



# 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 29

Andrew Bornstein  
Astoria Pacific Seafoods, LLC  
P.O. Box 58  
Astoria, OR 97103

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/I-NWR-2023-158

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Astoria Pacific Seafoods, LLC (APS) a civil penalty of \$22,800 for violating the technology-based effluent limits set forth in the National Pollutant Discharge Elimination System (NPDES) 900J General Permit, submitting a late dilution study, failing to meet the minimum dilution ratios required by the Permit, and for discharging untreated wastewater from an unauthorized discharge point at its seafood processing facility located on Pier 2 at the Port of Astoria.

DEQ issued this penalty because compliance with the effluent limitations and other requirements set forth in the Permit is essential in protecting water quality. Additionally, the discharge of untreated wastewater poses a risk to aquatic life. DEQ is concerned that APS continues to have ongoing issues meeting the effluent limitations set forth in the Permit. This is the second enforcement action DEQ has issued to APS in less than two years for effluent limit violations.

Included in Section IV of the enclosed Notice is an order requiring APS to redesign or move its outfall to meet the required dilution ratios set forth in Schedule A.2 of the Permit and to propose and install a wastewater treatment system.

DEQ appreciates your efforts to ensure that the unauthorized discharge violation would not be repeated by installing a valve to better regulate the flow of process water and by ensuring that the screens used at the facility are regularly cleaned. DEQ considered these efforts when determining the amount of civil penalty.

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](mailto: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,



Becka Puskas, Interim Manager  
Office of Compliance and Enforcement

Enclosures

cc: Suzanne Lacampagne, Miller Nash LLP (via email to [Suzanne.Lacampagne@MillerNash.com](mailto:Suzanne.Lacampagne@MillerNash.com))  
Randall Bailey, DEQ NWR  
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
ASTORIA PACIFIC SEAFOODS, LLC ) ASSESSMENT AND ORDER  
Respondent. ) CASE NO. WQ/I-NWR-2023-158

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 a seafood processing facility located at 55 Pier 2, Building A, Astoria, OR 97103 (the Facility). The Facility discharges wastewater to the Columbia River.

2. The Columbia River is a water of the state pursuant to ORS 468B.005(10).

3. Respondent has coverage under the National Pollutant Discharge Elimination System (NPDES) 900J General Permit (the Permit) with Facility ID# 110825. Respondent is authorized to discharge wastewater from a single outfall: Outfall 001.

4. Because the Facility discharges wastewater from all its processing operations through a single outfall, the applicable Daily Maximum and Monthly Average Technology-Based Effluent Limitations (TBELs) set forth in Schedule A of the Permit are calculated using a “Compliance Calculator” spreadsheet developed by DEQ (Spreadsheet). The Spreadsheet calculates the applicable limits based on the total pounds of seafood processed on a given day/month, how much of each type of seafood was processed on a given day/month, and the limits for each type set forth in the Permit.

5. The Discharge Monitoring Reports (DMRs) submitted by Respondent for April 2023 through February 2024, identified the following violations of the BOD<sub>5</sub>, TSS, and Oil & Grease Daily Maximum Limits:

Date	Pollutant	Load lb/klb	Limit lb/klb	% Exceedance	Violation Class
4/26/2023	BOD <sub>5</sub>	59	13	354%	1
5/3/2023	BOD <sub>5</sub>	24	13	85%	1
6/28/2023	BOD <sub>5</sub>	17	11	55%	1
10/3/2023	BOD <sub>5</sub>	14	13	8%	3
11/7/2023	BOD <sub>5</sub>	2.5	1.8	39%	2
5/9/2023	TSS	7.5	5.3	42%	2
6/28/2023	O&G	2.3	0.98	135%	1
10/11/2023	O&G	2.3	1.2	92%	1
11/7/2023	O&G	0.3	0.065	362%	1
11/8/2023	O&G	0.5	0.045	1011%	1

6. The DMRs submitted by Respondent for April 2023 through February 2024, identified the following violations of the BOD<sub>5</sub>, TSS, and Oil & Grease Monthly Average Limits:

Year	Month	Pollutant	Load lb/klb	Limit lb/klb	% Exceedance	Violation Class
2023	April	BOD <sub>5</sub>	22	8.7	153%	1
2023	October	O&G	0.8	0.43	86%	1
2023	November	O&G	0.2	0.16	25%	2

7. Pursuant to Schedule D.1. of the Permit, “[w]ithin 24 months of receiving permit coverage, the [permit] registrant must submit the results of a dilution study to demonstrate that the dilution ratio of the discharge to receiving water body at the edge of the regulatory mixing zone is at least 1 to 10 and at least 1 to 5 [at] the edge of the zone of immediate dilution.”

8. On March 22, 2022, Respondent was issued permit coverage under the 2020 version of the Permit effective April 1, 2022, thus the dilution study required by Schedule D.1. of the Permit was required to be submitted to DEQ by April 1, 2024. Respondent submitted its dilution study on April 12, 2024.

