

# DEQ Office of Compliance and Enforcement

## Environmental Enforcement Panel: DEQ's Enforcement Process

October 14, 2016  
Troutdale, OR

# DEQ Enforcement Process

## Topics

- Inspection
- Enforcement Responses
- Notice of Civil Penalty Assessment and Order
- Settlement
- Contested Case Hearing

# Inspections

- Scheduled inspection complaint response
- Inspection procedure
  - Initial Conference
  - Site Walk-Through
  - Records Review
- Inspection Report
- Self-Disclosure Policy

# Enforcement Responses

## *Informal*

- Warning Letter (with opportunity to correct)
- Pre-Enforcement Notice
- Expedited Enforcement Offer

## *Formal*

- Notice of Civil Penalty Assessment and Order

# Notice of Civil Penalty Assessment and Order

- Elements of the Order
  - Factual Findings and Legal Conclusions
  - Compliance Actions (Sometimes) ORS 468.100
  - Notice of right to a hearing ORS 183.415
  - Penalty Assessment – OAR 340, Div. 12
- Request for a Contested Case Hearing
  - Written request within 20 days of service of the Order
    - OAR 340-011-0530

# Notice of Civil Penalty Assessment and Order

## *Formula and Factors of the Penalty Assessment*

- $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$ 
  - Base Penalty (BP)
    - Penalty matrix, classification, magnitude
  - “P” Factor – Prior Significant Actions (PSAs)
  - “H” Factor – History of correcting PSAs
  - “O” Factor – Number of occurrences of violation
  - “M” Factor – Mental state
  - “C” Factor – Efforts to correct or mitigate violation
  - “EB” Economic Benefit – avoided or delayed cost of compliance

EXHIBIT NO. 1

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

**VIOLATION NO. 1:** Failure to monitor stormwater discharge, in violation of ORS 468B.025(2) and Schedule B, condition 1 of the Permit.

**CLASSIFICATION:** These are Class I violations pursuant to OAR 340-012-0055(1)(c).

**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 \$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 has coverage under an NPDES General Permit.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 4 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has the following prior significant actions:

- One Class III violation in case number WQ/SW-NWR-11-088, issued August 3, 2011, and as amended by a Mutual Agreement and Final Order (MAO) on August 14, 2012;
- One Class II violation in case number WQ/SW-NWR-12-107, issued on November 19, 2012; and
- Three Class I violations and one Class II violation in case number WQ/SW-NWR-14-157, issued on December 29, 2014, and as amended by an MAO on March 2, 2015.

"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 Permit requires Respondent to monitor stormwater discharge from three outfalls at the Facility. Respondent must monitor for impairment pollutants at least twice per monitoring year, but Respondent only monitored for impairment pollutants (other than iron) once in the 2014-2015 monitoring year. Respondent must also monitor for benchmark pollutants four times per year, but Respondent only monitored three times for

the benchmark parameters during the 2014-2015 monitoring year. Therefore, there were three occurrences of the violation (one sample collection at three outfalls).

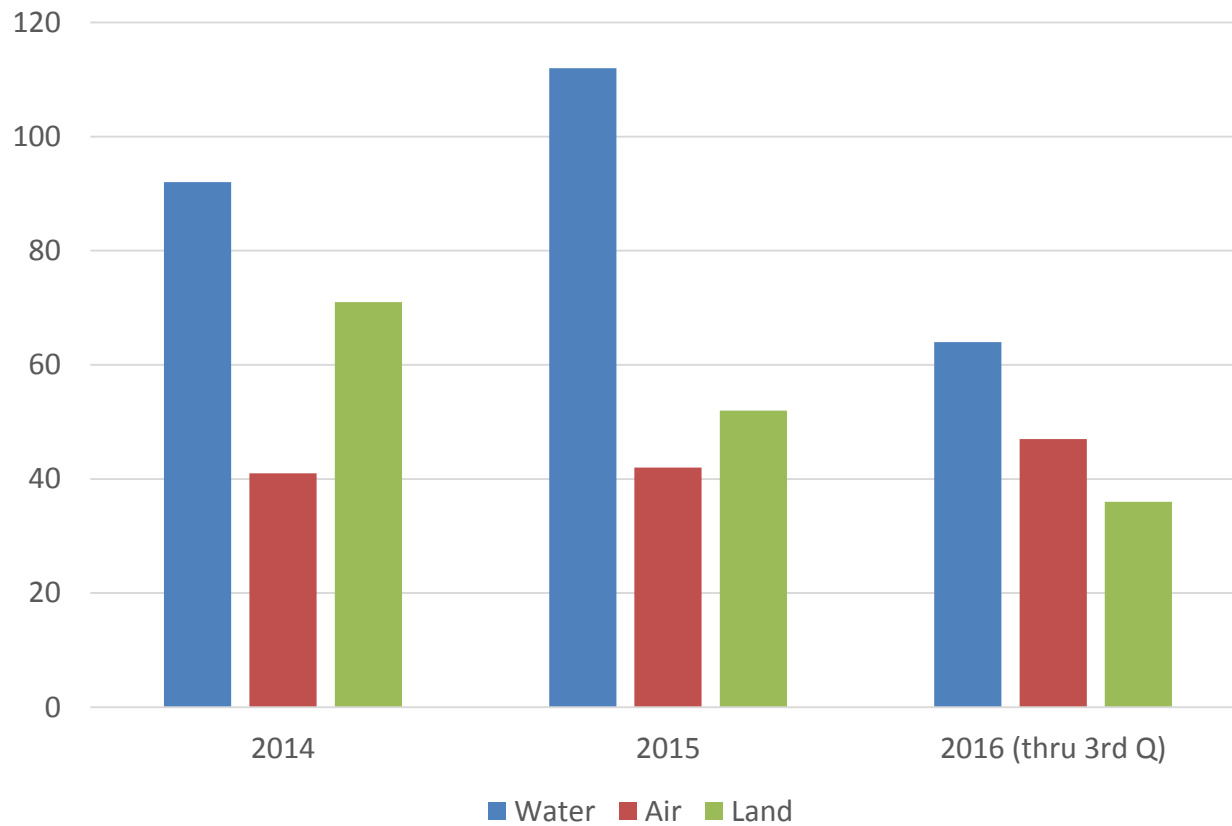
- "M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent is aware of the requirement to monitor its stormwater discharge for benchmark and impairment pollutants because it has previously done so, and because DEQ issued Respondent a civil penalty for failing to monitor for iron (an impairment pollutant) in 2014. By failing to collect all required samples for impairment and benchmark pollutants, Respondent failed to take reasonable care to avoid a foreseeable risk of violating the terms of the Permit.
- "C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(a)(D), because the violations or the effects of the violations 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 \$1,333. This is the amount Respondent gained by avoiding spending \$2,376 to collect and analyze its stormwater discharge as required by the Permit. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

