

State of Oregon
Department of Environmental Quality

Memorandum

Date: Jan. 28, 2011

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item M, Action item: Contested Case No. WQ/D-NWR-09-118 regarding Magar Edward Magar.
February 16-18, 2011, EQC meeting

Introduction The Oregon Department of Environmental Quality implements environmental protection laws. Most people voluntarily comply with the laws; however, DEQ may assess civil penalties and orders to compel compliance or create deterrence. When persons or businesses do not agree with DEQ's enforcement action, they have the right to an appeal and a contested case hearing before an administrative law judge.

On Aug. 18, 2009, DEQ issued Magar Edward Magar a Notice of Civil Penalty Assessment and Order alleging seven violations and assessing civil penalties for all violations. Mr. Magar appealed the notice, and on June 22, 2010, a contested case hearing was held. Administrative Law Judge Monica A. Whitaker issued a Corrected Proposed and Final Order on Aug. 6, 2010,¹ and on Sept. 2, 2010, Mr. Magar petitioned EQC for review of that order.

In his exceptions and brief, Mr. Magar requests that the commission adopt alternate findings of fact and alternate conclusions of law, and reverse Judge Whitaker's conclusion that Mr. Magar is liable for the violations. In its answering brief, DEQ requests that the commission uphold the Order.

DEQ recommendation and EQC motion DEQ recommends that the commission issue a final order adopting Judge Whitaker's order.

Background and Findings of Fact In the order, Judge Whitaker found that Mr. Magar owns and operates Riverwood Mobile Home Park located near Rainier, Oregon.² In June 2007, DEQ issued a National Pollutant Discharge Elimination System waste

¹ The original Proposed and Final Order incorrectly stated that DEQ's Notice was issued on August 18, 2010, instead of August 18, 2009.

² Proposed and Final Order, page 2, finding of fact number 1.

discharge permit system to Mr. Magar, making him the permittee.³

Mr. Magar has a history of noncompliance with the permit. On July 11, 2001, DEQ issued a formal enforcement action to Mr. Magar in case no. WQ/D-NWR-01-129 that assessed a civil penalty for six Class I violations of the permit.⁴ The civil penalty was paid in full on or about April 10, 2002.⁵ On or about Feb. 7, 2006, DEQ issued a formal enforcement action to Mr. Magar in case no. WQ/D-NWR-05-181 for one Class I violation and for one Class II violation of the permit.⁶ The civil penalty was paid in full on or about Aug. 18, 2006.⁷

On March 12, 2007, Mr. Magar filed an application with DEQ to renew the permit for the park, and on June 4, 2007, DEQ renewed the permit.⁸ On May 15, 2008, DEQ issued Notice of Violation, Department Order, and Civil Penalty Assessment case no. WQ/D-NWR-08-019 to Mr. Magar, and that case has not been resolved.⁹

Schedule B, Condition 1(b) of the permit requires Mr. Magar to calculate and report biochemical oxygen demand effluent mass on a monthly basis.¹⁰ Schedule B, Condition 1(b) of the permit requires Mr. Magar to calculate and report effluent mass data (pounds discharged), for total suspended solids on a monthly basis.¹¹ During each month for the period April 2008 through June 2009, Mr. Magar failed to calculate and report effluent mass data for biochemical oxygen demand and total suspended solids.¹²

Schedule B, Condition 1(a) of the permit requires Mr. Magar to monitor the influent monitoring data for pH at a minimum frequency of two times per week.¹³ During each month for the period June 2008 through June 2009, Mr. Magar failed to collect and report influent monitoring data for pH at a minimum frequency of two times per week.¹⁴

³ Proposed and Final Order, page 3, finding of fact number 1.

⁴ Proposed and Final Order, page 3, finding of fact number 2.

⁵ Proposed and Final Order, page 3, finding of fact number 2.

⁶ Proposed and Final Order, page 3, finding of fact number 3.

⁷ Proposed and Final Order, page 3, finding of fact number 3.

⁸ Proposed and Final Order, page 3, finding of fact number 4.

⁹ On October 29, 2010, the Commission affirmed the Proposed Order and upheld the \$8,345 civil penalty. On December 28, 2010, Mr. Magar filed a Petition for Review of the Commission Order with the Court of Appeals for the State of Oregon.

