



# 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

November 22, 2022

CERTIFIED MAIL: Certified Mail # 7018 1830 0001 5906 3893

Vander Pol Investments, LLC  
c/o Edward H Vander Pol, Registered Agent  
PO Box 1469  
Auburn OR 98071

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ-SW-NWR-2021-541

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$38,505 for multiple violations of the 1200-C construction stormwater general permit, and for causing pollution of waters of the state by placing sediment and fill in wetlands outside authorized areas, at your Oak Harbor Trucking project at the intersection of NE 13<sup>th</sup> Avenue and NE Fazio Way in Portland.

DEQ issued this penalty because fill and increased sediment and turbidity from construction projects must be controlled to protect the environment, especially aquatic life and habitat. The 1200-C permit requires erosion and sediment controls, and the fill permit from the Department of State Lands (DSL) authorizes limited fill only in compliance with the terms of the fill permit. By failing to control erosion and by moving fill into unpermitted areas of the wetlands, your activities risked adverse impacts to wetlands and canals connected to the Columbia Slough.

Included in Section IV of the enclosed Notice is an order requiring you to take corrective actions, including working with DSL to delineate the wetland boundaries, remove unauthorized fill, and restore all impacted wetlands to pre-work condition; and revise the Erosion and Sediment Control Plan (ESCP) and stabilize the site to return to compliance with the 1200-C permit.

\$15,305 of the civil penalty represents the economic benefit you gained by failing to implement effective erosion and sediment controls, conduct visual monitoring, and update the ESCP as required. If you complete these requirements, 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](mailto: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.

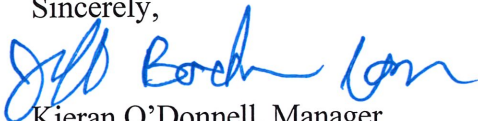
The attached Notice further details DEQ’s reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

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 Sarah Wheeler at 971-301-0622.

Sincerely,



Kieran O’Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Ed Vander Pol, [ed.vanderpol@oakh.com](mailto:ed.vanderpol@oakh.com)  
Michael Kennedy, DEQ  
Christine Svetkovich, DEQ  
Melinda Butterfield, DSL, [melinda.butterfield@dsl.oregon.gov](mailto:melinda.butterfield@dsl.oregon.gov)  
Accounting, DEQ

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

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 VANDER POL INVESTMENTS, LLC, ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. WQ-SW-NWR-2021-541

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  
9 468.140, ORS 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions  
10 011, 012, and 045.

11 II. FINDINGS OF FACT

12 1. Respondent owns and controls a construction project (the Oak Harbor Project) at NE  
13 13<sup>th</sup> Avenue and NE Fazio Way in Portland, Oregon (the Site).

14 2. On July 15, 2019, DEQ issued Respondent coverage under National Pollutant Discharge  
15 Elimination System (NPDES) Construction Stormwater Discharge General Permit No. 1200-C (the  
16 Previous Permit). The Previous Permit expired on December 14, 2020. On December 16, 2020, DEQ  
17 issued Respondent coverage for the current NPDES Construction Stormwater Discharge General  
18 Permit No. 1200-C (the Current Permit), and the Current Permit is effective until December 14, 2025.

19 3. On August 2, 2018, the Oregon Department of State Lands (DSL) issued Oak Harbor  
20 Freight Lines, Inc. Fill Permit Number 38447-FP (the Fill Permit) authorizing placement of up to 5,775  
21 cubic yards of gravel in wetlands located in the vicinity of the Site, specifically, T1N, R 1E, Section 11-  
22 A, Tax Lot 300 in Multnomah County, as outlined in the map and drawings attached to the Fill Permit  
23 and under the conditions of the Fill Permit.

24 4. The total approximate Site area is 17.14 acres, and the total approximate size of the  
25 disturbed area at the Site is 7.66 acres.

26 5. The receiving waterbody at the Site is the Columbia River Slough. Along the west side  
27 of the Site is a ditch that connects to a canal that drains to the Columbia Slough.

