



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

September 22, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5345

Trimble Construction Co., Inc.
c/o Bill Trimble, Registered Agent
34420 SE Jarl Rd
Boring, OR 97009

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-NP-NWR-2022-530

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$68,929 for causing pollution to waters of the state and for the unpermitted discharge of stormwater from construction activities at the site located at 38001 HWY 211 in Sandy, Oregon (the Site).

DEQ issued this penalty because your failure to obtain coverage under the National Pollutant Discharge Elimination System General Permit No. 1200-C (the Permit) for your construction activities at the Site resulted in stormwater run-off causing pollution to waters of the state, including a tributary to Tickle Creek. The Permit requires that registrants implement and maintain sufficient erosion and sediment controls and best management practices to prevent the discharge of sediment and visibly turbid stormwater discharge from the site and into waters of the state. Sediment carried in stormwater run-off from construction sites is considered waste that poses a risk of harm to beneficial uses of state waters, including the use of those waters as habitat for aquatic organisms. The discharge of sediment can degrade water quality and harm aquatic life by covering up food sources and smothering invertebrate organisms living in wetlands and creeks. Without permit coverage, you failed to implement proper controls and caused pollution to Tickle Creek and its tributary.

Included in Section IV of the enclosed Notice is an order requiring you to obtain 1200-C permit coverage within 60 days of the Order becoming final. \$48,129 of the civil penalty represents the economic benefit you gained by failing to obtain coverage under the Permit and implement best management practices. If you obtain Permit coverage and implement control measures, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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.oregon.gov

Via fax – 503-229-6762

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.

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 Emily Knobbe at 971-300-9770.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

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

1 e. Respondent had not implemented any best management practices to control stormwater
2 runoff, such as turbidity curtains, jute matting, straw wattles, and plastic sheeting.

3 6. At all relevant times, Respondent was not assigned coverage under the National
4 Pollutant Discharge Elimination System General Permit No. 1200-C (the Permit). According to the
5 Permit, coverage is required for “[a]ny construction activity and materials or equipment staging and
6 stockpiling that will disturb one or more acres of land; or . . . that will disturb less than one acre of land
7 but is part of a common plan of development or sale that will ultimately disturb one or more acres of
8 land.”

9 III. CONCLUSIONS

10 1. On at least March 21, 2022, and March 24, 2022, Respondent violated ORS 468B.025(1)(a)
11 by causing pollution to waters of the state, as described in Section II above. Specifically, Respondent’s
12 activities caused highly turbid stormwater run-off to enter a tributary to Tickle Creek. Stormwater run-
13 off carrying sediment from Respondent’s activities is “waste” pursuant to ORS 468B.005(9) and was
14 discharged from the Site to a tributary of Tickle Creek, which is a “water of the state” pursuant to ORS
15 468B.005(10). This is a Class I violation, according to OAR 340-012-0055(1)(a). DEQ hereby assesses
16 a \$12,000 civil penalty for these violations.

17 2. On or about March 3, 2022 through on or about the time of this Notice, Respondent violated
18 ORS 468B.050(1)(d) by engaging in activity which would cause an increase in the discharge of wastes
19 into the waters of the state without a permit issued by DEQ, as described in Section II above.
20 Specifically, without obtaining coverage under the Permit, Respondent engaged in construction
21 activities including grading, filling, and stumping at the Site that caused run-off of construction
22 stormwater. Stormwater run-off carrying sediment from Respondent’s activities is a “waste” pursuant
23 to ORS 468B.005(9) and was discharged from the Site to a tributary of Tickle Creek, which is
24 considered a “water of the state,” pursuant to ORS 468B.005(10). This is a Class I violation, according
25 to OAR 340-012-0055(1)(d). DEQ hereby assesses a \$56,929 civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

4 1. Pay a total civil penalty of \$68,929. The determination of the civil penalty is attached as
5 Exhibits 1 and 2 and is incorporated as part of this Notice.

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

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

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

16 2. Obtain coverage under a 1200-C permit and comply with permit requirements. Within 60
17 days of this order becoming final by operation of law or on appeal, written documentation
18 demonstrating Respondent's compliance must be sent to: Blair Edwards, Northwest Region, 700 NE
19 Multnomah St, Suite 600, Portland, OR 97232.

