



Oregon

Tina Kotek, 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

May 25, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 2694

Fred Wahl Marine Construction, Inc.
c/o Holly Hinshaw
135 Shipyard Way
Reedsport, OR 97467

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-WR-2022-576

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Fred Wahl Marine Construction, Inc. a civil penalty of \$12,709 for failing to conduct the minimum number of monitoring events required by the National Pollutant Discharge Elimination System 1200-Z General Permit (1200-Z Permit) for industrial stormwater discharges at your facilities located at 135 American Bridge Way and 100 Port Dock Road in Reedsport, Oregon.

DEQ issued this penalty because monitoring is an important condition of the 1200-Z Permit. Fred Wahl Marine Construction has been the subject of at least two prior enforcement cases involving monitoring violations (Case Nos. #2018-EEO-5053 and #2020-EEO-5241). Monitoring may reveal the presence of harmful levels of pollutants that pose a threat to waters of the state. In addition, monitoring allows permittees and DEQ to gauge the effectiveness of stormwater controls and best management practices implemented to reduce the levels of pollutants in discharges.

\$3,909 of the civil penalty represents the economic benefit Fred Wahl Marine Construction, Inc. gained by failing to meet the minimum monitoring frequency set forth in the Permit.

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

Fred Wahl Marine Construction, Inc.
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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 portion of your 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 Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Matt Warden, Fred Wahl Marine Construction (via email at mattheww@fredwahlmarine.com)
Kathy Jacobsen, DEQ WR
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3)
4 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
5 FRED WAHL MARINE) ASSESSMENT AND ORDER
6 CONSTRUCTION INC.)
7 Respondent.) CASE NO. WQ/SW-WR-2022-576

8 I. AUTHORITY

9 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
10 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
11 ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
12 011, 012, and 045.

13 II. FINDINGS OF FACT

- 14 1. Respondent is in the business of building commercial marine vessels and is the owner
15 and operator of two facilities (collectively the Facilities) located in Reedsport, Oregon:
- 16 a. 135 American Bridge Way (the American Bridge Facility); and
 - 17 b. 100 Port Dock Road (the Port Dock Facility).
- 18 2. The Facilities are located immediately adjacent to the Umpqua River, a water of the state
19 pursuant to ORS 468B.005(10).
- 20 3. The American Bridge Facility has coverage under the National Pollutant Discharge
21 Elimination System (NPDES) 1200-Z General Permit for industrial stormwater discharges (the Permit)
22 under File No. 112023. The American Bridge Facility has three discharge points.
- 23 4. The Port Dock Facility has coverage under the Permit under File No. 107433. The Port
24 Dock Facility has two discharge points.
- 25 5. Pursuant to Schedule B, Table 5 of the Permit, Respondent is required to monitor for all
26 applicable statewide benchmarks in Schedule A.9, any applicable sector-specific benchmarks in
27

1 Schedule E, and any applicable impairment pollutants four times per year. Two samples must be taken
2 at each monitoring point between January 1 and June 30, and two samples between July 1 and
3 December 31 of each year.

4 6. For the period January 1, 2020 – June 30, 2020:

5 a. at the American Bridge Facility, Respondent only collected one of the two
6 required samples at each of its three discharge points;

7 b. at the Port Dock Facility, Respondent only collected one of the two required
8 samples at each of its two discharge points.

9 7. For the period January 1, 2021 – June 30, 2021:

10 a. at the Port Dock Facility, Respondent failed to collect either of the two required
11 samples at its two monitoring points.

12 8. For the period January 1, 2022 – June 30, 2022:

13 a. at the American Bridge Facility, Respondent failed to collect either of the two
14 required samples at its three discharge points;

15 b. at the Port Dock Facility, Respondent failed to collect either of the two required
16 samples at its two discharge points.

17 9. Pursuant to Schedule B, Table 6 of the Permit, Respondent is required to submit
18 discharge monitoring reports (DMRs) to DEQ quarterly as follows:

19 a. Quarter 1 DMRs (July – September) are due by November 15,

20 b. Quarter 2 DMRs (October – December) are due by February 15,

21 c. Quarter 3 DMRs (January – March) are due by May 15,

22 d. Quarter 4 DMRs (April – June) are due by August 15.

