



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah St Ste 600

Portland, OR 97232-4100

(503) 229-5696

FAX (503) 229-5100

TTY: 711

June 9, 2017

CERTIFIED MAIL: 7014 2870 0001 3378 4553

Russell F. Wilson, Registered Agent

Wilson Property Investments

P.O. Box 99

Lyons, OR 97358

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-WR-2017-061

Dear Mr. Wilson:

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Wilson Property Investments a civil penalty of \$12,776 for violations of the stormwater permit at the "Country View Estates" residential development construction site located at the end of Shetterly Drive in Dallas, Oregon. Specifically, you failed to implement the Erosion and Sediment Control Plan, which resulted in significant amounts of sediment being discharged to a storm drain that leads to Rickreall Creek. In addition, you failed to conduct visual inspections of the construction site from the time you began active construction in May 2016 to the date of DEQ's inspection on February 15, 2017. The Notice also cites you, without penalty, for additional violations of your construction stormwater permit.

DEQ issued this penalty because failing to prevent discharges of sediment from the construction site to conveyance systems that lead to surface waters such as Rickreall Creek can increase turbidity to the receiving waters. This increase in turbidity can block light from submerged vegetation, reduce photosynthesis and dissolved oxygen, decrease water clarity, and cause detrimental effects to aquatic organisms.

Included in Section IV of the Notice is an order requiring you complete the following actions within 30 days after the order becomes final by operation of law or on appeal:

- Perform a full Site inspection by the designated Erosion and Sediment Control Inspector and provide the inspection report to DEQ. The inspection report should identify any remaining corrective actions required to achieve compliance with the ESCP and the Permit.
- Take any required corrective actions and provide documentation to DEQ demonstrating that the corrective actions have been completed. Corrective actions required to comply with the Permit include but are not limited to temporary or permanent stabilization measures.

DEQ appreciates your efforts to address the violations by installing sediment fencing and inlet protection at the Site's catch basins on March 10, 2017. DEQ considered these efforts when determining the amount of civil penalty.



If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us)

Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,



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

Enclosures

cc: Tasha Mack, Wilson Property Investments, LLC, 45908 Hwy 226, Lyons, OR 97358  
Eric Kelley, DEQ, Portland Office  
Jill Seale, DEQ, Eugene Office  
Zach Loboy, DEQ, Eugene Office  
Shaumae Hall, Accounting, DEQ  
John Koestler, WQ, DEQ

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

3 IN THE MATTER OF: )  
4 Wilson Property Investments, LLC, ) NOTICE OF CIVIL PENALTY  
a domestic limited liability corporation, ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. WQ/SW-WR-2017-061

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 ORS Chapters 183 and 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,  
10 and 045.

11 II. FINDINGS OF FACT

12 1. On March 8, 2016, DEQ assigned coverage to Respondent under National Pollutant  
13 Discharge Elimination Service (NPDES) General Permit No. 1200-C (Permit) for construction  
14 activities at the "Country View Estates," a residential development construction project located at the  
15 terminus of SE Shetterly Drive in Dallas, Oregon (Site).

16 2. The Permit was in effect at all material times.

17 3. The total disturbed area at the Site is approximately 6.4 acres.

18 4. The Permit authorizes Respondent to construct, install, modify or operate erosion and  
19 sediment control measures and stormwater treatment and control facilities, and to discharge stormwater  
20 and certain specified non-stormwater discharges to surface waters of the state or conveyance systems  
21 leading to surface waters of the state only in conformance with all the requirements, limitations, and  
22 conditions set forth in the Permit.

23 5. Schedule A, Condition 12 of the Permit requires Respondent to prepare an Erosion and  
24 Sediment Control Plan (ESCP). Pursuant to Schedule A.8.a of the Permit, failure to implement any of  
25 the control measures or practices described in the ESCP is a violation of the Permit.

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1           6. Schedule A, Condition 12.c.i of the Permit requires Respondent to maintain an accurate  
2 ESCP that reflects site conditions, and update the ESCP as needed to represent the actual Best  
3 Management Practices (BMPs) being used onsite.

