

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

3 )  
4 IN THE MATTER OF ) MUTUAL AGREEMENT  
5 PNW METAL RECYCLING, INC, ) AND FINAL ORDER  
6 d/b/a RIVERGATE SCRAP METALS )  
7 Respondent. ) CASE NO. AQ-ACDP-NWR-2024-112

8 Section I and II of this Mutual Agreement and Final Order (MAO) are DEQ’s Findings of  
9 Fact and DEQ’s conclusions, some of which Respondent expressly disputes and disagrees with, as  
10 further described in Section III of the MAO.

11 I. DEQ’S FINDINGS OF FACT

12 1. Respondent owns and operates a metals recycling facility located at 9645 N.  
13 Columbia Boulevard in Portland, Oregon (the Facility).

14 2. In June 2008, Respondent began construction of a 2300 horsepower American  
15 Pulverizer metal shredder at the Facility (the Shredder). The Shredder was equipped with water  
16 injection and a closed loop baghouse/Z-box cyclone to control particulate matter (PM)  
17 emissions. Construction was completed and Respondent began using the Shredder by June 2009.  
18 Respondent has used the Shredder since June 2009 to reduce end-of-life automobiles, appliances,  
19 and other metals to smaller pieces.

20 3. Respondent did not submit any notices, construction records or emissions estimates to  
21 DEQ at the time it constructed the Shredder.

22 4. In September 2011, DEQ received a complaint about dust from the Facility. Because  
23 DEQ had no records regarding the Shredder, DEQ requested that Respondent estimate the Facility’s  
24 maximum emissions of particulate matter (PM), particulate matter less than ten microns (PM<sub>10</sub>) and  
25 volatile organic compounds (VOCs) and submit an air quality notice of intent to construct (NC)  
26 application to DEQ.

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1           5. In October 2011, Respondent submitted a Notice to Construct application for the  
2 Shredder to DEQ (the 2011 NC Application). Regarding VOC emissions, Respondent proposed to  
3 use an emissions factor of 0.247 lbs/ton, based on a source test reviewed by the Ohio EPA.

4           6. Based on the information submitted by Respondent as well as a broader review of  
5 Shredder emissions information and source tests, on October 2012, DEQ approved Respondent's  
6 Notice to Construct application for the Shredder. In its analysis, DEQ determined that based on its  
7 review of a range of metal shredder source tests, a more appropriate emission factor for VOCs was  
8 0.03 lbs/ton, due to Respondent's practice of draining fluids from automobiles prior to shredding  
9 them. Based on this lower emission factor, DEQ estimated that the VOC emissions from  
10 Respondent's Facility were approximately 2 tons per year, and that the Facility did not need an Air  
11 Contaminant Discharge Permit (ACDP), which was required at the level of 10 tons per year. DEQ  
12 also determined that PM emissions for the Facility were below 10 tons per year.

13           7. On November 1, 2018, DEQ inspected the Facility. DEQ had been reviewing recent  
14 source test information from metal shredders at other facilities that indicated that VOC emissions  
15 were significantly higher than the emission factor used in DEQ's 2012 permitting decision,  
16 described in Section I, Paragraph 6, above. Therefore, one purpose of the inspection was to review  
17 whether DEQ's 2012 determination that no ACDP was required remained valid.

18           8. On June 17, 2019, DEQ sent Respondent Pre-Enforcement Notice No. 2019-PEN-4645  
19 (2019 PEN), requiring Respondent to submit an ACDP application because Respondent's potential  
20 to emit calculations for the Facility exceeded 10 tons per year of particulate matter.

21           9. On June 26, 2019, Respondent submitted an ACDP application to DEQ (the 2019  
22 ACDP Application).

23           10. Respondent's 2019 ACDP Application stated that the Facility's Potential Annual  
24 Emissions of VOCs was 5.15 tons per year.