¹⁰ Proposed and Final Order, page 3, finding of fact number 6.

¹¹ Proposed and Final Order, page 3, finding of fact number 8.

¹² Proposed and Final Order, page 3, finding of fact number 7.

¹³ Proposed and Final Order, page 3, finding of fact number 9.

¹⁴ Proposed and Final Order, page 4, finding of fact number 10.

Schedule B, Condition 1(b) of the permit requires Mr. Magar to monitor and report, on a monthly basis, effluent E. coli bacteria levels.¹⁵ For the months of May, June, and September 2008, as well as January, May, and June 2009, Mr. Magar failed to report effluent monitoring data for E. coli bacteria levels.¹⁶

Schedule A, Condition 1(a)(3) of the permit requires that treated effluent waste discharge fall within a range of 6.0 to 9.0 pH.¹⁷ On January 1, 6, 7, 8, 9, 10, and 11, 2009, as well as May 16, 2009, Mr. Magar reported that the treated effluent from the wastewater treatment system was not within the range of 6.0 to 9.0 pH. Specifically, Mr. Magar reported the following results: 5.8, 5.6, 5.8, 5.8, 5.5, 5.4, 5.5, and 5.9 pH.¹⁸

Schedule B, Conditions 2(a) and (b) of the Permit set forth the reporting procedures Mr. Magar must follow. Condition 2(a) states: "Monitoring results shall be reported on approved forms. The reporting period is the calendar month. Reports must be submitted to [DEQ's] Northwest Region – Portland office by the 15th day of the following month." Condition 2(b) states: "State monitoring reports shall identify the name, certificate classification and grade level of each principal operator designated by the permittee as responsible for supervising the wastewater collection and treatment systems during the reporting period. Monitoring reports shall also identify each system classification as found on page one of this permit."¹⁹

For the months of April, May, June, July, August, and December 2008, as well as January, February, March, and May 2009, Mr. Magar submitted discharge monitoring reports to DEQ without including operator certification information, including name, certification number and grade level of each principal operator, of the facility's wastewater management system.²⁰

Schedule F, Section B, Condition 1 of the permit states: "The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve

¹⁵ Proposed and Final Order, page 4, finding of fact number 11.

¹⁶ Proposed and Final Order, page 4, finding of fact number 12.

¹⁷ Proposed and Final Order, page 4, finding of fact number 13.

¹⁸ Proposed and Final Order, page 4, finding of fact number 14.

¹⁹ Proposed and Final Order, page 4, finding of fact number 15.

²⁰ Proposed and Final Order, page 4, finding of fact number 16.

compliance with the conditions of the permit.”²¹

On or about April 25, 2008, Mr. Magar’s flow meter stopped working, and as a result, Mr. Magar could not accurately measure the facility’s flow.²² In a Feb. 8, 2009, email communication to Mr. Christensen,²³ Mr. Magar reported the facility’s water meter needed to be repaired and properly calibrated. In a Feb. 10, 2009, response, Mr. Christensen stated that “You as the owner and permit holder need to get the meter issue resolved. Many meters at wastewater plants are installed in wet locations and function just fine. It is your challenge to get a meter installed that provides reliable information on the flow from your plant...”²⁴

On Oct. 15, 2008, DEQ issued a letter to Mr. Magar, explaining that his discharge monitoring reports did not meet the minimum monitoring and reporting requirements. Specifically, the letter explained that his August 2008 report included one day of pH sampling on the plant influent, but that the permit required influent pH monitoring twice each week. The letter further explained that Mr. Magar’s reports did not contain daily flow (in millions of gallons), as required by the permit.²⁵

On or about Dec. 30, 2008, Mr. Christensen discussed discharge monitoring report requirements with Mr. Magar and explained that he was expected to submit complete, accurate, and legible reports in a timely manner. Mr. Christensen discussed with Mr. Magar that the reports needed to include all required data, and that any discharge monitoring report submitted with missing data needed to include a written explanation regarding what information was missing, why it was missing, and when it would be provided.²⁶

On July 7, 2009, DEQ issued a Pre-Enforcement Notice to Mr. Magar, alleging that he violated conditions of the permit, including: 1) failure to include operator certification information in the discharge monitoring reports; 2) failure to meet minimum monitoring, including influent pH monitoring twice per week, mass amounts for biochemical oxygen demand and total suspended solids, and bacteria results; 3) failure to timely submit discharge monitoring reports; 4) failure to accurately report or provide flow

²¹ Proposed and Final Order, page 4-5, finding of fact number 17.

