



Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah St Ste 600

Portland, OR 97232-4100

(503) 229-5696

FAX (503) 229-5100

TTY: 711

May 19, 2017

CERTIFIED MAIL: 7014 2870 0001 3378 4539

Luis Belmonte, Registered Agent
Seven Hills Properties, LLC
86 Perry Street, Suite 800
San Francisco, CA 94107

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2017-033

Dear Mr. Belmonte:

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$20,622 for violations of your construction stormwater permit for the Gresham Crossing development located at 227-291 223rd Avenue in Gresham, Oregon. Specifically, DEQ cited you for failing to implement your Erosion and Sediment Control Plan and failing to revise that plan to reflect changes in site conditions, in particular wet weather conditions. In addition, you violated your permit by failing to conduct visual monitoring at the site to ensure proper functioning of erosion and sediment controls. These violations resulted in significant amounts of sediment discharging to adjacent wetlands and conveyance systems leading to Fairview Creek, in violation of your permit. Lastly, DEQ cited you for disposing of solid waste including construction debris, asphalt, trees and other wastes in a wetland channel along the border of the construction site.

DEQ issued this penalty because failing to prevent discharges of sediment from the construction site to conveyance systems that lead to surface waters such as Fairview Creek can increase turbidity to the receiving waters. This increase in turbidity can block light from submerged vegetation, reduce photosynthesis and dissolved oxygen, decrease water clarity, and cause detrimental effects to aquatic organisms. Placing solid waste, including construction debris and sediment into wetland channels reduces channel capacity, increases flood risk, harms natural habitat for plants and animals and can introduce potentially toxic chemicals to waters.

Included in Section IV is an order requiring you perform certain corrective actions within 30 days after the order becomes final by operation of law or on appeal. Specifically, the order requires you to have your designated inspector perform a full site inspection and take any corrective actions required to comply with your permit, including but not limited to temporary or permanent stabilization measures. The order also requires you to remove and properly dispose of any solid wastes remaining at the site.

\$12,042 of the total civil penalty represents the economic benefit you gained by failing to comply with your construction stormwater permit. Specifically, \$698 represents the delayed and avoided cost to install and maintain stormwater Best Management Practices (BMPs) to adequately control erosion and runoff from the construction site; \$2,969 represents the avoided cost of revising your Erosion and Sediment Control Plan to accurately reflect site conditions; and \$11,375 represents the avoided cost of site inspections required by the permit. In addition, \$1,980 of the total civil penalty represents the



avoided cost of removing and properly disposing of the solid waste at the construction site. If you complete the requirement of the compliance order to remove and properly dispose of the solid waste, DEQ will consider recalculating the cost as delayed rather than avoided and will reduce the civil penalty accordingly.

DEQ appreciates your efforts to address the violations by conducting site inspections and taking corrective actions to address permit compliance issues following DEQ's inspection, including rebuilding the construction site entrance, installing a concrete washout, installing sediment fencing, adding inlet protection, and covering some exposed soils with straw. DEQ considered these efforts when determining the amount of civil penalty.

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

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

Via email – DEQappeals@deq.state.or.us

Via fax – 503-229-5100

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

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

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

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

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

Sincerely,



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

Enclosures

Seven Hills Properties, LLC
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cc: Tom Rocca, Seven Hills Properties LLC, 88 Perry Street, San Francisco, CA 94107
Jonathan M. Hill, Seven Hills Properties LLC, 88 Perry Street, San Francisco, CA 94107
Daria Gneckow, DEQ
Christine Svetkovich, DEQ
Shaumae Hall, Accounting, DEQ
John Koestler, WQ, DEQ

1 | vegetation including important trees and associated rooting zones, and vegetation areas to be preserved.
2 | Identify vegetative buffer zones between the site and sensitive areas (e.g. wetlands), and other areas to
3 | be preserved, especially in perimeter areas (Standard Erosion and Sediment Control Plan Drawing Note
4 | No. 9).