25           11. Respondent's 2019 ACDP Application stated that based on the Facility's potential  
26 emissions, the Facility was not subject to Major New Source Review or State New Source Review.  
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1 12. Since the submittal of the 2019 ACDP Application, DEQ has further reviewed the  
2 potential emissions calculations for the Facility and has requested additional information from  
3 Respondent regarding the components of those calculations including: the capacity of the Shredder;  
4 operating hours and inherent limits on the Shredder's operation, the resulting throughput (capacity x  
5 operating hours); the percentage of autos processed and inherent limits on percent autos; and VOC  
6 emission factors.

7 13. Specifically, regarding the capacity of the Shredder:

- 8 a. Respondent's 2011 NC Application stated that the Shredder's capacity was 100 tons  
9 per hour (tph);
- 10 b. Respondent's technical memorandum, submitted in May 2022, stated that the  
11 Shredder's capacity was 30-50 tph;
- 12 c. Respondent's response to DEQ's information request, submitted in June 2023, stated  
13 that after discussion with the manufacturer, the Shredder's capacity was 55 tph;
- 14 d. Subsequently, Respondent clarified that the 55 tph is the Shredder output, and the  
15 maximum input capacity is 70 tph, which is the upper limit on the manufacturer's  
16 website.
- 17 e. DEQ has accepted a capacity of 70 tph for the purposes of its conclusions described  
18 in Section II below.

19 14. Regarding the operating hours (hours per year) and the resulting throughput of the  
20 Shredder (tons per year or tpy):

- 21 a. Respondent's 2019 ACDP Application used a Shredder throughput of 41,678 tpy to  
22 calculate potential annual VOC emissions and a throughput of 100,000 tpy to  
23 calculate potential annual PM emissions. Both values are significantly below the  
24 Shredder's actual throughput.
- 25 b. Respondent submitted a technical memorandum in May 2022 and a response to a  
26 DEQ information request in June 2023. Both of these submittals estimated Shredder  
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1 throughput based on the stated capacity of the Shredder x daytime operating hours,  
2 assuming downtime for maintenance during the Facility's night shift.

- 3 c. After further discussion with Respondent, including reviewing maintenance records  
4 and conducting a nighttime inspection to observe maintenance practices, and  
5 consulting with EPA about typical metal shredder downtime, DEQ accepts a 50%  
6 downtime assumption as an inherent limit on the Shredder's operations for purposes  
7 of its conclusions described in Section II below.

8 15. Regarding percent autos processed by the Shredder, after further discussion and  
9 additional information provided by Respondent including actual process information, DEQ accepts  
10 50% autos as an inherent limit on the Shredder's operations for purposes of its conclusions  
11 described in Section II below.

12 16. Regarding the emission factor used to estimate potential VOC emissions from the  
13 Shredder:

- 14 a. In its 2011 NC application, Respondent proposed an emission factor of 0.247  
15 lbs/ton, based on a source test by the Ohio EPA.
- 16 b. In its 2012 NC determination, DEQ applied a much lower emission factor of 0.03  
17 lbs/ton, based on an analysis of source test information where facilities had drained  
18 autos prior to processing (like Respondent does) and facilities that had not.
- 19 c. In its 2019 ACDP Application, Respondent proposed an emission factor of 0.247  
20 lbs/ton.
- 21 d. After further discussion with DEQ, which was evaluating source test information  
22 available to it at the time, Respondent updated its ACDP application to include a  
23 DEQ-recommended VOC emission factor of 0.278 lbs/ton, which was the average  
24 of a number of shredder source tests that DEQ had collected.
- 25 e. On or before early 2023, EPA developed a linear regression equation for metal  
26 shredder VOC emissions plotted against percent autos in the scrap feed. The EPA  
27 equation is based on nine metal shredder source tests using Method 25A. The

1 equation is:  $Y = 0.2873x + 0.2246$ , where:  $Y$  = VOC emission factor in lbs/gross  
2 ton, and  $x$  = percent auto bodies in scrap feed. Using this equation, the EPA-  
3 recommended VOC emission factor assuming 50% autos in the scrap feed is 0.412  
4 lbs/ton (0.368 lbs/gross ton).

5 f. In November 2025, Respondent completed inlet source testing of its Longview, WA  
6 shredder (Longview shredder). The inlet testing of the enclosed Longview shredder  
7 used EPA Method 25A to determine actual VOC emissions. Respondent submitted  
8 the Longview shredder test information to DEQ in January 2026.