4           7. Schedule A, Condition 8.b of the Permit requires Respondent to prevent the discharge of  
5 significant amounts of sediment to surface waters or conveyance systems leading to surface waters.

6           8. On February 9, 2016, Respondent submitted an ESCP to DEQ, dated February 3, 2016,  
7 which includes the following conditions or requirements:

8           a. The entire site must be temporarily stabilized using vegetation or a heavy mulch layer,  
9 temporary seeding, or other method should all construction activities cease for 30 days or more...Do  
10 not remove temporary sediment control practices until permanent vegetation or other cover of exposed  
11 areas is established (ESCP p. CE-0.03, Standard Drawing Notes 34 & 36);

12           b. Long term slope stabilization measures, including matting, shall be in place over  
13 exposed soils by October 1 (ESCP p. CE-0.03, Erosion and Sediment Control BMP Implementation  
14 Note 3);

15           c. Construction activities must avoid or minimize excavation and bare ground activities  
16 during wet weather (ESCP p. CE-0.03, Standard Drawing Note 28);

17           d. "Wet weather" construction measures, including sediment fencing along the perimeter  
18 of the Site and inlet protection, need to be applied between October 15 and April 30<sup>th</sup> (ESCP p. CE-  
19 0.03, Erosion and Sediment Control BMP Implementation Note 5; p. CE-0.07, BMP Matrix for  
20 Construction Phases);

21           e. Sediment barriers to be installed after grading shall be installed immediately following  
22 establishment of finished grade as shown on these plans (ESCP p. CE-0.03, Erosion and Sediment  
23 Control BMP Implementation Note 2; see also ESCP p. CE-1.03, Keynote 307);

24           f. Active inlets to storm water systems shall be protected through the use of approved inlet  
25 protection measures. Inlet protection measures are to be regularly inspected and maintained as  
26 needed...Use BMPs such as check-dams, berms and inlet protection to prevent run-off from reaching  
27 discharge points (ESCP p. CE-0.03, Grading, Utility, and Street Erosion Control Notes 9 & 14);

1 g. Provide inlet protection immediately following construction of catch basins (ESCP p.  
2 CE-1.03, Keynote 311; see also ESCP p. CE-0.03, Erosion and Sediment Control BMP Implementation  
3 Note 4);

4 h. Within 24 hours, significant sediment that has left the construction site must be  
5 remediated. Investigate the cause of the sediment release and implement steps to prevent a recurrence  
6 of the discharge within the same 24 hours (ESCP p. CE-0.03, Standard Drawing Note 32);

7 9. According to the construction schedule in the ESCP, Respondent conducted active  
8 construction at the Site from on or about May 9, 2016 to on or about August 18, 2016.

9 10. DEQ inspected the Site on February 15, 2017. At the time of inspection:

10 a. The graded area of the Site was unstable with bare soils and rills.

11 b. There was an active discharge of unfiltered sediment-laden water into an unprotected  
12 storm drain that ultimately discharges to Rickreall Creek.

13 c. There were no perimeter controls (e.g. sediment fencing) in place.

14 11. The ESCP did not reflect the conditions and actual BMPs being used at the Site as of  
15 February 15, 2017.

16 12. On March 10, 2017, Respondent installed sediment fencing and inlet protection at ten of the  
17 Site's catch basins.

18 13. Schedule B, Condition 1 of the Permit requires Respondent to conduct visual monitoring of  
19 the Site by its designated Erosion and Sediment Control Inspector (Inspector), according to a schedule  
20 set forth in Schedule B, Condition 1.b of the Permit.

21 14. Schedule A, Condition 12.b.iii of the Permit requires Respondent to identify a certified  
22 Inspector in its ESCP, including a description of the inspector's experience and training.

23 15. Schedule A, Condition 12.c.iv.6 of the Permit requires Respondent to submit ESCP  
24 revisions to DEQ for a change in the Inspector.

25 16. Respondent's ESCP, submitted to DEQ on February 9, 2016, lists Keith Whisenhunt of  
26 Project Delivery Group, LLC as Respondent's designated Inspector (ESCP, page CE-0.07).

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1 17. During the inspection on February 15, 2017, DEQ requested records documenting visual  
2 monitoring by the Inspector. Respondent did not produce any visual monitoring records.