5 | b. Phase clearing and grading to the maximum extent practical to prevent exposed inactive
6 | areas from becoming a source of erosion (Standard Erosion and Sediment Control Plan Drawing Note
7 | No. 8).

8 | c. Construction activities must avoid or minimize excavation and creation of bare ground
9 | during wet weather (Standard Erosion and Sediment Control Plan Drawing Note No. 24).

10 | d. Erosion and sediment control measures including perimeter sediment control must be in
11 | place before vegetation is disturbed and must remain in place and be maintained, repaired, and
12 | promptly implemented following procedures established for the duration of construction, including
13 | protection for active storm drain inlets and catch basins and appropriate non-stormwater pollution
14 | controls (Standard Erosion and Sediment Control Plan Drawing Note No. 11). Active inlets to storm
15 | water systems shall be protected through the use of approved inlet protection measures. All inlet
16 | protection measures are to be regularly inspected and maintained as needed (Grading & Utility Erosion
17 | & Sediment Construction Note No. 9). Use BMPs such as check dams, berms, sediment fence and inlet
18 | protection to prevent runoff from reaching discharge points (Grading & Utility Erosion & Sediment
19 | Construction Note No. 14). The drawings on Pages 2.0, 3.0 and 3.1 of the ESCP depict a sediment
20 | fence along some portions of the perimeter of the Site as well as inlet protection at various catch basins
21 | throughout the site.

22 | e. Establish concrete truck and other concrete equipment washout areas before beginning
23 | concrete work (Standard Erosion and Sediment Control Plan Drawing Note No. 12). Page 2.0 and 3.0
24 | of the ESCP depict the proposed location of the concrete washout and Drawing No. 6 on Page 4.0 of
25 | the ESCP depicts the design of the concrete washout.

26 | f. Prevent tracking of sediment onto public roadways using BMPs such as: graveled (or
27 | paved) exits and parking areas, gravel all unpaved roads located onsite, or use an exit tire wash. These

1 | BMPs must be in place prior to land disturbing activities (Standard Erosion and Sediment Control Plan
2 | Drawing Note No. 15).

3 | g. At the end of each work day, soil stockpiles must be covered, or other BMPs must be
4 | implemented to prevent discharges to surface waters or conveyance systems leading to surface waters
5 | (Standard Erosion and Sediment Control Plan Drawing Note No. 23). A note on page 2.0 of the ESCP
6 | marking the proposed location of a temporary soil stockpile states that the stockpile is to be covered
7 | when not in use. Drawing No. 5 on page 4.0 of the ESCP depicts how soil stockpiles are to be covered
8 | with plastic sheeting with a barrier required at the toe of the stock pile.

9 | h. Within 24 hours, significant sediment that has left the construction site must be
10 | remediated. Investigate the cause of the sediment release and implement steps to prevent a recurrence
11 | of the discharge within the same 24 hours (Standard Erosion and Sediment Control Plan Drawing Note
12 | No. 28).

13 | i. All inspections must be made in accordance with DEQ 1200-C Permit requirements
14 | (Standard Erosion and Sediment Control Plan Drawing Note No. 2). Page 1.0 of the ESCP lists Craig
15 | Harris of AAI Engineering as the Permittee's Site Inspector. Page 1.0 of the ESCP also describes a
16 | required inspection frequency, consistent with the Permit. Specifically, during the "active period" of
17 | construction, the ESCP requires Respondent to inspect daily when stormwater runoff, including runoff
18 | from snowmelt, is occurring, and at least once every two weeks regardless of whether stormwater
19 | runoff is occurring.

20 | 5. The ESCP states that: "The ESCP measures shown on this plan are minimum requirements
21 | for anticipated site conditions. During the construction period, upgrade these measures as needed to
22 | comply with applicable local, state, and federal erosion and sediment control regulations (Standard
23 | Erosion and Sediment Control Plan Drawing Note No. 28).