²² Proposed and Final Order, page 5, finding of fact number 18.

²³ Lyle Christensen is the DEQ employee responsible for reviewing Mr. Magar’s compliance with his permit and he was DEQ’s sole witness at the hearing.

²⁴ Proposed and Final Order, page 5, finding of fact number 18.

²⁵ Proposed and Final Order, page 5, finding of fact number 19.

²⁶ Proposed and Final Order, page 5, finding of fact number 20.

measurement; and 5) failure to meet the effluent pH limit.²⁷

On July 21, 2009, Mr. Magar submitted a written response to the July 7, 2009, Pre-Enforcement Notice. The response included his operator certificate numbers and expiration dates and a spreadsheet that contained levels for influent and effluent biochemical oxygen demand and total suspended solids, effluent E. coli, and ammonia levels. The response also explained that pH measurements were missing from his discharge monitoring reports because the pH electrodes were defective and had to be replaced, and that “equipment failure is a fact of life.” Finally, Mr. Magar explained that, at most, the facility put out less than 2.2 pounds of biochemical oxygen demand or total suspended solids per day in the summer, and no more than 3.3 pounds per day during the winter,” and he questioned why DEQ would require him to report the biochemical oxygen demand and/or total suspended solids, measurements when “we have forever at a maximum put out at most 3.5 ounces per day.”²⁸

DEQ estimates that Mr. Magar would have incurred a cost of \$500 to take two pH samples at least twice per week between June 1, 2008, and June 1, 2009, and DEQ used the U.S. Environmental Protection Agency’s BEN computer model to estimate that by avoiding this cost, Mr. Magar benefited by \$312.²⁹

DEQ estimates it would have cost Mr. Magar approximately \$25 per month to take bacteria samples for the months of May, June, and Sept. 2008, as well as Jan., May, and June 2009, and DEQ used EPA’s BEN computer model to estimate that by avoiding this cost, Mr. Magar benefited by \$94.³⁰

DEQ estimates it would have cost Mr. Magar \$2,800 to replace the facility’s flow meter, and DEQ used EPA’s BEN computer model to estimate that by avoiding the cost, Mr. Magar benefited by \$2,101.³¹

**Conclusions of the
administrative law
judge**

On Aug. 6, 2010, administrative law judge Whitaker issued a Corrected Proposed and Final Order. Judge Whitaker concluded that:

(1) Mr. Magar violated ORS 468B.025 by failing to perform monthly effluent mass amount biochemical oxygen demand calculations and reporting required by Schedule B, Condition 1(b) of the permit.

(2) Mr. Magar violated ORS 468B.025 by failing to perform the monthly effluent mass amount total suspended solids calculation and

²⁷ Proposed and Final Order, page 5, finding of fact number 21.

²⁸ Proposed and Final Order, page 5, finding of fact number 22.

²⁹ Proposed and Final Order, page 5, finding of fact number 23.

³⁰ Proposed and Final Order, page 5, finding of fact number 24.

³¹ Proposed and Final Order, page 5, finding of fact number 25.

reporting required by Schedule B, Condition 1(b) of the permit.

(3) Mr. Magar violated ORS 468B.025 by failing to perform the influent monitoring data for pH at a minimum frequency of two times per week, as required by Schedule B, Condition 1(a)(1) of the permit.

(4) Mr. Magar violated ORS 468B.025 by failing to report the monthly effluent monitoring and sampling for bacteria, required by Schedule B, Condition 1(b) of the permit.

(5) Mr. Magar violated ORS 468B.025 by discharging treated effluent from his wastewater treatment system that was not within the range of 6.0 to 9.0 pH, as required by Schedule A, Condition 1(a)(3) of the permit.

(6) Mr. Magar violated ORS 468B.025 by failing to include operator certification information on the discharge monitoring reports, as required by Schedule B, Condition 2(b) of the permit.