3 18. On March 15, 2017, Respondent submitted to DEQ visual monitoring records dated March  
4 14, 2017 and March 15, 2017 and prepared by Lee Brennan of Project Delivery Group, LLC.

5 19. As of the date of this Notice, DEQ has not received any visual monitoring reports from  
6 Respondent other than those described in Paragraph 18, above.

7 20. As of the date of this Notice, Respondent has not submitted a revised ESCP to DEQ  
8 documenting the change in Inspector or demonstrating his qualifications.

### 9 III. CONCLUSIONS

10 1. Respondent violated Schedule A, Condition 8.a of the Permit and ORS 468B.025(2) by failing  
11 to substantially implement the ESCP, as described in Section II, above. Specifically, Respondent failed to  
12 stabilize the site, failed to install BMPs, including sediment fencing and inlet protection, to adequately  
13 manage erosion and sediment at the Site, and failed to perform corrective actions in response to indications  
14 that significant amounts of sediment were leaving the Site before February 15, 2017. This is a Class I  
15 violation according to OAR 340-012-0055(1)(r). DEQ hereby assesses a \$5,600 civil penalty for this  
16 violation.

17 2. Respondent violated Schedule B, Condition 1 of the Permit and ORS 468B.025(2) by failing to  
18 conduct visual monitoring by a designated Erosion and Sediment Control Inspector between the start of  
19 construction, on or about May 9, 2016 and the date of DEQ's inspection on February 15, 2017, as  
20 described in Section II, above. Specifically, Respondent failed to conduct visual monitoring on at least  
21 seven occasions (at least once every 14 calendar days pursuant to Schedule B, Condition 1.b.1 of the  
22 Permit) during the active period of construction from May 9, 2016 to August 18, 2016. Respondent failed  
23 to conduct visual monitoring on at least six occasions (once every month pursuant to Schedule B,  
24 Condition 1.b.3 of the Permit) during the inactive period from August 18, 2016 to the date of DEQ's  
25 inspection, February 15, 2017. Thus, Respondent failed to conduct visual monitoring on at least 13  
26 occasions. These are Class I violations according to OAR 340-012-0055(1)(o). DEQ hereby assesses a  
27 \$7,176 civil penalty for these violations.

1           3. Respondent violated Schedule A, Condition 12.c of the Permit and ORS 468B.025(2) by  
2 failing to complete required revisions to its ESCP, as described in Section II, above. Specifically,  
3 Respondent failed to maintain an accurate ESCP that reflects site conditions and failed to submit ESCP  
4 revisions to DEQ documenting the change in Inspector. This is a Class II violation according to OAR  
5 340-012-0053(2). DEQ has not assessed a civil penalty for this violation.

6           4. Respondent violated Schedule A, Condition 8.b of the Permit and ORS 468B.025(2) by failing  
7 to prevent the discharge of significant amounts of sediment to conveyance systems leading to surface  
8 waters, as described in Section II, above. Specifically, on February 15, 2017, the date of DEQ's  
9 inspection, the graded area of the Site was unstable with bare soils and rills and there was an active  
10 discharge of unfiltered sediment-laden water into an unprotected storm drain that ultimately discharges  
11 to Rickreall Creek. This is a Class II violation according to OAR 340-012-0053(2). DEQ has not  
12 assessed a civil penalty for this violation.

#### 13   IV. ORDER TO PAY CIVIL PENALTY

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

16           1. Pay a total civil penalty of \$12,776. The determination of the civil penalties are attached as  
17 Exhibits 1 and 2 and are incorporated as part of this Notice.

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

22           2. Within 30 days after the order becomes final by operation of law or on appeal, perform a  
23 full Site inspection by the designated Erosion and Sediment Control Inspector and provide the inspection  
24 report to DEQ. The inspection report should identify any remaining corrective actions required to  
25 achieve compliance with the ESCP and the Permit. Take any required corrective actions and provide  
26 documentation to DEQ demonstrating that the corrective actions have been completed. Corrective  
27 actions required to comply with the Permit include but are not limited to temporary or permanent

1 stabilization measures. Written documentation demonstrating Respondent's compliance with this  
2 paragraph must be sent to: Eric Kelley, DEQ, 700 NE Multnomah Street, Suite 600, Portland OR 97232  
3 or Kelley.Eric@deq.state.or.us.

