Oregon
Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

May 23, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6532 36

Port of Astoria
c/o Matt McGrath, Deputy Director
422 Gateway Ave, Ste 100
Astoria, OR 97103

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2023-629

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the Port of Astoria (the Port) a civil penalty of $28,800 for violations of the National Pollutant Discharge Elimination System (NPDES) 1200-Z General Permit for industrial stormwater discharges (the Permit) at Pier 2. Specifically, the Port failed to minimize exposure of seafood processing activities on Pier 2 to stormwater and failed to prevent seafood processing activities from contaminating the stormwater catch basins on the pier. These failures caused pollution to the Columbia River.

DEQ issued this penalty because, as the permit holder, it is the Port's responsibility to ensure that stormwater discharges from Pier 2 are not contaminated by seafood processing activities, that the pier deck is regularly cleaned, and that the stormwater catch basins and other discharge points on the Pier are regularly maintained. Failure to fulfill these requirements of the Permit led to a build-up of avian fecal matter and seafood processing waste on the pier deck and in the pier's stormwater catch basins as well as direct discharges of process wastewater through stormwater catch basins.

Included in Section IV of the enclosed Notice is an order requiring the Port to submit an updated Stormwater Pollution Control Plan (SWPCP) to DEQ for review and approval that includes control measures or Best Management Practices (BMPs) that implement each of the narrative technology-based effluent limits set forth in Schedule A.1 of the Permit. Additionally, the site map must be revised to demonstrate a clear separation between the stormwater and wastewater discharge points on the pier—any stormwater that is commingled with wastewater must be routed through either Da Yang or Astoria Pacific Seafood's treatment system.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: https://ydo.oregon.gov. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

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 of paying a penalty. Further information is available by calling the number below or at http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx.

DEQ's rules are available at http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx or by calling the number below.

If you have any questions, please contact Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,

Rebecca J Puskas

Becka Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Stacy Bandy (via email to bandy@portofastoria.com)
Mike Kennedy, DEQ NWR
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER |
| PORT OF ASTORIA | ) | |
| Respondent. | ) | CASE NO. WQ/SW-NWR-2023-629 |

## I. AUTHORITY

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

## II. FINDINGS OF FACT

1. Respondent is the owner and operator of the Port of Astoria Central Waterfront District (Gateway) located at 422 Gateway Avenue in Astoria, Oregon (the Facility).

2. Respondent has coverage under the National Pollutant Discharge Elimination System (NPDES) 1200-Z General Permit for industrial stormwater discharges (the Permit) for the Facility under File No. 107184.

3. The industrial portion of the Facility that is covered by the Permit consists of three piers (Pier 1, Pier 2, and Pier 3) which extend into the Columbia River. The Permit coverage area includes boat slips that are present between Piers 1 and 2 and between Piers 2 and 3, as well as an upland area along Gateway Avenue that is south of the piers and slips. Most of the Facility is used for marine-related activities, and a significant portion of the Facility is leased to commercial, public, and industrial tenants.

4. Pier 2 is leased to two fish and seafood processing tenants: Da Yang Seafoods (Da Yang) and Astoria Pacific Seafoods (APS).

5. APS has permit coverage under DEQ's 2020 NPDES 900-J General Permit for wastewater discharges and commingled stormwater from seafood processors and recreational sportfish cleaning stations (2020 900-J Permit). Pursuant to Schedule D.5. of the 2020 900-J Permit, APS "may

discharge stormwater commingled with process wastewater under [the 2020 900-J Permit] if the stormwater is contained, collected, treated, and discharged in accordance with the requirements of [the 2020 900-J Permit]." "Commingled stormwater" is defined under the 2020 900-J Permit as "stormwater that falls within the facility boundary and flows through the wastewater treatment system and is monitored and discharged through the outfall." APS is approved to discharge process wastewater and commingled stormwater only through Outfall 001.

6. In May 2015, DEQ learned that Da Yang Seafood, Inc. had been discharging wastewater to the Columbia River without a permit for a period of seven years. DEQ advised Da Yang Seafood, Inc. in a July 15, 2015, letter that the agency would not take enforcement action for future unpermitted discharges from the Facility if Da Yang immediately applied for permit coverage and complied with the terms of the 2006 900J General Permit until permit coverage was issued to the Facility. Pursuant to the 2006 900-J Permit, all process wastewater must pass through at least a 40 mesh screen (or equivalent control) prior to discharge.

7. Pursuant to Condition I.7 of the Permit, "wastewater discharge or disposal, including stormwater mixed with wastewater is not authorized under this permit and must be permitted in a separate permit, unless the wastewater is reused or recycled without discharge of disposal, or is discharged to the sanitary sewer with approval from the sanitary sewer system operator."

