



# Oregon

Kate Brown, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232  
(503) 229-5382  
FAX (503) 229-5787  
TTY 711

January 21, 2022

CERTIFIED MAIL No. 7018 1830 0001 5906 2605

Cascadia Ridge LLC  
c/o I & E Construction, Inc., Registered Agent  
27375 SW Parkway Ave.  
Wilsonville, OR 97070

Re: Notice of Civil Penalty Assessment and Order  
No. WQ/SW-NWR-2021-512

*DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage at: <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.*

This letter is to inform you that DEQ has issued you a total civil penalty of \$54,786 for water quality violations at the Cascadia Ridge No. 6 construction site in Estacada. You have coverage under the NPDES Construction Stormwater Discharge General Permit No. 1200-C for construction activities at the site. On October 6, 2021, DEQ inspected the site and found that you failed to adequately implement many aspects of your Erosion and Sediment Control Plan (ESCP). This resulted in discharge of sediment-laden stormwater from the site that caused pollution of Currin Creek. You also failed to inspect the site as required. These are violations of the Permit and Oregon environmental law.

DEQ issued this penalty because implementing the ESCP is essential to ensure compliance with the terms of the NPDES 1200-C Permit, as it includes pollution control measures that are specific to your site. These measures are intended to prevent the discharge of sediment to surface waters. Discharge of sediment from the site resulted in increased turbidity and appreciable bottom deposits in Currin Creek. These conditions can impact aquatic life by covering up food sources and smothering invertebrate organisms, thereby impairing the beneficial use of Currin Creek as habitat.

Included in Section IV of the enclosed Notice is an Order requiring you to submit a restoration plan for the area of the natural buffer zone that was impacted by your activities, and to fully implement that plan.

\$28,509 of the civil penalty represents the economic benefit you gained by failing to implement the ESCP by installing erosion and sediment controls at the site. If you complete these requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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.oregon.gov](mailto:DEQappeals@deq.oregon.gov)

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 via check, money order, or e-check (ACH) by following the instructions on the attached invoice and logging in to Your DEQ Online here: <https://ordeq-edms-public.govonlinesaas.com/pub/login>. Payments sent by mail must be sent to the address on the invoice.

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 Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Blair Edwards, Northwest Region, DEQ  
Christine Svetkovich, Northwest Region, DEQ  
Accounting, DEQ

1                                   BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2                                   OF THE STATE OF OREGON

3  
4 IN THE MATTER OF:                                   )   NOTICE OF CIVIL PENALTY  
5 CASCADIA RIDGE LLC,                               )   ASSESSMENT AND ORDER  
6 an Oregon limited liability company,           )     
7   )   NO. WQ/SW-NWR-2021-512  
8                                   Respondent.                                   )

9   I. AUTHORITY

10           The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty  
11 Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through  
12 468.140, ORS Chapters 183 and 468B, and Oregon Administrative Rules (OAR) Chapter 340,  
13 Divisions 011, 012, 041, and 045.

14   II. FINDINGS OF FACT

15           1. On December 20, 2019, DEQ issued coverage to Respondent under the National  
16 Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit No.  
17 1200-C (Previous Permit) for a residential subdivision construction project, “Cascadia Ridge No.  
18 6,” located north of Currin Creek Drive in Estacada, Clackamas County, Oregon (the Site). The  
19 Previous Permit expired on December 14, 2020. On December 15, 2020, DEQ issued the current  
20 Permit (Current Permit), and Respondent’s coverage was subsequently renewed.

21           2. Respondent began construction activities at the Site in July 2018, prior to obtaining  
22 permit coverage.

23           3. The Site is approximately 35.4 acres in size, and the total disturbed area at the Site is  
24 approximately 17,17 acres.

25           4. The Previous Permit and the Current Permit authorize construction activities that may  
26 discharge to surface waters or conveyance systems leading to surface waters of the state.

27           5. Schedule A, Condition 8.a of the Previous Permit and Schedule A, Condition 4 of the  
Current Permit require Respondent to implement the erosion and sediment control plan (ESCP).

- 1 6. DEQ inspected the Site on October 6, 2021. At the time of the inspection:
- 2 a. The entire “disturbed area” of the Site had been cleared of vegetation and graded.
- 3 b. There were areas where the sediment fencing was installed incorrectly, needed
- 4 maintenance, or had sediment buildup, rendering the sediment fencing ineffective.
- 5 c. There were areas, including steep slopes, where construction activities had ceased
- 6 for 14 days or more and temporary stabilization measures were not implemented.
- 7 d. Some stockpiles were not covered.

