>10</sub>; 1,900 tons for NO<sub>x</sub>; and 99 tons for SO<sub>2</sub>.

23 b. From August 1, 2022, to July 31, 2023, the Permittee's PSELs for the  
24 following pollutants are:

25 i. 99 tons for PM<sub>10</sub>; 1,542 tons for NO<sub>x</sub>; and 99 tons for SO<sub>2</sub>.

26 c. From On August 1, 2023, to July 31, 2024 the Permittee's PSELs for the  
27 following pollutants are:

1 i. 99 tons for PM10; 1,184 tons for NOx; and 99 tons for SO2.

2 d. From August 1, 2024, to July 31, 2025 the Permittee’s PSELs for the  
3 following pollutants are:

4 i. 99 tons for PM10; 826 tons for NOx; and 99 tons for SO2.

5 e. On August 1, 2025, the Permittee’s PSELs for the following pollutants are:

6 i. 99 tons for PM10; 436 tons for NOx; and 39 tons for SO2.

7 4. According to Section I, paragraph 6 of the SAFO, Respondent “shall calculate  
8 compliance with PSELs in Section II of this SAFO according to the requirements of the Permit.”

9 5. Conditions 62 through 66 of the Permit address how Respondent must determine  
10 compliance with PSELs for each rolling 12 calendar month period.

11 a. According to Conditions 62 and 63, Respondent must determine compliance  
12 with PM10 PSELs by monitoring process parameters including natural gas  
13 burned, distillate fuel oil burned and heat input and calculating emissions using  
14 emission factors described in the Permit.

15 b. According to Conditions 62 and 64, Respondent must determine compliance  
16 with NOx PSELs using data from NOx Continuous Emissions Monitoring  
17 Systems (NOx CEMS) installed on GTEU6 (the six combined cycle combustion  
18 turbines for electrical power generation at the Beaver Plant), PTEU1 (peaking  
19 turbine at the Beaver Plant), and PTWEU1 (combined cycle combustion turbine  
20 for electrical power generation at the Port Westward Plant); NOx emissions from  
21 the remaining emissions units are determined using process parameters and  
22 emission factors described in the Permit.

23 6. Table 1 describes Respondent’s reported emissions from the Facility calculated  
24 according to the Permit conditions described in paragraph 5, above.

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1 Table 1. Reported PM10 and NOx emissions

2 SAFO Reference	3 12 month period	SAFO PM10 PSEL (tons)	Reported PM10 Emissions	SAFO NOx PSEL (tons)	Reported NOx Emissions
4 II.1.b	August 1, 2022 - July 31, 2023	99	105	1,542	1,035
5 II.1.c	September 1, 2022 - August 31, 2023	99	108	1,184	1,065
	6 October 1, 2022 - September 30, 2023		111		1,103
	7 November 1, 2022 - October 31, 2023		119		1,150
	8 December 1, 2022 - November 30, 2023		121		1,136
	9 January 1, 2023 - December 31, 2023		124		1,144
	February 1, 2023 - January 31, 2024		124		1,198
	March 1, 2023 - February 29, 2024		124		1,162
	April 1, 2023 - March 31, 2024		121		1,082

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11 7. According to Section I, paragraph 3 of the SAFO, Respondent “agrees to and will  
12 ensure compliance with the PSEL reductions in Section II of this SAFO.”

13 I. AGREEMENT

14 Respondent and DEQ hereby agree that:

15 1. This Mutual Agreement and Final Order (MAO) shall be effective upon the date  
16 fully executed (MAO Effective Date).

17 2. Since the execution of the SAFO in August 2021, Respondent has experienced  
18 significant load growth, an increase in peak events, and significant weather events that have driven  
19 up demand for power generation.

20 3. In March 2022, DEQ approved Respondent’s Notice of Approval application no.  
21 033699 to install a low-NOx burner on turbine Unit 6 at the Beaver Plant. Respondent completed  
22 the upgrade in December 2022.

23 4. On February 2023, DEQ approved Respondent’s Notice of Approval application no.  
24 034606 to install low-NOx burners on the remaining five turbines at the Beaver Plant (Units 1-5).  
25 As of the date of this MAO, Respondent has completed the upgrade to Unit 4 and has started  
26 construction on the upgrade to Unit 1, but has not completed the upgrades to Units 1, 2, 3 or 5.