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

21 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
22 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
23 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
24 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
25 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
26 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
27 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax

1 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
2 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
3 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
4 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
5 you may represent yourself. If you are a corporation, partnership, limited liability company,
6 unincorporated association, trust or government body, you must be represented by an attorney or a duly
7 authorized representative, as set forth in OAR 137-003-0555.

8 Active duty Service members have a right to stay proceedings under the federal Service
9 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
10 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
11 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
12 Department does not have a toll free telephone number.

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

19
20
21 9/22/2022

22 Date

22 

23 Kieran O'Donnell, Manager
24 Office of Compliance and Enforcement

discharge of sedimentation to the Tickle Creek tributary. This risk is a gross deviation from the standard of care that a construction company operating since 2003 would reasonably observe.

"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).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because any economic benefit that Respondent gained as a result of this violation is de minimis.

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 + 2 + 8 + 0)] + EB
= \$6,000 + (\$600 x 10) + \$0
= \$6,000 + \$6,000 + \$0
= \$12,000

EXHIBIT 1

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

VIOLATION NO. 1 Violated ORS 468B.025(1)(a) by causing pollution to waters of the state.

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

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

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

"BP" is the base penalty, which is \$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)(D).

"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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Each day of violation is a separate occurrence. Respondent discharge highly turbid construction stormwater to a tributary of Tickle Creek on at least two days: March 21, 2022, and March 24, 2022.

"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. According to OAR 340-012-0030(20), 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 a reasonable person would observe in that situation. Respondent has been a registered construction business since 2003. The Site is located adjacent to Tickle Creek and is directly uphill from a Tickle Creek tributary. As such, engaging in construction activities created a substantial and unjustifiable risk that the disturbed land would cause a

EXHIBIT 2

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

- VIOLATION NO. 2 Violated ORS 468B.050(1)(d) by engaging in construction activity without a 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)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii), as Respondent should have applied for coverage under an NPDES General Permit for a construction site that disturbed one or more 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 violation is a separate occurrence. Respondent started construction activities that caused the discharge of waste on or about March 3, 2022, and continues until at least the date of this Notice..
- "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. According to OAR 340-012-0030(20), 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 a reasonable person would observe in that situation. Respondent has been a registered construction business since 2003. The Site is located uphill of an intermittent stream and adjacent to Tickle Creek and Tickle Creek Trail. As such, engaging

in grading, fill, and stumping activities created a substantial and unjustifiable risk that the disturbed land would cause sediment to enter the tributary to Tickle Creek. This risk is a gross deviation from the standard of care that a construction company operating since 2003 would reasonably observe.

"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).

"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 \$48,129. This is the amount Respondent gained by avoiding spending \$63,299 to obtain coverage under the Permit and implement best management practices to avoid causing pollution to waters of the state. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 4 + 8 + 0)] + \$48,129
= \$4,000 + (\$400 x 12) + \$48,129
= \$4,000 + \$4,800 + \$48,129
= \$56,929

Oregon Department of Environmental Quality
 700 NE Multnomah Street, Suite 600
 Portland, OR 97232-4100



State of Oregon
 Department of Environmental Quality

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

CIVIL PENALTY - ORS 468.135(2)

BILL TRIMBLE
 TRIMBLE CONSTRUCTION CO.
 P.O. BOX 10
 SANDY, OR 97055

DATE:	September 22, 2022
RESPONSE DATE :	December 1, 2022
TOTAL PENALTY:	\$68,929.00

Account Name:	TRIMBLE CONSTRUCTION CO.		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300026
SubSystem ID:	55	FIMS Acct. ID:	9051

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 68,929.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 68,929.00

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



BILL TRIMBLE
 TRIMBLE CONSTRUCTION CO.
 P.O. BOX 10
 SANDY, OR 97055

REFERENCE NO.	CPGFD2300026		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	December 1, 2022
FIMS ACCT. ID:	9051	TOTAL PENALTY DUE:	\$68929.00

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 0095000090511(CPGF)230002600068929000



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
9/21/2022	2022-530 WQ-SW-NWR-2022-530	\$68,929.00

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 _____