1           6.       Respondent submitted an erosion and sediment control plan (ESCP) to DEQ on or about  
2 March 8, 2019. The ESCP includes the following conditions:

3           a.       The boundaries of the clearing limits shown on this plan shall be clearly flagged in the  
4 field prior to construction. During the construction priod, no disturbance beyond the flagged clearing  
5 limits shall be permitted. The flagging shall be maintained by the applicant/contractor for the duration  
6 of construction.

7           b.       Stablilized construction entrances shall be installed at the beginning of construction and  
8 maintained for the duration of the project.

9           c.       Temporary slope stabilization measures shall include: covering exposed soil with plastic  
10 sheeting, straw mulching, wood chips, or other approved measures.

11          d.       Best Management Practices (BMPs) to be employed at the Site for the duration of the  
12 project include: temporary seeding and planting, sediment fencing, straw wattles, and storm drain inlet  
13 protection.

14          7.       Schedule A, Condition 4 of the Current Permit requires Respondent to implement the  
15 ESCP. Schedule A, Condtion 4 of the Current Permit required Respondent to update the ESCP content  
16 and site map to ensure that the requirements of the Current Permit are addressed by February 15, 2021.

17          8.       On November 18, 2021, and as of the date of this Notice, Respondent has not prepared  
18 an updated ESCP to address the Current Permit requirements.

19          9.       DEQ inspected the Site on November 18, 2021. At the time of the inspection:

20          a.       The construction entrance was not built to specifications in Respondent's ESCP and did  
21 not contain subgrade geotextile or controls on either side to prevent discharges of sediment to the ditch.

22          b.       Respondent had not flagged the boundaries of the authorized area for clearing.

23          c.       Respondent had excavated soil and vegetation and deposited it into wetlands on the west  
24 and east sides of the Site, outside of the boundary permitted for fill by DSL.

25          d.       Respodent placed sediment fencing in the wetland, east of the boundary permitted for  
26 fill by DSL.

27          e.       Sediment fencing installed at the site was not properly installed or maintained, with



1 joints not secured, fencing not taught, damage to the fencing, fill piled up against the fencing and not  
2 removed, and sediment undercut and flowed beneath and beyond the sediment fencing into the wetland  
3 and canals toward the Columbia Slough.

4 f. There were erosional rills, gullies, and channels of uncontrolled sediment-laden  
5 stormwater discharges to the wetlands, ditch, and the canals to the Columbia Slough at the Site.

6 g. Along the southern boundary of the Site, adjacent to a conveyance leading to the  
7 wetland, Respondent had not implemented any erosion or sediment controls or slope stabilization to  
8 prevent discharges of sediment to the conveyance. Specifically, there was no plastic sheeting, straw  
9 mulching, wood chips, or seeding in place.

10 h. Two stormwater catchbasins on NE 13<sup>th</sup> Avenue contained damaged and torn filtration  
11 fabric that did not effectively filter out sediment from the storm drains.

12 10. Schedule B, Condition 6.2 of the Current Permit requires Respondent to conduct and  
13 document a visual monitoring inspection of the Site every 14 calendar days and within 24 hours of any  
14 storm event that results in discharge from the site.

15 11. According to rain gauge data from the Portland HYDRA Network rain gauge at 8030  
16 NE Mallory Avenue, which is 2,000 feet southwest of the Site, there were 23 days when Respondent  
17 should have conducted visual monitoring at the Site, but did not, from August 4, 2021, through  
18 November 2021.

### 19 III. CONCLUSIONS

20 1. Respondent violated Schedule A, Condition 4 of the Current Permit, and ORS  
21 468B.025(2), by failing to implement the Erosion and Sediment Control Plan, as described in  
22 Paragraphs 6-7 and 9 of Section II. This is a Class I violation, according to OAR 340-012-0055(1)(r).  
23 DEQ hereby assesses a \$21,586 civil penalty for this violation.