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1           5.       Hereinafter, turbine Units 4 and 6 and any units for which Respondent completes  
2 low-NOx burner upgrades after the date of this MAO are referred to as the “upgraded turbine units;”  
3 units that have not yet been upgraded are referred to as the “non-upgraded turbine units.”

4           6.       The low-NOx burners already installed by Respondent have reduced NOx  
5 emissions, on an hourly basis, by approximately 90 percent. Respondent and DEQ agree that the  
6 installation of the remaining low-NOx burners and the operation of the Facility according to the  
7 restrictions in Section II, paragraph 4.b and 4.c below, will be critical for achieving the objectives of  
8 round II of regional haze.

9           7.       On February 9, 2024, Respondent notified DEQ via letter that it had exceeded the  
10 SAFO limits for PM10 and NOx. On February 15, 2024, Respondent submitted its Title V annual  
11 report for the Facility to DEQ which included required monthly NOx and PM10 emissions data  
12 used to determine compliance with the SAFO limits. Respondent provided further information  
13 about 2024 emissions in response to DEQ’s requests.

14           8.       Respondent exceeded the PM10 PSEL in the SAFO during nine consecutive 12-  
15 calendar month periods from August 1, 2022 - July 31, 2023 through April 1, 2023 – March 31,  
16 2024, in violation of Section II, paragraphs 1.b and 1.c of the SAFO. These are Class I violations  
17 according to OAR 340-012-0054(1)(g). DEQ hereby assesses a civil penalty of \$130,500 for  
18 these violations. The determination of the civil penalty is attached and incorporated as Exhibit 1.

19           9.       Respondent exceeded the NOx PSEL in the SAFO during one consecutive 12-  
20 calendar month period, February 1, 2023 – January 31, 2024, in violation of Section II, paragraph  
21 1.c of the SAFO. This is a Class I violation according to OAR 340-012-0054(1)(g). DEQ hereby  
22 assesses a civil penalty of \$4,500 for this violation. The determination of the civil penalty is  
23 attached and incorporated as Exhibit 2.

24           10.      DEQ and Respondent agree that from the MAO Effective Date until July 31,  
25 2027, the Facility is anticipated to continue experiencing increased demand for power generation  
26 such that Respondent is likely to continue to violate the PM10 and NOx PSELs in the SAFO  
27 until Respondent completes the installation of the low-NOx burners.

1 11. Condition 42 of the Permit requires Respondent to limit ammonia slip from the Port  
2 Westward Plant turbine (PWEU1) to no more than 8 ppmvd (parts per million volume, dry) based  
3 on three-hour average, as measured by a source test, further described in Condition 43 of the Permit.

4 12. During a source test of PWEU1 on August 15-16, 2023, the three-hour average  
5 ammonia concentration was 8.6 ppmvd (rounded to 9 ppmvd to match the significant figures of the  
6 permit limit).

7 13. Respondent retested PWEU1 on October 26, 2023 and the three-hour average  
8 ammonia concentration was 8.0 ppmvd. All source tests from 2013 until the August 2023 source  
9 test described in Section I, paragraph 12, above, were also in compliance with the Condition 42  
10 limit.

11 14. On at least two days on August 15-16, 2023, Respondent violated the ammonia slip  
12 limit in Condition 42 of the Permit, as described in Section I, paragraphs 11-13, above. This is a  
13 Class I violation according to OAR 340-012-0054(1)(o). DEQ hereby assesses a civil penalty of  
14 \$10,200 for this violation. The determination of the civil penalty is attached and incorporated as  
15 Exhibit 3.

16 15. The U.S. Environmental Protection Agency (EPA) approved a delegation of  
17 authority to DEQ to implement Title V of the federal Clean Air Act and has approved Oregon's  
18 State Implementation Plan (SIP), making DEQ the primary administrator and enforcer of these  
19 requirements in Oregon. This MAO furthers the goals of the Act by ensuring progress towards  
20 compliance and is consistent with DEQ's goals of protecting human health and the environment.  
21 Specifically, DEQ and Respondent agree that this MAO addresses noncompliance with the SAFO  
22 due to the circumstances described in Section I, paragraph 2 while holding Respondent to  
23 commitments to reduce regional haze pollutants at the Facility, consistent with the objectives of  
24 round II of regional haze. DEQ and Respondent recognize that this MAO does not eliminate the  
25 possibility of additional enforcement of the Act by EPA or citizens under the federal citizen suit  
26 provision.