24 | 6. The ESCP further states that: "These erosion and sediment control plans assume 'dry
25 | weather' construction. 'Wet weather' construction measures need to be applied between October 1st
26 | and May 31st" (ESCP pages 2.0, 2.1, 3.0 and 3.1).

27 | 7. On or about April 17, 2016, Respondent began active construction at the Site.

1 8. On or before July 23, 2016, Respondent disposed of approximately 45 cubic yards of
2 construction debris, asphalt, trees and other wastes in a wetland channel located on the southwestern
3 border of the Site.

4 9. DEQ inspected the Site on January 23, 2017. At the time of inspection:

5 a. The wastes described in Paragraph 8, above, remained in a wetland channel located on
6 the southwestern border of the Site.

7 b. There were no identified or marked vegetative buffer zones or additional erosion and
8 sediment controls between the disturbed areas of the Site and sensitive areas near the perimeter
9 including the pond in the northwest corner of the site and the wetland vegetation bordering the
10 southern, southwestern, and western borders of the Site.

11 c. There was an active discharge of unfiltered sediment-laden water into a wetland channel
12 along the southern and southwestern borders of the Site. The wetland channel drains into Fairview
13 Creek.

14 d. The graded area near the southern and southwestern border of the Site was unstable with
15 bare soils, rills, and areas of bank failure.

16 e. There was heavy sediment accumulation present in the wetland channel located on the
17 southern and southwestern borders of the Site, including sediment accumulation among the wastes
18 described in Paragraph 8 and 9(a), above.

19 f. There was heavy sediment accumulation in a pond located at the northwestern corner of
20 the Site that drains to Fairview Creek. The pond was the terminus for stormwater being piped from
21 areas throughout the Site. There were no protections in place (e.g. filter fabric) at the pipe inlets, at the
22 pipe outfall to the pond, or at the grate culvert in the pond that drains to Fairview Creek. Construction
23 debris was stored adjacent to the pond with no protection or barriers between the debris and the pond.

24 g. There was no inlet protection at some of the various catch basins throughout the Site.
25 Other catch basins had partial inlet protection in need of repair. Several catch basins were heavily
26 inundated with sediment.

27 h. The Site did not have a designated concrete washout area. Piles of concrete were

1 dumped in at least 4 locations throughout the Site.

2 i. There was visible track out onto the paved road where vehicles were exiting the Site.

3 j. There were no perimeter controls (e.g. sediment fences) in place at the Site.

4 k. There were several stockpiles of soil located throughout the Site that were not covered
5 or stabilized.

6 l. DEQ staff observed that the ESCP did not reflect the current conditions and actual
7 BMPs being used at the Site.

8 10. During the Site inspection on January 23, 2017, DEQ requested records of visual monitoring
9 inspections conducted by the designated Erosion and Sediment Control Inspector. Respondent's
10 designated Site Inspector, Craig Harris, provided to DEQ an inspection report dated January 23, 2017.

11 11. On January 24, 2017, DEQ reiterated its request for inspection records in an email to Craig
12 Harris, the designated Erosion and Sediment Control Inspector. DEQ requested that the records be
13 submitted to DEQ within 3 days, pursuant to Schedule B, Condition 2(b) of the Permit. In response to
14 this request, Mr. Harris provided inspection reports for January 24-27, and January 30, 2017.

15 12. As of the date of this Notice, DEQ has not received any visual monitoring inspection
16 reports from Respondent other than those described in Paragraphs 11 and 12, above.

17 13. Between September 1, 2016 and January 22, 2017, based on rainfall data, there were 91
18 days with sufficient precipitation to create stormwater runoff from the Site.

19 14. As of the date of this Notice, Respondent has not submitted documentation to DEQ
20 demonstrating that all of the wastes described in Paragraphs 8, 9(a) and 9(f), above, have been removed
21 and properly disposed of.