24 2. Respondent violated ORS 468B.025(1)(a) by causing pollution of waters of the state, by  
25 placing fill in unpermitted wetlands and discharging sediment through erosional rills, gullies, channels, and  
26 focused uncontrolled stormwater flows. Fill and sediment cause "pollution" as defined in ORS  
27 468B.005(5), because they alter the physical, chemical, or biological properties of waters of the state,

1 including change in turbidity. Additionally, when discharged into waters of the state, they will or tend to  
2 render such waters detrimental to wildlife, fish, or other aquatic life or the habitat thereof. The Columbia  
3 Slough is a natural body of surface water and is waters of the state pursuant to ORS 468B.005(10). The  
4 wetlands at the Site are also waters of the state pursuant to ORS 468B.005(10). This is a Class I  
5 violation, according to OAR 340-012-0055(1)(a). DEQ hereby assesses an \$8,000 civil penalty for this  
6 violation.

7 3. Respondent violated Schedule B, Condition 6.2 of the Current Permit, and ORS  
8 468B.025(2), by failing to conduct visual monitoring at the Facility on 23 days, as described in paragraphs  
9 10-11 of Section II. These are Class I violations pursuant to OAR 340-012-0050(1)(o). DEQ hereby assess  
10 a \$8,919 civil penalty for these violations.

11 4. Respondent violated Schedule A, Condition 4 of the Current Permit, and ORS  
12 468B.025(2), by failing to update, by February 15, 2021, the Erosion and Sediment Control Plan to ensure  
13 that requirements of the Permit are addressed, as described in Paragraphs 7-8 of Section II. This is a Class  
14 II violation according to OAR 340-012-0055(2)(b). DEQ has not assessed a civil penalty for this violation.

#### 15 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

18 1. Pay a total civil penalty of \$38,505. The determination of the civil penalties are attached as  
19 Exhibits 1-3 which are incorporated as part of this Notice.

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

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

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

4 2. Take the following corrective actions and submit written documentation demonstrating  
5 Respondent's compliance with the actions listed below to: Michael Kennedy at either  
6 [mike.kennedy@deq.oregon.gov](mailto:mike.kennedy@deq.oregon.gov) or 700 NE Multnomah St, Ste 600, Portland OR 97232.

7 a. Within 120 days of this Notice becoming final by operation of law or on appeal,  
8 complete a forensic delineation of the wetland boundaries. Within 60 days of receiving DSL approval  
9 of the delineation and a restoration plan, fully restore all impacted wetlands to pre-work condition, as  
10 approved by DSL. The restoration work must include removing all fill from wetlands outside areas  
11 covered by the DSL permit and restoring those areas to their prior ecological function. Within 30 days  
12 of completion of restoration, submit a report documenting the restoration work to DEQ and DSL.

13 b. Within 30 days of this Notice becoming final by operation of law or on appeal, revise  
14 the ESCP to meet the conditions of the Current Permit.

15 c. Within 60 days of this Notice becoming final by operation of law or on appeal, fully  
16 stabilize the site in compliance with the revised ESCP and the Current Permit.

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

18 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
19 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
20 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
21 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
22 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
23 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
24 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
25 it to **503-229-6762** or email it to [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov). An administrative law judge  
26 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
27 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be



1 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
2 you may represent yourself. If you are a corporation, partnership, limited liability company,  
3 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
4 authorized representative, as set forth in OAR 137-003-0555.

5 Active duty Service members have a right to stay proceedings under the federal Service  
6 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
7 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
8 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
9 Department does not have a toll free telephone number.

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

16  
17  
18 11/22/22

19 Date

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Kieran O'Donnell, Manager

Office of Compliance and Enforcement



## EXHIBIT 1

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

VIOLATION 1: Failing to substantially implement the Erosion and Sediment Control Plan (ESCP), in violation of Condition 4 of the Current Permit and ORS 468B.025(2).

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

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

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

"BP" is the base penalty, which is \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent has coverage under the NPDES 1200-C General Permit for a construction site between five and 20 acres in size. The disturbed area at the Site is approximately 7.66 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 constitutes a separate occurrence. As of the date of this Notice, Respondent has not documented implementation of erosion and sediment controls in response to DEQ's inspection on November 18, 2021.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. The 1200-C Permit and the ESCP prepared by Respondent's engineer require implementation of specific erosion

and sediment control measures. By failing to effectively implement or maintain many of the measures and features in the ESCP and allowing discharge of sediment to surface waters, Respondent failed to take reasonable care to avoid the foreseeable risk of committing 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 did not address 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, Respondent has not corrected 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 \$13,586. This is the amount Respondent gained by avoiding spending \$14,242.16 on erosion and sediment controls, including sediment fencing, wattles, and a compliant construction entrance, as well as \$5,000 to revise the ESCP to be compliant with the Current Permit. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 4 + 2)] + \$13,586 \\ &= \$4,000 + (\$400 \times 10) + \$13,586 \\ &= \$4,000 + \$4,000 + \$13,586 \\ &= \$21,586 \end{aligned}$$

EXHIBIT NO. 2

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

VIOLATION 2: Causing pollution of waters of the state, in violation of ORS 468B.025(1)(a).