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1           16.     DEQ and Respondent recognize that the Environmental Quality Commission (EQC)  
2 has the authority to impose civil penalties and to issue an abatement order for violations of the  
3 SAFO and exceeding the ammonia slip limit. Therefore, pursuant to ORS 183.417(3), DEQ and  
4 Respondent wish to settle violations referred to in Section I paragraphs 8-10 and 14 of this MAO.  
5 DEQ is expressly not settling any violations of the SAFO that may occur after July 31, 2027.  
6 Notwithstanding any other provisions of this agreement, the execution of this MAO shall not be  
7 construed as an admission of liability by Respondent nor may DEQ submit this MAO in any  
8 proceeding except as provided in paragraph 17 or in a proceeding commenced by DEQ to enforce  
9 the terms of this MAO.

10           17.     Pursuant to OAR 340-012-0030(19) and OAR 340-012-0145(2), the violations  
11 described in Section I, paragraphs 8, 9 and 14 will be treated as prior significant actions in the event  
12 a future violation occurs.

13           18.     Respondent waives any and all rights and objections Respondent may have to a  
14 contested case hearing and judicial review of this MAO, and to service of a copy of this MAO.

15           19.     This MAO resolves all civil claims of DEQ, based upon the facts alleged, for the  
16 violations expressly alleged in this MAO. This MAO is not intended to limit, in any way, DEQ's  
17 right to proceed against Respondent in any forum for any past or future violations not expressly  
18 settled herein.

19           20.     This MAO is not meant to limit the parties' ability to amend the SAFO.

20           21.     Respondent releases and waives any and all claims of any kind, known or unknown,  
21 past or future, against the State of Oregon or its agencies, instrumentalities, employees, officers, or  
22 agents, arising out of the matters and events set out in this MAO. Any and all claims includes but is  
23 not limited to any claim under 42 USC § 1983 et seq., any claim under federal or state law for  
24 damages, declaratory, or equitable relief, and any claim for attorney's fees or costs.

25           22.     This MAO shall be binding on Respondent and its respective successors, agents, and  
26 assigns. The undersigned representative of Respondent certifies that they are fully authorized to  
27 execute and bind Respondent to this MAO. No change in ownership, corporate or partnership status

1 of Respondent, or change in the ownership of the properties or businesses affected by this MAO  
2 shall in any way alter Respondent's obligation under this MAO, unless otherwise approved in  
3 writing by DEQ through an amendment to this MAO.

4 23. Verifiable electronic, facsimile, or scanned signatures on this MAO shall be treated  
5 the same as original signatures.

6 24. Stipulated Penalties. Respondent is subject to the following stipulated penalties:

7 a. Interim Regional Haze Pollutants Limits Violations. For each 12-calendar  
8 month period, if Respondent exceeds the applicable Interim Regional Haze  
9 Pollutants Limit in Section II, paragraph 4.a of this MAO, upon receipt of a  
10 written Penalty Demand Notice from DEQ, Respondent shall pay a civil penalty  
11 for each ton in excess of the applicable Interim Regional Haze Pollutants Limit  
12 as prescribed in the table below.

<i>Applicable Time Period</i>	<i>Interim Limit</i>	<i>Stipulated Penalty</i>
April 1, 2024 to July 31, 2025	1,382	\$400/ton for each ton over 1,382 \$800/ton for each ton over 1,392 \$1,200/ton for each ton over 1,402
August 1, 2025 to July 31, 2026	1,024	\$400/ton for each ton over 1,024 \$800/ton for each ton over 1,034 \$1,200/ton for each ton over 1,044
August 1, 2026 to July 31, 2027	574	\$400/ton for each ton over 574 \$800/ton for each ton over 584 \$1,200/ton for each ton over 594

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24 b. Beaver Turbine Unit Restriction and Fuel Oil Violations. If Respondent fails to  
25 comply with the turbine restrictions in Section II, paragraph 4.b of this MAO or  
26 the fuel oil restriction in Section II, paragraph 4.c of this MAO, upon receipt of  
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1 a written Penalty Demand Notice from DEQ, Respondent shall pay a civil  
2 penalty of \$5,000 for each day of violation.