9 g. DEQ has added Respondent's Longview shredder test result, along with four recent  
10 metal shredder VOC source test results to the EPA linear regression. All of the  
11 source tests included in DEQ's updated regression are inlet (or pre VOC control  
12 device) tests of an enclosed shredder using EPA Method 25A. The VOC emission  
13 factor at 50% autos based on DEQ's updated regression is 0.3147 lbs/ton.

14 h. DEQ has used the VOC emission factor of 0.3147 lbs/ton for purposes of its  
15 conclusions described in Section II below.

16 17. As of the date of this MAO, DEQ has not issued an ACDP to the Facility.

17 18. Regarding the Facility's status as a "new source" vs. an "existing source" for purposes  
18 of the requirements in the Cleaner Air Oregon program, Chapter 340, Division 245:

19 a. In communications regarding an ACDP for the Facility in 2019, DEQ  
20 communicated to Respondent that the Facility was an existing source.

21 b. In Pre-Enforcement Notice No. 2023-PEN-8648, dated October 2, 2023 (2023  
22 PEN), DEQ communicated to Respondent that the Facility was a new source. On  
23 December 1, 2023, DEQ sent Respondent a letter confirming that the 2023 PEN was  
24 not a final agency action.

25 c. After further review, DEQ has concluded that the Facility is an "existing source" as  
26 stated in Section II, Paragraph 5, below.

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1 II. DEQ'S CONCLUSIONS

2 1. Based on DEQ's review of the components of the VOC emissions calculation since  
3 Respondent's 2019 ACDP Application, described in Section I, Paragraphs 12-16, above, DEQ  
4 estimates the Shredder's potential to emit VOCs is greater than 40 tons per year.

5 2. Applying the same approach and using actual production data, DEQ estimates the  
6 Shredder's actual maximum VOC emissions for any rolling 12-month period from January 2018  
7 through March 2026 is less than 40 tons per year.

8 3. Respondent reasonably relied on DEQ's 2012 determination that the Facility did not  
9 require an ACDP until DEQ's 2019 PEN requiring the submittal of an ACDP application, described  
10 in Section I, above.

11 4. Respondent constructed and operated a major source without first obtaining an ACDP  
12 from DEQ that meets the requirements of OAR Chapter 340, Division 224 (Major New Source  
13 Review), in violation of OAR 340-224-0010(2)<sup>1</sup> and ORS 468A.045(1)(b). Specifically, in June  
14 2008 when construction began, the Facility was located in the Portland-Vancouver Interstate  
15 Maintenance Area for Ozone (*see* OAR 340-204-0040(2)(b)). The installation of the Shredder was  
16 construction according to OAR 340-200-0020(25)(b) because it was the installation of an emissions  
17 unit that resulted in a change in actual emissions. The Shredder was a major source of VOCs,  
18 according to OAR 340-200-0020(67)(a) because the new Shredder in and of itself had the potential  
19 to emit more than the VOC significant emission rate of 40 tons per year, *see* OAR 340-200-  
20 0020(124). Respondent applied for an ACDP in 2019, but stated it was not subject to New Source  
21 Review and did not request a limit on its VOC emissions. As of the date of this MAO, Respondent's  
22 Facility does not have an ACDP that meets New Source Review requirements or that limits its  
23 emissions below the 40 tpy significant emissions rate for VOCs. This is a Class I violation,  
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26 <sup>1</sup> The citations to OAR Chapter 340, Division 224 and 200 rules in this Paragraph are to the rules  
27 in effect at the time the Shredder was constructed in 2008, *see* DEQ 1-2004, f. & cert ef. 4-14-  
04.

1 according to OAR 340-012-0054(1)(a). DEQ has assessed a civil penalty of \$51,000 for this  
2 violation. The calculation of the civil penalty is attached and incorporated in Exhibit 1 to this MAO.