8. According to Section 2.4.1.3 of the Facility's Stormwater Pollution Control Plan (SWPCP), "[s]tormwater runoff from the seafood processing areas at Pier 2 sheet flows to drains that discharge stormwater to Slip 1 or Slip 2 via Discharge Points 009 through 014." These discharge points discharge directly to the Columbia River. Neither Da Yang nor APS are authorized to discharge wastewater from these discharge points.

9. Schedule A.1 of the Permit sets forth narrative technology-based effluent limits. Pursuant to Schedule A.1.a of the Permit, Respondent is required to "[m]inimize exposure of manufacturing, processing, material storage areas, loading and unloading, disposal, cleaning, maintenance and fixed fueling areas to rain, snow, snowmelt and runoff." Specifically:

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a. Pursuant to Schedule A.1.a.ii of the Permit, Respondent must "[u]se grading, berming, or curbing to divert stormwater away from these areas and prevent stormwater contamination."

b. Pursuant to Schedule A.1.a.iii, Respondent must "[l]ocate materials, equipment and activities in containment and diversion systems . . . to prevent spills and leaks from contaminating stormwater."

c. Pursuant to Schedule A.1.a.vi, Respondent must "[p]erform all cleaning operations indoors, under cover or in bermed areas that prevent runoff and run-on and captures all overspray."

d. Pursuant to Schedule A.1.a.vii, Respondent must manage all wash water "indoors or in bermed areas, disposed into sanitary sewer or drain to a proper collection system such as a closed-loop system or vegetated area that does not discharge into the stormwater drainage system."

10. Pursuant to Schedule A.1.e. of the Permit, Respondent must "[e]mploy screens, booms, settling ponds, or other methods to eliminate or minimize waste, garbage and floatable debris in stormwater discharges and ensure that this debris is not discharged to receiving waters."

11. Pursuant to Schedule A.1.g. of the Permit, Respondent is required to "[r]outinely clean all exposed areas that may contribute pollutants to stormwater with measures such as sweeping at regular intervals, litter pick-up, keeping materials orderly and labeled, promptly clean-up spills and leaks, proper maintenance of vehicles and stowing materials in appropriate containers."

12. Pursuant to Schedule A.1.k. of the Permit, Respondent must "[e]liminate any non-stormwater discharges not authorized by a NPDES permit."

13. Pursuant to Schedule A.2. of the Permit, Respondent must describe the control measures it will use to meet the requirements of Schedule A.1 in a Stormwater Pollution Control Plan (SWPCP). Pursuant to Schedule A.8. of the Permit, "the SWPCP must include control measures/[Best Management Practices] that implement each narrative technology-based effluent limit to eliminate or reduce the potential to contaminate stormwater and prevent exceedance of instream water quality

standards." Schedule A.10. of the Permit lists the required components of the SWPCP, including "the schedule or frequency for maintaining all control measures and waste collection."

14. On July 18, 2023, and August 8, 2023, DEQ conducted inspections of the Facility.

15. At the time of the inspections, process wastewater from the Da Yang and APS facilities was observed discharging—untreated and uncontained—to the pier deck and in some instances into the stormwater catch basins, uncontrolled fish processing waste was widespread on the pier deck throughout the fish processing areas, and there was a significant accumulation of avian fecal material on the pier deck in the fish processing areas. The stormwater catch basins on Pier 2 were poorly maintained; fish waste was present in many of the catch basins as well as in numerous cracks and gaps in the pier deck through which water had clearly been discharging directly to the river below. The filtration bags in the few catch basins that had them needed replacement. Additionally, seafood processing activities and material storage was occurring on the pier deck with no containment or berms to prevent contamination of the stormwater system. APS employees were observed washing totes in uncontained areas on the pier deck and directing the wash water either into stormwater catch basins on the pier or over the side of the pier directly into the river.

16. Maintenance logs provided by Respondent to DEQ at the time of the inspection showed that no sweeping or catch basin maintenance had occurred since August 2022.

17. Seafood processing waste was observed floating in the river adjacent to the pier.

18. Respondent's SWPCP does not provide for frequent enough sweeping and catch basin maintenance on Pier 2. The SWPCP also does not establish clear control measures to prevent the seafood processing activities on Pier 2 from contaminating the stormwater system.

19. Pursuant to Schedule F, Section A1 of the Permit, failure to comply with any permit condition is a violation of ORS 468B.025.

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

21. "Pollution" is defined in ORS 468B.005(5) as "such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color,

turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof."

22. Pursuant to ORS 468B.025(1)(a), except as provided in ORS 468B.050, no person shall "[c]ause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means."

