



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

June 3, 2022

CERTIFIED MAIL: 7018 1830 0001 6172 5826

ICON Construction & Development, LLC
c/o Mark Handris, Registered Agent
1980 Willamette Falls Drive, Suite 200
West Linn, OR 97068

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2021-151

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a total civil penalty of \$114,089 for violating multiple provisions of Oregon law and the conditions of the National Pollutant Discharge Elimination System Construction Stormwater General Permit No.1200-C (the Permit) assigned to you for the Beckword, Hamilton Acres, Redwood Landing II, and Redwood Landing III projects located in Canby, Oregon. Specifically, DEQ has cited you for the following violations at each project site:

- 1) **Beckwood.** DEQ has issued you a \$20,000 penalty for:
 - a. starting construction without first obtaining coverage under the Permit; and
 - b. making false statements and representations on the Erosion and Sediment Control Plans (ESCP) submitted as part of your permit application. Specifically, you submitted multiple versions of the ESCP that erroneously described the site conditions as "With Trees," and failed to note that stumping, site development activities, and grading had been conducted at the site prior to you applying for or receiving permit coverage.

- 2) **Hamilton Acres.** DEQ has issued you a \$46,894 penalty for:
 - a. failing to implement the ESCP developed for the project by failing to correctly and effectively install and maintain storm drain traps and barriers, perimeter sediment controls, soil stabilization measures, and material and waste storage areas;
 - b. failing to perform visual monitoring on a regular basis to ensure the pollution controls are effective;
 - c. failing to submit a revised ESCP to DEQ by February 15, 2021, as required by the revised 2020 Permit; and
 - d. placing wastes in a location where they are likely to enter waters of the state by discharging concrete waste and wash water directly to the ground and locating portable toilets immediately adjacent to and upgradient from stormwater catch basins that discharge to Willow Creek.

- 3) **Redwood Landing II.** DEQ has issued you a \$23,158 penalty for:
- failing to implement the ESCP developed for the project by failing to install and maintain effective sediment perimeter fencing, stockpile controls, and construction entrances;
 - failing to perform visual monitoring on a regular basis to ensure the pollution controls are effective;
 - failing to submit a revised ESCP to DEQ by February 15, 2021, as required by the revised 2020 Permit; and
 - causing pollution to waters of the state by washing sediment track-out into city catch basins that have overflows to Willow Creek.
- 4) **Redwood Landing III.** DEQ has issued you a \$24,037 penalty for:
- starting construction without first obtaining coverage under the Permit;
 - failing to implement the ESCP developed for the project by failing to install and maintain effective sediment perimeter fencing, stockpile controls, and a concrete washout;
 - failing to perform visual monitoring on a regular basis to ensure the pollution controls are effective;
 - causing pollution to waters of the state by failing to control track-out onto project roads and public rights of way and for allowing that sediment to combine with water leaked from a dust suppression truck and discharge to city catch basins that have overflows to Willow Creek; and
 - making false statements and representations on the ESCP submitted as part of your permit application. Specifically, you submitted an ESCP to DEQ on June 18, 2021, that erroneously described the site conditions as “cleared of trees with grass ground cover” and noted that clearing and grading work would begin in July 2021, despite having started clearing and grading the site on June 3, 2021.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:

<https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to “Department of Environmental Quality” and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

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

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 Erin Saylor via email at erin.saylor@deq.oregon.gov or by phone at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Darren Gusdorf, ICON Construction & Development, LLC
Elizabeth Howard, Schwabe, Williamson & Wyatt
Jerry Nelzen, City of Canby Public Works Director
Michael Kennedy, DEQ, Northwest Region
Daria Gneckow, DEQ, Northwest Region
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	ICON CONSTRUCTION &)	ASSESSMENT AND ORDER
5	DEVELOPMENT, LLC, an Oregon limited)	
6	liability corporation,)	
7	Respondent.)	CASE NO. WQ/SW-NWR-2021-151

8 I. AUTHORITY

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

13 II. FINDINGS OF FACT

14 1. Respondent is the owner and operator of the following four construction and
15 development projects located in Canby, Oregon:

- 16 a. The “Beckwood” development located at N Pine Street and N 17th Avenue (the
17 Beckwood Project);
- 18 b. The “Hamilton Acres” development located at 1467 N. Pine Street (the Hamilton Acres
19 Project);
- 20 c. The “Redwood Landing II” development located at 1238 N. Redwood Street (the
21 Redwood II Project); and
- 22 d. The “Redwood Landing III” development located at 1234, 1212, and 1176 N. Redwood
23 Street (the Redwood III Project).

24 2. The National Pollutant Discharge Elimination System General Permit Number 1200-C
25 (the Permit) authorizes permit registrants to engage in construction activities that may discharge
26 construction stormwater to waters or conveyance systems leading to surface waters of the state. DEQ
27 most recently renewed the Permit on December 15, 2020 (the 2020 Permit).

A. BECKWOOD PROJECT

3. Respondent engaged in construction activities in connection with the Beckwood Project, disturbing an area of 6.68 acres.

4. The Beckwood Project is connected to the City of Canby's public stormwater system which conveys overflow stormwater to Willow Creek, a water of the state, through the adjacent existing subdivision to the north.

5. ORS 468B.050(1)(d) prohibits any person from undertaking any activities that would cause an increase in the discharge of wastes into waters of the state without first obtaining a permit from DEQ.

6. Respondent started construction activity by clearing trees at the site on or about June 10, 2021.

7. Respondent applied for coverage under the 2020 Permit on June 28, 2021.

8. OAR 340-45-0015(5)(d) prohibits any person from making false statements, representations, or certifications in any required documents submitted to DEQ, including permit applications.

9. The Erosion and Sediment Control Plan (ESCP) Respondent submitted with its June 28, 2021, application described the existing site conditions as "Vacant – With Trees." The ESCP further noted that clearing work would begin in July 2021.

10. On July 12, 2021, Respondent submitted a revised ESCP that described the existing site conditions as "Vacant – With Trees."

11. On July 29, 2021, Respondent submitted a second revised ESCP that described the existing site conditions as "Vacant – With Trees."

12. On August 2, 2021, DEQ performed an inspection of the Beckwood Project. At the time of the inspection, the Beckwood Project site had been completely cleared of trees, grading work had begun, and stockpiles were present. Also on August 2, 2021, ICON representative Darren Gusdorff sent an email to DEQ confirming that Respondent had been working on tree removal at the Project site.

13. On August 5, 2021, Respondent submitted a third revised ESCP that continued to

1 describe the existing site conditions as “Vacant – With Trees.”

2 14. Respondent was assigned coverage under the 2020 Permit for the Beckwood Project on
3 September 22, 2021.

4 B. HAMILTON ACRES PROJECT

5 15. Respondent engaged in construction activities in connection with the Hamilton Acres
6 Project, disturbing a total area of 9 acres.