(7) Mr. Magar violated ORS 468B.025 by failing to properly operate and maintain the facility's systems of treatment and control, specifically the facility's flow meter, as required by Schedule F, Section B, Condition 1 of the permit.

(8) A civil penalty of \$18,797 is appropriate.

Issues on appeal

1. The exclusion of exhibits R4 and R5

Mr. Magar's argument:

Mr. Magar argues that Judge Whitaker erred in excluding exhibits R4 and R5.³² He states that those exhibits represent "original and completed" discharge monitoring reports that he amended after the deadline for submitting those reports had expired. Even though the deadline had expired, Mr. Magar argues that the exhibits should have been admitted because "there is no rule that prohibits amending the discharge monitoring reports so long as the data is timely collected."³³ He concludes that he "has collected all the data required by the rules and the permit."³⁴

In his reply brief Mr. Magar argues that he had this data analyzed, stating that "DEQ exhibit A8 p. 4 and Respondent R.11 shows the numbers collected and it is those numbers that form the basis of the computations that ultimately went into Respondent's exhibits R4 and R5."³⁵

DEQ's argument:

DEQ responds that the reports in excluded exhibits R4 and R5 were marred with markings and numbers made by Mr. Magar, while exhibit A2, which Judge Whitaker did admit into the record, is a set of copies of the reports that

³² Mr. Magar's Exceptions, pages 1-2.

³³ Mr. Magar's Exceptions, page 4.

³⁴ Mr. Magar's Exceptions, page 4.

³⁵ Mr. Magar's Reply Brief, page 2.

Mr. Magar originally submitted which did not contain those markings.³⁶ The judge found that the exhibits were not relevant, and excluded them.³⁷ Further, Mr. Magar did not introduce any evidence showing that he had actually done the testing needed to support any corrections shown in exhibits R4 and R5. Because Mr. Magar failed to provide any foundation for exhibits R4 and R5, Judge Whitaker properly excluded them from the record.³⁸

2. The proper classification of violations one and two

Mr. Magar's argument:

Mr. Magar argues that DEQ's Notice "wrongly cites the rules in paragraphs 1 and 2 in the conclusion section of the Notice by stating that Respondent violated OAR 340-012-0055(1)(o)."³⁹ Mr. Magar seems to be arguing that violations one and two – failures to perform monthly effluent mass amount calculations – cannot be classified at OAR 340-012-0055(1)(o) which applies to "Failing to collect monitoring data required in Schedule B of the permit."

In his reply brief Mr. Magar states that "the fact that the data did not appear on the discharge monitoring reports when submitted does not mean the data were not timely collected."⁴⁰ He contends that neither DEQ nor the judge should have classified his failure to perform mass calculations under OAR 340-012-0055(1)(o). He argues that he did in fact collect the required monitoring data, which makes OAR 340-012-0055(1)(o) inapplicable, and therefore violations one and two are unclassified violations that should have been classified as Class II violations pursuant to OAR 340-012-0053.⁴¹

DEQ's argument:

DEQ responds that the judge found "the evidence establishes that during each month for the period April 2008 through June 2009, Respondent submitted reports to DEQ that did not contain biochemical oxygen demand effluent mass data. Therefore, Respondent failed to comply with Schedule B, Condition (1)(b) of the permit."⁴² The judge also properly considered the missing biochemical oxygen demand effluent mass amount calculations to be monitoring data, concluding that "(f)ailure to collect monitoring data required in Schedule B of the permit is a Class I violation. OAR 340-012-0055(1)(o)."⁴³ On page 13 of the Proposed Order the judge made the same

³⁶ DEQ's Answering Brief, Page 2.

³⁷ Proposed and Final Order, page 2.

³⁸ Mr. Magar's Exceptions, page 2.

³⁹ Mr. Magar's Exceptions, page 2.

⁴⁰ Mr. Magar's Reply Brief, pages 3-4.

⁴¹ Mr. Magar's Reply Brief, page 4.

⁴² Proposed and Final Order, page 12.

⁴³ Proposed and Final Order, page 12.

statements and conclusion regarding violation two being properly classified under OAR 340-012-0055(1)(o). Therefore, violations one and two were properly classified both in the Notice and by the judge.

