



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 3947

West-Linn Wilsonville School District
2755 SW Borland Road
Tualatin, OR 97602

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2022-532

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$36,600 for multiple violations of the National Pollutant Discharge Elimination System Construction Stormwater General Permit No. 1200-C (the Permit) issued for the New Athey Creek Middle School construction project located at 945 Dollar Street, West Linn, Oregon (the Site).

DEQ issued this penalty because your construction activities violated multiple Permit conditions and resulted in significant discharges of highly turbid construction stormwater to wetlands and the Tualatin River. Turbidity in the water column and deposition of sediments in waterways 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 public waters of the state and is considered "pollution" under Oregon environmental law.

Included in Section IV is an order requiring you to revise the Erosion and Sediment Control Plan so that it complies with the Permit and matches current Site conditions.

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
Christine L. Hein, Managing Partner, Ring Bender LLP, 920 SW Sixth Avenue, Suite 600,
Portland, OR 97204

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

3 IN THE MATTER OF:)
4 WEST LINN-WILSONVILLE)
5 SCHOOL DISTRICT,)
 Respondent.) CASE NO. WQ/SW-NWR-2022-532

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 owner of the New Athey Creek Middle School construction site
13 located at 945 Dollar Street, West Linn, Oregon (the Site).

14 2. DEQ assigned Respondent coverage under the National Pollutant Discharge Elimination
15 System Construction Stormwater Discharge General Permit Number 1200-C (the Permit) on January 3,
16 2022 for construction activities at the Site. The Permit was in effect at all material times.

17 3. Construction activities disturbed approximately 21.7 acres.

18 4. Condition 1.5(a) of the Permit prohibits visually turbid discharges or the discharge of
19 sediment from the construction site to surface waters or a conveyance system that leads to water of the
20 state.

21 5. Condition 2.2.11(d) of the Permit prohibits sediment laden or turbid flows of stormwater
22 that are not filtered or settled to remove sediment and turbidity.

23 6. Condition 2.2 of the Permit requires that permittees ensure that soils are stable during all
24 rain events throughout the year.

25 7. On February 28, 2022, muddy, milk-chocolate colored, visually turbid construction
26 stormwater discharged from the Site across Willamette Falls Drive, and into ponds and wetlands at
27 Fields Bridge Park.

1 8. The ponds and wetlands at the Fields Bridge Park are hydrologically connected to the
2 Tualatin River.

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

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

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

12 12. The roadside ditch along Willamette Falls Drive connects to a culvert that runs under the
13 street towards a stormwater catchment system in or near a wetland at Fields Bridge Park that discharges
14 directly to the Tualatin River.

15 13. Condition 2.2.11(e) of the Permit prohibits deposits of sediment at the construction site
16 in areas that drain to unprotected stormwater inlets or to catch basins that discharge to surface waters.

17 14. Condition 2.2.11(g) of the Permit prohibits deposits of sediment from the project site on
18 any property outside of the construction activity covered by the Permit.

19 15. On March 2, 2022, accumulated sediment was both inside and outside of perimeter
20 sediment fencing and outside of the Site boundary in multiple locations. Sediment was outside of the
21 Site within the ditch along Willamette Falls Drive.

22 16. On May 3, 2022, there was accumulated sediment along Willamette Falls Drive near the
23 culvert that crosses under the road and drains towards the wetlands in the Fields Park. There was also
24 sediment accumulated in the wetland area.

25 17. Condition 2.2.9 of the Permit requires permittees to prevent wind-blown soil and dust
26 from areas with exposed soil.

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18. On September 6, 2022, fugitive dust from bare soils and uncovered stockpiles at the Site was blowing from the Site.

19. On September 6, 2022, the entire Site was bare soil without any temporary stabilization controls implemented on Site. Steep slopes to the south of the Site were not stabilized.

20. On September 6, 2022, sediment had been tracked out onto Dollar Street and Willamette Falls Drive. These streets are bordered with catch basin inlets that did not have any inserts or other devices to prevent the discharge of sediment into them. The catch basins discharge to the Tualatin River.

21. Condition 4 of the Permit requires the permit registrant to implement the Erosion and Sediment Control Plan (ESCP) at all times. The ESCP must be kept up-to-date throughout the term of coverage under the permit. The registrant must ensure that an ESCP is revised as necessary to reflect site conditions.

22. On September 6, 2022, no erosion and sediment controls described in ESCP had been implemented except for some perimeter sediment fence. The ESCP did not include a sedimentation basin that was in the northeast part of the site. A construction entrance had been built in the middle of the north perimeter but was not identified in the ESCP. A construction entrance did not have 3”-6” minimum crushed aggregate over a geotextile mat as described in the ESCP.