7 16. The Hamilton Acres Project is connected to the City of Canby’s stormwater
8 infrastructure on N. Pine Street, which conveys overflow stormwater to Willow Creek, a water of the
9 state.

10 17. Respondent was initially assigned coverage under the Permit on August 2, 2019.

11 18. Respondent was assigned renewed coverage under the 2020 Permit on December 16,
12 2020.

13 19. Schedule A, condition 4 of the 2020 Permit requires all permit registrants that received
14 coverage prior to December 14, 2020, to update their ESCP and site map by February 15, 2021, to
15 ensure the requirements of the 2020 Permit are implemented.

16 20. Schedule A, condition 8.a of the Permit, and Schedule A, condition 4 of the 2020 Permit
17 state that permit registrants must implement the ESCP at all times.

18 21. Among other Best Management Practices (BMPs), Respondent’s ESCP proposed
19 installation of storm drain traps and barriers, perimeter sediment controls, soil stabilization measures,
20 and material and waste storage areas.

21 22. Between March 13, 2020, and at least August 2, 2021, none of the erosion and sediment
22 controls described in the ESCP and Section II, paragraph 21, above, were installed as required by the
23 ESCP.

24 23. Schedule A, condition 8.c.ii.(2) of the Permit and Schedule A, condition 2.2.14 of the
25 2020 Permit require that concrete equipment only be washed in an appropriately protected area or in
26 designated washout areas—concrete wash water may not be disposed onto the ground. Concrete wash
27 water and waste concrete management areas must be maintained and functional.

1 24. On August 2, 2021, DEQ performed an inspection of the Hamilton Acres Project. At the
2 time of the inspection, concrete waste and wash water had been discharged to the ground rather than to
3 the designated washout.

4 25. Schedule A, condition 2.3.8 of the 2020 Permit requires that portable toilets be placed
5 away from waters of the state and stormwater inlets or conveyances.

6 26. At the time of DEQ's August 2, 2021, inspection, Respondent had placed portable toilets
7 immediately adjacent to and upgradient from stormwater catch basins.

8 27. Schedule B, condition 1.b. of the Permit and Schedule B, condition 6.2 of the 2020
9 Permit requires Respondent to monitor its active construction site every fourteen (14) days, and within
10 24 hours of any storm event.

11 28. It rained on the following weekdays between March 13, 2020, and August 2, 2021, within
12 the vicinity of the Hamilton Acres Project and Respondent did not perform visual monitoring on these
13 days:

- 14 a. March 13, 23, 24, 27, 30, 31, 2020;
- 15 b. April 1, 22, 2020;
- 16 c. May 6, 11, 12, 14, 18, 2020;
- 17 d. June 8, 9, 12, 15, 16, 2020;
- 18 e. September 23, 2020;
- 19 f. October 13, 2020;
- 20 g. November 3, 5, 10, 12, 13, 16-18, 23, 24, 30, 2020;
- 21 h. December 8, 10, 11, 16, 18, 25, 30, 2020;
- 22 i. January 1, 6, 8, 11, 15, 26, 27, 29, 2021;
- 23 j. February 1, 22, 26, 2021;
- 24 k. March 5, 10, 2021;
- 25 l. April 30, 2021;
- 26 m. May 7, 19, 24, 27, 2021;
- 27 n. June 14, 2021;

1 29. Respondent did not perform visual monitoring on the following days when it was not
2 raining but was more than fourteen (14) days since the last visual inspection: April 15, 2020; June 1, 2020;
3 June 30, 2020; July 7, 2020; October 23, 2020; April 16, 2021; and July 9, 2021.

4 C. REDWOOD II PROJECT

5 30. Respondent engaged in construction activities in connection with the Redwood II
6 Project, disturbing a total area of 4.8 acres.

7 31. The Redwood II Project is connected to the City of Canby's stormwater infrastructure,
8 which conveys overflow stormwater to Willow Creek, a water of the state.

9 32. Respondent was initially assigned coverage under the Permit on December 2, 2020.

10 33. Respondent was assigned renewed coverage under the 2020 Permit on December 15,
11 2020.

12 34. Respondent commenced construction activities at the Project site on February 22, 2021.

13 35. Schedule A, condition 4 of the 2020 Permit requires all permit registrants that received
14 coverage under the Permit prior to December 14, 2020, to update their ESCP and site map by February
15 15, 2021, to ensure the requirements of the revised 2020 Permit are implemented.

16 36. Schedule A, condition 8.e. of the Permit and Schedule A, condition 2.1.4 of the 2020
17 Permit states that all stormwater controls must be maintained and remain effective while the permit is
18 in effect.

19 37. Schedule A, condition 8.a of the Permit and Schedule A, condition 4 of the 2020 Permit
20 states that permit registrants must implement the ESCP at all times.

21 38. Among other Best Management Practices (BMPs), Respondent's ESCP proposed
22 installation of a functional perimeter sediment fence, sediment barriers, and construction entrances that
23 ensure all paved areas are kept clean for the duration of the project.

24 39. On July 28, 2021, DEQ performed an inspection of the Redwood II Project. At the time
25 of the inspection, Respondent's perimeter fence was installed ineffectively, allowing for large volumes
26 of loose, disturbed soils to fall outside the project perimeter.

27 40. At the time of the July 28, 2021, DEQ inspection, Respondent's stockpile management

1 controls were installed ineffectively. The straw wattles were installed mid-height on stockpiled soil
2 along the eastern project boundary and the stockpile height exceeded the height of the adjacent
3 sediment fence.

4 41. Schedule A, condition 7.d.ii of the Permit and Schedule A, condition 2.2.7 of the 2020
5 Permit require the implementation of controls to prevent the track-out of sediment from construction
6 access points.

7 42. Schedule A, condition 9.b.ii of the Permit and Schedule A, condition 2.2.19.b of the
8 2020 Permit, prohibit the intentional washing of sediment into storm sewers or drainage ways.

9 43. On or about July 23, 2021, Respondent intentionally washed sediment track-out into the
10 City of Canby's public stormwater system.

11 44. At the time of the July 28, 2021, DEQ inspection, significant volumes of sediment track-
12 out from the Redwood II Project remained on all adjacent streets.

13 45. Schedule B, condition 6.2 of the 2020 Permit requires Respondent to monitor its active
14 construction site at the start of construction, every fourteen (14) days, and within 24 hours of any storm
15 event.

16 46. Respondent did not perform visual monitoring when construction began on February 22,
17 2021.

