



# 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

February 8, 2018

CERTIFIED MAIL: 7016 2140 0000 2409 6547

Jackson Hills IV LLC  
c/o Jeffrey Parker, Registered Agent  
1800 Blankenship Rd., Ste. 325  
West Linn, OR 97068

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-NWR-2017-217

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Jackson Hills IV LLC (Jackson Hills) a civil penalty of \$26,286 for violating conditions of the National Pollutant Discharge Elimination System General Permit number 1200-C (the "Permit") and for allowing an unlicensed asbestos abatement project at a 19-acre property development site located at 9115 SE 152<sup>nd</sup> Avenue, in Happy Valley, Oregon.

DEQ issued this penalty because the alleged violations present a risk to human health and the environment. First, the Permit requires phasing of construction and implementation of erosion and sediment control measures in order to protect waterways from erosion and turbidity caused by construction projects. DEQ observed turbid stormwater discharge in excess of a statewide water quality standard for turbidity. Excessively turbid stormwater discharge poses a threat to fish and other aquatic life because it can clog fish gills, reduce photosynthesis in aquatic flora, and increase the temperature of the affected waterbody. Second, asbestos fibers are a respiratory hazard proven to cause lung cancer, mesothelioma, and asbestosis. Asbestos is a danger to public health and a hazardous air contaminant for which there is no known safe level of exposure. Allowing a contractor without an asbestos license to perform an asbestos abatement project presents a significant risk to public health and the environment.

If Jackson Hills wishes to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from the receipt of this letter. The hearing request must be in writing. Send the 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 the 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, Jackson Hills 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.

Jackson Hills IV LLC  
Case No. WQ/SW-NWR-2017-217  
Page 2

DEQ may allow Jackson Hills to resolve part of its penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that a Respondent may 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/administrative-rules.aspx> or by calling the number below.

If you have any questions, please contact Kieran O'Donnell at 503-229-5012 or toll free in Oregon at 800-452-4011, extension 5012.

Sincerely,



Sarah G. Wheeler, Acting Manager  
Office of Compliance and Enforcement

Enclosures

cc: Zeb Bates, NWR, DEQ  
Daria Gneckow, NWR, DEQ  
Audrey O'Brien, NWR, DEQ  
Christine Svetkovich, NWR, DEQ  
Shaumae Hall, Accounting, DEQ  
Donald Hendrix, AQ, DEQ  
John Koestler, WQ, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 JACKSON HILLS IV LLC ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. WQ/SW-NWR-2017-217

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,  
9 468B, 468A, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,  
10 041, 045, and 248.

11 II. FINDINGS OF FACT

- 12 1. Respondent is a property development company.
- 13 2. At all relevant times Respondent owned a 2,034 square foot, site built home located at 9115  
14 SE 152<sup>nd</sup> Avenue, in Happy Valley, Oregon (the Facility).
- 15 3. On or before July 24, 2017, an asbestos survey was performed at the Facility and  
16 Respondent received the results. The asbestos survey concluded that the following homogeneous  
17 materials (collectively the Materials) inside the Facility contained asbestos:
- 18 a. Bedroom wall joint compound contained 2% Chrysotile asbestos by weight,
  - 19 b. Bathroom vinyl flooring contained 10% Chrysotile asbestos by weight,
  - 20 c. Kitchen vinyl flooring contained 20% Chrysotile asbestos by weight,
  - 21 d. Laundry room vinyl flooring contained 11% Chrysotile asbestos by weight,
  - 22 e. Kitchen linoleum contained 40% Chrysotile asbestos by weight,
  - 23 f. Bedroom vinyl flooring contained 13% Chrysotile asbestos by weight,
  - 24 g. Bedroom linoleum contained 15% Chrysotile asbestos by weight, and
  - 25 h. Bedroom floor tiles contained 5% Chrysotile asbestos by weight.

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1 4. On or about September 7, 2017, Respondent allowed Tapani Inc. (Tapani) to completely  
2 wreck the Facility, removing all load bearing structural members of the Facility and reducing it to piles  
3 of demolition debris.

4 5. Tapani is not licensed by DEQ as an asbestos abatement contractor.

5 6. The Materials were not removed from the Facility prior to Tapani's complete wrecking of  
6 the Facility.