22 15. As of the date of this Notice, Respondent has not submitted a revised ESCP to DEQ that is
23 accurate and reflects the Site conditions, especially BMPs necessary to control erosion and sediment
24 runoff under wet weather conditions.

25 16. At all relevant times, the Site was not permitted or authorized by DEQ as a solid waste
26 disposal site.

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1 III. CONCLUSIONS

2 1. Respondent violated Schedule A, Condition 8(a) of the Permit and ORS 468B.025(2) by failing
3 to substantially implement the ESCP, as described in Section II, above. Specifically, Respondent failed to
4 identify, mark and protect sensitive areas such as wetlands adjacent to the Site, failed to install BMPs to
5 adequately manage erosion and sediment at the Site, and failed to perform corrective actions in response to
6 indications that significant amounts of sediment were leaving the Site before January 23, 2017. This is a
7 Class I violation according to OAR 340-012-0055(r). DEQ hereby assesses a \$3,998 civil penalty for this
8 violation.

9 2. Respondent violated Schedule A, Condition 12(c) of the Permit and ORS 468B.025(2) by
10 failing to maintain an accurate ESCP that reflects Site conditions, as described in Section II, above.
11 Specifically, Respondent failed to update the ESCP as needed to represent actual BMPs being used at the
12 Site, failed to identify any changes (such as type or design) to necessary to prevent and control erosion
13 and sediment runoff, in particular changes required due to wet weather conditions. This is a Class II
14 violation according to OAR 340-012-0053(2). DEQ hereby assesses a \$2,969 civil penalty for this
15 violation.

16 3. Respondent violated Schedule B, Condition 1 of the Permit and ORS 468B.025(2) by failing to
17 conduct visual monitoring by a designated Erosion and Sediment Control Inspector on 100 days or
18 occasions, as described in Section II, above. Specifically, Respondent failed to conduct visual monitoring
19 on 9 occasions (at least once every 14 calendar days) between the start date of construction on April 17,
20 2016 and August 30, 2016. Respondent failed to conduct visual monitoring on 91 occasions between
21 September 1, 2016 and January 22, 2017, when there was sufficient precipitation such that runoff likely
22 occurred. These are Class I violations according to OAR 340-012-0055(1)(o). DEQ hereby assesses an
23 \$11,675 civil penalty for these violations.

24 4. Respondents have violated OAR 340-093-0040(1) by disposing of solid waste at a location
25 not permitted by DEQ, as described in Section II, above. Specifically, on or before July 23, 2016,
26 Respondent disposed of approximately 45 cubic yards of construction debris, asphalt, trees and other
27 wastes in a wetland channel located on the southwestern border of the Site. These wastes are "Solid

1 Waste”, according to OAR 340-093-0030(91), because they are useless or discarded construction
2 materials. The Site is not a location permitted by DEQ for solid waste disposal. This is a Class I
3 violation, according to OAR 340-012-0065(1)(c). DEQ hereby assesses a \$1,980 civil penalty for this
4 violation.

5 5. Respondent violated Schedule A, Condition 8(b) of the Permit and ORS 468B.025(2) by
6 failing to prevent the discharge of significant amounts of sediment to conveyance systems leading to
7 surface waters, as described in Section II, above. Specifically, on January 23, 2017, the date of DEQ’s
8 inspection: the graded area near the southern and southwestern border of the Site was unstable with bare
9 soils, rills, and areas of bank failure; heavy sediment accumulation present in the wetland channel
10 located on the southern and southwestern borders of the Site, and heavy sediment accumulation was
11 present in the pond at the northwest corner of the Site that was draining to an unprotected catch basin that
12 leads to Fairview Creek. This is a Class II violation according to OAR 340-012-0053(2). DEQ has not
13 assessed a civil penalty for this violation.

14 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

17 1. Pay a total civil penalty of \$20,622. The determinations of the civil penalties are attached as
18 Exhibits 1, 2, 3 and 4 and are incorporated as part of this Notice.