18 47. It rained on the following six weekdays between February 22, 2021, and July 28, 2021,
19 within the vicinity of the Redwood II Project and Respondent did not perform visual monitoring on
20 these days:

- 21 a. February 26, 2021;
- 22 b. March 10, 2021;
- 23 c. April 30, 2021;
- 24 d. May 24, 27, 2021;
- 25 e. June 14, 2021;

26 48. Respondent did not perform visual monitoring on the following days when it was not
27 raining but was more than fourteen (14) days since the last visual inspection: June 18, 2021; June 28, 2021;

1 July 12, 2021.

2 D. REDWOOD III PROJECT

3 49. Respondent engaged in construction activities in connection with the Redwood III
4 Project, disturbing a total area of 4.5 acres.

5 50. The Redwood III Project is connected to the City of Canby's stormwater infrastructure,
6 which conveys overflow stormwater to Willow Creek, a water of the state.

7 51. ORS 468B.050(1)(d) prohibits any person from undertaking any activities that would
8 cause an increase in the discharge of wastes into waters of the state without first obtaining a permit
9 from DEQ.

10 52. On or about June 3, 2021, Respondent commenced construction activities at the
11 Redwood III Project site, including clearing, grading, and heavy equipment staging.

12 53. On or about June 18, 2021, Respondent applied to DEQ for coverage under the 2020
13 Permit.

14 54. OAR 340-45-0015(5)(d) prohibits any person from making false statements,
15 representations, or certifications in any required documents submitted to DEQ, including permit
16 applications.

17 55. Although clearing and grading work at the Redwood III Project site had already
18 commenced, as part of its application, Respondent submitted an ESCP that describes the existing site
19 conditions as cleared of trees with grass ground cover. The construction schedule in the ESCP states
20 that clearing and grading work would begin in July 2021.

21 56. Respondent was assigned coverage under the 2020 Permit on June 21, 2021.

22 57. Schedule A, condition 2.1.4 of the 2020 Permit states that all stormwater controls must
23 be maintained and remain effective while the permit is in effect.

24 58. Schedule A, condition 4 of the 2020 Permit states that permit registrants must implement
25 the ESCP "at all times."

26 59. Among other Best Management Practices (BMPs), Respondent's ESCP requires the
27 installation of sediment perimeter control and construction entrances to prevent track-out of sediment

1 from the Project site onto public or provide roads. Respondent's ESCP also requires the installation of a
2 sediment fence around the perimeter of stockpiled soil and that stockpiled soil be covered with straw
3 mulch.

4 60. On July 28, 2021, DEQ performed an inspection of the Redwood III Project. At the time
5 of the inspection, Respondent's perimeter fence was installed incompletely and ineffectively, allowing
6 for large volumes of loose, disturbed soils to fall outside the project perimeter.

7 61. At the time of the July 28, 2021, DEQ inspection, a large stockpile along the southern
8 boundary of the Redwood III Project site was left uncontrolled with no perimeter fence in the
9 immediate vicinity, putting neighboring property at risk.

10 62. At the time of the July 28, 2021, DEQ inspection, the plastic lining in the concrete
11 washout at the Redwood III Project site was torn and garbage and sediment were present in the pit.

12 63. Schedule A, condition 2.2.7 of the 2020 Permit requires the implementation of controls
13 to prevent the track-out of sediment from construction access points.

14 64. At the time of the July 28, 2021, DEQ inspection, the construction entrances at the
15 Redwood III Project site were constructed ineffectively, resulting in significant sediment track-out onto
16 project streets and public rights of way.

17 65. At the time of the July 28, 2021, DEQ inspection, a large water truck used for dust
18 suppression at the Redwood III Project site was leaking water which was mixing with sediment track-
19 out on the street from the Redwood III Project, causing muddy discharges to a stormwater catch basin
20 located at the Redwood II Project site.

21 66. At the time of the July 28, 2021, DEQ inspection, a large, suspected hydrocarbon spill
22 was present on the ground near heavy equipment.

23 67. Schedule B, condition 6.2 of the 2020 Permit requires Respondent to monitor its active
24 construction site on the date construction starts, every fourteen (14) days, and within 24 hours of any
25 storm event.

26 68. Respondent did not perform visual monitoring on the following days when it was not
27 raining but was more than fourteen (14) days since the last visual inspection: June 21, 2021; July 5,

1 2021.

2 III. CONCLUSIONS

3 A. BECKWOOD PROJECT

4 1. Respondent violated ORS 468B.050(1)(d) by starting construction without first obtaining
5 coverage under the NPDES Stormwater Discharge 1200-C General Permit, as described in Section II,
6 paragraphs 6 and 14 above. Specifically, Respondent began construction activities at the Beckwood
7 Project site on June 10, 2021, but did not obtain permit coverage until September 22, 2021. This is a
8 Class I violation pursuant to OAR 340-012-0055(1)(d). DEQ hereby assesses a \$10,400 civil penalty for
9 this violation.

10 2. Respondent violated OAR 340-045-0015(5)(d) by making false statements and representations
11 on documents that are required to be submitted to DEQ as part of a 1200-C permit application.
12 Specifically, Respondent submitted a permit application and multiple versions of its ESCP for the
13 Beckwood Project that erroneously described the site conditions as “With Trees,” and failed to note that
14 stumping, site development activities, and grading had been conducted at the site prior to the Respondent
15 applying for or receiving permit coverage, as described in Section II, paragraphs 9-13 above. This is a
16 Class I violation pursuant to OAR 340-012-0053(1)(b). DEQ hereby assesses a \$9,600 civil penalty for
17 this violation.

18 B. HAMILTON ACRES PROJECT

19 3. Respondent violated ORS 468B.025(2) by failing to implement the visual monitoring required
20 under Schedule B of both versions of the Permit, as described in Section II, paragraphs 28-29 above.
21 Specifically, from on or about March 13, 2020, through August 2, 2021, Respondent failed to conduct
22 visual monitoring of the Hamilton Acres Project on at least 45 occasions. These are Class I violations,
23 according to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$14,412 civil penalty for this violation.

24 4. On or about March 13, 2020, through on or about August 2, 2021, Respondent violated ORS
25 468B.025(2), Schedule A condition 8.a of the Permit, and Schedule A, condition 4 of the 2020 Permit by
26 failing to implement the ESCP developed for the Project as described in Section II, paragraphs 21-22
27 above. Specifically, Respondent failed to correctly and effectively install or maintain storm drain traps and

1 barriers, perimeter sediment controls, soil stabilization measures, and material and waste storage areas
2 as required by the ESCP. This is a Class I violation, according to OAR 340-012-0055(1)(r). DEQ hereby
3 assesses a \$11,558 civil penalty for this violation.

4 5. Respondent violated ORS 468B.025(2) by failing to submit a revised ESCP to DEQ by
5 February 15, 2021, as required by Schedule A, Condition 4 of the 2020 Permit. This is a Class I violation
6 pursuant to OAR 340-012-0055(1)(r). DEQ hereby assesses a \$14,624 civil penalty for this violation.