3. Functional flow meter requirement

Mr. Magar's argument:

Mr. Magar argues that he did not commit violation seven because the permit does not require him to maintain a functional flow meter and to record actual flow data.⁴⁴

In his reply brief, Mr. Magar states "(D)uring all relevant times there is a turbo meter measuring the flow every day," and therefore, he did not commit violation seven. He also states "(I)n addition to the flow measured by the turbo flow meter Respondent provided the flow as measured by the consumption of the residents which is a measure of influent."⁴⁵

DEQ's argument:

DEQ argues Mr. Magar's permit requires him to measure and record actual flow data because Schedule (1)(B)(b) of his permit requires him to take daily flow measurements "just before the facility's chlorine contact pipe," and to verify "flow meter calibration" annually.⁴⁶ The judge held that that maintaining a functional flow meter is a permit requirement, finding that "(o)n or about April 25, 2008, Respondent's flow meter stopped working," and "(a)s a result of the broken flow meter, Respondent could not accurately measure the facility's flow, as required by the permit."⁴⁷ Therefore, the judge properly concluded that Mr. Magar committed violation seven.

4. The "economic benefit" factor in the civil penalty for violation seven

Mr. Magar's argument:

Mr. Magar argues that the judge erred with regard to the "economic benefit" factor by excluding what he believes to be mitigating information regarding his alleged expenditures for a flow meter and totalizer.⁴⁸

DEQ's argument:

DEQ responds that whether or not Mr. Magar submitted sufficient evidence in the record to show that he made expenditures on the proper equipment that

⁴⁴ Mr. Magar's Exceptions, page 9.

⁴⁵ Mr. Magar's Reply Brief, page 5.

⁴⁶ Exhibit A1, page 3.

⁴⁷ Proposed and Final Order, page 18.

⁴⁸ Respondent's Exceptions and Brief, page 10.

should be considered as mitigating information, was a matter of sufficiency of the evidence and credibility for the judge.⁴⁹ The judge therefore was correct to uphold the “economic benefit” factor assessed by DEQ on the basis of her review of the evidence submitted by both parties.

5. The proper magnitude of the violations

Mr. Magar’s argument:

Mr. Magar argues that that the magnitude of the seven violations should each have been assessed as “minor” magnitude because his violations caused no more than a de minimis adverse impact on health or the environment.⁵⁰ His reasoning appears to be that the magnitude must be minor unless DEQ articulates why the magnitude should be greater than minor magnitude. In his reply brief Mr. Magar states that, “(S)ince no person became ill as a result of Respondent’s activities and since there was no demonstrable harm to the environment Respondent has met his difficult burden.”⁵¹

DEQ’s argument:

DEQ responds that the applicable rule regarding magnitude contradicts Mr. Magar’s argument: “the magnitude is moderate unless: (a) A selected magnitude is specified in OAR 340-012-0135...; or (b) The department determines, using information reasonably available to it that the magnitude should be major under section [340-012-0135(3)] or minor under section [340-012-0135(4)]. The Department’s determination is the presumed magnitude of the violation, but the person against whom the violation is alleged has the opportunity and the burden to prove that another magnitude applies and is more probable than the presumed magnitude.”⁵² Mr. Magar did not meet this burden at the hearing, and his exceptions do not provide any arguments showing why the judge should have found differently on the issue of magnitude.

EQC authority

The commission has the authority to hear this appeal under OAR 340-011-0575.

DEQ’s contested case hearings must be conducted by an administrative law judge.⁵³ The Proposed and Final Order was issued under current statutes and rules governing the administrative law judge panel.⁵⁴

Under ORS 183.600 to 183.690, the commission’s authority to change or

⁴⁹ DEQ’s Answering Brief, Page 4.

⁵⁰ Respondent’s Exceptions and Brief, page 10.

⁵¹ Mr. Magar’s Reply Brief, page 6.

⁵² OAR 340-012-0135(2).

⁵³ ORS 183.635.

⁵⁴ ORS 183.600 to 183.690 and OAR 137-003-0501 to 137-003-0700.

reverse an administrative law judge's Proposed and Final Order is limited.