23 10. Respondent failed to submit a DMR for the American Bridge Facility for Quarter 3 of
24 2021.

25 11. Respondent failed to submit DMRs for the Port Dock Facility for Quarter 3 and Quarter
26 4 of 2021.

27 12. Pursuant to Schedule B.8.a. and B.8.b. of the Permit, Respondent must include chain of

1 custody information and the laboratory results from the testing laboratory with each DMR.

2 13. The DMR Respondent submitted for Quarter 2 of 2020 for the Port Dock Facility lacked
3 chain of custody information and a laboratory report for sampling conducted on November 23, 2020.

4 14. Pursuant to Schedule F, Section A1. of the Permit, failure to comply with any permit
5 condition is a violation of ORS 468B.025.

6 15. Pursuant to ORS 468B.025(2), no person shall violate the conditions of any waste
7 discharge permit issued under ORS 468B.050.

8 III. CONCLUSIONS

9 1. Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to meet the
10 minimum monitoring frequency set forth in the Permit. Specifically, Respondent failed to conduct 19
11 monitoring events as follows:

- 12 a. for the period January 1, 2020 – June 30, 2020, Respondent failed to collect three samples
13 at the American Way Facility and two samples at the Port Dock Facility;
- 14 b. for the period January 1, 2021 – June 30, 2021, Respondent failed to collect four samples at
15 the Port Dock Facility;
- 16 c. for the period January 1, 2022 – June 30, 2022, Respondent failed to collect six samples at
17 the American Bridge Facility and four samples at the Port Dock Facility.

18 These are Class I violations pursuant to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$12,709
19 civil penalty for these violations.

20 2. Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to submit a
21 complete DMR for Quarter 2 of 2020 for the Port Dock Facility. Specifically, the DMR Respondent
22 submitted for Quarter 2 of 2020 lacked a laboratory report and chain of custody information. This is a
23 Class III violation pursuant to OAR 340-012-0055(3)(a). DEQ has not assessed a civil penalty for this
24 violation.

25 IV. ORDER TO PAY CIVIL PENALTY

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

1 1. Pay a civil penalty of \$12,709. The determination of the civil penalty is attached as Exhibit No. 1
2 and is incorporated as part of this Notice.

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

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

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

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

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

27 ///

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.

12
13
14
15 5/25/2023
16 Date


15 
16 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

VIOLATIONS: Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to meet the minimum monitoring frequency set forth in the Permit. Respondent missed collecting 19 required samples.

CLASSIFICATION: These are Class I violations 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 1200-Z General Permit.

"P" is whether Respondent has any prior significant actions (PSAs), 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 5 according to OAR 340-012-0145(2) because Respondent has prior significant actions consisting of at least 4 Class I equivalent violations, as established in Case Nos. 2018-EEO-5053 and 2020-EEO-5241.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were between seven and 28 occurrences of the violation. Respondent failed to conduct 19 monitoring events.

"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. Respondent has a copy of the permit that clearly sets forth the monitoring requirements. Respondent has also previously been cited for these same violations. Respondent's failure to follow the monitoring requirements set forth in the Permit was negligent.

"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 \$3,909. By failing to complete 19 monitoring events, Respondent avoided spending an estimated \$5,436 (\$294 per monitoring event for the nine missed monitoring events during the 2019-2020 and 2020-2021 monitoring year and \$279 per monitoring event for the 10 missed monitoring events during the 2021-2022 monitoring year). 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 (5 + 0 + 3 + 4 + 0)] + \$3,909
= \$4,000 + [\$400 x 12] + \$3,909
= \$4,000 + \$4,800 + \$3,909
= \$12,709

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:	May 25, 2023
RESPONSE DATE :	August 3, 2023
TOTAL PENALTY:	\$12,709.00

Account Name:	FRED WAHL MARINE CONSTRUCTION INC		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300076
SubSystem ID:	194071	FIMS Acct. ID:	6467

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 12,709.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 12,709.00

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.	CPGFD2300076		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	August 3, 2023
FIMS ACCT. ID:	6467	TOTAL PENALTY DUE:	\$12709.00

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 0095000064671CPGFD230007600012709006



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
5/24/2023	2022-576 WQ-SW-WR-2022-576	\$12,709.00

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 _____