7 6. Respondent violated ORS 468B.025(1)(a) by placing wastes in a location where they are likely
8 to enter waters of the state by any means, as described in Section II, paragraphs 24 and 26 above.
9 Specifically, between March 13, 2020, through on or about August 2, 2021, Respondent discharged
10 concrete waste and wash water directly to the ground and located portable toilets immediately adjacent to
11 and upgradient from stormwater catch basins that discharge to Willow Creek, a “water of the state,”
12 according to ORS 468B.005(10). Concrete residue is considered a “waste” according to ORS 468B.005(9)
13 as it tends to cause pollution to waters of the state. This is a Class II violation according to OAR 340-012-
14 0055(2)(c). DEQ hereby assesses a penalty of \$6,300 for this violation.

15 C. REDWOOD II PROJECT

16 7. Respondent violated ORS 468B.025(2) by failing to implement the visual monitoring required
17 under Schedule B of the 2020 Permit, as described in Section II, paragraphs 46-48 above. Specifically,
18 from on or about February 22, 2021, through July 28, 2021, Respondent failed to conduct visual
19 monitoring of the Project on at least 10 occasions. These are Class I violations, according to OAR 340-
20 012-0055(1)(o). DEQ hereby assesses a \$4,434 civil penalty for this violation.

21 8. On or about February 22, 2021, through on or about July 28, 2021, Respondent violated
22 ORS 468B.025(2) and Schedule A, condition 2.2 of the 2020 Permit by failing to effectively implement
23 the erosion and sediment controls developed for the Redwood II Project as described in Section II,
24 paragraphs 38-40 and 44 above. Specifically, Respondent failed to install and maintain effective
25 sediment perimeter fencing, stockpile controls, and construction entrances. This is a Class I violation,
26 according to OAR 340-012-0055(1)(r). DEQ hereby assesses a \$3,900 civil penalty for this violation.

27 9. Respondent violated ORS 468B.025(2) by failing to submit a revised ESCP to DEQ by

1 February 15, 2021, as required by Schedule A, Condition 4 of the 2020 Permit. This is a Class I violation
2 pursuant to OAR 340-012-0055(1)(r). DEQ hereby assesses a \$7,624 civil penalty for this violation.

3 10. Respondent violated ORS 468B.025(1)(a) by causing pollution to waters of the state by
4 washing sediment track-out into city catch basins that have overflows to Willow Creek, a “water of the
5 state,” according to ORS 468B.005(10). This is a Class II violation pursuant to OAR 340-012-0055(2)(c).
6 DEQ hereby assesses a \$7,200 civil penalty for this violation.

7 D. REDWOOD III PROJECT

8 11. Respondent violated ORS 468B.050(1)(d) by starting construction without first obtaining
9 coverage under the NPDES Stormwater Discharge 1200-C General Permit, as described in Section II,
10 paragraphs 52 and 56 above. Specifically, Respondent began construction activities at the Redwood III
11 Project on June 3, 2021, and obtained coverage under the permit on June 21, 2021. This is a Class I
12 violation pursuant to OAR 340-012-0055(1)(d). DEQ hereby assesses a \$3,750 civil penalty for this
13 violation.

14 12. Respondent violated OAR 340-045-0015(5) by making false statements and representations on
15 documents that are required to be submitted to DEQ as part of a 1200-C permit application. Specifically,
16 on June 18, 2021, Respondent submitted a permit application to DEQ that included an ESCP that
17 described the existing site conditions as “cleared of trees with grass ground cover” and noted that clearing
18 and grading work would begin in July 2021, even though Respondent had started clearing and grading the
19 site on June 3, 2021. This is a Class I violation pursuant to OAR 340-012-0053(1)(b). DEQ hereby
20 assesses a \$3,300 civil penalty for this violation.

21 13. Respondent violated ORS 468B.025(2) by failing to implement the visual monitoring required
22 under Schedule B of the Permit, as described in Section II, paragraph 68 above. Specifically, from on or
23 about June 21, 2021, through July 28, 2021, Respondent failed to conduct visual monitoring of the Project
24 on at least two occasions. This is a Class I violation, according to OAR 340-012-0055(1)(o). DEQ hereby
25 assesses a \$3,735 civil penalty for this violation.

26 14. On or about June 21, 2021, through at least July 28, 2021, Respondent violated ORS
27 468B.025(2) and Schedule A, condition 2.2 of the Permit by failing to effectively implement the erosion

1 and sediment controls in the ESCP developed for the Project as described in Section II, paragraphs 59-64
2 above. Specifically, Respondent failed to install and maintain effective sediment perimeter fencing,
3 stockpile controls, and a concrete washout. This is a Class I violation, according to OAR 340-012-
4 0055(1)(r). DEQ hereby assesses a \$6,652 civil penalty for this violation.

5 15. Respondent violated ORS 468B.025(1)(a) by causing pollution to waters of the state by failing
6 to control track-out onto project roads and public rights of way and for allowing that sediment to combine
7 with water leaked from a dust suppression truck and discharge to city catch basins that have overflows to
8 Willow Creek, a “water of the state,” according to ORS 468B.005(10). This is a Class II violation pursuant
9 to OAR 340-012-0055(2)(c). DEQ hereby assesses a \$6,600 civil penalty for this violation.

10 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

- 13 1. Pay a total civil penalty of \$114,089. The determination of the civil penalty is attached as Exhibits
14 No.1–4 and are incorporated as part of this Notice.

15 If you do not file a request for hearing as set forth in Section V below, please pay the penalty as follows:

16 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:
17 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account
18 dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US
19 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional
20 charges.

21 Pay by check or money order: Make checks payable to “Department of Environmental
22 Quality” and mail to the address on the enclosed payment slip. Please make sure to include the payment
23 slip with your check or money order.

- 24 2. Within 30 days of this order becoming final by operation of law or on appeal:

- 25 a. Hamilton Acres Project:

- 26 i. Submit to DEQ a revised Erosion and Sediment Control Plan and site map, as
27 required by Schedule A, condition 4 of the 2020 Permit.

1 b. Redwood II Project

- 2 i. Submit to DEQ a revised Erosion and Sediment Control Plan and site map, as
3 required by Schedule A, condition 4 of the 2020 Permit.
- 4 ii. If the following corrective actions were not completed immediately following
5 DEQ's August 2, 2021, inspection:
- 6 a. Outfit the stormwater catch basins with properly sized filtration devices
7 or plugs. Confirm that the storm sewer lines are plugged and vacuum
8 out any sediment which may have entered the storm sewer.
- 9 b. Provide additional catch basin protection near the water hydrant used
10 for dust suppression.
- 11 c. Clean the sediment track-out off the project streets and public rights of
12 way, including the accumulated sediment along curbs.
- 13 d. Reinstall the perimeter sediment fence to properly delineate the project
14 disturbance areas from the non-disturbed areas.