8 7. Respondent’s ESCP that was submitted to DEQ on or about July 25, 2019 contains

9 the following conditions or requirements:

- 10 a. Phase clearing and grading to the maximum extent practical to prevent exposed
- 11 inactive areas from becoming a source of erosion. (Standard Erosion and
- 12 Sediment Control Plan Drawing Note 8 on Sheet C050).
- 13 b. Install sediment fencing at perimeter of Site. (Sheet C051, Sediment Fence Detail
- 14 Drawing on Sheet C053).
- 15 c. Provide temporary stabilization for that portion of the site where construction
- 16 activities cease for 14 days or more with a covering of blown straw and a
- 17 tackifier, loose straw, or an adequate covering of compost or mulch until work
- 18 resumes on that portion of the site. (Standard Erosion and Sediment Control Plan
- 19 Drawing Note 35 on Sheet C050).
- 20 d. As needed based on weather conditions, at the end of each workday soil
- 21 stockpiles must be stabilized or covered, or other BMPs must be implemented to
- 22 prevent discharges. (Standard Erosion and Sediment Control Plan Drawing Note
- 23 27 on Sheet C050; Plastic Sheeting Detail Drawing on Sheet C053).

24 8. On October 6, 2021, there was a steep area approximately 0.75 acres in size on the

25 southern portion of the Site, immediately west of the construction entrance, that was not

26 stabilized. There was evidence of erosion and sediment moving beyond the perimeter controls.

27 Currin Creek lies at the bottom of a ravine that is directly downslope from the unstabilized area.

1 9. Conditions at the site were substantially the same on September 28, 2021.

2 10. Currin Creek flows from south to north along the western portion of the Site within  
3 “Tract L.” Tract L is open space owned by Respondent, which was set aside for conservation  
4 purposes as part of the settlement of a previous enforcement case against Respondent, DEQ Case  
5 No. WQ/SW-NWR-2019-271.

6 11. Currin Creek is a natural body of surface water and is “waters of the state” under  
7 ORS 468B.005(10). Currin Creek provides habitat for aquatic life including coastal cutthroat  
8 trout. Currin Creek is a tributary of Eagle Creek, which is a tributary of the Clackamas River.

9 12. On October 6, 2021, Currin Creek was brown and turbid approximately 100 yards  
10 downstream of the disturbed area described in Section II, Paragraph 8 above. Currin Creek was  
11 visibly turbid approximately one-half mile downstream from that point.

12 13. On October 6, 2021, Currin Creek was flowing clear approximately one-half mile  
13 upstream from the Site.

14 14. On October 6, 2021, there were visible sediment deposits in Currin Creek near the  
15 discharge point at the Site. The sediment covered the rocks and stones in the stream bed.

16 15. The stormwater outfall for the western portion of the Site discharges stormwater  
17 overland to Currin Creek and is located between Lots 257 and 258 at the western boundary of the  
18 Site, within Tract L.

19 16. On October 6, 2021, there was a cleared strip of land inside the 50-foot natural buffer  
20 zone on the northwest portion of the Site, running from approximately Lot 258 to the northern  
21 boundary of the Site. Several trees had been cut down and there were visible tire tracks in and  
22 running along the cleared strip of land. It appeared to be a construction access road used to  
23 transport rock and materials for construction of the stormwater outfall described in Section II,  
24 Paragraph 15 above.

25 17. Schedule A, Condition 7.b.i of the Current Permit requires Respondent to  
26 “[m]aintain any existing natural buffer within the 50-foot zone for the duration of permit  
27 coverage.”

1 18. Schedule B, Condition (1)(b) of the Previous Permit requires that when the site is  
2 active, all ESCP controls and practices must be monitored visually on a daily basis when  
3 stormwater runoff, including runoff from snowmelt, is occurring, and at least once every  
4 fourteen (14) calendar days, regardless of whether stormwater runoff is occurring. Schedule B,  
5 Condition 6.2 of the Current Permit requires that Respondent conduct visual monitoring once  
6 every 14 calendar days, and within twenty-four (24) hours of any storm event, including  
7 snowmelt that results in discharge from the site.

8 19. On or about October 7, 2021, Respondent provided copies of visual monitoring  
9 records to DEQ. The records were dated June 4, 2021 through September 28, 2021.

10 20. According to rain gauge data, there were approximately 14 days when Respondent  
11 should have conducted visual monitoring at the Site from June 1, 2021 through October 6, 2021.

12 21. Respondent conducted visual monitoring at the Site on only three of the 14 days  
13 described in Section II, Paragraph 20 above.

