



Oregon

Kate Brown, 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

November 3, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5321

Chris Miccolis
WRF Manager, City of Bend
22395 McGrath Road
Bend, OR 97701

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-ER-2022-055

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the City of Bend (the City) a civil penalty of \$30,333 for violating the effluent limits and monitoring requirements set forth in the Water Pollution Control Facilities Permit # 101572 (the Permit) issued to the City for its wastewater treatment plant located on McGrath Road. Specifically, between July 2019 and March 2022, the City exceeded the effluent limitations set forth in its permit for biochemical oxygen demand (BOD₅) 25 times; total suspended solids (TSS) 60 times; and bacteria (*E. Coli*) 15 times. Additionally, between August 2018 and August 2021, the City failed to collect effluent monitoring data on seven occasions.

DEQ issued this penalty because the City's compliance with the effluent limitations set forth in its Permit is essential in preventing groundwater contamination and avoiding nuisance conditions, such as odors. Additionally, failure to collect monitoring data prevents both the City and DEQ from evaluating the City's compliance with the Permit and from quickly responding, where necessary, to exceedances.

DEQ appreciates the efforts the City has undertaken in recent years to upgrade its system; the Department considered those efforts when determining the amount of the civil penalty. With the upgrades now complete, DEQ expects the City will operate in compliance with its permit going forward.

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. Alternatively, you can pay the penalty by sending a check or money order to the above address.

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,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Shane Cossell, DEQ ER
Mike Hiatt, DEQ ER
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3
4 IN THE MATTER OF:
5 THE CITY OF BEND WWTP

6 Respondent.

) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER

) CASE NO. WQ/M-ER-2022-055
)

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
10 ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
11 011, 012, and 045.

12 II. FINDINGS OF FACT

13 1. Respondent is the owner and operator of a domestic wastewater treatment plant located at
14 22395 McGrath Road in Bend, Oregon (the Facility).

15 2. Respondent operates the Facility under Water Pollution Control Facilities (WPCF) Permit
16 #101572 (the Permit). The Permit was issued on December 10, 2010, and expired on November 30,
17 2015. Respondent submitted a timely permit renewal application on September 15, 2015, thus the
18 Permit has been administratively extended until the renewal permit is issued.

19 3. The Facility discharges treated wastewater to constructed, non-overflow,
20 evaporation/percolation ponds via Outfall No. 001. The Facility is also authorized to reuse treated
21 wastewater—in accordance with a DEQ approved recycled water use plan—via Outfall Nos. 002, 003,
22 and 004.

23 4. Respondent recently completed a major expansion project at the Facility to address
24 increasing flows and loads.

25 5. Schedule A of the Permit establishes waste disposal limits for wastewater discharges from
26 the Facility. These limits must be met prior to the discharge of treated effluent from the activated
27 sludge plant to Outfall 001.

1 6. Schedule A.1.a. of the Permit establishes the following Technology Based Effluent Limits
2 (TBELs) for both the concentration of five-day biochemical oxygen demand (BOD₅) and total
3 suspended solids (TSS): average monthly effluent concentration limit of 20 mg/l; average weekly
4 effluent concentration limit of 30 mg/l; monthly average limit of 1000 lb/day; weekly average limit of
5 1500 lbs/day and daily maximum limit of 2000 lbs/day. The lbs/day limits are based on an average dry
6 weather design flow of 6.0 MGD.

7 7. Schedule A.1.a. of the Permit establishes the following limit for bacteria levels in the
8 Facility's effluent: "*E.Coli* concentrations shall not exceed 126 organisms per 100 ml monthly
9 geometric mean. No single sample shall exceed 406 organisms per 100 ml."

10 8. Schedule B.1 of the Permit requires the Respondent to monitor specific parameters in its
11 influent and effluent, including BOD₅, TSS, and *E.Coli*. Specifically, the Permit requires Respondent to
12 perform influent and effluent monitoring three times per week for BOD₅ and TSS; effluent monitoring
13 three times per week for *E.Coli*; and effluent monitoring daily for pH and Total Chlorine Residual.

14 9. In preparation for the renewal of the Permit, DEQ completed a file review of the discharge
15 monitoring reports (DMRs) submitted by Respondent for the Facility for the period of August 2018—
16 September 2022.