The most important limitations are as follows:

1. EQC may not modify the form of the administrative law judge's Proposed and Final Order in any substantial manner without identifying and explaining the modifications.⁵⁵
2. EQC may not modify a recommended finding of historical fact made by the administrative law judge assigned from the Office of Administrative Hearings unless it determines that there is clear and convincing evidence in the record that the finding was wrong.⁵⁶ Accordingly, EQC may not modify any historical fact unless it has reviewed the entire record or at least all portions of the record that are relevant to the finding.
3. EQC may not consider any new or additional evidence, but may only remand the matter to the administrative law judge to take the evidence.⁵⁷

The rules implementing these statutes also have more specific provisions addressing how commissioners must declare and address any ex parte communications and potential or actual conflicts of interest.⁵⁸

In addition, the commission has established by rule a number of other procedural provisions, including:

- (1) EQC will not consider matters not raised before the administrative law judge unless it is necessary to prevent a manifest injustice.⁵⁹
- (2) EQC will not remand a matter to the administrative law judge to consider new or additional facts unless the proponent of the new evidence has properly filed a written motion explaining why evidence was not presented to the hearing officer.⁶⁰

Alternatives

When reviewing a proposed final order in an enforcement case, the Commission may have one or more of the following alternatives, depending on the nature of the case, the specific issues raised in the petition for review, and whether a proper motion to allow additional evidence has been filed:

- (1) The commission may issue an order affirming the judge's proposed order.

⁵⁵ ORS 183.650(2).

⁵⁶ ORS 183.650(3). A historical fact is a determination that an event did or did not occur or that a circumstance or status did or did not exist either before or at the time of the hearing.

⁵⁷ OAR 137-003-0655(5).

⁵⁸ OAR 137-003-0655(7), referring to ORS Chapter 244; OAR 137-003-0660.

⁵⁹ OAR 340-011-0132(3)(a).

⁶⁰ *Id.* at (4).

(2) The commission may change or add a conclusion of law. If this approach is taken, the commission is required to explain why it has found the judge's conclusions to be insufficient or incorrect based on evidence in the record.

(3) The commission may change a finding of historical fact. This may be done only if the commission has reviewed the record and determined, *based on clear and convincing evidence* in the record, that the judge's finding of historical fact is incorrect.

(4) The commission may determine that the judge's proposed order does not adequately address an issue in the case and ask the judge to revise the proposed decision, either with or without reopening the hearing for the purpose of considering additional argument or taking additional evidence.

(5) If a timely motion to allow additional evidence into the record has been filed and the commission decides to grant the motion, the commission must ask the judge to conduct a further hearing and provide an opportunity for the respondent (or DEQ) to submit the additional evidence and DEQ (or respondent) to submit rebuttal evidence.

If the commission has questions about whether a particular alternative applies to a particular issue in the case, it may request that DEQ and respondent address the matter in their oral arguments and it may direct questions to the commission's legal counsel.

Attachments

- A1. Letter from Stephanie Clark to Mr. Magar, dated Jan. 26, 2011
- A2. Motion to request additional evidence faxed by Mr. Magar, dated Jan. 25, 2011
- A. Letter from Stephanie Clark to Mr. Magar, dated Dec. 15, 2010
- B. Mr. Magar's reply brief, dated Dec. 7, 2010
- C. Letter from Mr. Magar to Stephanie Clark, dated Dec. 3, 2010
- D. Letter from Stephanie Clark to Mr. Magar, dated Nov. 23, 2010
- E. DEQ's Answering Brief, dated Nov. 15, 2010
- F. Letter from Stephanie Clark to Bryan Smith, dated Oct. 13, 2010
- G. Denial of motion to consolidate letter from Stephanie Clark to Mr. Magar, dated Oct. 12, 2010
- H. Deadline extension letter from Bryan Smith to Stephanie Clark, dated Oct. 12, 2010
- I. Mr. Magar's motion to consolidate, received Oct. 1, 2010
- J. Mr. Magar's exceptions and brief, received Sept. 28, 2010
- K. Letter from Stephanie Clark to Mr. Magar, dated Sept. 7, 2010
- L. Mr. Magar's petition for commission review of the Proposed and Final Order and motion for extension of time to file exceptions and brief, received Sept. 2, 2010

