



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

August 17, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4148

Alliance Pacific Northwest Builders LLC
c/o C T Corporation System
780 Commercial St. SE, Ste 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2023-547

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$23,271 for violations of the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit No. 1200-C (the Permit) issued to you for the Prose Apartments Hayden Island project located along N Tomahawk Island Drive in Portland, Oregon. Specifically, you failed to maintain effective erosion and sediment controls, failed to complete the minimum number of visual monitoring inspections, failed to revise and submit to DEQ an updated Erosion and Sediment Control Plan (ESCP) reflective of changes in the visual monitoring inspector for the project, and generated false visual monitoring reports.

DEQ issued this penalty because your failure to properly maintain erosion controls and your failure to conduct visual monitoring posed a risk of harm to water quality. The Permit requires implementation of the ESCP as the primary mechanism to reduce pollutants in stormwater discharges resulting from construction activities. In addition, the Permit requires you to visually monitor all areas of the site disturbed by construction activity to ensure that best management practices are in proper working order. By failing to properly maintain and monitor your construction site, you created a risk that stormwater discharges from the site contained sediment and other pollutants.

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.state.or.us

Via fax – 503-229-5100

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. Alternatively, you can pay the penalty by sending a check or money order to the above address.

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 Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,

A handwritten signature in black ink, appearing to read "Kieran O'Donnell". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Mike Kennedy, DEQ NWR
Accounting, DEQ

1 initial soil disturbance until permit registration is terminated. Failure to implement any of the control
2 measures or practices described in the ESCP is a permit violation.

3 7. Pursuant to Schedule A, Condition 2.1.4 of the Permit, Respondent must ensure that all
4 stormwater controls are maintained and remain effective during permit coverage and are protected from
5 activities that would reduce their effectiveness.

6 8. At the time of the inspection, the catchbasin filtration devices outside the construction
7 entrance on N. Tomahawk Island Drive were damaged and no longer effective, the erosion matting at
8 the stormwater outfall was installed incorrectly causing scour and erosion of sediment, the construction
9 entrances were not maintained, and stockpile controls were torn or blown off with long-term exposure
10 to stormwater evident.

11 9. Pursuant to Schedule A, Condition 2.3 of the Permit, Respondent must implement
12 controls to prevent the discharge of pollutants to stormwater, including building materials, building
13 products, construction wastes, trash, landscape materials and other materials.

14 10. At the time of the inspection, the waste receptacles at the Project were uncovered and
15 construction materials and trash were present on the ground throughout the site, most notably along the
16 site perimeter.

17 11. Pursuant to Schedule A, Condition 2.2.14 of the Permit, concrete washout areas must be
18 established before beginning concrete work.

19 12. At the time of the inspection, Respondent was actively generating concrete wastewater
20 without the use of a concrete washout; instead, the wastewater was being discharged directly to the
21 ground.

22 13. Pursuant to Schedule A, Condition 4.9 of the Permit, if the certified visual monitoring
23 inspector for the Project changes, Respondent must revise its ESCP and submit the revised ESCP to
24 DEQ within ten calendar days of the revision.

25 14. During the inspection, Respondent informed DEQ that the visual monitoring inspector
26 listed in the ESCP for the Project—Ian Moore—was never certified and had never acted as the visual
27 monitoring inspector for the Project, rather Wyatt Houghtby had been conducting the inspections.

1 15. October 29, 2022, was Wyatt Houghtby's last day working on the Project.

2 16. A revised ESCP reflecting the change in the certified visual monitoring inspector was
3 not submitted to DEQ within ten calendar days of when the change occurred.

4 17. Pursuant to Schedule B, Condition 6.2 of the Permit, a Certified Erosion and Sediment
5 Control or Storm Water Quality Inspector must complete and document visual monitoring inspections:
6 a) on the date construction activities begin; b) once every 14 calendar days; and c) within 24 hours of
7 any storm event, including snowmelt that results in discharge from the site. In the Permit, DEQ adopted
8 EPA's definition of "storm event," which pursuant to 40 C.F.R. § 122.21(g)(7)(ii) means a rainfall
9 event with greater than 0.1 inches of rainfall and at least 72 hours from the previously measurable—
10 greater than 0.1 inch rainfall—storm event. Where a storm event continues for multiple days, an
11 inspection must be conducted within 24 hours of the first day of the storm and within 24 hours after the
12 end of the storm.