17 10. DEQ's review of the Facility's DMRs identified the following twenty-five (25) violations of
18 the BOD₅ TBELs established in the Permit:

Date	Violation	Class
July 23, 2019	BOD ₅ loading daily max 2,621 lbs/day	II
July 24, 2019	BOD ₅ loading daily max 2,565 lbs/day	II
July 31, 2019	BOD ₅ loading daily max 4,858 lbs/day	I
July 2019	BOD ₅ loading weekly average 2,593 lbs/day	I
July 2019	BOD ₅ concentration weekly average 49 mg/L	I
July 2019	BOD ₅ loading monthly average 1,348 lbs/day	II
July 2019	BOD ₅ concentration monthly average 26 mg/L	II
August 1, 2019	BOD ₅ loading daily max 3,684 lbs/day	I
August 7, 2019	BOD ₅ loading daily max 7,914 lbs/day	I
August 2019	BOD ₅ loading monthly average 1,354 lbs/day	II

1	August 2019	BOD ₅ concentration monthly average 26 mg/L	II
2	August 2019	BOD ₅ loading weekly average 3,831 lbs/day	I
3	August 2019	BOD ₅ concentration weekly average 72 mg/L	I
4	February 4, 2020	BOD ₅ loading daily max 3,759 lbs/day	I
5	February 5, 2020	BOD ₅ loading daily max 3,826 lbs/day	I
6	February 6, 2020	BOD ₅ loading daily max 3,882 lbs/day	I
7	February 16, 2020	BOD ₅ loading daily max 3,012 lbs/day	I
8	February 19, 2020	BOD ₅ loading daily max 2,928 lbs/day	II
9	February 20, 2020	BOD ₅ loading daily max 4,002 lbs/day	I
10	February 23, 2020	BOD ₅ loading daily max 2,773 lbs/day	II
11	February 25, 2020	BOD ₅ loading daily max 2,221 lbs/day	III
12	February 2020	BOD ₅ loading monthly average 2,513 lbs/day	I
13	February 2020	BOD ₅ concentration monthly average 51 mg/L	I
14	February 2020	BOD ₅ loading weekly average 3,822 lbs/day	I
15	February 2020	BOD ₅ concentration weekly average 79 mg/L	I

16 11. DEQ's review of the Facility's DMRs identified the following sixty-one (61) violations of
17 the TSS TBELs established in Schedule A.1.a. of the Permit:

18	Date	Violation	Class
19	July 11, 2019	TSS loading daily max 3,052 lbs/day	I
20	July 12, 2019	TSS loading daily max 2,544 lbs/day	II
21	July 22, 2019	TSS loading daily max 2,098 lbs/day	III
22	July 23, 2019	TSS loading daily max 5,578 lbs/day	I
23	July 24, 2019	TSS loading daily max 4,150 lbs/day	I
24	July 25, 2019	TSS loading daily max 2,640 lbs/day	II
25	July 26, 2019	TSS loading daily max 2,573 lbs/day	II
26	July 27, 2019	TSS loading daily max 2,024 lbs/day	III
27	July 30, 2019	TSS loading daily max 2,231 lbs/day	III
	July 31, 2019	TSS loading daily max 8,407 lbs/day	I
	July 2019	TSS loading weekly average 2,789 lbs/day	I