### 14 III. CONCLUSIONS

15 1. From on or before September 28, 2021 through October 6, 2021, Respondent  
16 violated Schedule A, Condition 8.a of the Previous Permit, Schedule A, Condition 4 of the  
17 Current Permit, and ORS 468B.025(2) by failing to implement the ESCP, as described in Section  
18 II above. Specifically, Respondent failed to phase clearing and grading, properly install and  
19 maintain sediment fencing, implement temporary stabilization measures, and cover soil  
20 stockpiles at the Site as provided in the ESCP. This is a Class I violation according to OAR 340-  
21 012-0055(1)(r). DEQ hereby assesses a \$37,309 civil penalty for this violation.

22 2. On or about October 6, 2021, Respondent violated ORS 468B.025(1)(a) by  
23 causing pollution of waters of the state, as described in Section II above. Specifically,  
24 Respondent discharged sediment-laden stormwater from the Site, which altered the physical,  
25 chemical or biological properties of Currin Creek by changing the color and turbidity of the  
26 creek and depositing silt into the creek, which tends to render it harmful to fish or aquatic life.  
27

1 This is a Class I violation according to OAR 340-012-0055(1)(a). DEQ hereby assesses an  
2 \$8,800 civil penalty for this violation.

3 3. On or about October 6, 2021, Respondent violated ORS 468B.025(1)(b) by  
4 discharging wastes into waters of the state and the discharge caused a reduction in the quality of  
5 waters below water quality standards established by the Environmental Quality Commission as  
6 described in Section II above. Specifically, Respondent discharged stormwater containing  
7 sediment, a waste, from its activities at the Site, which caused the formation of appreciable  
8 bottom deposits in Currin Creek in violation of water quality standards pursuant to OAR 340-  
9 041-0007(11). This is a Class I violation according to OAR 340-012-0055(1)(b). DEQ has not  
10 assessed a civil penalty for this violation.

11 4. On or before October 6, 2021, Respondent violated Schedule A, Condition 7.b.i.  
12 of the Current Permit and ORS 468B.025(2) by failing to maintain the 50-foot natural buffer  
13 zone at the Site, as described in Section II above. Specifically, Respondent cleared an area inside  
14 the buffer zone and used it as a construction access road. This is a Class II violation according to  
15 OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this violation.

16 5. From June 4, 2021 through October 6, 2021, Respondent violated Schedule B,  
17 Condition (1)(a) of the Previous Permit and Schedule B, Condition 6.2 of the Current Permit by  
18 failing to conduct visual monitoring on approximately 11 days, as described in Section II above.  
19 These are Class I violations according to OAR 340-012-0055(1)(o). DEQ hereby assesses an  
20 \$8,677 civil penalty for these violations.

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

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

24 1. Pay a total civil penalty of \$54,786. The determination of the civil penalties are  
25 attached as Exhibit Nos. 1, 2 and 3, and incorporated as part of this Notice.

26 If you do not file a request for hearing as set forth in Section V below, please pay the  
27 penalty via check, money order, or e-check (ACH) by following the instructions on the attached

1 invoice and logging in to Your DEQ Online here: <https://ordeq-edms->  
2 [public.govonlinesaas.com/pub/login](https://public.govonlinesaas.com/pub/login). Payments sent by mail must be sent to the address on the  
3 invoice.

4 2. Submit a restoration plan for the disturbed area within the 50-foot natural buffer zone  
5 to DEQ for approval within thirty (30) days of this Notice becoming final by operation of law or on  
6 appeal. Submit the plan to Blair Edwards via email at: [blair.edwards@deq.oregon.gov](mailto:blair.edwards@deq.oregon.gov). Within thirty  
7 (30) days of DEQ's approval of the plan, complete the work set forth in the plan and submit  
8 documentation of completion of the work to Blair Edwards via email at the address above.

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

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

25 Active duty Service members have a right to stay proceedings under the federal Service  
26 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-



1 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
2 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
3 Department does not have a toll-free telephone number.

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

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13 11/21/2022  
14 Date


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Kieran O'Donnell, 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 1: Failing to substantially implement the Erosion and Sediment Control Plan (ESCP), in violation of Schedule A, Condition 8.a of the Previous Permit, Schedule A, Condition 4 of the Current Permit, and ORS 468B.025(2).

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

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 the NPDES 1200-C General Permit for a construction site between five and 20 acres in size. The disturbed area at the Site is approximately 17.17 acres.

"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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent was cited for two Class I violations in Case No. WQ/SW-NWR-2019-271.

"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 3 according to OAR 340-012-0145(4)(c), because there were from seven to 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondent failed to substantially implement the plan from on or before September 28, 2021 through at least October 6, 2021, which is eight days.