15 c. Redwood III Project

- 16 i. If the following corrective actions were not completed immediately following
17 DEQ's July 28, 2021, inspection:
- 18 a. Install perimeter sediment fencing along the entire project boundary,
19 b. Install construction entrances to the design standard in the ESCP—this
20 may include removing rock and placing geotextile;
- 21 c. Clean sediment track-out off the project streets and public rights of way,
22 including the accumulated sediment along curbs.
- 23 d. Install a concrete washout that is in compliance with the permit
24 requirements;
- 25 e. Investigate the potential fuel spill and mitigate;
- 26 f. Remove and dispose of all demolition debris.

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1 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

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

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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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6 6/3/2022

7 Date

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12 Kieran O'Donnell, Manager
13 Office of Compliance and Enforcement
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EXHIBIT 1

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

BECKWOOD PROJECT SITE

VIOLATION 1: Respondent violated ORS 468B.050(1)(d) by starting construction without first obtaining coverage under the NPDES Stormwater Discharge 1200-C General Permit.

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

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), as Respondent should have applied for coverage under the NPDES 1200-C General Permit for a construction site that is 6.68 acres in size.

"P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2)(a)(C)-(D), because Respondent has a total of four PSAs: two Class I violations in Case No. WQ/SW-NWR-2020-090 and two Class I violations in Case No. WQ/SW-NWR-2020-091.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b). Although some of the violations cited as PSAs were uncorrectable, Respondent took reasonable efforts to minimize the effects of the correctable violations cited as PSAs.

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent engaged in construction activity at the site from on or about June 10, 2021, through at least September 22, 2021, for a total of more than 28 days.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d). The Respondent is a sophisticated construction company that has been registered to do business in Oregon for over twenty years. Respondent knew or should have known it was a violation of Oregon law to engage in construction activities, including tree clearing and grading, without first obtaining coverage under the 1200-C general 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 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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$4,000 + [(0.1 \times \$4,000) \times (5 + -1 + 4 + 8 + 0)] + 0$
 $= \$4,000 + \$6,400$
 $= \$10,400$

VIOLATION 2: Respondent submitted a permit application and multiple versions of its Erosion and Sediment Control Plan (ESCP) that failed to note that stumping, site development activities, and grading had been conducted at the site prior to the Respondent applying for or receiving permit coverage, in violation of OAR 340-045-0015(5)(d).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(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), as Respondent should have applied for

coverage under the NPDES 1200-C General Permit for a construction site that is 6.68 acres in size.

"P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2)(a)(C)-(D), because Respondent has a total of four PSAs: two Class I violations in Case No. WQ/SW-NWR-2020-090 and two Class I violations in Case No. WQ/SW-NWR-2020-091.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b). Although some of the violations cited as PSAs were uncorrectable, Respondent took reasonable efforts to minimize the effects of the correctable violations cited as PSAs.

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were four occurrences of the violation. Respondent submitted an initial ESCP with its permit application on June 28, 2021, and three separate revised ESCPs—on July 12, 2021; July 29, 2021; and August 5, 2021—to DEQ indicating that the project site was "Vacant – With Trees" and that clearing and grading work was scheduled for specific dates in the future when, in fact, Respondent had already started those activities.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because the Respondent acted either intentionally or recklessly when it submitted the false information. Respondent is a sophisticated construction company that has been registered to do business in Oregon for over twenty years. Respondent started clearing trees at the project site on or about June 10, 2021, over two weeks before it submitted its application to DEQ for coverage under the Permit indicating the existing site conditions as "Vacant – With Trees." Between on or about June 10, 2021, and August 2, 2021, Respondent completely cleared the trees from the project site. During this same time, Respondent submitted two revised ESCP's to DEQ that described the existing site conditions as "Vacant – With Trees." Respondent's false representations masked the fact it had started construction without a permit. Furthermore, Respondent was informed by DEQ on August 3, 2021, that Respondent's inaccurate description of the existing site conditions in the ESCPs it had submitted was a violation of Oregon law, yet on August 5, 2021, Respondent submitted another revised ESCP that continued to describe the existing site conditions as "Vacant – With Trees."

"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 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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$4,000 + [(0.1 \times \$4,000) \times (5+-1+2+8+0)] + 0$
 $= \$4,000 + \$5,600$
 $= \$9,600$

EXHIBIT 2

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

HAMILTON ACRES PROJECT SITE

VIOLATION 1: Respondent violated ORS 468B.025(2) by failing to implement the visual monitoring required under Schedule 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, pursuant to OAR 340-012-0140(3)(a)(E)(iii), is \$4,000 for a Class I, moderate magnitude violation, as Respondent has coverage under the NPDES 1200-C General Permit for a construction site that is 9.0 acres in size.

"P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2)(a)(C)-(D), because Respondent has a total of four PSAs: two Class I violations in Case No. WQ/SW-NWR-2020-090 and two Class I violations in Case No. WQ/SW-NWR-2020-091.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b). Although some of the violations cited as PSAs were uncorrectable, Respondent took reasonable efforts to minimize the effects of the correctable violations cited as PSAs.

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent missed an estimated 45 days of visual monitoring.

"M" is the mental state of the Respondent and receives a value of 10 according to OAR 340-012-0145(5)(e), because Respondent's conduct was flagrant. Respondent applied for coverage under the Permit and has a copy of the Permit, which expressly requires Respondent to comply with the conditions set forth in the Permit. Furthermore, Respondent had previously been cited for this same violation as this same project site and thus had actual knowledge of the requirement.

"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 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 \$3,212. Respondent missed at least 45 visual monitoring events between March 2020 and August 2021. Respondent avoided spending an estimated \$100 for each visual monitoring inspection that was skipped. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$4,000 + [(0.1 \times \$4,000) \times (5 + -1 + 4 + 10 + 0)] + \$3,212$
 $= \$4,000 + \$7,200 + \$3,212$
 $= \$14,412$

VIOLATION 2: Respondent violated ORS 468B.025(2) by failing to effectively implement the ESCP developed for the Site, as required by Schedule A, Condition 2.2 of the Permit. Specifically, Respondent failed to appropriately install storm drain traps and barriers, perimeter sediment controls, soil stabilization measures, and material and waste storage areas.