3 c. Reporting Violations. If Respondent fails to satisfactorily complete the reporting  
4 requirements in Section II, paragraph 4.d, upon receipt of a written Penalty  
5 Demand Notice from DEQ, Respondent shall pay a civil penalty of \$500 for  
6 each day of each violation, until such violation is corrected.

7 25. With the approval of DEQ, Respondent may reduce any stipulated penalty due under  
8 this MAO by up to eighty percent through contributing to the SEP(s) described in this MAO or  
9 another SEP approved by DEQ.

10 26. Within twenty (20) days of receipt of a Penalty Demand Notice from DEQ,  
11 Respondent may contest the Penalty Demand Notice. Respondent agrees that the issue shall be  
12 limited to Respondent's compliance or noncompliance with this MAO. The amount of the stipulated  
13 civil penalty is established in advance by this MAO and is not a contestable issue.

14 27. This MAO terminates after Respondent has complied with all the requirements of  
15 Section II below. However, Respondent remains liable for stipulated penalties for any violations  
16 of the MAO occurring during the period the MAO was in effect.

17 28. If any event occurs that is beyond Respondent's reasonable control that may cause  
18 a delay or deviation in Respondent satisfactorily completing the requirements contained in this  
19 MAO despite Respondent's reasonable efforts ("Force Majeure"), Respondent will promptly,  
20 upon learning of the event, notify DEQ verbally of the cause of the delay or deviation, its  
21 anticipated duration, the measures that have been or will be taken to prevent or minimize the  
22 delay or deviation and the timetable by which Respondent proposes to carry out such measures.  
23 Respondent will confirm in writing this information within five working days of the verbal  
24 notification. Failure to comply with these notice requirements precludes Respondent from  
25 asserting Force Majeure for the event and for any additional delay it causes. If Respondent  
26 demonstrates to DEQ's reasonable satisfaction that the delay or deviation has been or will be  
27 caused by a Force Majeure, DEQ will extend the times for performance of the affected

1 requirements in Section II, as appropriate, and such delays or deviations caused by a Force  
2 Majeure shall not constitute a violation of this MAO. Circumstances or events constituting a  
3 Force Majeure include, but are not limited to, acts of nature, unforeseen strikes or work  
4 stoppages, site conditions that could not have been reasonably anticipated, fire, explosion, riot,  
5 sabotage, war, unforeseen supply chain issues, and delays in receiving a governmental approval  
6 or permit outside of Respondent’s control. Normal inclement weather, a consultant’s failure to  
7 provide timely reports, increased cost of performance, changed business or economic  
8 circumstances, or routine, non-emergency government actions, other than delayed approvals and  
9 permit decisions referenced above, may not be considered Force Majeure.

10           29.     Respondent agrees to refrain from using the value of the Supplemental  
11 Environmental Project(s) (SEPs) described in Section II, paragraph 2, as a tax deduction or as  
12 part of a tax credit application; and, whenever Respondent publicizes the SEP(s) or the results of  
13 the SEP(s), Respondent will state in a prominent manner that the project was undertaken as  
14 settlement of a DEQ enforcement action. An approved SEP(s) will be incorporated into this  
15 MAO by amendment. Respondent will be deemed to have completed the SEP when the DEQ  
16 Office of Compliance and Enforcement receives a final report documenting the completion of  
17 the SEP(s).

18           30.     Civil penalty payments made pursuant to this MAO should be made as follows:  
19 send a check or money order made payable to “Department of Environmental Quality” to DEQ -  
20 Business Office, 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232. Please include  
21 the case number on the check or money order.

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1 II. FINAL ORDER

2 The Environmental Quality Commission hereby enters a final order:

3 1. Imposing upon Respondent a total civil penalty of \$145,200 for the violations  
4 alleged in Section I, paragraphs 8-10 and 14 of this MAO, \$29,040 of which is due within 14  
5 working days of the MAO Effective Date.

