



# 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

July 13, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6009 82

Orchid Orthopedic Solutions Oregon, Inc.  
c/o Corporation Service Company, Registered Agent  
1127 Broadway St NE, Ste 310  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ-SW-NWR-2022-569

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$12,400 for failing to comply with the requirements of your National Discharge Elimination System Industrial Stormwater General Permit No. 1200-Z (the Permit). Specifically, you failed to implement Tier 2 correction actions by the deadline and missed required monitoring as a result.

DEQ issued this penalty because complying with Tier 2 corrective actions is essential to reducing pollutant concentrations in industrial stormwater runoff. A Tier 2 corrective action is triggered by an exceedance of statewide pollutant benchmarks. Permit benchmarks are established to protect both aquatic life and human health. Benchmark exceedances pose a threat to waters of the state, and corrective actions are essential to preventing further risk of harm. Furthermore, monitoring is an important condition of the Permit. Monitoring may reveal the presence of harmful levels of pollutants. In addition, monitoring allows permittees and DEQ to gauge the effectiveness of stormwater controls and best management practices at reducing levels of pollutants in discharges.

DEQ appreciates your efforts to correct the violation by eventually implementing Tier 2 corrective actions. 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](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 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 Emily Knobbe at (971) 300-9770 or [emily.knobbe@deq.oregon.gov](mailto:emily.knobbe@deq.oregon.gov).

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Daria Gneckow, Northwest Region  
Heather Tugaw, DEQ  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:  
4 ORCHID ORTHOPEDIC SOLUTIONS  
5 OREGON, INC.,

6 Respondent.

) NOTICE OF CIVIL PENALTY  
) ASSESSMENT AND ORDER

) CASE NO. WQ-SW-NWR-2022-569

7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

13 1. Respondent is registered under the National Pollutant Discharge Elimination System  
14 Industrial Stormwater General Permit No. 1200-Z (the Permit) for the facility located at 13963 Fir St.  
15 in Oregon City, Oregon (the Facility).

16 2. Schedule A.12.f.iii of the Permit states that a corrective action response must include  
17 Tier 2 corrective actions to all discharge points. Schedule A.14.e states, "the permit registrant must  
18 complete corrective action associated with monitoring exceedances."

19 3. Pursuant to Schedule A.12.f.iii, Respondent submitted a Tier 2 Corrective Action  
20 Stormwater Management Plan (the Plan) on January 13, 2020, in response to an exceedance of the  
21 statewide benchmark for total zinc established in Table 4 of the Permit. The Plan proposed construction  
22 of a filtration swale to route stormwater. The deadline to implement Tier 2 corrective actions at the  
23 Facility was January 1, 2022.

24 4. As of the deadline, Respondent had not completed implementation of Tier 2 corrective  
25 actions.

26 5. Pursuant to Schedule B.7.f, Permit registrants must monitor stormwater discharge  
27 according to the frequency in Table 6, unless DEQ or agent grant a monitoring waiver or approve a

1 monitoring variance. Pursuant to Table 6, the minimum monitoring frequency is two times between  
2 January 1 and June 30 of each monitoring year.

3 6. Respondent conducted monitoring only once between January 1, 2022, and June 30,  
4 2022: on March 31, 2022.

### 6 III. CONCLUSIONS

7 1. Respondent has violated ORS 468B.025(2) and Schedule A.12.f.iii and A.14.e of the Permit  
8 by failing to implement the Tier 2 corrective actions. Specifically, Respondent failed to construct the  
9 stormwater filtration swale by the deadline, as described in Section II paragraphs 2-4 above. This is a  
10 Class I violation, according to OAR 340-012-0055(1)(r). DEQ hereby assesses a \$6,400 civil penalty for  
11 this violation.