1	July 2019	TSS concentration weekly average 53 mg/L	I
2	July 2019	TSS loading monthly average 1,545 lbs/day	I
3	July 2019	TSS concentration monthly average 30 mg/L	II
4	August 1, 2019	TSS loading daily max 7,695 lbs/day	I
5	August 2, 2019	TSS loading daily max 6,839 lbs/day	I
6	August 3, 2019	TSS loading daily max 3,061 lbs/day	I
7	August 4, 2019	TSS loading daily max 3,138 lbs/day	I
8	August 5, 2019	TSS loading daily max 3,448 lbs/day	I
9	August 6, 2019	TSS loading daily max 3,067 lbs/day	I
10	August 7, 2019	TSS loading daily max 7,710 lbs/day	I
11	August 8, 2019	TSS loading daily max 4,562 lbs/day	I
12	August 9, 2019	TSS loading daily max 2,702 lbs/day	II
13	August 10, 2019	TSS loading daily max 2,242 lbs/day	III
14	August 11, 2019	TSS loading daily max 2,231 lbs/day	III
15	August 2019	TSS loading monthly average 1,691 lbs/day	I
16	August 2019	TSS concentration monthly average 32 mg/L	I
17	August 2019	TSS loading weekly average 4,434 lbs/day	I
18	August 2019	TSS concentration weekly average 85 mg/L	I
19	January 31, 2020	TSS loading daily max 2,585 lbs/day	II
20	February 1, 2020	TSS loading daily max 2,942 lbs/day	II
21	February 4, 2020	TSS loading daily max 3,918 lbs/day	I
22	February 5, 2020	TSS loading daily max 4,208 lbs/day	I
23	February 6, 2020	TSS loading daily max 3,721 lbs/day	I
24	February 7, 2020	TSS loading daily max 2,223 lbs/day	III
25	February 8, 2020	TSS loading daily max 3,069 lbs/day	I
26	February 9, 2020	TSS loading daily max 3,128 lbs/day	I
27	February 10, 2020	TSS loading daily max 2,334 lbs/day	III
	February 14, 2020	TSS loading daily max 2,738 lbs/day	II
	February 15, 2020	TSS loading daily max 2,165 lbs/day	III
	February 16, 2020	TSS loading daily max 4,690 lbs/day	I
	February 17, 2020	TSS loading daily max 6,874 lbs/day	I

1	February 18, 2020	TSS loading daily max 3,420 lbs/day	I
2	February 19, 2020	TSS loading daily max 4,913 lbs/day	I
3	February 20, 2020	TSS loading daily max 8,083 lbs/day	I
4	February 21, 2020	TSS loading daily max 5,304 lbs/day	I
5	February 22, 2020	TSS loading daily max 2,743 lbs/day	II
6	February 23, 2020	TSS loading daily max 3,597 lbs/day	I
7	February 24, 2020	TSS loading daily max 2,116 lbs/day	III
8	February 25, 2020	TSS loading daily max 2,825 lbs/day	II
9	February 26, 2020	TSS loading daily max 3,380 lbs/day	I
10	February 2020	TSS loading monthly average 3,016 lbs/day	I
11	February 2020	TSS concentration monthly average 62 mg/L	I
12	February 2020	TSS loading weekly average 5,147 lbs/day	I
13	February 2020	TSS concentration weekly average 103 mg/L	I
14	September 20, 2021	TSS loading daily max 2,035 lbs/day	III
15	September 21, 2021	TSS loading daily max 2,332 lbs/day	III
16	September 22, 2021	TSS loading daily max 2,780 lbs/day	II
17	September 2021	TSS concentration weekly average 33 mg/L	III
18	September 2021	TSS loading weekly average 1,632 lbs/day	III
19	June 20, 2022	TSS loading daily max 2,033 lbs/day	III

12. DEQ's review of the Facility's DMRs identified the following fifteen (15) violations of the bacteria limit established in Schedule A.1.a. of the Permit:

Date	Violation	Class
July 24, 2019	<i>E. coli</i> single sample 649 org/100mL	III
July 31, 2019	<i>E. coli</i> single sample 1,300 org/100mL	III
August 5, 2019	<i>E. coli</i> single sample 2,420 org/100mL	II
October 2, 2019	<i>E. coli</i> single sample 649 org/100mL	III
February 26, 2020	<i>E. coli</i> single sample 2,420 org/100mL	II
July 29, 2020	<i>E. coli</i> single sample 980 org/100mL	III
August 26, 2020	<i>E. coli</i> single sample 548 org/100mL	III

1	November 5, 2020	<i>E. coli</i> single sample 687 org/100mL	III
2	January 20, 2021	<i>E. coli</i> single sample 770 org/100mL	III
3	August 2, 2021	<i>E. coli</i> single sample 1,986 org/100mL	III
4	August 25, 2021	<i>E. coli</i> single sample 980 org/100mL	III
5	August 26, 2021	<i>E. coli</i> single sample 1,120 org/100mL	III
6	August 27, 2021	<i>E. coli</i> single sample 525 org/100mL	III
7	December 22, 2021	<i>E. coli</i> single sample 435 org/100mL	III
8	March 1, 2022	<i>E. coli</i> single sample 2,420 org/100mL	II