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

23 2. Within 30 days after the order becomes final by operation of law or on appeal:

24 a. Perform a full Site inspection by the designated Erosion and Sediment Control Inspector
25 and provide the inspection report to DEQ. The inspection report should identify any remaining
26 corrective actions required to achieve compliance with the ESCP and the Permit. Take any required
27 corrective actions and provide documentation to DEQ demonstrating that the corrective actions have

1 | been completed. Corrective actions required to comply with the Permit include but are not limited to
2 | temporary or permanent stabilization measures.

3 | b. Submit documentation to DEQ demonstrating that all of the solid waste, including the
4 | construction debris, asphalt, trees and other wastes in a wetland channel located on the southwestern
5 | border of the Site and the wastes adjacent to the pond in the northwest corner of the Site, has been
6 | removed and properly disposed of.

7 | 3. Written documentation demonstrating Respondent's compliance with Section IV, Paragraph
8 | 2, above, must be sent to: Daria Gneckow, DEQ, 700 NE Multnomah Street, Suite 600, Portland OR
9 | 97232 or Gneckow.Daria@deq.state.or.us.

10 | V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

25 | Active duty service-members have a right to stay proceedings under the federal Service
26 | Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-452-8260
27 | or the Oregon Military Department at 1-800-452-7500. Additional information can be found online at

1 the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
2 <http://legalassistance.law.af.mil/content/locator.php>.

3 If you fail to file a timely request for hearing, the Notice will become a final order by default
4 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
5 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
6 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
7 the relevant portions of its files, including information submitted by you, as the record for purposes of
8 proving a prima facie case.
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11

12 May 19, 2017

13 Date

12 Sarah Wheeler

13 Sarah G. Wheeler, Acting Manager
14 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

VIOLATION No. 1: Failing to substantially implement the ESCP, in violation of Schedule A, Condition 8(a) of the Permit and ORS 468B.025(2).

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

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

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

"BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(ii) because Respondent has coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one but less than five acres.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of a violation constitutes a separate occurrence. At a minimum, Respondent failed to substantially implement the ESCP between at least July 23, 2016 and January 30, 2017 by failing to identify, mark and protect (by fencing off or other means) vegetative buffer zones between the site and the adjacent wetlands and by failing to install and implement BMPs needed to control runoff and minimize sediment transport at the Site.

"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. Reckless means the Respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care that a reasonable person would observe in that situation. On January 23, 2017, the date of DEQ's

inspection, the Site was lacking basic erosion and sediment controls such as perimeter fencing, inlet protection, covering on soil stockpiles, among other BMPs. A buffer zone had not been delineated despite the fact that there are ponds and wetlands adjacent to the Site. As of the date of this Notice, Respondent has not provided DEQ with documentation demonstrating that any corrective actions were performed prior to DEQ's inspection on January 23, 2017, despite the following conditions observed during the inspection and indicating that a significant amount of sediment has left, or is likely to leave the Site: 1) the graded area near the southern and southwestern border of the Site was unstable with bare soils, rills, and areas of bank failure; 2) heavy sediment accumulation present in the wetland channel located on the southern and southwestern borders of the Site, and 3) heavy sediment accumulation present in the pond at the northwest corner of the Site that was draining to an unprotected catch basin that leads to Fairview Creek. By failing to identify, mark and protect sensitive areas such as wetlands adjacent to the Site, failing to install BMPs to adequately manage erosion and sediment at the Site, and failing to perform corrective actions in response to indications that significant amounts of sediment were leaving the Site before January 23, 2017, Respondent failed to substantially implement its ESCP. Thus, Respondent consciously disregarded a substantial and unjustifiable risk of violating the 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 there is insufficient information to make a finding under paragraphs 6(a) through 6(e), or 6(g). The last Site inspection report received by DEQ, dated January 30, 2017, indicated that corrective actions were still needed at the Site.