6 2. By no later than 90 days after the MAO Effective Date, requiring Respondent to  
7 submit to DEQ a Supplemental Environmental Project (SEP) application for a project or projects  
8 that meet DEQ SEP approval criteria and contribute no less than \$116,160 to a third-party  
9 organization(s) to implement one or more SEPs that will benefit air quality in the vicinity of the  
10 Facility. Within 30 days of DEQ’s approval of the SEP application, Respondent must transmit  
11 payment of no less than \$116,160 to the third-party organization(s) and provide DEQ with  
12 documentation of the transmittal(s).

13 3. By May 1, 2024, Respondent must submit a schedule to DEQ for Selective  
14 Catalytic Reduction (SCR) catalyst replacement on emission unit PWEU1.

15 4. Requiring Respondent to comply with the following schedule and conditions:

16 a. Interim Regional Haze Pollutants Limits. Comply with the following interim  
17 limits for the combined emissions of PM10, NOx and SO2 during the time  
18 periods described below. Compliance with the Interim Regional Haze  
19 Pollutants Limits shall be calculated according to the requirements of the  
20 Permit.

21 i. From the April 1, 2024 to July 31, 2025: **1,382 tons<sup>1</sup>**

22 ii. From August 1, 2025 to July 31, 2026: **1,024 tons<sup>2</sup>**

23 iii. From August 1, 2026 to July 31, 2027: **574 tons<sup>3</sup>**

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25 <sup>1</sup> The first 12 calendar month period subject to this interim limit is May 1, 2023 – April 30, 2024 and the  
26 final 12 calendar month period subject to this interim limit is August 1, 2024 – July 31, 2025.

27 <sup>2</sup> The first 12 calendar month period subject to this interim limit is September 1, 2024 – August 30, 2025  
and the final 12 calendar month period subject to this interim limit is August 1, 2025 – July 31, 2026.

<sup>3</sup> The first 12 calendar month period subject to this interim limit is September 1, 2025 – August 30, 2026  
and the final 12 calendar month period subject to this interim limit is August 1, 2026 – July 31, 2027.

1 b. Beaver Turbine Unit Restrictions. Respondent must operate the turbine units at  
2 the Beaver Plant as follows:

- 3 i. From November 1, 2024 to March 31, 2025, Respondent must not  
4 operate more than three (3) non-upgraded units at the same time;
- 5 ii. From April 1, 2025 to March 31, 2026, Respondent must not operate  
6 more than two (2) non-upgraded units at the same time;
- 7 iii. From April 1, 2026 to July 31, 2026, Respondent must not operate  
8 more than one (1) non-upgraded unit at the same time;
- 9 iv. From August 1, 2026 onward, Respondent must not operate any non-  
10 upgraded units.

11 c. Fuel Oil Restriction. From the MAO Effective Date onward, Respondent  
12 shall not receive any new deliveries of fuel oil to run any of the turbine Units 1-6 at the  
13 Beaver Plant, and Respondent shall not use fuel oil to run any of the turbine Units 1-6 after  
14 March 31, 2026.

15 d. Reporting. Respondent will include with its annual reports submitted under  
16 the Permit for calendar years 2024-2027:

- 17 i. Rolling 12-calendar month emissions of PM10, NOx and SO2 and  
18 combined emissions of the three pollutants, calculated according to  
19 Conditions 62-64 of the Permit.
- 20 ii. A description of any violations of the Beaver turbine unit restrictions  
21 in Section II, paragraph 4.b, including the dates of the violations, and
- 22 iii. A certification that, after the MAO effective date, no fuel oil was  
23 delivered for use in any of the turbine Units 1-6 at the Beaver Plant.
- 24 iv. In the 2026 annual report, a certification that no fuel oil was used in  
25 any of the turbine Units 1-6 at the Beaver Plant after March 31, 2026.

