



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

May 29, 2018

CERTIFIED MAIL: 7016 2140 0000 2409 5823

Scouter's Mountain LLC
c/o Scott Miller, Registered Agent
602 NW Culpepper Ter.
Portland, OR 97210

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2017-192

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a total civil penalty of \$54,497 for discharging turbidity and sedimentation into waters of the state that caused the formation of appreciable bottom deposits and violating conditions of the National Pollutant Discharge Elimination System General Permit number 1200-C (the "Permit") issued at the Scouter's Mountain development site in Happy Valley, Oregon.

DEQ issued this penalty because the Permit requires that registrants implement and maintain sufficient erosion and sediment controls and best management practices to prevent the discharge of sediment from the site and into waters of the state. During construction you violated multiple conditions of the permit and the resulting conditions at the site violate state water quality standards. While DEQ appreciates that you have taken some efforts to correct the permit violations by implementing additional erosion and sediment controls, the impacts to the waters of the state remain. Schedule F, section A3 of the Permit imposes a duty to mitigate and correct any adverse impact on the environment resulting from noncompliance with the Permit upon DEQ request. Included in Section IV is an order requiring you to restore the waters of the state at the Site to their pre-project condition and that prior to doing so you submit a restoration plan and timeline to DEQ for approval.

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 Courtney Brown at 503-229-6839 or toll free in Oregon at 800-452-4011, extension 6839.

Sincerely,



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

Enclosures

cc: Michael Kennedy, DEQ, Northwest Region

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 SCOUTER'S MOUNTAIN LLC,) ASSESSMENT AND ORDER
an Oregon limited liability corporation,)
5 Respondent.) CASE NO. WQ/SW-NWR-2017-192

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9 ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
10 011, 012, 045, and 048.

11 II. FINDINGS OF FACT

12 1. Since on or about June 6, 2017, through the present, Respondent has engaged in
13 construction activities at the "Scouter's Mountain" development located west of the intersection of S.E.
14 145th Avenue and S.E. Boy Scout Lodge Road ("the Site") in Happy Valley, Oregon.

15 2. The construction activities at the Site disturbed approximately 56.24 acres.

16 3. Respondent was assigned coverage under the National Pollutant Discharge Elimination
17 System General Permit Number 1200-C permit (the Permit) for construction activities at the Site on
18 April 13, 2017.

19 4. Schedule A, condition 8.a of the Permit requires that permit registrants must implement
20 the Erosion and Sediment Control Plan (ESCP). Failure to implement any of the control measures or
21 practices described in the ESCP is a violation of the Permit.

22 5. Schedule A, condition 8.b of the Permit requires that permit registrants must prevent the
23 discharge of significant amounts of sediment to surface waters or conveyance systems leading to
24 surface waters. Conditions that indicate that a significant amount of sediment has left or is likely to
25 leave the site are prohibited, including: Deposits of sediment from the construction site on any property
26 outside of the construction activity covered by this permit.

27 ///

1 6. Schedule A, condition 7.a.ii of the Permit requires that permit registrants phase clearing
2 and grading to the maximum extent practical to prevent exposed inactive areas from becoming sources
3 of erosion.

4 7. Schedule A, condition 7.d of the Permit requires that permit registrants prevent or
5 minimize sediment transport.

6 8. Schedule A, condition 7.e of the Permit requires that permit registrants implement and
7 maintain pollution prevention measures to minimize trash.

8 9. Schedule A, condition 9.a of the Permit requires permit registrants to establish and
9 promptly implement procedures for maintenance and repair of erosion and sediment control measures.

10 10. Schedule A, condition 13.a.i of the Permit requires that permit registrants must take
11 corrective actions if significant amounts of sediment or turbidity are visible downstream of permitted
12 activities in: 1) a conveyance system leading to surface waters; or 2) surface waters 50 feet or more
13 downstream of the discharge point.

14 11. Schedule A, condition 13.a.ii of the Permit requires the permit registrant to take
15 corrective actions if: the construction activity causes or contributes to a violation of in-stream water
16 quality standards.