3 5. DEQ has determined that the Facility is a Cleaner Air Oregon existing source as  
4 defined in OAR 340-245-0020(20) because the Facility was physically existing at its current  
5 location prior to November 16, 2018, and, based on the emissions information available at the  
6 time, DEQ determined, prior to November 16, 2018, that Respondent had submitted all  
7 necessary applications to DEQ under OAR 340 divisions 210 or 216.

### 8 III. AGREEMENT

9 Respondent and DEQ hereby agree that:

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

12 2. Respondent's agreement to enter into this MAO is not an admission as to any  
13 allegation, finding, conclusion, or statement in the 2023 PEN or this MAO.

14 3. Further, Respondent expressly disagrees with, disclaims, and denies the following  
15 statements and conclusions from Section I (Findings of Fact) and Section II (DEQ's Conclusions):

16 a. Section I., Paragraph 16.g and 16.h: Respondent expressly disclaims and  
17 denies that the VOC emission factor of 0.3147 lbs/ton is representative of its  
18 VOC emissions. Respondent also denies the accuracy and efficacy of  
19 DEQ's updated linear regression equation (described in Section I,  
20 Paragraphs 16.g and 16.h). Respondent further disagrees with and denies  
21 that the linear regression equation is a calculation methodology that  
22 accurately predicts emissions from the Shredder.

23 b. Section II, Paragraph 1. Respondent disagrees and denies that DEQ has  
24 correctly estimated the Shredder's potential to emit VOC is greater than 40  
25 tons per year.

26 c. Section II, Paragraph 4: Respondent disputes, disagrees with and denies  
27 each and every statement in this paragraph. Further, Respondent further

1 disagrees and denies that DEQ should not be wholly responsible for the  
2 extended delays in processing the ACDP. Respondent is agreeing to this  
3 penalty for purposes of settlement only.

4 4. Notwithstanding Section III, Paragraphs 2 and 3, for purposes of the pending ACDP  
5 application for the Facility and for the ACDP issued in response to that application, the parties agree  
6 to the following:

- 7 a. The Shredder has a capacity of 70 tph;
- 8 b. A maximum of 50% downtime as an inherent limit<sup>2</sup> on the Shredder's hours  
9 of operation;
- 10 c. A maximum of 50% autos as an inherent limit on the Shredder's operations;  
11 and
- 12 d. Use of the DEQ VOC regression described in Section I, Paragraph 16.g  
13 and provided to Respondent on March 10, 2026, to determine the VOC  
14 emission factor for the Shredder.

15 5. DEQ's VOC regression equation and determination of potential to emit VOCs shall  
16 not extend to Respondent's future ACDP renewal applications, notices of construction, applications  
17 or requests to amend or modify the ACDP, or ACDP applications for other facilities or emissions  
18 sources and units not included in the pending ACDP application. Additionally, except as expressly  
19 stated herein, the contents and terms of this MAO shall not apply to the pending ACDP  
20 application for the Facility or to any other application, permitting process, or administrative or  
21 legal proceeding. Further, nothing in this MAO shall be deemed to be binding, a waiver, or  
22 precedent for purposes of determining emission factors for VOCs or any other pollutant in any other  
23 proceeding, application, or process in which Respondent, its successors or assigns are involved.

24 \_\_\_\_\_  
25 <sup>2</sup> Notwithstanding the maximum inherent limit on the Shredder's hours of operation and the  
26 maximum inherent limit for percent autos for purposes of calculating potential to emit, the  
27 parties recognize that Respondent may accept a limit in the ACDP permit that is based on more  
than 50% downtime (i.e., fewer operating hours) or less than 50% autos.

1           6.       The total civil penalty for the violation alleged in Section II, Paragraph 4 of this  
2 MAO is \$51,000.

3           7.       DEQ and Respondent recognize that this MAO does not eliminate the possibility of  
4 additional enforcement of the Act by EPA or citizens under the federal citizen suit provision.

5           8.       DEQ and Respondent recognize that the Environmental Quality Commission (EQC)  
6 has the authority to impose civil penalties and to issue an abatement order for the alleged violation  
7 described in Section II, Paragraph 4 of this MAO. Therefore, pursuant to ORS 183.417(3), DEQ  
8 and Respondent wish to settle the violation alleged in Section II, Paragraph 4 of this MAO.