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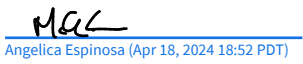
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PORTLAND GENERAL ELECTRIC COMPANY  
(RESPONDENT)

Apr 18, 2024

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Date

  
Angelica Espinosa (Apr 18, 2024 18:52 PDT)

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Angelica Espinosa  
Senior Vice President Chief Legal and  
Compliance Officer

DEPARTMENT OF ENVIRONMENTAL QUALITY and  
ENVIRONMENTAL QUALITY COMMISSION

Apr 19, 2024

\_\_\_\_\_  
Date

*Rebecca L Puskas*

\_\_\_\_\_  
Becka Puskas, Interim Manager  
Office of Compliance and Enforcement  
on behalf of DEQ pursuant to OAR 340-012-0170  
on behalf of the EQC pursuant to OAR 340-011-0505

EXHIBIT 1

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

VIOLATION NO. 1 Exceeding the PM10 PSEL in the SAFO, in violation of Section II, paragraphs 1.b and 1.c of the SAFO.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(g).

MAGNITUDE: The magnitude of one of the violations (August 1, 2022 - July 31, 2023) is minor pursuant to OAR 340-012-0135(1)(f)(C)(i) because Respondent exceeded the PSEL by an amount less than 50 percent of the Significant Emission Rate for PM10, which is 15 tons according to the definitions in OAR 340-200-0020.

The magnitude of two of the violations (September 1, 2022 - August 31, 2023 and October 1, 2022 - September 30, 2023) is moderate pursuant to OAR 340-012-0135(1)(f)(B)(i) because Respondent exceeded the PSEL by an amount from 50 up to and including 100 percent of the Significant Emission Rate for PM10, which is 15 tons according to the definitions in OAR 340-200-0020.

The magnitude of the remaining six violations (November 1, 2022 - October 31, 2023 through April 1, 2023 – March 31, 2024) is major pursuant to OAR 340-012-0135(1)(f)(A)(i) because Respondent exceeded the PSEL by more than the Significant Emission Rate for PM10, which is 15 tons according to the definitions in OAR 340-200-0020.

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:

- \$12,000 for the six Class I, major magnitude violations in the matrix listed in OAR 340-012-0140(2)(b)(A)(i),
- \$6,000 for the two Class I, moderate magnitude violations in the matrix listed in 340-012-0140(2)(b)(A)(ii), and
- \$3,000 for the one Class I, minor magnitude violation in the matrix listed in 340-012-0140(2)(b)(A)(iii).

These base penalties are applicable pursuant to OAR 340-012-0140(2)(a)(A) because Respondent has a Title V permit.

"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 initially receives a value of 10 according to OAR

340-012-0145(2)(a)(C) and (D) because there was one Class I violation in case no. AQ-V-NWR-2015-173 issued on November 24, 2015 and 8 Class I violations in Mutual Agreement and Final Order No. AQ-V-NWR-2016-049, issued on March 18, 2016. The P factor is reduced to 6 according to OAR 340-012-0145(2)(d)(A)(ii) and OAR 340-012-0145(2)(e) because all of the formal enforcement actions in which prior significant citations were cited are more than five years before the current violations.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history accounted for in this civil penalty.

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(e), because DEQ is assessing a penalty for each occurrence of the violation.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. As a signatory to the SAFO, Respondent has constructive knowledge of the PM10 PSEL.

"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 affirmative to minimize the effects of the violation by agreeing to comply with the requirements in Section II, paragraph 4 of the MAO.

"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 because DEQ has insufficient information to calculate an economic benefit for this violation.

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 exceeded the PM10 PSEL during nine consecutive rolling 12-calendar month periods from August 1, 2022 - July 31, 2023 through April 1, 2023 - March 31, 2024. DEQ is assessing a civil penalty for each of the nine 12-calendar month periods.

PENALTY CALCULATION – for the five exceedances of the PM10 PSEL > PM10 SER:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$12,000 + [(0.1 \times \$12,000) \times (6 + 0 + 0 + 2 + -3)] + \$0 \\ &= \$12,000 + (\$1,200 \times 5) + \$0 \\ &= \$12,000 + \$6,000 + \$0 \\ &= \$18,000 \end{aligned}$$

\$18,000 per violation x 6 violations = \$108,000

PENALTY CALCULATION – for the two exceedances of the PM10 PSEL  $\geq$  50% of the PM10

SER:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$6,000 + [(0.1 \times \$6,000) \times (6 + 0 + 0 + 2 + -3)] + \$0 \\ &= \$6,000 + (\$600 \times 5) + \$0 \\ &= \$6,000 + \$3,000 + \$0 \\ &= \$9,000\end{aligned}$$

$$\$9,000 \text{ per violation} \times 2 \text{ violations} = \$18,000$$

PENALTY CALCULATION – for the one exceedance of the PM10 PSEL  $<$  50% of the PM10