9 13. Respondent failed to collect the following monitoring data, as required by Schedule B.1. of
10 the Permit:

- 11 a. August 2018 (1st week): Failure to collect influent monitoring data for BOD₅,
- 12 b. December 2018 (4th week): Failure to collect effluent monitoring data for BOD₅,
- 13 c. May 20, 2019: Failure to collect effluent monitoring data for pH,
- 14 d. May 20, 2019: Failure to collect effluent monitoring data for Total Residual Chlorine,
- 15 e. August 2021 (1st week): Failure to collect influent monitoring data for BOD₅,
- 16 f. August 2021 (3rd week): Failure to collect influent monitoring data for BOD₅, and
- 17 g. August 2021 (3rd week): Failure to collect effluent monitoring data for BOD₅.

18 14. Pursuant to Schedule F.A1 of the Permit, failure to comply with any permit condition is a
19 violation of Oregon Revised Statutes (ORS) 468B.025.

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

22 III. CONCLUSIONS

23 1. Respondent violated ORS 468B.025(2) by exceeding the effluent limitations for BOD₅ set
24 forth in Schedule A.1.a. of the Permit a total of twenty-five times. Specifically, between July 2019 and
25 February 2020:

- 1 • On sixteen occasions, Respondent reported BOD₅ levels that exceeded the limitations set forth
2 in its permit by 50% or more—these are Class I violations pursuant to OAR 340-012-
3 0055(1)(k)(A);
- 4 • On eight occasions, Respondent reported BOD₅ levels that exceeded the limitations set forth in
5 its permit by 20% or more but less than 50%—these are Class II violations pursuant to OAR
6 340-012-0055(2)(a)(A); and
- 7 • On one occasion, Respondent reported BOD₅ levels that exceeded the limitations set forth in its
8 permit by less than 20%—this is a Class III violation pursuant to OAR 340-012-0055(3)(b)(A).

9 DEQ hereby assesses a \$9,600 civil penalty for these violations.

10 2. Respondent violated ORS 468B.025(2) by exceeding the effluent limitations for TSS set forth
11 in Schedule A.1.a. of the Permit a total of sixty-one times. Specifically, between July 2019 and June 2022:

- 12 • On thirty-six occasions, Respondent reported TSS levels that exceeded the limitations set forth
13 in its permit by 50% or more—these are Class I violations pursuant to OAR 340-012-
14 0055(1)(k)(A);
- 15 • On eleven occasions, Respondent reported TSS levels that exceeded the limitations set forth in
16 its permit by 20% or more but less than 50%—these are Class II violations pursuant to OAR
17 340-012-0055(2)(a)(A); and
- 18 • On fourteen occasions, Respondent reported TSS levels that exceeded the limitations set forth
19 in its permit by less than 20%—these are Class III violations pursuant to OAR 340-012-
20 0055(3)(b)(A).

21 DEQ hereby assesses a \$10,200 civil penalty for these violations.

22 3. Respondent violated ORS 468B.025(2) by exceeding the effluent limitation for *E. Coli* bacteria
23 set forth in Schedule A.1.a. of the Permit a total of fifteen times. Specifically, between July 2019 and
24 March 2022:

- 25 • On three occasions, Respondent reported *E. Coli* levels that exceeded the limitation set forth in
26 its permit by a factor of five or more—these are Class II violations pursuant to OAR 340-012-
27 0055(2)(a)(C); and

- 1 • On twelve occasions, Respondent reported *E. Coli* levels that exceeded the limitation set forth
2 in its permit by less than five times the limit—these are Class III violations pursuant to OAR
3 340-012-0055(3)(b)(C).

4 DEQ has chosen not to assess a civil penalty for these violations.

5 4. Respondent violated ORS 468B.025(2) by failing to collect monitoring data, as required by
6 Schedule B.1. of the Permit. Specifically, Respondent failed to collect monitoring data on seven occasions,
7 as set forth in Paragraph 15 above. These are Class I violations pursuant to OAR 340-012-0055(1)(o).
8 DEQ hereby assesses a \$10,533 civil penalty for these violations.