## III. CONCLUSIONS

1. Respondent violated ORS 468B.025(2) and Schedule A.1.a.ii; A.1.a.iii; A.1.a.vi; and A.1.a.vii of the Permit by failing to use grading, berming, or curbing to prevent stormwater contamination from seafood processing, material storage, loading and unloading, and cleaning areas; and failing to manage all wash water so as to prevent discharge of wash water to the stormwater drainage system, as described in Section I, Paragraph 15 above. This is a Class II violation pursuant to OAR 340-012-0053(2). DEQ hereby assesses a $6,000 civil penalty for this violation.

2. Respondent violated ORS 468B.025(2) and Schedule A.1.a.g of the Permit by failing to routinely clean all exposed areas that may contribute pollutants to stormwater, as described in Section I, Paragraphs 15 and 16 above. This is a Class II violation pursuant to OAR 340-012-0053(2). DEQ hereby assesses a $6,000 civil penalty for this violation.

3. Respondent violated ORS 468B.025(1)(a) by causing pollution to waters of the state. Specifically, by failing to regularly clean the pier deck and stormwater catch basins on Pier 2, failing to prevent seafood processing activities and materials from contaminating the stormwater system, and failing to prevent wash water from discharging through the stormwater system, Respondent caused industrial waste and process wastewater to discharge to the Columbia River. This is a Class I violation pursuant to OAR 340-012-0055(1)(a). DEQ hereby assesses a $16,800 civil penalty for this violation.

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## IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

1. Pay a civil penalty of $28,800. The determination of the civil penalty is attached as Exhibits Nos. 1–3 and is incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, please pay the penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: https://ydo.oregon.gov. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

2. Within 30 days of this order becoming final by operation of law or on appeal:

   a. Thoroughly clean all stormwater catchbasins, stormwater conveyance lines, and other stormwater discharge points. Provide DEQ with invoices or other documentation supporting the cleaning of this infrastructure;

   b. Install pollution controls to isolate and prevent waste material and wastewater discharges from exterior fish processing areas, fish screens, tote washing activity, and bailwater from entering the stormwater system and discharging to the Columbia River. Provide DEQ with photos or other documentation to show this work has been completed;

   c. Revise—and submit to DEQ for review and approval—the Facility's SWPCP and site map.

      i. As required by Schedules A.2 and A.8.c of the Permit, the SWPCP must include control measures/BMPs that implement each narrative

technology-based effluent limit set forth in Schedule A.1 of the Permit.

ii. The SWPCP must identify the minimum frequency for when inspections, monitoring, housekeeping, and debris control will be conducted. This includes a minimum frequency for the control and prevention of avian fecal material accumulation on the pier deck.

iii. The revisions must show definitive separation of the stormwater discharge points regulated by the 1200-Z Permit and the wastewater discharge points regulated by the 900J Permit. The revisions must also demonstrate that all stormwater discharged through the Port's stormwater catch basins is separate from any wastewater that may be present on the pier; all stormwater that is commingled with wastewater must be routed through Da Yang or APS's wastewater treatment.

iv. All exterior pipes, drains, catchbasins, sheetflow discharges, and other associated conveyances that receive stormwater (including cracks and breaks in the pier deck), must be clearly and definitively identified on the site map. The site map must also indicate the locations of Da Yang and APS's wastewater outfalls.

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

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS

Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

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

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

5/23/2024
Date

Rebecca L Puskas
Becka Puskas, Interim Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION: Respondent violated ORS 468B.025(2) and Schedule A.1.a.ii; A.1.a.iii; A.1.a.vi; and A.1.a.vii of the Permit by failing to use grading, berming, or curbing to prevent stormwater contamination from seafood processing, material storage, loading and unloading, and cleaning areas; and failing to manage all wash water so as to prevent discharge of wash water to the stormwater drainage system.

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 $2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent has coverage under the NPDES 1200-Z General Permit.

"P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent and receives a value of 10 according to OAR 340-012-0145(2)(b) because Respondent has more than 9 prior Class I violations stemming from Case Nos. WQ/SW-NWR-2014-136, WQ/SW-NWR-2016-016, and WQ/SW-NWR-2016-220.

"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. Each day of violation is a separate occurrence. There is no evidence that grading, berming, or curbing has ever been installed on the pier deck.

"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 actions were negligent. By failing to follow the requirements of the Permit, Respondent failed to take reasonable care to avoid the foreseeable risk that seafood processing waste would contaminate the stormwater system.

"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) because the Respondent has not submitted documentation to show that grading, berming, or curbing has been installed on the pier deck.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to estimate EB.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $2,000 + [(0.1 x $2,000) x (10 + 0 + 4 + 4 + 2)] + $0
= $2,000 + [$200 x 20] + $0
= $2,000 + $4,000 + $0
= $6,000

EXHIBIT 2

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

VIOLATION: Respondent violated ORS 468B.025(2) and Schedule A.1.a.g of the Permit by failing to routinely clean all exposed areas that may contribute pollutants to stormwater.

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 $2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent has coverage under the NPDES 1200-Z General Permit.