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, pursuant to OAR 340-012-0140(3)(a)(E)(iii), is \$4,000 for a Class I, moderate magnitude violation, as Respondent has coverage under the NPDES 1200-C General Permit for a construction site that is 9.0 acres in size.
- "P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2)(a)(C)-(D), because Respondent has a total of four PSAs: two Class I violations in Case No. WQ/SW-NWR-2020-090 and two Class I violations in Case No. WQ/SW-NWR-2020-091.
- "H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b). Although some of the violations cited as PSAs were uncorrectable, Respondent took reasonable efforts to minimize the effects of the correctable violations cited as PSAs.
- "O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Specifically, between March 2020 and August 2021, Respondent failed to implement the ESCP by failing to effectively install storm drain traps and barriers, perimeter sediment controls, soil stabilization measures, and material and waste storage areas. Each day of violation is a separate occurrence, for a total of more than 28 days.
- "M" is the mental state of the Respondent and receives a value of 10 according to OAR 340-012-0145(5)(e), because Respondent's conduct was flagrant. Respondent applied for coverage under the Permit and has a copy of the Permit, which expressly requires Respondent to comply with the conditions set forth in the Permit. Furthermore, Respondent had previously been cited for this same violation as this same project site and thus had actual knowledge of the requirement.
- "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 the Respondent made reasonable affirmative efforts to minimize the effects of the violation.
- "EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$1,558. Between March 13, 2020, and August 4, 2021, Respondent delayed spending a total of \$36,965 on erosion and sediment controls described in the ESCP and required at the site. Specifically, Respondent should have spent \$31,356 on straw bales, \$1,657 on catch basin inlet filters, and \$3,952 on labor to install and maintain the controls. 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 x \$4,000) x (5+-1+4+10+-3)] + \$1,558
= \$4,000 + \$6,000 + \$1,558
= \$11,558

VIOLATION 3: Respondent violated ORS 468B.025(2) by failing to submit a revised ESCP to DEQ by February 15, 2021, as required by Schedule A, Condition 4 of the Permit in violation.

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, pursuant to OAR 340-012-0140(3)(a)(E)(iii), is \$4,000 for a Class I, moderate magnitude violation, as Respondent has coverage under the NPDES 1200-C General Permit for a construction site that is 9.10 acres in size.

"P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2)(a)(C)-(D), because Respondent has a total of four PSAs: two Class I violations in Case No. WQ/SW-NWR-2020-090 and two Class I violations in Case No. WQ/SW-NWR-2020-091.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b). Although some of the violations cited as PSAs were uncorrectable, Respondent took reasonable efforts to minimize the effects of the correctable violations cited as PSAs.

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent was required to submit a revised ESCP to DEQ by February 15, 2021, and has yet to do so.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent failed to act with actual knowledge of the requirement. Respondent applied for coverage under the Permit and has a copy of the 2020 Permit, which expressly requires Respondent to comply with the conditions set forth in the 2020 Permit, including submission of a revised ESCP by February 15, 2021. DEQ expressly informed Respondent by letter on December 16, 2020, that a revised ESCP was required by February 15, 2021. Additionally on August 10, 2021, DEQ provided Respondent with a copy of the August 2, 2021, inspection report that noted a revised ESCP is required.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because the Respondent has not corrected the violation despite being directed to do so on August 10, 2021.

"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 \$3,424. Respondent avoided spending \$5,000 on the development of a revised ESCP. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$4,000 + [(0.1 \times \$4,000) \times (5 + -1 + 4 + 8 + 2)] + \$3,424$
 $= \$4,000 + \$7,200 + \$3,424$
 $= \$14,624$

VIOLATION 4: Respondent violated ORS 468B.025(1)(a) by placing wastes in a location where such wastes are likely to escape or be carried into waters of the state.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(c).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which, pursuant to OAR 340-012-0140(2)(a)(D), is \$3,000 for a Class II, moderate magnitude violation of ORS 468B.025(a)(1).

- "P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2)(a)(C)-(D), because Respondent has a total of four PSAs: two Class I violations in Case No. WQ/SW-NWR-2020-090 and two Class I violations in Case No. WQ/SW-NWR-2020-091.
- "H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b). Although some of the violations cited as PSAs were uncorrectable, Respondent took reasonable efforts to minimize the effects of the correctable violations cited as PSAs.
- "O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(d) because at the time of DEQ's inspection on August 2, 2021, there was at least one portable toilet located adjacent to and upgradient from a catch basin and there was more than one but less than seven areas at the project site where concrete wastes were disposed of directly onto the ground.
- "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. Respondent applied for coverage under the Permit and has a copy of the Permit, which expressly requires, under Schedule A, condition 2.2.14, that concrete wash water may not be disposed onto the ground. Additionally, Schedule A, condition 2.3.8 expressly requires that portable toilets be placed away from stormwater inlets and conveyances. By failing to implement these requirements, Respondent consciously disregarded a substantial and unjustifiable risk that wastes would be carried to waters of the state.
- "C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(f) because Respondent made reasonable efforts to correct the violation.
- "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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$3,000 + [(0.1 \times \$3,000) \times (5 + -1 + 2 + 8 + -3)] + 0$
 $= \$3,000 + \$3,300 + 0$
 $= \$6,300$

EXHIBIT 3

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

REDWOOD LANDING II

VIOLATION 1: Respondent violated ORS 468B.025(2) by failing to implement the visual monitoring required under Schedule B of the 2020 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, pursuant to OAR 340-012-0140(4)(a)(F)(ii), is \$1,500 for a Class I, moderate magnitude violation, as Respondent has coverage under the NPDES 1200-C General Permit for a construction site that is 4.8 acres in size.

"P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2)(a)(C)-(D), because Respondent has a total of four PSAs: two Class I violations in Case No. WQ/SW-NWR-2020-090 and two Class I violations in Case No. WQ/SW-NWR-2020-091.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b). Although some of the violations cited as PSAs were uncorrectable, Respondent took reasonable efforts to minimize the effects of the correctable violations cited as PSAs.

"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 between seven and 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent missed an estimated 10 days of visual monitoring.

"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. Respondent applied for coverage under the Permit and has a copy of the Permit, which expressly requires Respondent to comply with the conditions set forth in the Permit. Furthermore, Respondent had previously been cited for this same violation at a different project site that utilizes the same inspector.

"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 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 \$684. Respondent missed 10 visual monitoring events between February 22, 2021, and July 28, 2021. Respondent avoided spending an estimated \$100 for each visual monitoring inspection that was skipped. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$1,500 + [(0.1 \times \$1,500) \times (5 + -1 + 3 + 8 + 0)] + \684
 $= \$1,500 + \$2,250 + \$684$
 $= \$4,434$

VIOLATION 2: Respondent violated ORS 468B.025(2) by failing to install and maintain effective erosion and sediment controls for the Site in accordance with its ESCP and Schedule A, Condition 2.2 of the 2020 Permit.