9. Pursuant to Schedule A.2 of the Permit, “[t]he dilution ratio of the discharge to receiving water body must be a minimum of 1 to 10 at the edge of the regulatory mixing zone and a minimum of 1 to 5 at the edge of the zone of immediate dilution.”

10. The dilution study Respondent submitted on April 12, 2024, concludes that the “[t]he minimum predicted dilution factor at the 10 ft [zone of immediate dilution] is 4.9, which does not

1 meet the requirement from the 900-J Permit of a minimum dilution factor of 6 (a 5 to 1 dilution ratio).”

2 11. Pursuant to Schedule F, Section A.1. of the Permit, failure to comply with any permit  
3 condition is a violation of ORS 468B.025.

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

6 13. On July 18, 2023, and August 8, 2023, DEQ conducted an inspection of the Port of Astoria to  
7 assess the Port’s compliance with the 1200-Z NPDES General Permit for Industrial Stormwater. On  
8 both days, two totes meant to catch the solids removed during Respondent’s wastewater screening  
9 process were overflowing onto the pier deck. Wastewater was flowing from the totes into stormwater  
10 drains and cracks in the pier deck which discharge into the Columbia River, where a large plume of  
11 wastewater was present. Additionally, at the time of both inspections, Respondent’s employees were  
12 washing totes in an uncontained area allowing the wash water to flow over the pier deck into the river.

13 14. Pursuant to ORS 468B.050(1)(e), no person may use any new outlet for the discharge of any  
14 wastes into the waters of the state without permit coverage which specifies effluent limitations  
15 applicable to the use of that outlet.

### 16 III. CONCLUSIONS

17 1. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the TBELs  
18 for BOD<sub>5</sub> six times, as described in Section II, Paragraphs 5–6 above. Specifically:

- 19 a. On four occasions Respondent exceeded the TBELs for BOD<sub>5</sub> by 50% or more. These are  
20 Class I violations pursuant to OAR 340-012-0055(1)(k)(A);
- 21 b. On one occasion Respondent exceeded the TBELs for BOD<sub>5</sub> by 20% or more but less than  
22 50%. This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A); and
- 23 c. On one occasion Respondent exceeded the TBELs for BOD<sub>5</sub> by less than 20%. This is a  
24 Class III violation pursuant to OAR 340-012-0055(3)(b)(A).

25 DEQ hereby assesses a \$5,200 civil penalty for these violations.

26 2. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the TBELs  
27 for TSS on one occasion. Specifically, as described in Section II, Paragraph 5 above, on May 9, 2023,

1 Respondent exceeded the daily maximum TBEL for TSS by 20% or more but less than 50%. This is a  
2 Class II violation pursuant to OAR 340-012-0055(2)(a)(A). DEQ hereby assesses a \$2,400 civil penalty  
3 for this violation.

4 3. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the TBELs  
5 for Oil & Grease on six occasions, as described in Section II, Paragraphs 5–6 above. Specifically,

6 a. On five occasions Respondent exceeded the TBELs for Oil & Grease by 50% or more.

7 These are Class I violations pursuant to OAR 340-012-0055(1)(k)(A); and

8 b. On one occasion Respondent exceeded the TBELs for Oil & Grease by 10% or more but  
9 less than 50%. This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A).

10 DEQ hereby assesses a \$5,200 civil penalty for these violations.

11 4. Respondent violated ORS 468B.025(2) and Schedule D of the Permit by failing to submit a  
12 dilution study by the April 1, 2024, deadline. As described in Section II, Paragraphs 7–8 above,  
13 Respondent submitted a dilution study twelve days late, on April 12, 2024. This is a Class II violation  
14 pursuant to OAR 340-012-0055(2)(b). DEQ has not assessed a civil penalty for this violation.

15 5. Respondent violated ORS 468B.025(2) and Schedule A.2 of the Permit by failing to meet the  
16 minimum mixing zone dilution ratio of 1 to 5, as described in Section II, Paragraphs 9–10 above. This is a  
17 Class II violation pursuant to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this  
18 violation.

19 6. Respondent violated ORS 468B.050(1)(e) by discharging wastes into a water of the state from  
20 an unpermitted outlet, as described in Section II, Paragraphs 13–14 above. This is a Class I violation  
21 pursuant to OAR 340-012-0055(1)(c). DEQ hereby assesses a \$10,000 civil penalty for these violations.

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

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

25 1. Pay a total civil penalty of \$22,800. The determination of the civil penalty is attached as  
26 Exhibits 1–4 and is incorporated as part of this Notice.