12 2. Respondent has violated ORS 468B.025(2) and Schedule B.7.f and Table 6 of the Permit by  
13 failing to comply with the monitoring requirements of the Permit. Specifically, Respondent conducted  
14 monitoring only once between January 1, 2022, and June 30, 2022, as described in Section II paragraphs 5-  
15 6 above. The Permit requires two samples between January 1 and June 30 of each monitoring year. This is  
16 a Class I violation, according to OAR 340-012-0055(1)(o). DEQ has assessed a \$6,000 civil penalty for  
17 these violations.

### 18 IV. ORDER TO PAY CIVIL PENALTY

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

21 1. Pay a total civil penalty of \$12,400. The determinations of the civil penalties are attached as  
22 Exhibits 1-2 and are incorporated as part of this Notice.

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

25 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:  
26 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account  
27 dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US

1 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional  
2 charges.

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

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

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

21 Active duty Service members have a right to stay proceedings under the federal Service  
22 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
23 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
24 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
25 Department does not have a toll free telephone number.

26 If you fail to file a timely request for hearing, the Notice will become a final order by default  
27 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later

1 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the  
2 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates  
3 the relevant portions of its files, including information submitted by you, as the record for purposes of  
4 proving a prima facie case.

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7/13/2023  
Date

  
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 Violated ORS 468B.025(2) and Schedule A Conditions 12.f.iii and 14.e of the Permit by failing to timely implement Tier 2 corrective actions.

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).

"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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has one Class I violation and two Class II violations in case no. 2021-EEO-6569.

"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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. Tier 2 corrective actions were due January 1, 2022, and were completed on or around June 13, 2022.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. Respondent requested a deadline extension for implementing Tier 2 corrective actions that was granted. Therefore, Respondent had knowledge of the requirement to meet the deadline and failed to do so.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation. Unforeseen challenges and expenses arose while implementing the project. Respondent continued development and construction despite these challenges and significantly higher cost.

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

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (3 + 0 + 4 + 2 + -3)] + \$0 \\ &= \$4,000 + (\$400 \times 6) + \$0 \\ &= \$4,000 + \$2,400 + \$0 \\ &= \$6,400 \end{aligned}$$



EXHIBIT 2

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

VIOLATION NO. 2 Violated ORS 468B.025(2) and Schedule B of the Permit by failing to comply with monitoring requirements of the Permit.

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).

"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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has 1 Class I violation and 2 Class II violations in case no. 2021-EEO-6569.

"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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Schedule B and Table 6 of the Permit require two samples between January 1 and June 30. Between January 1, 2022, and June 30, 2022, Respondent conducted only one of the two required sampling events.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. Respondent has previously received warning letters and an EEO regarding monitoring requirements. Therefore, Respondent knew of the requirements and still failed to comply.

"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 could not be corrected.

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

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (3 + 0 + 0 + 2 + 0)] + \$0 \\ &= \$4,000 + (\$400 \times 5) + \$0 \\ &= \$4,000 + \$2,000 + \$0 \\ &= \$6,000 \end{aligned}$$



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

**CIVIL PENALTY - ORS 468.135(2)**

<b>DATE:</b>	July 13, 2023
<b>RESPONSE DATE :</b>	September 21, 2023
<b>TOTAL PENALTY:</b>	\$12,400.00

<b>Account Name:</b>	ORCHID ORTHOPEDIC SOLUTIONS, OREGON, INC. <ORCHID> <101827>		
<b>Account Type:</b>	Vendor/Organization/Company	<b>Reference Number:</b>	CPGFD2300091
<b>SubSystem ID:</b>	179618	<b>FIMS Acct. ID:</b>	4852

**Penalty Summary**

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 12,400.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 12,400.00

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>	CPGFD2300091		
<b>PAYCODE:</b>	00401 7400 10040 74001 0500 000000 00		
<b>FEE PROGRAM ID:</b>	950	<b>RESPONSE DATE:</b>	September 21,
<b>FIMS ACCT. ID:</b>	4852	<b>TOTAL PENALTY DUE:</b>	\$12400.00

**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 0095000048528CPGFD230009100012400004



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
7/12/2023	2022-569 WQ-SW-NWR-2022-569	\$12,400.00

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