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, pursuant to OAR 340-012-0140(4)(a)(F)(ii), is \$1,500 for a Class I, moderate magnitude violation, as Respondent has coverage under the NPDES 1200-C General Permit for a construction site that is 4.8 acres in size.
- "P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2)(a)(C)-(D), because Respondent has a total of four PSAs: two Class I violations in Case No. WQ/SW-NWR-2020-090 and two Class I violations in Case No. WQ/SW-NWR-2020-091.
- "H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b). Although some of the violations cited as PSAs were uncorrectable, Respondent took reasonable efforts to minimize the effects of the correctable violations cited as PSAs.
- "O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Between February 22, 2021, and at least July 28, 2021, Respondent failed to install and maintain effective erosion and sediment controls as required by the 2020 Permit and its ESCP, including sediment fencing, sediment barriers, and construction entrances. Each day of violation is a separate occurrence.
- "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. Respondent applied for coverage under the Permit and has a copy of the Permit, which expressly requires Respondent to comply with the conditions set forth in the Permit. Respondent prepared an ESCP in accordance with the Permit for the Project and has actual knowledge of the requirements set forth therein. Furthermore, Respondent has recently been cited for this same violation at a nearby project site and thus is aware of the requirement to install effective sediment and erosion controls.
- "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 there is insufficient information to determine whether the violation has been corrected.
- "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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$1,500 + [(0.1 \times \$1,500) \times (5 + -1 + 4 + 8 + 0)] + 0$

= \$1,500 + \$2,400
= \$3,900

VIOLATION 3: Respondent violated Schedule A, Condition 4 of the Permit in violation of ORS 468B.025(2) by failing to submit a revised ESCP to DEQ by February 15, 2021.

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, pursuant to OAR 340-012-0140(4)(a)(F)(ii), is \$1,500 for a Class I, moderate magnitude violation, as Respondent has coverage under the NPDES 1200-C General Permit for a construction site that is 4.8 acres in size.

"P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2)(a)(C)-(D), because Respondent has a total of four PSAs: two Class I violations in Case No. WQ/SW-NWR-2020-090 and two Class I violations in Case No. WQ/SW-NWR-2020-091.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b). Although some of the violations cited as PSAs were uncorrectable, Respondent took reasonable efforts to minimize the effects of the correctable violations cited as PSAs.

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent was required to submit a revised ESCP to DEQ by February 15, 2021, and has yet to do so.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(c), because Respondent failed to act with actual knowledge of the requirement. Respondent applied for coverage under the Permit and has a copy of the 2020 Permit, which

expressly requires Respondent to comply with the conditions set forth in the 2020 Permit, including submission of a revised ESCP by February 15, 2021. DEQ expressly informed Respondent by letter on December 16, 2020, that a revised ESCP was required by February 15, 2021. Additionally on August 19, 2021, DEQ provided Respondent with a copy of the July 28, 2021, inspection report that noted a revised ESCP is required.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because the Respondent has not corrected the violation, despite being directed to do so on August 19, 2021.

"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 \$3,424. Respondent avoided spending \$5,000 on the development of a revised ESCP. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$1,500 + [(0.1 \times \$1,500) \times (5 + -1 + 4 + 8 + 2)] + \$3,424$
 $= \$1,500 + \$2,700 + \$3,424$
 $= \$7,624$

VIOLATION 4: Respondent violated ORS 468B.025(1)(a) by causing pollution to waters of the state by washing sediment track-out into city catch basins that have overflows to waters of the state.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(c).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which, pursuant to OAR 340-012-0140(2)(a)(D), is \$3,000 for a Class II, moderate magnitude violation of ORS 468B.025(1)(a).

- "P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2)(a)(C)-(D), because Respondent has a total of four PSAs: two Class I violations in Case No. WQ/SW-NWR-2020-090 and two Class I violations in Case No. WQ/SW-NWR-2020-091.
- "H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b). Although some of the violations cited as PSAs were uncorrectable, Respondent took reasonable efforts to minimize the effects of the correctable violations cited as PSAs.
- "O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because the violation occurred over the span of five days, from July 23-27, 2021. Each day of violation is a separate occurrence.
- "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. Respondent has a copy of the 2020 Permit which expressly prohibits the intentional washing of sediment into storm sewers or drainage ways. By washing sediment track-out into city catch basins, the Respondent consciously disregarded a substantial and unjustifiable risk that sediment would be discharged to a water of the state.
- "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 there is insufficient information to determine whether the violation has been corrected.
- "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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$3,000 + [(0.1 \times \$3,000) \times (5 + -1 + 2 + 8 + 0)] + 0$
 $= \$3,000 + \$4,200$
 $= \$7,200$

EXHIBIT 4

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

REDWOOD LANDING III PROJECT SITE

VIOLATION 1: Respondent violated ORS 468B.050(1)(d) by starting construction without first obtaining coverage under the NPDES Stormwater Discharge 1200-C General Permit.

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

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, pursuant to OAR 340-012-0140(4)(a)(F)(ii), is \$1,500 for a Class I, moderate magnitude violation, as Respondent's project site is 4.5 acres in size.

"P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2)(a)(C)-(D), because Respondent has a total of four PSAs: two Class I violations in Case No. WQ/SW-NWR-2020-090 and two Class I violations in Case No. WQ/SW-NWR-2020-091.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b). Although some of the violations cited as PSAs were uncorrectable, Respondent took reasonable efforts to minimize the effects of the correctable violations cited as PSAs.

"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 between seven and 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent commenced construction activity on June 3, 2021, but did not receive permit coverage until June 21, 2021.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d). The Respondent is a sophisticated construction company that has been registered to do business in Oregon for over twenty years. Respondent knew or should have known it was a violation of Oregon law to engage in construction activities without first obtaining coverage under the 1200-C general 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 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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
= \$1,500 + [(0.1 x \$1,500) x (5+-1+3+8+0)] + 0
= \$1,500 + \$2,250
= \$3,750

VIOLATION 2: Respondent submitted an Erosion and Sediment Control Plan (ESCP) that failed to note that clearing, site development activities, and grading had been conducted at the site prior to the Respondent applying for or receiving permit coverage, in violation of OAR 340-045-0015(5)(d).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(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, pursuant to OAR 340-012-0140(4)(a)(F)(ii), is \$1,500 for a Class I, moderate magnitude violation, as Respondent should have applied for coverage under the NPDES 1200-C General Permit for a construction site that is 4.5 acres in size.