"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 \$698. This EB total includes \$368 for the amount Respondent gained by delaying spending \$19,941 in costs associated with the installation of BMPs including sediment fencing, inlet protection, maintaining an adequate construction entrance, check dams, straw wattles, soil stock pile covering, straw mulching, soil stabilization matting, and concrete washout, from July 23, 2016 to January 30, 2017. The total EB also includes \$330 for the amount Respondent gained by avoiding spending \$593 in costs associated with maintaining the above-referenced BMPs from July 23, 2016 to January 30, 2017. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,500 + [(0.1 x \$1,500) x (0 + 0 + 4 + 8 + 0)] + \$698
= \$1,500 + (\$150 x 12) + \$698
= \$1,500 + \$1,800 + \$698
= \$3,998

EXHIBIT 2

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

VIOLATION No. 2: Failing to maintain an accurate ESCP that reflects Site conditions, in violation of Schedule A, Condition 12(c) of the Permit and ORS 468B.025(2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

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

Under OAR 340-012-0150(4), the Department elects to assess a penalty for this violation only for the amount of economic benefit realized by the Respondent.

"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 \$2,969. This is the amount Respondent gained by avoiding spending \$5,400 in consultant's fees to revise the ESCP to accurately reflect Site conditions, especially by including BMPs necessary to control erosion and sediment runoff under wet weather conditions. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$0 + [(0.1 \times \$0) \times (0 + 0 + 0 + 0 + 0)] + \$2,969$
 $= \$0 + (\$0 \times 0) + \$2,969$
 $= \$0 + \$0 + \$2,969$
 $= \$2,969$

EXHIBIT 3

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

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

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

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

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

"BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(ii) because Respondent has coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one but less than five acres.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of a violation constitutes a separate occurrence. Respondent failed to conduct visual monitoring on at least 9 occasions (at least once every 14 calendar days) between the approximate start date of construction on April 17, 2016 and August 30, 2016. Respondent failed to conduct visual monitoring on at least 91 occasions between September 1, 2016 and January 22, 2017, when there was sufficient precipitation such that runoff likely occurred.

"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. Reckless means the Respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care that a reasonable person would observe in that situation. Conducting visual inspections is an

express condition of the Permit. Respondent's ESCP also states that inspections must be made in accordance with DEQ 1200-C Permit requirements (Standard Erosion and Sediment Control Plan Drawing Note No. 2). Page 1.0 of the ESCP lists Craig Harris of AAI Engineering as the Permittee's Site Inspector. Page 1.0 of the ESCP also describes a required inspection frequency, consistent with the Permit. By failing to conduct visual monitoring on at least 100 occasions between the approximate start of construction April 17, 2016 and January 23, 2017, the date of DEQ's inspection, Respondent consciously disregarded a substantial and unjustifiable risk of violating the 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 violations could not be 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 \$8,375. This is the amount Respondent gained by avoiding spending \$15,000 in costs associated with conducting 100 visual monitoring inspections. 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 (0 + 0 + 4 + 8 + 0)] + \$8,375
= \$1,500 + (\$150 x 12) + \$8,375
= \$1,500 + \$1,800 + \$8,375
= \$11,675

EXHIBIT 4

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

VIOLATION No. 4: Respondents have violated OAR 340-093-0040(1) by disposing of solid waste at a location not permitted by DEQ.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(c).

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

Under OAR 340-012-0150(4), the Department elects to assess a penalty for this violation only for the amount of economic benefit realized by the Respondent.

"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 \$1,980. This is the amount Respondent gained by avoiding spending \$3,561 to remove and properly dispose of approximately 45 cubic yards of solid waste being stored at the Site since on or before July 23, 2016. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
= $\$0 + [(0.1 \times \$0) \times (0 + 0 + 0 + 0 + 0)] + \$1,980$
= $\$0 + (\$0 \times 0) + \$1,980$
= $\$0 + \$0 + \$1,980$
= $\$1,980$