7 7. On October 11, 2017, a licensed asbestos abatement contractor performed a cleanup  
8 abatement project, removing approximately 1,000 square feet of asbestos-containing material from the  
9 Site.

10 8. On July 12, 2017, DEQ issued Respondent coverage under the National Pollutant Discharge  
11 Elimination System (NPDES) 1200-C General Permit for construction stormwater discharges that  
12 expires on December 4, 2020 (the Permit).

13 9. The Permit was issued pursuant to ORS 468B.050 and the Federal Clean Water Act.

14 10. Under the Permit Respondent is authorized to discharge stormwater from construction  
15 activities at an approximately 19.54 acre site named Jackson Hills No. 4 and located at or near 9115 SE  
16 152<sup>nd</sup> Avenue, in Happy Valley, Oregon (the Site).

17 11. Mitchell Creek flows in an approximately north east direction through the southern half of  
18 the Site.

19 12. On July 12, 2017, Respondent began engaging in construction activities at the Site.

20 13. From July 12, 2017, to October 5, 2017, Respondent did not conduct any visual monitoring  
21 at the Facility.

22 14. On October 12, 2017, DEQ performed an inspection of the Site. At the time of the  
23 inspection, the following conditions existed:

24 a. A constructed conveyance channel (the Channel) diverted stormwater from an active  
25 section of the Site directly into Mitchell Creek;

26 b. The water from Mitchell Creek, directly upstream of the point where the Channel  
27 discharged into the creek, measured a turbidity value of 131 Nephelometric Turbidity Units (NTU);

- 1 c. The water from Mitchell Creek, directly downstream of the point where the Channel  
2 discharged into the creek, measured a turbidity value of greater than 1,000 NTUs;
- 3 d. Bare ground, bare slopes, and unstable soils persisted throughout the Site;
- 4 e. The entire Site, including areas that were not active, had been cleared of vegetation and  
5 graded;
- 6 f. Vegetation had been cleared and hay had been placed directly adjacent to Mitchell Creek  
7 within a natural buffer zone;
- 8 g. Heavy tracking of sediment onto a public road at Site entrance along SE Northern  
9 Heights Drive; and
- 10 h. Improperly maintained erosion and sediment control measures, including inundated  
11 sediment fencing, loose straw wattles, and catch basin inserts at capacity.

### 12 III. CONCLUSIONS

13 1. Respondent has violated OAR 340-248-0110(2) by allowing a person without an asbestos  
14 abatement license to perform an asbestos abatement project, as described in Section II above. Specifically,  
15 Respondent allowed Tapani to perform a demolition of the Facility, which contained the Materials, without  
16 an asbestos abatement license. The Materials were “asbestos containing materials,” pursuant to OAR 340-  
17 248-0010(8) because they contained more than one-percent asbestos by weight. The Facility was a  
18 “residential building,” pursuant to OAR 340-248-0260(1)(h) because it was a site built home. The  
19 complete wrecking of the Facility, reducing it to piles of demolition debris, was a “demolition,” pursuant  
20 to OAR 340-248-0010(19), because it involved the wrecking of at least one load supporting structural  
21 member of the Facility. The demolition of the Facility was an “asbestos abatement project,” pursuant to  
22 OAR 340-248-0010(6), because it was a demolition of a private facility that involved the removal and  
23 handling of asbestos-containing material with the potential of releasing asbestos fibers into the air.  
24 Respondent is an “owner or operator,” pursuant to OAR 340-248-0010(33), because, on September 7,  
25 2017, the day the Facility was demolished, Respondent owned the Facility. This is a Class I violation  
26 according to OAR 340-012-0054(1)(p). DEQ hereby assesses a \$14,400 civil penalty for this violation.

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1           2. Respondent has violated ORS 468B.025(1)(b) and Schedule A, Condition 10.a. of the  
2 Permit by discharging waste into waters of the state that reduces the quality of such waters below a  
3 water quality standard, as described in Section II above. Specifically, on October 12, 2017, Respondent  
4 discharged turbid stormwater runoff into Mitchell Creek that was more than a ten percent cumulative  
5 increase in natural stream turbidities in violation of the water quality standard set pursuant to OAR 340-  
6 041-0036. Respondent's discharge elevated Mitchell Creek's NTU value from 131 NTUs to greater  
7 than 1,000 NTUs, which is more than a ten percent cumulative increase. Mitchell Creek is a "water of  
8 the state," as defined by ORS 468B.005(10) because it is a creek. Construction stormwater runoff is a  
9 "waste," as defined by ORS 468B.005(9) because it is a liquid substance that may cause or tend to  
10 cause an alteration of the physical, chemical, or biological properties of a water of the state, including  
11 turbidity. This is a Class I violation according to OAR 340-012-0055(1)(b). DEQ hereby assesses a  
12 \$4,443 civil penalty for this violation.

