



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 15, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4124

Nehalem Bay Ready Mix Mohler Sand and Gravel
c/o Brett Smith
20805 Foss Rd
Nehalem, OR 97131

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-SW-NWR-2023-542

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$28,216 for discharging turbid stormwater to Anderson Creek and for violations of the National Pollutant Discharge Elimination System Industrial Stormwater General Permit No. 1200-A (the Permit) issued for Nehalem Bay Ready Mix Mohler Sand and Gravel's facility located in Nehalem, Oregon (the Facility), known as the Old County Pit (DEQ File No. 1117222, DOGAMI ID 29-0024). Specifically, DEQ cited you for failing to keep current and implement your Stormwater Pollution Control Plan (SWPCP). In addition, DEQ cited you, without penalty, for failing to properly train your employees in stormwater management.

DEQ issued this penalty because the failure to comply with the Permit poses a risk of harm to the quality of state waters. Permit registrants are required to maintain a current SWPCP that describes the site-specific best management practices the registrant will employ to reduce stormwater pollution. A SWPCP allows both DEQ and permit registrants to evaluate and control the levels of pollution that enter state waters. By failing to implement the Facility's SWPCP, keep it current, and revise it as needed to reflect current operations of the Facility, you impaired these functions and posed a risk of harm to state water quality.

Included in Section IV of the enclosed Notice is an order requiring you to submit for approval a revised SWPCP that complies with the Permit requirements and accurately reflects current activities at the Facility.

\$13,016 of the civil penalty represents the economic benefit you gained by failing to formulate a SWPCP that meets the Permit requirements, failing to keep the Facility's SWPCP current, and by failing to substantially implement the SWPCP. If you take corrective action, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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 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 Courtney Brown at (503) 229-6839.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Lisa Reinhart, lisa.reinhart@dogami.oregon.gov
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
NEHALEM BAY READY MIX MOHLER) NOTICE OF CIVIL PENALTY
SAND AND GRAVEL) ASSESSMENT AND ORDER
Respondent.) CASE NO. WQ-SW-NWR-2023-542

I. AUTHORITY

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

II. FINDINGS OF FACT

1. On June 28, 2013, Respondent was assigned coverage under the National Pollutant Discharge Elimination System Stormwater and Mine Dewatering Discharge General Permit No. 1200-A (the Permit) for stormwater discharges from the “Old County Pit” located at MP 2, North Fork Road, in Nehalem Oregon (DOGAMI Permit ID 29-0024, DEQ File No. 111722) (the Facility).

2. The Permit expired on December 3, 2017. Respondent’s coverage under the Permit was administratively extended on December 11, 2017. The Permit was in effect at all material times.

Failure to keep current and implement the SWPCP

3. Schedule A, Condition 2.a of the Permit requires permit registrants to select, design, install, implement, and maintain control measures to meet the narrative technology based effluent limits in Schedule A.1 of the Permit and describe those measures in a Stormwater Pollution Control Plan (SWPCP).

4. Schedule A, Condition 7.d of the Permit requires that permit registrants implement the SWPCP and any revisions to the SWPCP. Failure to implement any of the control measures or practices described in the SWPCP is a violation of the permit.

5. Schedule A, Condition 7.e of the Permit requires that the SWPCP must be kept current and updated as necessary to reflect any changes to the site.

1 6. Schedule A, Condition 8.b.ii requires that the SWPCP contain a site map that includes:
2 (1) drainage patterns, (2) drainage and discharge structures, (3) an outline of the drainage area for each
3 stormwater outfall . . . (7) existing structural control measures for minimizing pollutants in stormwater
4 runoff . . . (12) location of springs, wetlands, and other surface waterbodies both on site and adjacent to
5 the site . . . (15) location of monitoring points, and (16) location of spill prevention and cleanup
6 materials.

7 7. Schedule A, Condition 8.b.vi of the Permit requires that the SWPCP contain an
8 estimation of the maximum amount of surface area that will be disturbed or stripped of vegetation and
9 could contribute to stormwater discharges relative to the total area drained by each stormwater or mine
10 dewatering outfall.

11 8. Schedule A, Condition 8.b.vii of the Permit requires that the SWPCP identify any
12 receiving waters for stormwater and mine dewatering drainage.

13 9. Schedule A, Condition 8.b.viii of the Permit requires that the SWPCP identify the
14 Facility's discharge outfalls and points where monitoring will occur.

15 10. Schedule A, Condition 8.c.i of the Permit requires that the SWPCP contain procedures
16 for preventing and responding to spills and clean-up and notifications procedures. The location of the
17 clean-up materials must either be shown on the site drawing or indicated in the text of the SWPCP.

18 11. Schedule A, Condition 8.c.ii requires that the SWPCP contain preventative maintenance
19 procedures for conducting inspections, maintenance, and repairs to prevent leaks, spills, and other
20 releases and a schedule for regular pickup and disposal of waste materials, and inspections for leaks and
21 conditions of drums, tanks and containers.

22 12. Schedule A, Condition 1.j requires that permit registrants develop and maintain an
23 employee orientation and education program to inform personnel on the components and goals of the
24 SWPCP. The registrant must train all employees who work in areas where industrial materials or
25 activities are exposed to stormwater or mine dewatering water, or who are responsible for
26 implementing activities necessary to meet the conditions of this Permit.

27 13. Respondent's SWPCP has not been revised since March 13, 2013.

1 14. Respondent employs ditches with check dams and settling ponds at the Facility as the
2 only effective erosion and sediment control measures despite the fact that there are more effective and
3 economically practical options available considering best industry practices.