III. CONCLUSIONS

1. Respondent has violated ORS 468B.025(2) and Condition 1.5(a), Condition 2.2.11.(d) and Condition 2.2 of the Permit by discharging visually turbid construction stormwater and sediment from the Site to wetlands that connect to the Tualatin River and to a conveyance system that leads to the wetlands at Fields Bridge Park. Specifically, on or about February 28, 2022, March 1, 2022, March 2, 2022, and April 30, 2022, Respondent discharged visually turbid construction stormwater and sediment from the Site to surface waters or conveyance systems that lead to waters of the state as alleged in Section II, paragraphs 7-12, above. These are Class II violations, according to OAR 340-012-0053(2). DEQ hereby assesses a \$16,800 civil penalty for these violations.

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2. Respondent has violated ORS 468B.025(2) and Conditions 2.2.11.e and 2.2.11.g of the Permit by allowing deposits of sediment at the Site in areas that drain to unprotected stormwater inlets or to catch basins and allowing deposits of sediment from the Site on any property outside of the construction activity covered by the Permit. Specifically, on or about March 2, 2022, and May 3, 2022, there was accumulated sediment from the Site in the wetland area and the roadside ditch along Willamette Falls Drive near the culvert that crosses under the road and drains towards the wetlands in the Fields Park, as described in Section II, paragraphs 15 and 16 above. On September 6, 2022, sediment track out was observed on Dollar Street and Willamette Falls Drive, as described in Section II, paragraph 20 above. These are Class II violations, according to OAR 340-012-0053(2). DEQ hereby assesses a \$4,800 civil penalty for these violations.

3. Respondent has violated ORS 468B.025(2) and Conditions 2.2.9 of the Permit by failing to prevent wind-blown soil and dust from areas with exposed soil. Specifically, on or about September 6, 2022, dust was blowing uncontrolled from uncovered stockpiles and bare soil at the Site, as described in Section II paragraph 18, above. This is Class II violation, according to OAR 340-012-0053(2). DEQ hereby assesses a \$4,200 civil penalty for this violation.

4. Respondent has violated ORS 468B.025(2) and Condition 4 of the Permit by failing to implement the ESCP developed for the Site. Specifically, on or about September 6, 2022, Respondent did not implement erosion and sediment controls described in its ESCP, as alleged in Section II, paragraph 22, above. This is a Class I violation, according to OAR 340-012-0055(1)(r). DEQ hereby assesses a \$10,800 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

1. Pay a total civil penalty of \$36,600. The determinations of the civil penalties are attached as Exhibits No.1 through No.4 and are incorporated as part of this Notice; and

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2. Revise the ESCP to match current Site conditions and Permit conditions and submit it to DEQ (Attn: Blair Edwards, DEQ Stormwater Program Coordinator) for approval within 5 days of this Notice and Order becoming final.

If you do not file a request for hearing as set forth in Section V below, please pay the 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.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

1 Active duty Service members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
5 Department does not have a toll-free telephone number.

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

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14 12 / 16 / 2022
15 Date

16 Kieran O'Donnell
17 Kieran O'Donnell, Manager
18 Office of Compliance and Enforcement
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EXHIBIT No.1

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

- VIOLATION No.1: Violating Conditions 1.5(a), 2.2.11(d) and 2.2 of the Permit, in violation of ORS 468B.025(2), by discharging visually turbid stormwater and sediment from the Site to surface waters and to a conveyance system that leads to 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 applied for coverage under an NPDES General Permit for a construction site that disturbed 21.7 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) as DEQ is assessing separate penalties for each occurrence of the violation as described below.
- "M" is the mental state of 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. Respondent is permitted under the NPDES 1200-C Permit which expressly requires Respondent to comply with the conditions set forth in the Permit, including turbid discharges and the conditions that allow for turbid discharges, such as unstable soils. By failing to ensure that soils were stable and

all practical measures were implemented to prevent discharges, Respondent failed to take reasonable care to avoid the risk that it would violated conditions in the Permit designed to prevent turbid discharges 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 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 Respondents' 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 economic benefit Respondent gained by delaying implementing erosion and sediment controls described in its ESCP is de minimis. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$3,000 + [(0.1 x \$3000) x (0 + 0 + 0 + 4 + 0)] + \$0
= \$3,000 + (\$300 x 4) + \$0
= \$3,000 + \$1,200 + \$0
= \$4,200*

* 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, 2022, March 2, 2022, 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, \$4,200, by the number of violations (4), for a final penalty of \$16,800.