13 18. Pursuant to Schedule B, Section 6.4 of the Permit, visual monitoring must include an
14 evaluation of all elements of the ESCP including identification of all stormwater discharge locations at
15 the site. Schedule B, Section 6.5 of the Permit sets forth the required elements of the visual monitoring
16 reports.

17 19. Respondent did not perform visual monitoring when construction activities commenced
18 on March 25, 2022.

19 20. Between the date construction activities started on March 25, 2022, and the date of
20 DEQ's inspection on April 19, 2023, the following storm events occurred:

- 21 a. April 1–5, 2022;
- 22 b. April 8–22, 2022;
- 23 c. April 25–May 2, 2022;
- 24 d. May 5–9, 2022;
- 25 e. May 12–15, 2022;
- 26 f. May 18–19, 2022;
- 27 g. May 24–30, 2022;

- 1 h. June 3–5, 2022;
- 2 i. June 9–14, 2022;
- 3 j. June 17–18, 2022;
- 4 k. July 5–6, 2022;
- 5 l. September 12, 2022;
- 6 m. September 28–29, 2022;
- 7 n. October 21–November 7, 2022;
- 8 o. November 11, 2022;
- 9 p. November 14, 2022;
- 10 q. November 22–December 5, 2022;
- 11 r. December 8–11, 2022;
- 12 s. December 16, 2022;
- 13 t. December 18–20, 2022;
- 14 u. December 24, 2022–January 18, 2023;
- 15 v. January 21, 2023;
- 16 w. January 27–28, 2023;
- 17 x. February 3–10, 2023;
- 18 y. February 13–14, 2023;
- 19 z. February 18, 2023;
- 20 aa. February 21–March 15, 2023;
- 21 bb. March 19–20, 2023;
- 22 cc. March 23–April 12, 2023;
- 23 dd. April 16–24, 2023.

24 21. Respondent should have conducted visual inspections on the following days when it
25 would have been 14 days since the last inspection: July 2, 2022; July 20, 2022; August 3, 2022; August
26 17, 2022; August 31, 2022; September 26, 2022; and October 13, 2022.

27 22. During the inspection, Respondent produced 48 visual monitoring reports.

1 23. Of the 48 visual monitoring reports Respondent produced, 17 reports purport to cover
2 visual monitoring inspections performed by Mr. Houghtby after October 29, 2022—the date when Mr.
3 Houghtby ceased working on the Project—and appear to be duplicated from the report initially created
4 for the “10/23–10/29” time period.

5 24. Pursuant to OAR 340-045-0015(5)(d), permittees must comply with DEQ’s
6 requirements for recording, reporting, monitoring, entry, inspection and sampling and make no false
7 statement, representations, or certifications in any form, notice, report, or document required.

8 25. Pursuant to Schedule F, Condition A1 of the Permit, the permittee must comply with all
9 conditions of the Permit. Failure to comply with any permit condition is a violation of ORS 468B.025.

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

12 III. CONCLUSIONS

13 1. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by failing to
14 substantially implement the erosion and sediment controls required by the Permit and the approved
15 ESCP. Specifically, Respondent failed to maintain effective erosion and sediment controls, control
16 potential pollutants, and establish a concrete washout as described in Paragraphs 8, 10, and 12 above.
17 This is a Class I violation pursuant to OAR 340-012-0055(1)(r). DEQ hereby assesses a \$5,600 civil
18 penalty for this violation.

19 2. Respondent violated ORS 468B.025(2) and Schedule A, Conditions 4.8 and 4.9 of the
20 Permit by failing to revise the project’s ESCP to reflect a change in the visual inspector and to submit
21 the revised ESCP to DEQ. This is a Class II violation pursuant to OAR 340-012-0055(2)(b). DEQ has
22 chosen not to assess a civil penalty for this violation.