17 12. The ESCP developed and approved for the Site (dated March 14, 2017) stated that
18 construction activities at the Site would be phased; that soils exposed during tree removal, logging and
19 stump removal activities shall be stabilized with a thick blanket or spread straw or compost blanket,
20 and that slope matting would be installed on exposed slopes in excess of 5H:1V.

21 13. The ESCP did not identify a construction access road built across tributary 4.

22 14. The ESCP did not identify that construction activity was planned to occur in the
23 central/southern portion of the Site north of Tributary 1.

24 15. Respondent's Erosion Control Inspection Form dated June 6, 2017, states that
25 "[i]nstallers need to take caution not to trench through intermittent stream channels."

26 16. Respondent's Erosion Control Inspection Form dated June 15, 2017, indicates that there
27 is "Active Stormwater Runoff," biobag inlet protection/check dam at Hagen South Ditch was

1 “marginally functional,” and the “south side ditch line is causing a moderate turbid discharge into the
2 system at 172nd Ave.”

3 17. Respondent’s Erosion Control Inspection Form dated June 19, 2017, indicates that the
4 sediment fence around the stockpile area has been ripped up and needs to be repaired and that the feller
5 created deep ruts when passing the trough area east of wetland C and the sediment fence east of
6 wetland C needed reinforcement and the central catch basin on Hagen needs new biobags and catch
7 basin inserts.

8 18. Respondent’s Erosion Control Inspection Form dated July 20, 2017, indicated that:
9 maintenance was needed on perimeter sediment fence, straw wattles on the Path m bridge crossing
10 were insufficient; the “condition of the bridge crossing is poor with respect to erosion and sediment
11 control,” “[s]everal areas of the sediment fence east of the bridge crossing have been damaged,” [t]he
12 upper trail bridge crossing (the path N crossing) requires additional sediment control measures at the
13 stream bank and throughout the slope.” The Form suggested that Respondent “install double sediment
14 control BMP along the creek bank at the path n crossing.”

15 19. Respondent’s Erosion Control Inspection Form dated July 27, 2017 indicated that minor
16 maintenance was needed on the perimeter sediment fence, and that the path m bridge crossing straw
17 wattles were insufficient and needed maintenance. This Form stated that the bridge crossing in the pond
18 area “was in the same condition as last week” and that “[t]his bridge crossing needs to be stabilized and
19 the dirt removed from the bridge deck. The straw wattle on the SE corner of the bridge is being overrun
20 by soil pushed down from up the slope. The sediment fence at the SE bridge corner has been pushed
21 down....The sediment fence east of the bridge crossing is damaged in several areas... The lower access
22 road is muddy in areas where springs are still active ... The path N crossing has no sediment barrier
23 above the creek banks.” The Form noted that inlet protection measures needed to be installed at the
24 culvert invert at the east side of future lot 145, and the sediment fence and straw wattles needed
25 maintenance, that compost sock and sediment barriers needed to be placed along the banks and on the
26 slopes of the path n bridge crossing, and that erosion control conditions of the path m bridge crossing
27 needed to be improved.

1 20. On or about August 15, 2017, DEQ staff performed an inspection of the Site and
2 observed:

- 3 a. Sediment was observed in wetlands at the Site;
- 4 b. Sediment fences and compost socks in place to protect wetlands were not
5 properly implemented and functioning;
- 6 c. The entire Site was cleared of all vegetation; there were areas where no
7 construction activities were occurring that were exposed and cleared;
- 8 d. The exposed areas had no slope matting or thick blanket of straw or compost laid
9 down as described in the ESCP that was current at the time;
- 10 e. Respondent's clearing and grading activities had uncovered a spring. Tracks
11 indicated that heavy equipment had been driven through the spring. Sediment,
12 broken concrete and trash was observed in the waters of the spring;
- 13 f. No protective measures were in place to prevent further discharges into the
14 spring;
- 15 g. Sediment fences were not correctly installed and maintained to prevent sediment
16 from passing under and over them;
- 17 h. A piped water source was not identified in the ESCP or site map and was
18 discharging water into a channel that flows to tributary 2. A sediment fence was
19 improperly installed at the channel and turbid water was pooled behind the
20 sediment fence. Vehicle tracks were observed driving through the channel.
- 21 i. No erosion and sediment controls were implemented on steep slopes.
- 22 j. A ditched channel that directed water to Tributary 1 had no erosion and sediment
23 controls to protect it and there were vehicle tracks going right through the
24 channel.
- 25 k. A construction access road was constructed across tributary 4. There were no
26 BMPs implemented to stabilize the shoulder resulting in unstabilized sediment
27 collapsing into the creek bed of tributary 4. A sediment fence was breached and