13           3. Respondent has violated ORS 468B.025(2) and Schedule B, Conditions 1.a. and 1.b. of the  
14 Permit by failing to conduct visual monitoring at the Site, as described in Section II above. Specifically,  
15 Respondent failed to conduct any visual monitoring between July 12, 2017, and October 5, 2017. The Site  
16 became active on July 12, 2017 and remains active as of the date of this Notice. From July 12, 2017, to  
17 October 5, 2017, Respondent was required to conduct visual monitoring daily when stormwater runoff is  
18 occurring and at least once every 14 days, when stormwater runoff is not occurring. During the period of  
19 July 12, 2017 to October 5, 2017, Respondent missed four inspections due to daily runoff and five  
20 additional inspections from the minimum inspection requirement of once every 14 days. These are Class I  
21 violations according to OAR 340-012-0055(1)(o). DEQ has assessed a \$7,440 civil penalty for these  
22 violations.

23           4. Respondent has violated ORS 468B.025(2) and Schedule A, Conditions 7.a.i. and ii. of the  
24 Permit by failing to minimize soil erosion, as described in Section II above. Specifically, during the  
25 October 12, 2017, inspection, bare ground, bare slopes, and unstable soil persisted at the Site. This is a  
26 Class II violation according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this  
27 violation.



1 Pay a total civil penalty of \$26,286. The determinations of the civil penalties are attached as  
2 Exhibit Nos. 1, 2, and 3 and are incorporated as part of this Notice.

3 If you do not file a request for hearing as set forth in Section V below, your check or money order  
4 must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business Office,**  
5 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.** Once you pay the penalty, the  
6 Findings of Fact, Conclusions and Order become final.

#### 7 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

8 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
9 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
10 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
11 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
12 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
13 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
14 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,** fax  
15 it to **503-229-5100,** or email it to **DEQappeals@deq.state.or.us.** An administrative law judge  
16 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
17 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
18 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
19 you may represent yourself. If you are a corporation, partnership, limited liability company,  
20 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
21 authorized representative, as set forth in OAR 137-003-0555.

22 Active duty service-members have a right to stay proceedings under the federal Service  
23 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
24 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
25 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
26 <http://legalassistance.law.af.mil/content/locator.php>.

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

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10 February 8, 2018

11 Date

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Sarah Wheeler

11 Sarah G. Wheeler, Acting Manager  
Office of Compliance and Enforcement

EXHIBIT No.1

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

VIOLATION No.1: Allowing a person without an asbestos abatement license to perform an asbestos abatement project, in violation of OAR 340-248-0110(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(p).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(h)(A) because the violation involved more than 160 square feet of asbestos-containing material. The Facility was a 2,034 square foot site built home. The survey identified 8 different homogenous materials, including flooring and wall surfaces, with an asbestos content of greater than 1% asbestos by weight. Therefore, there were more likely than not, more than 160 square feet of asbestos-containing material.

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 \$8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(3)(a)(B) and applicable pursuant to OAR 340-012-0140(3)(b)(A)(i).

"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 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"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.

"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. Each day of violation constitutes a separate occurrence. The violation occurred on at least one day, on or about September 7, 2017, when Respondent allowed an unlicensed contractor to demolish the Facility.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. On July 24, 2017, Respondent received an asbestos survey report of the Facility, performed by Alpha Environmental Services (Alpha). The survey identified at least eight different homogeneous materials as asbestos-containing materials, including wall joint compound in the bedroom, different resilient flooring materials that covered the entirety of the Facility's bathroom, kitchen,

laundry room, and one bedroom, and floor tile in another bedroom. In addition, the survey states that Alpha “strongly recommends following EPA and Oregon Department of Environmental Quality (DEQ) guidelines for the abatement or removal of all ACMs prior to any disturbance or demolition activities.” Despite commissioning an asbestos survey of the Facility and having received the asbestos survey report indicating the presence of asbestos-containing material, Respondent nonetheless allowed an unlicensed contractor to demolish the Facility without first having the asbestos-containing material abated. This demonstrates that Respondent consciously disregarded a substantial and unjustifiable risk that its conduct would result in a violation. In addition, Respondent’s disregard of the risk constituted a gross deviation from the standard of care a reasonable person would observe in this situation.