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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent has coverage under the NPDES 1200-C General Permit for a construction site between five and 20 acres in size. The disturbed area at the Site is approximately 7.66 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 the violation is ongoing from approximately November 18, 2021, when DEQ documented fill placed in wetlands at the Site, to the date of this Notice, as Respondent has not removed the fill and restored the impacted wetland. Each day of an ongoing violation with a duration of more than one day is a separate violation.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. The 1200-C Permit, the ESCP prepared by Respondent's engineer, and the Fill Permit from DSL require control measures to protect the wetlands at the Site and delineate authorized and unauthorized areas for disturbance and fill. By failing to take measures to ensure fill was not deposited in

unauthorized areas of the wetlands at the Site, Respondent failed to take reasonable care to avoid the foreseeable risk of committing 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 did not address 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, Respondent has not corrected 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 because DEQ has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 4 + 2)] + \$0 \\ &= \$4,000 + [\$400 \times 10] + \$0 \\ &= \$4,000 + \$4,000 + \$0 \\ &= \$8,000 \end{aligned}$$



EXHIBIT NO. 3

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

VIOLATION 3: Failure to conduct visual monitoring in violation of Schedule B, Condition 6.2 of the Current Permit, and ORS 468B.025(2).

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

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

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

"BP" is the base penalty, which is \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent has coverage under the NPDES 1200-C General Permit for a construction site between five and 20 acres in size. The disturbed area at the Site is approximately 7.66 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)(c), because there were from seven to 28 occurrences of the violation. Each day of violation is a separate occurrence. From August through November 2021, Respondent failed to inspect the Site on approximately 23 days.

"M" is the mental state of the Respondent and receives an 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent has coverage under the NPDES 1200-C Permit which expressly requires Respondent to visually monitor all erosion and sediment controls daily when stormwater runoff is occurring so that it may identify problems at the site in order to prevent discharges. By failing to conduct monitoring for many rain events during a four-month period, Respondent failed to take reasonable care to avoid a foreseeable risk that it would commit this violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f), because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$1,719. This is the amount Respondent gained by avoiding spending \$2,300 to conduct visual monitoring at the Site on 23 occasions. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 4 + 0)] + \$1,719 \\ &= \$4,000 + [\$400 \times 8] + \$1,719 \\ &= \$4,000 + \$3,200 + \$1,719 \\ &= \$8,919 \end{aligned}$$



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
11/21/2022	2021-541 WQ-SW-NWR-2021-541	\$38,505.00

### 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 \_\_\_\_\_

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)**

<b>DATE:</b>	November 22, 2022
<b>RESPONSE DATE :</b>	January 31, 2023
<b>TOTAL PENALTY:</b>	\$38,505.00

<b>Account Name:</b>	VANDER POL INVESTMENTS, LLC <OAK HARBOR TRUCKING> <126420>		
<b>Account Type:</b>	Vendor/Organization/Company	<b>Reference Number:</b>	CPGFD2300032
<b>SubSystem ID:</b>	194314	<b>FIMS Acct. ID:</b>	3638

**Penalty Summary**

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 38,505.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 38,505.00

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'



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 PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



<b>REFERENCE NO.</b>	CPGFD2300032		
<b>PAYCODE:</b>	00401 7400 10040 74001 0500 000000 00		
<b>FEE PROGRAM ID:</b>	950	<b>RESPONSE DATE:</b>	January 31, 2023
<b>FIMS ACCT. ID:</b>	3638	<b>TOTAL PENALTY DUE:</b>	\$38505.00

**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 0095000036386(CPGF)230003200038505006