**PENALTY CALCULATION:**  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$4,000 + [(0.1 \times \$4,000) \times (4 + 0 + 2 + 4 + 0)] + \$1,333$   
 $= \$4,000 + [\$400 \times 10] + \$1,333$   
 $= \$4,000 + \$4,000 + \$1,333$   
 $= \$9,333$



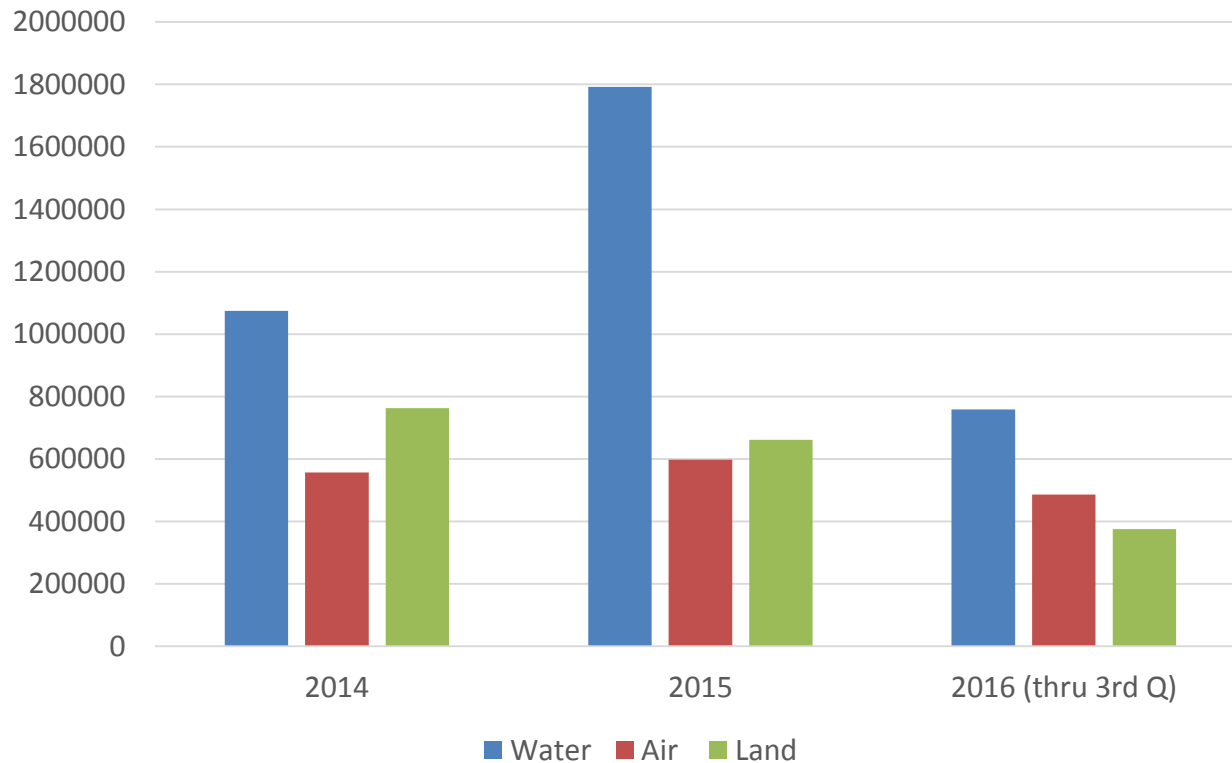
# Notice of Civil Penalty Assessment and Order

# of Orders Issued Per Year by Program



# Notice of Civil Penalty Assessment and Order

Total Dollar Amount of Assessed Civil Penalties  
Per Year by Program



# Settlement

- Informal settlement meeting
- Mutual Agreement and Final Order (MAO)
- Supplemental Environmental Project

# Contested Case Hearing

## *Before the Hearing*

- Referring the Order to the Office of Administrative Hearings
- Pre-Hearing Conference – Calendaring
- Motion for Summary Determination OAR 137-003-0580

# Contested Case Hearing

## *During and After the Hearing*

- Contested Case Hearing
  - Present evidence
  - Question witnesses
  - Closing arguments
- Proposed and Final Order issued by the ALJ
- Request for EQC review - OAR 340, Division 11
- Final Order

# Thank you

Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us).