1 no culverts were built to protect tributary 4 from vehicle traffic.

2 21. On or about September 18-21 2017, stormwater runoff with visible amounts of sediment
3 discharged from the Site.

4 22. On January 5, 2018, City of Happy Valley staff observed visibly turbid water
5 discharging from Baker Tanks at the Site into Tributary 1. City of Happy Valley staff also observed
6 that Tributary 1 upstream of the Baker Tank discharge was also visibly turbid.

7 23. On or about February 14, 2018, DEQ performed an inspection of the Site and observed
8 that sediment from the Site had discharged into tributary 1, tributary 2, tributary 3 and tributary 4 and
9 was observed approximately 250' downstream of the construction activity covered by the Permit, and
10 beyond the Site boundary, past a culvert under SE 162nd Ave. The sedimentation had filled in rocks
11 and the channel of the tributary.

12 24. Wetlands, springs, creeks and other bodies of surface and underground water that
13 combine of effect a junction with natural surface or underground waters are considered "waters of the
14 state" according to ORS 468B.005(10).

15 25. Tributary 1, 2, 3, and 4 are surface waters that discharge to Rock Creek and are considered
16 "waters of the state" according to ORS 468B.005(10).

17 26. As of the date of this Notice and Order the sedimentation referred to in paragraph 23 has
18 not been removed and the tributaries have not been restored to their natural condition.

19 27. Turbidity is included in the definition of "pollution" in ORS 468B.005(5).

20 28. Schedule F, Section A3 of the Permit requires the permittee to correct any adverse
21 impact on the environment resulting from noncompliance with the permit upon request of DEQ.

22 III. CONCLUSIONS

23 1. Respondent has violated ORS 468B.025(2) by violating a condition of the Permit.
24 Specifically, from on or before August 15, 2017, Respondent has violated Schedule A,
25 condition 7.a.iii of the Permit by not phasing clearing and grading to the maximum extent practical, as
26 described in Section II, paragraph 20.c. This is a Class II violation, according to OAR 340-012-0053(2).
27 DEQ has assessed a civil penalty for this violation as described in Section IV, paragraph 1, below.

1 2. Respondent has violated ORS 468B.025(2) by violating a condition of the Permit.
2 Specifically, on or about August 15, 2017, Respondent Schedule A, condition 8 by violating the ESCP for
3 the Site, as described in Section II, paragraphs 20.d, 20.h, and 20.i. This is a Class II violation, according
4 to OAR 340-012-0053(2). DEQ has assessed a civil penalty for this violation as described in Section IV,
5 paragraph 1, below.

6 3. Respondent has violated ORS 468B.025(2) by violating a condition of the Permit.
7 Specifically, on or before August 15, 2017, Respondent violated Schedule A, condition 7.d of the Permit
8 by not controlling sediment transport, as described in Section II, paragraphs 20.a, 20.e, and 20.k. This is a
9 Class II violation, according to OAR 340-012-0053(2). DEQ has assessed a civil penalty for this violation
10 as described in Section IV, paragraph 1, below.

11 4. Respondent has violated ORS 468B.025(2) by violating a condition of the Permit.
12 Specifically, on or about August 15, 2017, Respondent violated Schedule A, condition 7.e of the Permit by
13 not maintaining pollution prevention measures to minimize trash at the site, as described in Section II,
14 paragraph 20.e. This is a Class II violation, according to OAR 340-012-0053(2). DEQ has assessed a civil
15 penalty for this violation as described in Section IV, paragraph 1, below.