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

- 4 2. Comply with the following conditions and corrective action schedule with respect to the  
5 Facility's outfall:
- 6 a. By November 29, 2024, submit to DEQ for review and approval a proposed redesign or  
7 new location for the Facility's outfall that will enable the Facility to meet the required  
8 dilution ratios set forth in Schedule A.2 of the Permit. The proposal must include a  
9 schedule by which the new outfall will be in place and operational, not later than  
10 December 31, 2025.
- 11 3. Comply with the following conditions and corrective action schedule with respect to the  
12 Facility's wastewater treatment system:
- 13 a. By November 29, 2024, submit to DEQ for review and approval proposed wastewater  
14 treatment plans and specifications.
  - 15 b. Within 90 days of DEQ's approval of the plans and specifications, issue contracts for major  
16 equipment and improvements.
  - 17 c. By July 1, 2025, provide a written report to DEQ indicating the status of the project,  
18 including the dates that the contracts for major equipment and improvements were issued  
19 and the expected date for initial startup of the treatment system.
  - 20 d. By December 31, 2025, the new wastewater treatment system must be in service and fully  
21 operational and the Facility must be operating in compliance with the effluent limits set  
22 forth in the Permit.

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

24 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
25 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
26 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
27 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered

1 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
2 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
3 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
4 it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge  
5 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
6 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
7 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
8 you may represent yourself. If you are a corporation, partnership, limited liability company,  
9 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
10 authorized representative, as set forth in OAR 137-003-0555.

11 Active duty Service members have a right to stay proceedings under the federal Service  
12 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
13 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
14 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
15 Department does not have a toll free telephone number.

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

22  
23  
24  
25 5/23/2024  
Date

25 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

VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the TBELs for BOD<sub>5</sub> set forth in Schedule A of the Permit on 6 occasions.

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. Pursuant to OAR 340-012-0145(4)(e), the penalty is based on the highest classification applicable to any of the occurrences.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because the receiving stream flow at the time of the exceedances was more than 10 times the flow of Respondent's discharge.

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 I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent operates under the NPDES 900-J 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 over 60 Class I violations in Case No. WQ/I-NWR-2022-080.

"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 was more than one but less than seven occurrences of the violation. Respondent's discharge exceeded the BOD<sub>5</sub> TBELs on six 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 900J Permit and is aware of the TBELs required under the Permit. By failing to meet those TBELs, Respondent failed to take reasonable care to avoid the foreseeable risk that a 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 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 2 + 4 + 0)] + \$0 \\ &= \$2,000 + [\$200 \times 16] + \$0 \\ &= \$2,000 + \$3,200 + \$0 \\ &= \$5,200 \end{aligned}$$

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 TBELs for TSS set forth in Schedule A of the Permit on one occasion.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because the receiving stream flow at the time of the exceedances was more than 10 times the flow of Respondent's discharge.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent operates under the NPDES 900-J 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 over 60 Class I violations in Case No. WQ/I-NWR-2022-080.

"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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Respondent has a copy of the 900J Permit and is aware of the TBELs required under the Permit. By failing to meet those TBELs, Respondent failed to take reasonable care to avoid the foreseeable risk that a 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 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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

$$\begin{aligned} &= \$1,000 + [(0.1 \times \$1,000) \times (10 + 0 + 0 + 4 + 0)] + \$0 \\ &= \$1,000 + [\$100 \times 14] + \$0 \\ &= \$1,000 + \$1,400 + \$0 \\ &= \$2,400 \end{aligned}$$

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) by exceeding the TBELs for Oil & Grease set forth in Schedule A of the Permit on 6 occasions.

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. Pursuant to OAR 340-012-0145(4)(e), the penalty is based on the highest classification applicable to any of the occurrences.

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because the receiving stream flow at the time of the exceedances was more than 10 times the flow of Respondent's discharge.

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 I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent operates under the NPDES 900-J 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 over 60 Class I violations in Case No. WQ/I-NWR-2022-080.

"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 was more than one but less than seven occurrences of the violation. Respondent's discharge exceeded the Oil & Grease TBELs on six 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 900J Permit and is aware of the TBELs required under the Permit. By failing to meet those TBELs, Respondent failed to take reasonable care to avoid the foreseeable risk that a 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 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (10 + 0 + 2 + 4 + 0)] + \$0 \\ &= \$2,000 + [\$200 \times 16] + \$0 \\ &= \$2,000 + \$3,200 + \$0 \\ &= \$5,200 \end{aligned}$$

EXHIBIT 4

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

VIOLATIONS: Respondent violated ORS 468B.050(1)(e) by discharging wastes into a water of the state from an unpermitted outlet.

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

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 application 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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent operates under the NPDES 900-J 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 over 60 Class I violations in Case No. WQ/I-NWR-2022-080.

"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 was more than one but less than seven occurrences of the violation. Each day of violation is a separate occurrence. Wastewater from overflowing screening totes and tote washing activities discharged to the Columbia River on at least two days: 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 conduct was negligent. Respondent's permit coverage only authorizes discharges from Outfall 001. By discharging wastewater from other discharge points, Respondent failed to take reasonable care to avoid the foreseeable risk that a violation 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 the Respondent has made reasonable efforts to ensure that the violation would not be repeated by installing a valve to better regulate the flow of process water to the screens and by ensuring that the screens are cleaned hourly.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (10 + 0 + 2 + 4 + -1)] + \$0 \\ &= \$4,000 + [\$400 \times 15] + \$0 \\ &= \$4,000 + \$6,000 + \$0 \\ &= \$10,000 \end{aligned}$$