SER:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \\ &= \$3,000 + [(0.1 \times \$3,000) \times (6 + 0 + 0 + 2 + -3)] + \$0 \\ &= \$3,000 + (\$300 \times 5) + \$0 \\ &= \$3,000 + \$1,500 + \$0 \\ &= \$4,500\end{aligned}$$

$$\$4,500 \text{ per violation} \times 1 \text{ violations} = \$4,500$$

TOTAL CIVIL PENALTY

$$\$108,000 + \$18,000 + \$4,500 = \text{total civil penalty of } \$130,500$$

EXHIBIT 2

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

- VIOLATION NO. 2 Exceeding the NO<sub>x</sub> PSEL in the SAFO, in violation of Section II, paragraphs 1.c of the SAFO.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(g).
- MAGNITUDE: The magnitude of the violation (February 1, 2023 – January 31, 2024) is minor pursuant to OAR 340-012-0135(1)(f)(C)(i) because Respondent exceeded the PSEL by an amount less than 50 percent of the Significant Emission Rate for NO<sub>x</sub>, which is 40 tons according to the definitions in OAR 340-200-0020.
- 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 the one Class I, minor magnitude violation in the matrix listed in 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(A) because Respondent has a Title V permit.
- "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 initially receives a value of 10 according to OAR 340-012-0145(2)(a)(C) and (D) because there was one Class I violation in case no. AQ-V-NWR-2015-173 issued on November 24, 2015 and 8 Class I violations in Mutual Agreement and Final Order No. AQ-V-NWR-2016-049, issued on March 18, 2016. The P factor is reduced to 6 according to OAR 340-012-0145(2)(d)(A)(ii) and OAR 340-012-0145(2)(e) because all of the formal enforcement actions in which prior significant actions were cited are more than five years before the current violations.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history accounted for in this civil penalty.
- "O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation.
- "M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. As a signatory to the SAFO, Respondent has constructive knowledge of the NO<sub>x</sub> PSEL.

"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 affirmative to minimize the effects of the violation by agreeing to comply with the requirements in Section II, paragraph 4 of the MAO.

"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 because DEQ has insufficient information to calculate an economic benefit for this violation.

#### PENALTY CALCULATION

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$3,000 + [(0.1 \times \$3,000) \times (6 + 0 + 0 + 2 + -3)] + \$0 \\ &= \$3,000 + (\$300 \times 5) + \$0 \\ &= \$3,000 + \$1,500 + \$0 \\ &= \$4,500 \end{aligned}$$

EXHIBIT 3

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

VIOLATION NO. 3 Exceeding the ammonia slip limit in Condition 42 of the Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(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 \$6,000 for the one Class I, moderate magnitude violation in the matrix listed in 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(A) because Respondent has a Title V permit.

"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 initially receives a value of 10 according to OAR 340-012-0145(2)(a)(C) and (D) because there was one Class I violation in case no. AQ-V-NWR-2015-173 issued on November 24, 2015 and 8 Class I violations in Mutual Agreement and Final Order No. AQ-V-NWR-2016-049, issued on March 18, 2016. The P factor is reduced to 6 according to OAR 340-012-0145(2)(d)(A)(ii) and OAR 340-012-0145(2)(e) because all of the formal enforcement actions in which prior significant actions were cited are more than five years before the current violations.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history accounted for in this civil penalty.

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(e), because DEQ is assessing a penalty for each occurrence of the violation.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. As a permittee, Respondent has constructive knowledge of the ammonia slip limit.

"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 that the violation would not be repeated by retesting PWEU1 on October 26, 2023.

"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 because DEQ has insufficient information to calculate an economic benefit for this violation.

PENALTY CALCULATION

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$6,000 + [(0.1 \times \$6,000) \times (6 + 0 + 0 + 2 + -1)] + \$0 \\ &= \$6,000 + (\$600 \times 7) + \$0 \\ &= \$6,000 + \$4,200 + \$0 \\ &= \$10,200 \end{aligned}$$