23 3. Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to conduct
24 the minimum number of visual monitoring inspections required under the Permit. Specifically, Respondent
25 failed to conduct 31 visual monitoring inspections. These are Class I violations pursuant to OAR 340-012-
26 0055(1)(o). DEQ has assessed a \$9,271 civil penalty for these violations.

27 ////

1 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
2 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge
3 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
4 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
5 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
6 you may represent yourself. If you are a corporation, partnership, limited liability company,
7 unincorporated association, trust or government body, you must be represented by an attorney or a duly
8 authorized representative, as set forth in OAR 137-003-0555.

9 Active duty Service members have a right to stay proceedings under the federal Service
10 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
11 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
12 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
13 Department does not have a toll free telephone number.

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

20
21
22
23
24 Date

8/17/2023



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: Respondent violated ORS 468B.025(2) and Schedule A of the Permit by failing to substantially implement the ESCP for the project.

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 project that is 6.21 acres in size.

"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 0 according to OAR 340-012-0145(2) because the Respondent has no prior enforcement history.

"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 is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).

"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. Schedule A of the Permit clearly requires Respondent to maintain effective erosion and sediment controls, to prevent stormwater exposure to pollutants, and to install a concrete washout prior to starting construction.

"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 available to make a determination 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 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 pursuant to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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 \times \$4,000) \times (0 + 0 + 0 + 4 + 0)] + \0
= $\$4,000 + [\$400 \times 4] + \$0$
= $\$4,000 + \$1,600 + \$0$
= $\$5,600$

EXHIBIT 2

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

VIOLATION: Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to complete the minimum number of visual inspections.

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 project that is 6.21 acres in size.

"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 0 according to OAR 340-012-0145(2) because the Respondent has no prior enforcement history.

"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. Respondent failed to complete 31 visual inspections.

"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. Schedule B of the Permit clearly sets forth the inspection frequency required by 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 the violation cannot 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 \$2,071. By failing to complete 31 visual inspections, Respondent avoided spending approximately \$3,100 (31 missed inspections x \$100 per missed event). 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 (0 + 0 + 4 + 4 + 0)] + \$2,071
= \$4,000 + [\$400 x 8] + \$2,071
= \$4,000 + \$3,200 + \$2,071
= \$9,271

EXHIBIT 3

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

- VIOLATION: Respondent violated OAR 340-045-0015(5)(d) by making false statements and representations on 17 visual monitoring reports.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(b).
- 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 project that is 6.21 acres in size.
- "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 0 according to OAR 340-012-0145(2) because the Respondent has no prior enforcement history.
- "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 3 according to OAR 340-012-0145(4)(c) because there were between seven and 28 occurrences of the violation. Respondent created 17 false visual monitoring reports.
- "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. By generating visual monitoring reports alleged to be prepared by an inspector that was no longer working at the job site, Respondent consciously disregarded a substantial and unjustifiable risk that DEQ would be misled by the reports. Respondent's conduct in generating the false reports constituted a gross deviation from the standard of care a reasonable person would have observed.
- "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 available to make a determination 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 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 pursuant to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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 (0 + 0 + 3 + 8 + 0)] + \$0
= \$4,000 + [\$400 x 11] + \$0
= \$4,000 + \$4,400 + \$0
= \$8,400

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:	August 17, 2023
RESPONSE DATE :	October 26, 2023
TOTAL PENALTY:	\$23,271.00

Account Name:	PROSE APARTMENTS HAYDEN ISLAND		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400007
SubSystem ID:	180004	FIMS Acct. ID:	6620

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 23,271.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 23,271.00

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.	CPGFD2400007		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	October 26, 2023
FIMS ACCT. ID:	6620	TOTAL PENALTY DUE:	\$23271.00

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 0095000066200CPGFD240000700023271007



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
8/16/2023	2023-547 WQ-SW-NWR-2023-547	\$23,271.00

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 _____