EXHIBIT No.2

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

- VIOLATION No.2: Violating Conditions 2.2.11(e) and 2.2.11(g) of the Permit, in violation of ORS 468B.025(2), by allowing deposits of sediment from the Site on property outside of the permitted area.
- CLASSIFICATION: This is a Class II violation 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 applied for coverage under an NPDES General Permit for a construction site that disturbed 21.7 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 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 constitutes a separate offense. Sediment deposits were observed outside of the Site on at least three different days: March 2, 2022, May 3, 2022, and September 6, 2022.
- "M" is the mental state of 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. Respondent is permitted under the NPDES 1200-C Permit which expressly requires Respondent to comply with the conditions set forth in the Permit, including preventing the migration of sediment off-site.

By failing to contain sediment on-site, Respondent failed to take reasonable care to avoid the risk that it would violated conditions in the Permit.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' 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 economic benefit Respondent gained by delaying implementing erosion and sediment controls described in its ESCP is de minimis. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$3,000 + [(0.1 \times \$3000) \times (0 + 0 + 2 + 4 + 0)] + \$0 \\ &= \$3,000 + (\$300 \times 6) + \$0 \\ &= \$3,000 + \$1,800 + \$0 \\ &= \$4,800 \end{aligned}$$

EXHIBIT No.3

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

VIOLATION No.3: Violating Condition 2.2.9 of the Permit, in violation of ORS 468B.025(2), by failing to prevent wind-blown dust from areas with exposed soil.

CLASSIFICATION: This is a Class II violation 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 applied for coverage under an NPDES General Permit for a construction site that disturbed 21.7 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)(a) because there was only one occurrence of the violation. Wind-blown dust was observed on September 6, 2022.

"M" is the mental state of 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. Respondent is permitted under the NPDES 1200-C Permit which expressly requires Respondent to comply with the conditions set forth in the Permit, including preventing wind-blown soil and dust from areas with exposed soil. Respondent failed to take reasonable care to avoid the risk that it would violate this condition of the Permit.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' 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 economic benefit Respondent gained by delaying implementing erosion and sediment controls described in its ESCP is de minimis. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$3,000 + [(0.1 x \$3000) x (0 + 0 + 0 + 4 + 0)] + \$0
= \$3,000 + (\$300 x 4) + \$0
= \$3,000 + \$1,200 + \$0
= \$4,200

EXHIBIT No.4

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

VIOLATION No.4: Violating Condition 4 of the Permit, in violation of ORS 468B.025(2), by failing to implement the ESCP developed for the Site.

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 \$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 applied for coverage under an NPDES General Permit for a construction site that disturbed 21.7 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 occurrence is a separate violation. Respondent submitted a Corrective Action response to DEQ on October 26, 2022, more than 28 days after the violation was observed on September 6, 2022.

"M" is the mental state of 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. Respondent is permitted under the NPDES 1200-C Permit which expressly requires Respondent to comply with the conditions set forth in the Permit, including implementing the ESCP. Respondent received

two Pre-Enforcement Notices from DEQ on March 15, 2022, and May 6, 2022 informing Respondent that it had failed to implement elements of the ESCP, that its discharges off-site were causing pollution to waters of the state and that it needed to implement corrective action to manage stormwater runoff. By failing to ensure that an effective and updated ESCP that matched site conditions was implemented at the Site, Respondent failed to take reasonable care to avoid the risk that it was in violation of the condition in the Permit that requires permittees to implement the ESCP.

"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). Respondent submitted a Corrective Action response on October 26th but the ESCP was incomplete and requires revision.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' 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 economic benefit Respondent gained by delaying implementing erosion and sediment controls described in its ESCP is de minimis. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6000) x (0 + 0 + 4 + 4 + 0)] + \$0
= \$6,000 + (\$600 x 8) + \$0
= \$6,000 + \$4,800 + \$0
= \$10,800

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

KATHY LUDWIG
WEST-LINN WILSONVILLE SCHOOL DISTRICT
2755 SW BORLAND ROAD
TUALATIN, OR 97602

CIVIL PENALTY - ORS 468.135(2)

DATE:	December 16, 2022
RESPONSE DATE :	February 24, 2023
TOTAL PENALTY:	\$36,600.00

Account Name:	WEST-LINN WILSONVILLE SCHOOL DISTRICT		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300038
SubSystem ID:	93	FIMS Acct. ID:	9783

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 36,600.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 36,600.00

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



KATHY LUDWIG
WEST-LINN WILSONVILLE SCHOOL DISTRICT
2755 SW BORLAND ROAD
TUALATIN, OR 97602

REFERENCE NO.	CPGFD2300038		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	February 24, 2023
FIMS ACCT. ID:	9783	TOTAL PENALTY DUE:	\$36600.00

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 0095000097835CPGFD230003800036600007



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	2022-532 NEW ATHEY CREEK MS - WQ-SW-NWR-2022-532	\$36,600.00

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 _____