16 5. Respondent has violated ORS 468B.025(2) by violating a condition of the Permit.
17 Specifically, on or before August 15, 2017, Respondent violated Schedule A, condition 9.a of the Permit
18 by not promptly implementing BMP maintenance, as described in Section II, paragraph 20.b, 20.g, 20.h,
19 and 20.k. This is a Class II violation, according to OAR 340-012-0053(2). DEQ has assessed a civil
20 penalty for this violation as described in Section IV, paragraph 1, below.

21 6. Respondent has violated ORS 468B.025(2) by violating a condition of the Permit.
22 Specifically, on or about August 15, 2017, Respondent violated Schedule A, condition 13.a.i.3 of the
23 Permit by failing to take corrective actions to address significant amounts of sediment visible in surface
24 waters, as described in Section II, paragraph 20.k. This is a Class II violation, according to OAR 340-012-
25 0053(2). DEQ has assessed a civil penalty for this violation as described in Section IV, paragraph 1, below.

26 7. On or before February 14, 2018, through the present, Respondent has violated ORS
27 468B.025(1)(b) by discharging sediment into Tributary 1, 2, 3, and 4, waters of the state, that reduces the

1 quality of those waters of the state below the state's water quality standard at OAR 340-041-007(11).
2 Specifically, Respondents discharged sediment into tributaries 1, 2, 3, and 4 at the Site that caused the
3 formation of appreciable bottom deposits. This is a Class I violation, according to OAR 340-012-
4 0055(1)(b). DEQ hereby assesses a \$14,400 civil penalty for this violation.

5 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY:

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

8 1. Pay a total civil penalty of \$40,097 for the violations cited in Section II, paragraphs 1-6, above.
9 The determination of the civil penalty is attached as Exhibit No. 1 and is incorporated as part of this
10 Notice.

11 2. Pay a total civil penalty of \$14,400 for the violation cited in Section II, paragraph 7, above. The
12 determination of the civil penalty is attached as Exhibit No. 2 and is incorporated as part of this Notice.

13 3. Restore the waters of the state that have been adversely impacted by erosion, sedimentation
14 and the formation of appreciable bottom deposits at the Site to their natural ecological functions that
15 existed prior to the commencement of the construction activities registered by the Permit.

16 4. Within 30 days after the order becomes final by operation of law or on appeal, Respondent
17 must submit a plan for restoration of the waters of the state that have been adversely impacted by
18 erosion and sedimentation at the Site. The plan must propose a schedule for restoration that does not
19 exceed 6 months. To be approvable the plan must propose restoration of the waters of the state to the
20 natural ecological function that existed prior to the impacts caused by Respondent's construction
21 activity. This plan must be submitted to DEQ, Attn: Michael Kennedy, 700 NE Multnomah St., Suite
22 600, Portland, Oregon 97232.

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

27 ///

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 exhibit, 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, please call the Oregon State Bar at 1-800-
18 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
19 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
20 <http://legalassistance.law.af.mil/content/locator.php>.

21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///

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

7
8
9 May 29, 2018
10 Date

Sarah Wheeler
11 Sarah G. Wheeler, Acting Manager
12 Office of Compliance and Enforcement
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

EXHIBIT No.1

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

VIOLATION 1: Violating ORS 468B.025(2) by violating:

- Schedule A condition 8 of the Permit by violating the ESCP for the Site;
- Schedule A, condition 7.a.iii of the Permit by not phasing clearing and grading to the maximum extent practical;
- Schedule A, condition 7.d of the Permit by not controlling sediment transport;
- Schedule A, condition 7.e of the Permit by not maintaining pollution prevention measures to minimize trash at the site;
- Schedule A, condition 9.a of the Permit by not promptly implementing maintenance; and
- Schedule A, condition 13.a.i.3 of the Permit by failing to take corrective actions to address significant amounts of sediment visible in surface waters.

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0053(2).