"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. Respondent could not go back in time and prevent the demolition from occurring. Nor could Respondent minimize the harmful effects of the demolition, including the potential to endanger the public and workers with exposure to asbestos fibers during the activity.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent’s noncompliance. It is designed to “level the playing field” by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, “EB” receives a value of \$0 because DEQ does not have sufficient information to make an estimate under OAR 340-012-0150.

PENALTY CALCULATION:  $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$   
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 0 + 8 + 0)] + \$0  
= \$8,000 + (\$800 x 8) + \$0  
= \$8,000 + \$6,400 + \$0  
= \$14,400

EXHIBIT No. 2

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

VIOLATION No. 2: Discharging waste into waters of the state that reduces the quality of such waters below a water quality standard, in violation of 468B.025(1)(b) and Schedule A, Condition 10.a. of the Permit.

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

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)(a)(E)(iii) and applicable pursuant to OAR 340-012-0140(3)(b)(A)(ii) because Respondent has authorization to discharge construction stormwater under the 1200-C NPDES general permit for a construction site approximately 19.54 acres in size.

"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 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"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.

"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. Each day of violation constitutes a separate occurrence. The violation occurred on at least one day, October 12, 2017, the day that DEQ performed an inspection of the Site and recorded the water quality standards 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 is a property development company. In addition, Respondent is registered to discharge construction stormwater from the Site under the 1200-C NPDES general permit (the Permit). Schedule A, Condition 10.a. of the Permit explicitly prohibits the Respondent from causing or contributing to a water quality standards violation. Therefore, Respondent's failure to take

required measures to prevent the discharge of highly turbid construction stormwater into Mitchell Creek such that Respondent elevated the turbidity of the creek by an approximately 663 percent cumulative increase, represented a failure to take reasonable care to avoid a foreseeable risk that its discharge would result in a violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation. After and during DEQ's inspection, Respondent implemented best management practices to stop the discharge of turbid construction stormwater to Mitchell Creek.

"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 \$43. This is the amount Respondent gained by delaying spending approximately \$5,600 to secure the Site such that it would not discharge in a manner that would violate a water quality standard.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 0 + 4 + -3)] + \$43 \\ &= \$4,000 + (\$400 \times 1) + \$43 \\ &= \$4,000 + \$400 + \$43 \\ &= \$4,443 \end{aligned}$$

EXHIBIT No. 3

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

VIOLATION No. 3: Failing to conduct visual monitoring at the Site, in violation of ORS 468B.025(2) and Schedule B, Conditions 1.a. and 1.b. of the Permit.

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

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)(a)(E)(iii) and applicable pursuant to OAR 340-012-0140(3)(b)(A)(ii) because Respondent has authorization to discharge construction stormwater under the 1200-C NPDES general permit for a construction site approximately 19.54 acres in size.

"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 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"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.

"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. Each day of missed monitoring constitutes a separate occurrence. The violation occurred on at least nine days between July 12, 2017 and October 5, 2017.

"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 a property development company. In addition, Respondent is registered to discharge construction stormwater from the Site under the 1200-C NPDES general permit (the Permit). Schedule B, Conditions 1.a. and 1.b. of the Permit explicitly require visual monitoring during the active period of the Site. Therefore, Respondent's failure to conduct any monitoring during a three month active period, represented a failure to take reasonable care to avoid a foreseeable risk that its failure to monitor would result in a violation.

"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 \$640. This is the amount Respondent gained by avoiding spending approximately \$1,140 to conduct the required visual monitoring of the Site.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 3 + 4 + 0)] + \$640$   
 $= \$4,000 + (\$400 \times 7) + \$640$   
 $= \$4,000 + \$2,800 + \$640$   
 $= \$7,440$