"P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent and receives a value of 10 according to OAR 340-012-0145(2)(b) because Respondent had more than 9 prior Class I violations stemming from Case Nos. WQ/SW-NWR-2014-136, WQ/SW-NWR-2016-016, and WQ/SW-NWR-2016-220.

"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. Each day of violation is a separate occurrence. Maintenance logs provided by Respondent to DEQ at the time of the inspection showed that no sweeping or catch basin maintenance had occurred since August 2022.

"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 actions were negligent. By failing to routinely clean the

pier deck, Respondent failed to take reasonable care to avoid the foreseeable risk that seafood processing waste would contaminate the stormwater system.

"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) because the Respondent has not submitted documentation to show that it conducts routine cleaning of the pier deck.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to estimate EB.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $2,000 + [(0.1 x $2,000) x (10 + 0 + 4 + 4 + 2)] + $0
= $2,000 + [$200 x 20] + $0
= $2,000 + $4,000 + $0
= $6,000

EXHIBIT 3

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

VIOLATION: Respondent violated ORS 468B.025(1)(a) by causing pollution to waters of the state by allowing industrial waste and process wastewater to discharge to the Columbia River through storm water catch basins.

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

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 a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D).

"P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent and receives a value of 10 according to OAR 340-012-0145(2)(b) because Respondent has more than 9 prior Class I violations stemming from Case Nos. WQ/SW-NWR-2014-136, WQ/SW-NWR-2016-016, and WQ/SW-NWR-2016-220.

"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 at least two occurrences of the violation, on July 18, 2023, and August 8, 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 actions were negligent. Respondent failed to take reasonable care to avoid the foreseeable risk that seafood processing waste would be washed into Pier 2's stormwater catch basins that discharge directly to the Columbia River.

"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) because the Respondent has not submitted any documentation to show that it has taken steps to prevent wastewater from the seafood processing activities from discharging to the river through stormwater catch basins or other openings on the pier deck.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to estimate EB.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $6,000 + [(0.1 x $6,000) x (10 + 0 + 2 + 4 + 2)] + $0
= $6,000 + [$600 x 18] + $0
= $6,000 + $10,800 + $0
= $16,800

Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100

State of Oregon
**Department of Environmental Quality**

Phone: 503-229-5437
Fax: 503-229-5850

## CIVIL PENALTY - ORS 468.135(2)

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| | |
|---|---|
| **DATE:** | May 23, 2024 |
| **RESPONSE DATE :** | August 1, 2024 |
| **TOTAL PENALTY:** | $28,800.00 |

| | | | |
|---|---|---|---|
| Account Name: | ASTORIA, PORT OF <PORT OF ASTORIA> <107184> | | |
| Account Type: | Government Local | Reference Number: | **CPGFD2400067** |
| SubSystem ID: | 179396 | FIMS Acct. ID: | 4677 |

## Penalty Summary

| Penalty Amount | Interest | Adjustment | Amount Paid | Total Penalty |
|---|---|---|---|---|
| $ 28,800.00 | $ 0.00 | $ 0.00 | $ 0.00 | $ 28,800.00 |

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit https://ydo.oregon.gov and select 'Register Account'

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

DEQ

| | | | |
|---|---|---|---|
| REFERENCE NO. | CPGFD2400067 | | |
| PAYCODE: | 00401 7400 10040 74001 0500 000000 00 | | |
| FEE PROGRAM ID: | 950 | RESPONSE DATE: | August 1, 2024 |
| FIMS ACCT. ID: | 4677 | TOTAL PENALTY DUE: | $28800.00 |

AMOUNT ENCLOSED: _____

,

MAKE CHECK PAYABLE TO: Department of Environmental Quality

☐ Check this box if updated address information has been provided on the back of the form.

DEQ FINANCIAL SERVICES - LBX4244
PO BOX 4244
PORTLAND OR 97208-4244

00401 7400 10040 74001 0500 000000 00950000046775CPGFD2400067000028800004

# State of Oregon Department of Environmental Quality

## CIVIL PENALTY - ORS 468.135(2)

State of Oregon
**Department of Environmental Quality**

700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
Phone: 503-229-5437
Fax: 503-229-5850

### Penalty Detail

| Transaction Date | Description | Amount |
|---|---|---|
| 5/22/2024 | 2023-629 WQ-SW-NWR-2023-629 | $28,800.00 |

**SFMS Agencies Use:**

| Trans Code | Treasury Fund | SFMS | Index | PCA (5) | Agency Object | Project # | Phase |
|---|---|---|---|---|---|---|---|
| 723 | 00401 | 7400 | 10040 | 74001 | 0500 | 00000 | 00 |

### Address Changes

Please visit https://ydo.oregon.gov to update your mailing address online or provide the following information:

Name _____

Address _____

City, State, Zip _____