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

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

19 Active duty service-members have a right to stay proceedings under the federal Service  
20 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
21 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
22 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
23 <http://legalassistance.law.af.mil/content/locator.php>.

24 If you fail to file a timely request for hearing, the Notice will become a final order by default  
25 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later  
26 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the  
27 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates



1 the relevant portions of its files, including information submitted by you, as the record for purposes of  
2 proving a prima facie case.

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June 9, 2017  
Date

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

## EXHIBIT 1

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

- VIOLATION No 1: Failing to substantially implement the ESCP, in violation of Schedule A, Condition 8.a of the 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 an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than five but less than 20 acres in size. The total disturbed area at the Site is approximately 6.4 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 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 constitutes a separate occurrence of the violation. Respondent failed to substantially implement the ESCP by failing to install adequate BMPs at the Site from at least February 15, 2017 to March 10, 2017, when Respondent submitted documentation to DEQ demonstrating that inlet protection and sediment fencing had been installed. Therefore, the violation was ongoing for at least 23 days.
- "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. Negligent means that Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. The requirement to implement the ESCP is an express condition of the Permit. Respondent prepared an ESCP and submitted it to DEQ on February 9, 2016, prior

to the active construction phase at the Site. The ESCP details a number of Best Management Practices (BMPs) aimed at reducing erosion and preventing significant amounts of sediment from leaving the Site and discharging to surface waters. Nevertheless, on the date of DEQ's inspection on February 15, 2017, the Site had bare, unstable soils with evidence of erosion, there was no inlet protection at the Site's catch basins and there was no sediment fencing installed. In addition, Respondent had not taken any corrective actions in response to the active discharge of unfiltered sediment-laden water into an unprotected storm drain that ultimately discharges to Rickreall Creek. By failing to implement these critical elements of the ESCP, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting 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. On March 10, 2017, Respondent installed sediment fencing and inlet protection at ten of the Site's catch basins.

"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 enough information to calculate the economic benefit of 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 (0 + 0 + 3 + 4 + -3)] + \$0  
= \$4,000 + (\$400 x 4) + \$0  
= \$4,000 + \$1,600 + \$0  
= \$5,600

## EXHIBIT 2

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

VIOLATION No 2: Failing to conduct visual monitoring by a designated Erosion and Sediment Control Inspector, in violation of Schedule B, Condition 1 of the 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 an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than five but less than 20 acres in size. The total disturbed area at the Site is approximately 6.4 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 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 constitutes a separate occurrence of the violation. Specifically, Respondent failed to conduct visual monitoring on at least seven occasions (at least once every 14 calendar days pursuant to Schedule B, Condition 1.b.1 of the Permit) during the active period of construction from May 9, 2016 to August 18, 2016. Respondent failed to conduct visual monitoring on at least six occasions (once every month pursuant to Schedule B, Condition 1.b.3 of the Permit) during the inactive period from August 18, 2016 to the date of DEQ's inspection, February 15, 2017. In total, Respondent failed to conduct visual monitoring on at least 13 occasions.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Negligent means that Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. The requirement to conduct visual monitoring by a designated Inspector is an express condition of the Permit. Respondent's ESCP, submitted to DEQ on February 9, 2016, lists Keith Whisenhunt of Project Delivery Group, LLC as Respondent's designated Inspector and details the inspection frequency required by the Permit (ESCP, p. CE-0.07). By failing to conduct any visual monitoring between the start of construction on or about May 9, 2016 and the date of DEQ's inspection on February 15, 2017, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting 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 \$376. This is the amount Respondent gained by avoiding spending \$650 to have its designated Inspector conduct visual monitoring on at least 13 occasions between May 9, 2016 and February 15, 2017. 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 (0 + 0 + 3 + 4 + 0)] + \$376  
= \$4,000 + (\$400 x 7) + \$376  
= \$4,000 + \$2,800 + \$376  
= \$7,176