- M. Corrected Proposed and Final Order, dated Aug. 6, 2010
- N. Notice of in-person hearing and contested case rights, dated March 12, 2010
- O. Notice of in-person hearing and contested case rights, dated Feb. 25, 2010
- P. Notice of pre-hearing conference, dated Feb. 19, 2010
- Q. Notice of pre-hearing conference, dated Feb. 4, 2010
- R. Notice of pre-hearing conference, dated Jan. 28, 2010
- S. Notice of in-person hearing and contested case rights, received Jan. 4, 2010
- T. Mr. Magar's answer and request for hearing, received Oct. 6, 2009
- U. Notice of Civil Penalty Assessment, dated Aug. 18, 2009
- V. Exhibits from June 22, 2010, contested case hearing
 - A-1. NPDES Permit, dated June 4, 2007
 - A-2. Discharge monitoring reports for the facility for the months between May 2008 and July 2009
 - A-3. Letter from Lyle Christensen to Mr. Magar, dated Oct. 15, 2008
 - A-4. Emails between Mr. Magar and DEQ employees, dated between Feb. 2, 2009, and Feb. 10, 2009
 - A-5. Emails between Mr. Magar and DEQ employees, dated Dec. 30, 2008, and Feb. 17, 2009
 - A-6. Pre-Enforcement Notice from Lyle Christensen to Mr. Magar, dated July 7, 2009
 - A-7. Emails between Lyle Christensen and Bryan Smith, dated July 16, 2009, and July 21, 2009
 - A-8. Emails between Mr. Magar, Lyle Christensen and Bryan Smith, dated July 21, 2009, and letter from Mr. Magar to Lyle Christensen, undated but received July 21, 2009
 - A-9. Emails between Lyle Christensen and Bryan Smith, dated July 21, 2009, and July 22, 2009
 - A-10. Investigation details, drafted by Lyle Christensen, undated
 - A-11. Email from Bryan Smith to Sarah Wheeler, dated July 23, 2009, and economic benefit calculations and memorandum, dated July 23, 2009
 - A-12. Affidavit of Amy Smothers, dated Sept. 30, 2009; DEQ Civil Penalty Receipt and associated documents pertaining to payment of Civil Penalty no. WQ/D-NWR-01-129, dated April 10, 2002; Notice of Assessment of Civil Penalty no. WQ/D-NWR-01-129, dated July 11, 2001; settlement letter from Jane Hickman to Mr. Magar, concerning Case no. WQ/I-NWR-05-181, dated Aug. 18, 2006; and Notice of Violation, Department Order and Assessment of Civil Penalty Assessment no. WQ/I-NWR-05-181, dated Feb. 7, 2006
- R-1. NPDES permit, dated June 10, 2002
- R-3. Letter from Mr. Magar to Judge Whitaker, dated March 3, 2010
- R-4/5 Altered discharge monitoring reports for the facility for the months between May 2008 and July 2009 – considered by the judge but

- not accepted into the record
- R-6. Fact Sheet and NPDES Permit Evaluation, undated, and April 2, 2002, letter from Kenneth S. Eiler to Lyle Christensen, dated April 2, 2002
 - R-7. Fact Sheet and NPDES Permit Evaluation, undated
 - R-9. Emails between Bryan Smith and Lyle Christensen, dated Dec. 28, 2009, and Jan. 4, 2010
 - R-11. Data sheet by Mr. Magar, undated
 - R-12. Data sheet by Mr. Magar, undated
 - R-13. Notes on mass calculation by Mr. Magar, undated
 - R-14. Statistical analysis and data sheet by Mr. Magar, undated
 - R-15. Mr. Magar's online banking statements, printed June 8, 2010 (personal information redacted by DEQ in this official record)
 - R-16. Mr. Magar's 2008 federal tax return (personal information redacted by DEQ in this official record)
 - R-17. Table 2, Monitoring Requirements for WPCF permittees, undated
 - R-18. Various pre-hearing motions and scheduling documents
 - W. Audio recording of the June 22, 2010, contested case hearing (one CD)

**Available upon
request**

- 1. OAR Chapter 340, Divisions 11 and 12; ORS Chapter 468B

Approved:

Division: _____

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