- "P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2)(a)(C)-(D), because Respondent has a total of four PSAs: two Class I violations in Case No. WQ/SW-NWR-2020-090 and two Class I violations in Case No. WQ/SW-NWR-2020-091.
- "H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b). Although some of the violations cited as PSAs were uncorrectable, Respondent took reasonable efforts to minimize the effects of the correctable violations cited as PSAs.
- "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.
- "M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because the Respondent acted either intentionally or recklessly when it submitted the false information. Respondent is a sophisticated construction company that has been registered to do business in Oregon for over twenty years. Respondent knew or should have known it was a violation of Oregon law to engage in construction activities, including grading work, without first obtaining coverage under the 1200-C general permit. Respondent submitted an application for coverage under the 2020 Permit to DEQ on June 18, 2021. The ESCP submitted with its application described the existing site conditions as cleared of trees with grass ground cover. The ESCP indicated that clearing and grading work were scheduled to begin in July 2021. However, Respondent had started clearing, grading and staging heavy equipment at the site on or about June 3, 2021, approximately two weeks before it submitted its application to DEQ. Respondent's false representations masked the fact it had started construction without a 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 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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$1,500 + [(0.1 \times \$1,500) \times (5 + -1 + 0 + 8 + 0)] + 0$
 $= \$1,500 + \$1,800$
 $= \$3,300$

VIOLATION 3: Respondent violated ORS 468B.025(2) by failing to implement the visual monitoring required under Schedule 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, pursuant to OAR 340-012-0140(4)(a)(F)(ii), is \$1,500 for a Class I, moderate magnitude violation, as Respondent has coverage under the NPDES 1200-C General Permit for a construction site that is 4.5 acres in size.

"P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2)(a)(C)-(D), because Respondent has a total of four PSAs: two Class I violations in Case No. WQ/SW-NWR-2020-090 and two Class I violations in Case No. WQ/SW-NWR-2020-091.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b). Although some of the violations cited as PSAs were uncorrectable, Respondent took reasonable efforts to minimize the effects of the correctable violations cited as PSAs.

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(c) because there was more than one but less than seven occurrences of the violation. Each day of violation is a separate occurrence. Respondent missed an estimated 2 days of visual monitoring.

"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. Respondent applied for coverage under the Permit and has a copy of the Permit, which expressly requires Respondent to comply with the conditions set forth in the Permit. Furthermore, Respondent had previously been cited for this same violation at a different project site that utilizes the same inspector.

"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 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 \$135. Respondent missed 2 visual monitoring events between June 21, 2021, and July 14, 2021. Respondent avoided spending an estimated \$100 for each visual monitoring inspection that was skipped. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
= \$1,500 + [(0.1 x \$1,500) x (5+-1+2+8+0)] + \$135
= \$1,500 + \$2,100 + \$135
= \$3,735

VIOLATION 4: Respondent violated ORS 468B.025(2) by failing to effectively implement the erosion and sediment controls in the approved ESCP, as required by Schedule A, Condition 2.2 of the Permit.

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, pursuant to OAR 340-012-0140(4)(a)(F)(ii), is \$1,500 for a Class I, moderate magnitude violation, as Respondent has coverage under the NPDES 1200-C General Permit for a construction site that is 4.5 acres in size.

"P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2)(a)(C)-(D), because Respondent has a total of four PSAs: two Class I violations in Case No. WQ/SW-NWR-2020-090 and two Class I violations in Case No. WQ/SW-NWR-2020-091.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b). Although some of the violations cited as PSAs were uncorrectable, Respondent took reasonable efforts to minimize the effects of the correctable violations cited as PSAs.

- "O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent failed to install and maintain effective sediment perimeter fencing, stockpile controls, and a concrete washout from June 21, 2021, through at least July 28, 2021, for a total of more than 28 days.
- "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. Respondent applied for coverage under the Permit and has a copy of the Permit, which expressly requires Respondent to comply with the conditions set forth in the Permit. Respondent prepared an ESCP in accordance with the Permit for the Project and has actual knowledge of the requirements set forth therein. Furthermore, Respondent has recently been cited for this same violation at a nearby project site and thus is aware of the requirement to install effective sediment and erosion controls.
- "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 there is insufficient information to determine whether the violation has been corrected.
- "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 \$2,752. Respondent avoided spending a total of \$4,079 on erosion and sediment controls described in the ESCP and required at the site. Specifically, Respondent should have spent \$4,000 installing construction entrances to design standards and \$79 on sediment fencing. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$1,500 + [(0.1 \times \$1,500) \times (5 + -1 + 4 + 8 + 0)] + \$2,752$
 $= \$1,500 + \$2,400 + \$2,752$
 $= \$6,652$

VIOLATION 5: Respondent violated ORS 468B.025(1)(a) by causing pollution to waters of the state by failing to control track-out onto project roads and public rights of way and for discharging tracked sediment to city catch basins that have overflows to waters of the state.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(c).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which, pursuant to OAR 340-012-0140(2)(a)(D), is \$3,000 for a Class II, moderate magnitude violation of ORS 468B.025(a)(1).

"P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2)(a)(C)-(D), because Respondent has a total of four PSAs: two Class I violations in Case No. WQ/SW-NWR-2020-090 and two Class I violations in Case No. WQ/SW-NWR-2020-091.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b). Although some of the violations cited as PSAs were uncorrectable, Respondent took reasonable efforts to minimize the effects of the correctable violations cited as PSAs.

"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 is insufficient information regarding how long the violation has been occurring.

"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. By allowing water to mix with sediment track-out and discharge to stormwater catch basins, Respondent consciously disregarded a substantial and unjustifiable risk that sediment would be discharged to a water of the state.

"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 there is insufficient information to determine whether the violation has been corrected.

"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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate.

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

$$\begin{aligned} &= \$3,000 + [(0.1 \times \$3,000) \times (5 + -1 + 0 + 8 + 0)] + 0 \\ &= \$3,000 + \$3,600 + 0 \\ &= \$6,600 \end{aligned}$$



Phone: 503-229-5437
 Fax: 503-229-5850

CIVIL PENALTY - ORS 468.135(2)

DATE:	June 3, 2022
RESPONSE DATE :	August 12, 2022
TOTAL PENALTY:	\$114,089.00

Account Name:	ICON CONSTRUCTION & DEVELOPMENT, LLC		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2200032
SubSystem ID:	194347	FIMS Acct. ID:	3655

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 114,089.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 114,089.00

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit <https://ydo.oregon.gov> and select 'Register Account'



 PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



REFERENCE NO.	CPGFD2200032		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	August 12, 2022
FIMS ACCT. ID:	3655	TOTAL PENALTY DUE:	\$114089.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

DEQ FINANCIAL SERVICES - LBX4244
 PO BOX 4244
 PORTLAND OR 97208-4244

Check this box if updated address information has been provided on the back of the form.

00401 7400 10040 74001 0500 000000 00950000036555(CPGFD)220003200114089009



State of Oregon
Department of
Environmental
Quality

State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
Phone: 503-229-5437
Fax: 503-229-5850

Penalty Detail

Transaction Date	Description	Amount
6/1/2022	2021-151 WQ-SW-NWR-2021-151	\$114,089.00

SFMS Agencies Use:

Trans Code	Treasury Fund	SFMS	Index	PCA (5)	Agency Object	Project #	Phase
723	00401	7400	10040	74001	0500	00000	00

Address Changes

Please visit <https://ydo.oregon.gov> to update your mailing address online or provide the following information:

Name _____
Address _____
City, State, Zip _____