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 \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140 (2)(a)(E)(v) as Respondent has coverage under an NPDES Stormwater Discharge 1200-C Permit and its construction site disturbed more than 20 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 0 according to OAR 340-012-0145(4)(e), because DEQ elects to assess separate penalties for multiple occurrences 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 Respondent's conduct was reckless. Respondent is registered under the NPDES 1200-C General Permit which expressly imposes the responsibility of the permit registrant to comply with the permit conditions. Respondent's Erosion Control Inspection Forms identified problems with erosion controls and best management practices not being implemented and maintained as early as June 15, 2017. The Forms documented necessary maintenance, repairs, and areas where additional erosion controls were needed on 6/15/17, 6/19/17, 7/20/17, 7/27/17, 8/3/17, and 8/10/17, but Respondent did not take corrective action in response to the documented needs. In addition, the erosion and sediment control inspector indicated that revisions to the ESCP had been made yet at the time of DEQ's inspection on August 15, 2017 erosion controls and best management practices called for in the ESCP were not implemented. By failing to implement the ESCP and comply with other controls required under the Permit, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate the Permit and Oregon law. The risk was of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation as the whole point of employing an erosion and sediment control inspector and performing inspections is to heed the inspector's recommendations and correct any problems that have been identified.
- "C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure that the violation would not be repeated by implementing erosion and sediment control measures 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 \$2,297. This is the amount Respondent gained by delaying spending \$155,750 from June 15, 2017, through January 15, 2018, on labor and materials (coconut matting, sediment fence, straw cover, straw wattles) to control erosion and sediment at the Site. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 4 + 8 + -1)] + \EB
 $= \$3,000 + (\$300 \times 11) + \$EB$
 $= \$3,000 + \$3,300 + \$EB$
 $= \$6,300^*$

* Pursuant to ORS 468.140(2) each day of violation constitutes a separate violation. Of the violations cited in the Notice of Civil Penalty Assessment and Order DEQ elects to assess separate

penalties, one for each condition of the permit that was violated, for a total of six penalties. Respondent's final civil penalty is calculated by multiplying the amount of penalty for a single violation, \$6,300, by six, for a sub-total of \$37,800, plus the "EB" Respondent gained through its violation, \$2,297, for a final penalty of \$40,097.

EXHIBIT No.2

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

VIOLATION 2: Discharging wastes into water of the state that caused the formation of appreciable bottom deposits in violation of ORS 468B.025(1)(b) in tributaries 1, 2, 3, and 4, waters of the state, on or before February 14, 2018, through the present.

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

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

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

"BP" is the base penalty, which is \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140 (2)(a)(E)(v) as Respondent has coverage under an NPDES Stormwater Discharge 1200-C Permit and its construction site disturbed more than 20 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 is a separate occurrence. The accumulation of appreciable bottom deposits was observed in the tributaries by DEQ on February 14, 2018. As of the date of this Notice and Order the deposits have not been removed and the tributaries have not been restored.

"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 is registered under the NPDES 1200-C General Permit which expressly requires Respondent to comply with its conditions to limit erosion, sediment, and other discharges to waters of the state. Respondent's Erosion Control Inspection forms identified turbid stormwater discharges

coming off the Site, ineffective sediment and erosion controls, and best management practices not being implemented and maintained as early as June 15, 2017. By failing to comply with the permit's conditions regarding erosion and sediment control, including phasing and BMP maintenance, Respondent consciously disregarded a substantial and unjustifiable risk that it would discharge sediment from the Site to waters of the state that could result in the formation of appreciable bottom deposits in violation of the Permit and Oregon law. The risk was of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation as the problems at the Site were detected early on and could have been mitigated thereby preventing the conditions that resulted in this violation.

"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 Respondent has not addressed the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice and Order the bottom deposits remain in tributaries 1, 2, 3, and 4.

"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 as there is insufficient information on which to make an estimate under OAR 340-012-0150(3).

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 4 + 8 + 2)] + \$0
= \$6,000 + (\$600 x 14) + \$0
= \$6,000 + \$8,400 + \$0
= \$14,400