"M" is the mental state of the Respondent and receives an 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. The 1200-C Permit and the ESCP prepared by Respondent's engineer require implementation of erosion and sediment control

measures in order to prevent the discharge of significant amounts of sediment from the Site. DEQ issued a previous enforcement action against Respondent for stormwater violations at the Site. Additionally, Respondent's owner, Kiril Ivanov, is an experienced developer and the owner of I & E Construction, Inc., Respondent's registered agent. I & E Construction, Inc. was the subject of two DEQ enforcement actions for stormwater violations. By failing to implement or maintain many of the measures and features included in the ESCP and allowing the discharge of sediment to surface waters, Respondent consciously disregarded the substantial and unjustifiable risk that it would violate its Permit and water quality statutes. This risk was of such a nature and degree that disregarding it constituted a gross deviation from the standard of care a reasonable permittee would observe in that situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to correct the violation. On October 20, 2021, Respondent sent DEQ documentation of some corrective actions it had taken at the Site. However, as of the date of this Notice, Respondent has not restored the area of the buffer zone that was impacted by construction activities.

"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 \$28,509. This is the amount Respondent gained by avoiding spending a total of \$44,034 for implementation of erosion and sediment controls at the Site, including hydroseeding, plastic sheeting, sediment fence, straw wattles and jute matting. 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 x \$4,000) x (3 + 0 + 3 + 8 - 2)] + \$28,509  
= \$4,000 + [\$400 x 12] + \$28,509  
= \$4,000 + \$4,800 + \$28,509  
= \$37,309

EXHIBIT NO. 2

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

VIOLATION 2: Causing pollution of waters of the state, in violation of ORS 468B.025(1)(a).

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

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 the NPDES 1200-C General Permit for a construction site between five and 20 acres in size. The disturbed area at the Site is approximately 17.17 acres.

"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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent was cited for two Class I violations in Case No. WQ/SW-NWR-2019-271.

"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. DEQ documented the pollution in Currin Creek resulting from Respondent's activities on October 6, 2021.

"M" is the mental state of the Respondent and receives an 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. The 1200-C Permit and the ESCP prepared by Respondent's engineer require implementation of erosion and sediment control measures in order to prevent the discharge of significant amounts of sediment from the Site. DEQ issued a previous enforcement action against Respondent for stormwater violations at the Site. Additionally, Respondent's owner, Kiril Ivanov, is an experienced developer and

the owner of I & E Construction, Inc., Respondent's registered agent. I & E Construction, Inc. was the subject of two DEQ enforcement actions for stormwater violations. By failing to implement or maintain many of the measures and features included in the ESCP and allowing the discharge of highly turbid stormwater from the Site, Respondent consciously disregarded the substantial and unjustifiable risk that it would cause pollution of Currin Creek. This risk was of such a nature and degree that disregarding it constituted a gross deviation from the standard of care a reasonable permittee would observe in that 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.

"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 has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

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 x \$4,000) x (3 + 0 + 0 + 8 + 0)] + \$0  
= \$4,000 + [\$400 x 11] + \$0  
= \$4,000 + \$4,400 + \$0  
= \$8,800

EXHIBIT NO. 3

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

VIOLATION 4: Failure to conduct visual monitoring in violation of Schedule B, Condition (1)(b) of the Previous Permit, Schedule B, Condition 6.2 of the Current Permit, and ORS 468B.025(2).

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)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent has coverage under the NPDES 1200-C General Permit for a construction site between five and 20 acres in size. The disturbed area at the Site is approximately 17.17 acres.

"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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent was cited for two Class I violations in Case No. WQ/SW-NWR-2019-271.

"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 4 according to OAR 340-012-0145(4)(c), because there were from seven to 28 occurrences of the violation. Each day of violation is a separate occurrence. From June 4, 2021 through October 6, 2021, Respondent failed to inspect the Site on approximately 11 days.

"M" is the mental state of the Respondent and receives an 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent has coverage under the NPDES 1200-C Permit which expressly requires Respondent to visually monitor all erosion and sediment controls daily when stormwater runoff is occurring so that it may identify problems at the site in order to prevent discharges. By failing to conduct monitoring

for most of the rain events during a four-month period, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate its 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)(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 \$677. This is the amount Respondent gained by avoiding spending \$1,045 to conduct visual monitoring at the Site on 11 occasions. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$   
 $= \$4,000 + [(0.1 \times \$4,000) \times (3 + 0 + 3 + 4 + 0)] + \$677$   
 $= \$4,000 + [\$400 \times 10] + \$677$   
 $= \$4,000 + \$4,000 + \$677$   
 $= \$8,677$