9           9.       Pursuant to OAR 340-012-0030(19) and OAR 340-012-0145(2), the violation  
10 alleged in Section II, Paragraph 4 of this MAO is one Class I violation and will be treated as a  
11 “Prior Significant Action,” as defined by OAR 340-012-0030(19), in the event DEQ assesses a civil  
12 penalty for violations not expressly settled herein. Respondent waives any and all rights and  
13 objections Respondent may have to a contested case hearing and judicial review of this MAO; and  
14 to service of a copy of this MAO.

15           10.      This MAO resolves all civil claims of DEQ, based upon the facts and violations  
16 alleged in the 2023 PEN, the violation expressly alleged in Section II, Paragraph 4 of this MAO,  
17 and DEQ’s Cleaner Air Oregon determination in Section II, Paragraph 5 of this MAO. This MAO is  
18 not intended to limit, in any way, DEQ’s right to proceed against Respondent in any forum for any  
19 past or future violations not expressly settled herein.

20           11.      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           12.      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 13. Verifiable electronic, facsimile, or scanned signatures on this MAO shall be treated  
5 the same as original signatures.

6 14. If Respondent exceeds the rolling 12-month throughput limit or percent auto limit  
7 contained in Section IV, Paragraph 2 of this MAO, upon receipt of a written Penalty Demand  
8 Notice from DEQ, Respondent shall pay a civil penalty of \$25,000 for each rolling 12-month period  
9 that the throughput limit was exceeded, and \$25,000 for each month that the percent autos limit was  
10 exceeded.

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

15 16. Civil penalty payments pursuant to this MAO may be made as follows:

- 16 a. Pay online with e-check (ACH) or credit card. Go to Your DEQ Online here:  
17 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay  
18 Invoices/Fees on your account dashboard. Enter the Reference Number and  
19 FIMS Account ID included on the attached payment slip. Note: US Bank  
20 charges a 2.3% convenience charge for credit card transactions. ACH  
21 payments have no additional charges, OR
- 22 b. Pay by check or money order: Make check payable to “Department of  
23 Environmental Quality” and mail to the address on the enclosed payment  
24 slip. Please make sure to include the payment slip with your check or money  
25 order and note the case number on your check.

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1 IV. FINAL ORDER

2 The Environmental Quality Commission hereby enters a final order:

3 1. Imposing on Respondent a total civil penalty of \$51,000 for the violation alleged in  
4 Section II, Paragraph 4 this MAO, \$51,000 of which is due within 14 days of the MAO Effective  
5 Date.

6 2. From the MAO Effective Date until DEQ issues an ACDP for the Facility,  
7 Respondent shall comply with the following limits for the metal infeed to the Shredder:

- 8 a. a maximum 12-month rolling total throughput of 250,950 tons/year; and  
9 b. a maximum percent autos of 50%, measured monthly.

10 The first 12-month rolling compliance period is the 12-calendar month period from May 1, 2025  
11 through April 30, 2026.

12 3. From the MAO Effective Date until DEQ issues an ACDP for the Facility,  
13 Respondent shall report 12-month rolling total metal throughput and monthly percent autos  
14 information physically processed through the Shredder to DEQ each month, within 15 business  
15 days of the close of the previous month. Reports must be submitted to David Graiver, DEQ, 700  
16 NE Multnomah Street, #600, Portland, Oregon or submitted in YourDEQOnline (YDO). Please  
17 submit any information marked as exempt from public disclosure under the Oregon Public Records  
18 law in hard copy and provide email notification of its mailing or delivery to DEQ. If submitting in  
19 YDO, please use the option for a Confidential Business Information (CBI) submittal.