9 IV. ORDER TO PAY CIVIL PENALTY

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

- 12 1. Pay a civil penalty of \$30,333. The determination of the civil penalty is attached as Exhibits
13 1–3 and is incorporated as part of this Notice.

14 If you do not file a request for hearing as set forth in Section V below, your check or money order must
15 be made payable to "**Department of Environmental Quality**" and sent to the **DEQ, Business Office,**
16 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

18 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
19 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
20 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
21 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
22 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
23 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
24 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,** fax
25 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge
26 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
27 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be

1 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
2 you may represent yourself. If you are a corporation, partnership, limited liability company,
3 unincorporated association, trust or government body, you must be represented by an attorney or a duly
4 authorized representative, as set forth in OAR 137-003-0555.

5 Active duty Service members have a right to stay proceedings under the federal Service
6 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
7 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
8 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
9 Department does not have a toll free telephone number.

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

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21 11/3/2022
22 Date


21 
22 Kieran O'Donnell, Manager
23 Office of Compliance and Enforcement
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EXHIBIT 1

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

VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the BOD₅ limits set forth in Schedule A.1.a. of the Permit a total of twenty-five times.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) because Respondent exceeded the Permit limit by 50 percent or more.

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)(E)(i) because Respondent's facility has a permitted flow of six million gallons per day.

"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 0 according to OAR 340-012-0145(2)(a)(A) and (2)(f) because Respondent has had no prior water quality violations in the preceding ten years.

"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 in the preceding ten years.

"O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Respondent violated the BOD₅ limits twenty-five times.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The BOD₅ limits are express conditions of Respondent's permit. By failing to take necessary actions to comply with the limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk permit violations would occur.

"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's system upgrades represent a reasonable effort to ensure the violations won't be repeated.

"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 make an estimate under the rule.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 3 + 4 + -1)] + \$0 \\ &= \$6,000 + [\$600 \times 6] + \$0 \\ &= \$6,000 + \$3,600 + \$0 \\ &= \$9,600 \end{aligned}$$

EXHIBIT 2

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

- VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the TSS limits set forth in Schedule A.1.a. of the Permit a total of sixty-one times.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) because Respondent exceeded the permit limit by 50 percent or more.
- 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)(E)(i)) because Respondent's facility has a permitted flow of six million gallons per day.
- "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 0 according to OAR 340-012-0145(2)(a)(A) and (2)(f) because Respondent has had no prior water quality violations in the preceding ten years.
- "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 in the preceding ten years.
- "O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(c) because there were more than 28 occurrences of the violation. Respondent violated the TSS limits sixty-one times.
- "M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The TSS limits are express conditions of Respondent's permit. By failing to take necessary actions to comply with the limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk permit violations would occur.

"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's system upgrades represent a reasonable effort to ensure the violations won't be repeated.

"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 make an estimate under the rule.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 4 + 4 + -1)] + \$0 \\ &= \$6,000 + [\$600 \times 7] + \$0 \\ &= \$6,000 + \$4,200 + \$0 \\ &= \$10,200 \end{aligned}$$

EXHIBIT 3

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

- VIOLATIONS: Respondent violated ORS 468B.025(2) and Schedule B.1. of the Permit by failing to collect required monitoring data on seven occasions.
- CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(o).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) because 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(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(E)(i) because Respondent's facility has a permitted flow of six million gallons per day.
- "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 0 according to OAR 340-012-0145(2)(a)(A) and (2)(f) because Respondent has had no prior water quality violations in the preceding ten years.
- "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 Respondent has had no prior water quality violations in the preceding ten years.
- "O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Respondent failed to collect monitoring data on seven occasions.
- "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. Respondent has a copy of the permit, which clearly sets forth the monitoring requirements in Schedule B.1. By failing to collect all the required monitoring data, Respondent failed to exercise reasonable care to avoid the foreseeable risk a permit violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$333. By missing 5 BOD₅ samples, 1 pH sample, and 1 Total Residual Chlorine sample, Respondent saved an estimated \$397. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 3 + 4 + 0)] + \$333 \\ &= \$6,000 + [\$600 \times 7] + \$333 \\ &= \$6,000 + \$4,200 + \$333 \\ &= \$10,533 \end{aligned}$$