



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

December 16, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3930

Emerick Construction Company
c/o Jordan Ramis PC, Registered Agent
Two Centerpointe Drive Suite 600
Lake Oswego, OR 97035

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2022-592

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$43,200 for causing pollution to waters of the state resulting from your construction activities at the New Athey Creek Middle School located at 945 Dollar Street, West Linn, Oregon (the Site).

DEQ issued this penalty because your construction activities, including land clearing and grading resulted in multiple, significant discharges of turbid stormwater to wetlands and the Tualatin River. Turbidity in the water column and deposition of sediments can degrade water quality and harm aquatic life by covering up food sources, abrading fish gills, and smothering fish eggs and invertebrate organisms. Turbidity also tends to create a public nuisance and harm other beneficial uses of waters of the state. Alterations in the physical properties of waters of the state, including changes in turbidity, are considered "pollution" under Oregon environmental law.

The work on this Site was done in violation of the National Pollutant Discharge Elimination System Construction Stormwater General Permit No. 1200-C Permit (the Permit) that was issued to the West Linn-Wilsonville School District, the owner of the Site. Therefore, the discharges of turbid construction stormwater cited in the attached Notice were not authorized by the Permit.

DEQ appreciates your efforts to implement appropriate Best Management Practices to stabilize the site and DEQ considered these efforts when determining the amount of civil penalty.

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

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

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

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 EMERICK CONSTRUCTION COMPANY,) NOTICE OF CIVIL PENALTY
an Oregon corporation,) ASSESSMENT AND ORDER
Respondent.) CASE NO. WQ/SW-NWR-2022-592

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, and 045.

11 II. FINDINGS OF FACT

12 1. Respondent is the operator of the “New Athey Creek Middle School” construction
13 project located at 945 Dollar Street, West Linn, Oregon (the Site). The Site is approximately 29.2 acres.

14 2. Respondent is a “person” according to OAR 340-012-0030(18).

15 3. On or about January 12, 2022, through the present Respondent has engaged in
16 construction activities at the Site, including but not limited to clearing, grading, grubbing, stumping,
17 and land disturbing activities.

18 4. Respondent’s construction activities at the Site disturbed approximately 21.7 acres and
19 resulted in large swaths of the Site devoid of stabilizing vegetation and insufficient erosion and
20 sediment controls.

21 5. On or about February 28, 2022, muddy, milk-chocolate colored, visually turbid
22 construction stormwater discharged from the Site, across Willamette Falls Drive, and into ponds and
23 wetlands located at the Fields Bridge Park.

24 6. The ponds and wetlands at the Fields Bridge Park are hydrologically connected to the
25 Tualatin River.

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7. On or about March 1, 2022, visually turbid construction stormwater discharged from the Site to a roadside ditch adjacent to Willamette Falls Drive, into a culvert that discharges to wetlands in or near the Fields Bridge Park and ultimately to the Tualatin River, waters of the state.

8. On March 2, 2002, visually turbid construction stormwater discharged from the Site to a roadside ditch adjacent to Willamette Falls Drive, into a culvert that discharges to wetlands in or near the Fields Bridge Park and ultimately to the Tualatin River, waters of the state.

9. On April 30, 2022, visually turbid construction stormwater discharged from the Site to the roadside ditch along Willamette Falls Drive and to wetlands, waters of the state, at Fields Bridge Park.

III. CONCLUSIONS

1. Respondent has violated ORS 468B.025(1)(a) by causing pollution to waters of the state on February 28, March 1, March 2, and April 30, 2022. Specifically, Respondent's construction activities caused sediment and turbid constructionstormwater to run off the Site and discharge to wetlands that are hydrologically connected to the Tualatin River, and to the Tualatin River, waters of the state, according to ORS 468B.005(10). Wetlands are habitat for many aquatic species including rough-skinned newts. The Tualatin River is habitat for aquatic life including fish. Discharges of sediment and turbidity altered the physical properties of the wetland and the Tualatin River, including its color and turbidity. Sediment and turbidity tends to render waters harmful, detrimental or injurious to fish or aquatic life or the habitat thereof and to other legitimate beneficial uses of waters of the state and are "pollution" according to ORS 468B.005(5). These are Class I violations, according to OAR 340-012-0055(1)(a). DEQ hereby assesses a \$43,200 civil penalty for these violations.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO: Pay a total civil penalty of \$43,200. The determination of the civil penalties are attached as Exhibit No.1 and is incorporated as part of this Notice.

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

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

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

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

14 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
15 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
16 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
17 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
18 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
19 further information about requests for hearing.) You must send your request to: **DEQ, Office of
20 Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
21 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
22 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
23 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
24 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
25 you may represent yourself. If you are a corporation, partnership, limited liability company,
26 unincorporated association, trust or government body, you must be represented by an attorney or a duly
27 authorized representative, as set forth in OAR 137-003-0555.

Active duty Service members have a right to stay proceedings under the federal Service
Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-

452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

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

12 / 16 / 2022
Date

Kieran O'Donnell
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 NO. 1 Causing pollution to 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 \$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) because Respondent violated ORS 468B.025(1)(a) and is a person without a National Pollutant Discharge Elimination System (NPDES) permit.
- "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) as DEQ is assessing separate penalties for each occurrence of the violation as described below.
- "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 is an experienced contractor and as such is or should be aware of the substantial risk of erosion and turbid discharge that can result from a large parcel of land that has been cleared of all its

stabilizing vegetation and has insufficient erosion and sediment controls. Respondent was aware that the Site was upgradient of waters of the state and that stormwater runoff had the potential to enter waters of the state. By failing to implement sufficient erosion and sediment controls, and then failing to maintain those controls during large storm events, Respondent consciously disregarded a substantial and unjustifiable risk that it would cause pollution to waters of the state.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because 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 \$0. The amount of economic benefit Respondent gained through this violation is too speculative to estimate.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (0+ 0+ 0+ 8 + 0)] + \$EB
= \$6,000 + (\$600 x 8) + \$EB
= \$6,000 + \$4,800 + \$EB
= \$10,800*

* 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 for each day the violation occurred (February 28, March 1, March 2, and April 30, 2022) for a total of 4 base penalties. Respondent's final civil penalty is calculated by multiplying the amount of penalty for a single violation, \$10,800, by the number of violations (4), for a final penalty of \$43,200.

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)

DATE:	December 16, 2022
RESPONSE DATE :	February 24, 2023
TOTAL PENALTY:	\$43,200.00

Account Name:	NEW ATHEY CREEK MIDDLE SCHOOL		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300037
SubSystem ID:	204267	FIMS Acct. ID:	9782

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 43,200.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 43,200.00

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

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



PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

REFERENCE NO.	CPGFD2300037		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	February 24, 2023
FIMS ACCT. ID:	9782	TOTAL PENALTY DUE:	\$43200.00

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 0095000097828CPGFD230003700043200007



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
12/15/2022	2022-592 WQ-SW-NWR-2022-592	\$43,200.00

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 _____