20 4. By May 31, 2026, requiring Respondent to:

- 21 a. Submit updated potential to emit calculations for the Facility, for VOCs, total PM,  
22 PM<sub>10</sub>, PM<sub>2.5</sub>, and hazardous air pollutants (total and individual), as an addendum  
23 to the ACDP application pending with DEQ. The potential to emit calculations  
24 must:  
25 i. Be consistent with the definition of potential to emit in OAR 340-200-  
26 0020;  
27 ii. Use a capacity of 70 tph for the Shredder;

- 1                   iii. Apply a maximum of 50% downtime as an inherent limit<sup>3</sup> on the Shredder's
- 2                   hours of operation;
- 3                   iv. Apply a maximum of 50% autos as an inherent limit on the Shredder's
- 4                   operations; and
- 5                   v. Use a VOC emission factor of 0.3147 lbs/ton for the Shredder.

6           b. Submit a plan to DEQ for approval that describes work practices that Respondent  
7           currently uses or proposes to use to minimize VOC emissions from the Shredder.  
8           The plan must be supported by a review of source test information and other  
9           industry information on best practices for minimizing VOC emissions from metal  
10           shredding operations. The identified work practices approved by DEQ shall be  
11           incorporated as compliance demonstration requirements in the Facility's air permit.

12           5. Within 30 days of DEQ's approval of the potential to emit calculations described in  
13           Section IV, Paragraph 4.a, submit an updated Cleaner Air Oregon Emissions Inventory using DEQ  
14           form AQ 520 that meets the requirements in OAR 340-245-0020(4).

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25                   <sup>3</sup> Notwithstanding the maximum inherent limit on the Shredder's hours of operation and the  
26                   maximum inherent limit for percent autos for purposes of calculating potential to emit, the  
27                   parties recognize that Respondent may accept a limit in the ACDP permit that is based on more  
                  than 50% downtime (i.e., fewer operating hours) or less than 50% autos.

PNW METAL RECYCLING, INC (RESPONDENT)

Signature  
Sean Daoud  
Name (print)  
Vice President  
Title (print)

DEPARTMENT OF ENVIRONMENTAL QUALITY and ENVIRONMENTAL QUALITY COMMISSION

Erin Saylor, 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

Date  
04/29/2026

Date  
4/29/2026

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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 Constructing and operating a major source without first obtaining an ACDP from DEQ that meets the requirements of OAR Chapter 340, Division 224 (Major New Source Review), in violation of 340-224-0010(2)<sup>1</sup> and ORS 468A.045(1)(b).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(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)(A) because Respondent should have had an ACDP issued pursuant to New Source Review regulations.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 2 according to OAR 340-012-0145(2)(a)(C) because Respondent has two Class II violations in case no. AQ/ACDP-NWR-2019-148 issued on October 24, 2019.

"H" is Respondent's history of correcting prior significant actions, and receives a value of -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited as prior significant actions by submitting an ADCP application to DEQ in 2019.

"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 is a separate occurrence of the violation. From on or before June 2009 to the date of this MAO, Respondent has operated the Facility without an ACDP that meets New Source Review requirements or that limits the Facility's emissions below the 40 tpy significant emissions rate for VOCs. As discussed below, DEQ is using its enforcement

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<sup>1</sup> See DEQ 1-2004, f. & cert ef. 4-14-04.

discretion to assess a separate civil penalty for each year of violation from 2019 through 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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent has submitted incomplete and inaccurate information to DEQ regarding the components of the VOC potential to emit calculation. Respondent incorrectly stated in its 2019 ACDP Application that the Facility's potential annual VOC emissions were 5.15 tons per year, and that the Facility was not subject to Major New Source Review or State New Source Review. It took multiple information requests from DEQ to obtain the information needed from Respondent for an accurate potential to emit calculation. Therefore, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated by entering into this MAO with enforceable production limits that apply until an ACDP is issued by DEQ.

"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 associated with this violation.

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

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 has operated without a NSR ACDP from 2009 until present. DEQ is using its enforcement discretion to assess a separate civil penalty for each year of violation from 2019 through 2023. In 2019, new information about metal shredder VOC emissions was available to both DEQ and Respondent and Respondent submitted an ACDP application to DEQ that included inaccurate information about its VOC emissions and stated that the Facility was not subject to New Source Review. In 2023, Respondent provided updated process and emissions information to DEQ in response to DEQ's information requests.

TOTAL PENALTY:

$$\$10,200 \times 5 = \$51,000$$