4 15. On April 19, 2023, the Department of Geology and Mineral Industries performed an
5 inspection of the Facility. At the time of the inspection, the Facility's SWPCP did not reflect site
6 conditions or activities occurring at the Facility. Specifically:

- 7 a. The SWPCP does not identify all outfall points. The SWPCP identifies one outfall point,
8 but the Facility has two direct outfall points;
- 9 b. The SWPCP states that the Facility employs oil booms and absorbent pads to minimize
10 oil and grease contamination of stormwater, but no such control measures are present on
11 site;
- 12 c. The SWPCP states that oil and grease are not stored on site but an empty grease tube was
13 found on site, exposed to stormwater;
- 14 d. The SWPCP states that the Facility's spill prevention and response cleanup materials are
15 stored in the "equipment building" but no such building or cleanup materials are present
16 on the site;
- 17 e. The SWPCP states that rock check dams are constructed at +/- 50' intervals in the
18 drainage ditch near the entrance of the Facility, but no such dams have been installed;
- 19 f. The SWPCP site map inaccurately states that the Facility's two settling ponds have no
20 outlets;
- 21 g. The SWPCP states that all employees are educated on the location of stormwater control
22 measures and discharge points, but Respondent's employees did not know where the
23 Facility's discharge points were located;
- 24 h. The SWPCP site map does not contain:
 - 25 i. An accurate depiction of the Facility's drainage patterns;
 - 26 ii. All of the Facility's drainage and discharge structures;
 - 27 iii. An outline of the drainage area for each stormwater outfall;

- iv. The location of all springs, wetlands and other surface waterbodies both on site and adjacent to the site;
- v. The location of all monitoring points;
- vi. The location of the Facility's spill prevention and cleanup materials.

16. Schedule A, Condition 9.e of the Permit require the permit registrant to submit a revised SWPCP following a request from DEQ or an agent. The permit registrant must submit the revisions within 30 days of the request unless a later date is approved by DEQ or an agent.

17. On June 8, 2023, the Oregon Department of Geology and Mineral Studies (DOGAMI) requested that Respondent submit a revised SWPCP to DOGAMI for review and approval.

18. On July 25, 2023, Respondent asked and was approved for a 30-day extension to submit a revised SWPCP.

Failure to adequately train employees on stormwater management

19. Schedule A, Condition 1(j) of the Permit requires the permit registrant to develop and maintain an employee orientation and education program to inform personnel on the components and goals of the SWPCP. The registrant must train all employees who work in areas where industrial materials or activities are exposed to stormwater or mine dewatering water, or who are responsible for implementing activities necessary to meet the conditions of the permit.

20. At the time of the April 19, 2023 inspection, Respondent's employees were not adequately trained, as they were unaware of the discharge or monitoring locations.

Causing pollution to Anderson Creek

21. Wetlands, springs, streams, and other bodies of surface and underground water that combine or effect a junction with a natural surface or underground waters are considered "waters of the state" according to ORS 468B.005(10).

22. On April 19, 2023, there was visibly turbid stormwater discharging from the paved road at the entrance of the Facility to a culvert that drains to an intermittent stream that discharges to Anderson Creek (outfall 001).

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1 23. On April 19, 2023, there was visibly turbid stormwater discharging from the Facility’s
2 haul road southwards into an unnamed intermittent stream (outfall 002). The stream is listed on the
3 National Hydrography Dataset (NHD).

4 24. Anderson Creek and the unnamed intermittent stream are “waters of the state” pursuant
5 to ORS 468B.005(10).

6 III. CONCLUSIONS

7 1. On or about April 19, 2023, through the present, Respondent has violated ORS 468B.025(2)
8 and Schedule A, Condition 2.a, Condition 7 and Condition 8.b of the Permit by failing to keep current
9 and implement a SWPCP that complies with the Permit requirements, as described in Section II,
10 paragraphs 3 through 18 above. Specifically, Respondent has failed to select, design, install, implement
11 and maintain control measures to meet the narrative technology based effluent limits in Schedule A.1 of
12 the Permit, failed to implement the control measures described in its SWPCP, failed to identify all
13 outfall and monitoring points, failed to update the plan to reflect changes at the Facility and failed to
14 provide a complete site map. This is a Class I violation according to OAR 340-012-0055(1)(r). DEQ
15 hereby assesses a \$21,816 civil penalty for this violation.

16 2. Respondent has violated ORS 468B.025(2) and Schedule A, Condition 1.j of the Permit by
17 failing to develop and maintain an employee orientation and education program to inform personnel on
18 the components and goals of the SWPCP, as described in section II, paragraphs 19 and 20 above.
19 Specifically, on April 19, 2023, during the inspection, Respondent’s employees did not know where the
20 Facility’s outfall points were located or why the water observed at the Facility was turbid. This is a
21 Class II violation according to OAR 340-012-053(2). DEQ has not assessed a civil penalty for this
22 violation.

23 3. On April 19, 2023, Respondent violated ORS 468B.025(1)(a) by causing pollution to waters of
24 the state. Specifically, respondent discharged visibly turbid stormwater from DP 001 into Anderson Creek
25 and from DP 002 into an unnamed intermittent stream as described in Section II, paragraphs 21 through 24
26 above. Anderson creek and the unnamed intermittent stream are considered “waters of the state” according
27 to ORS 468B.005(10), as they are bodies of surface water which combine or effect a junction with natural
surface waters. Visibly turbid stormwater causes “pollution” as defined by ORS 468B.005(5) because it

1 alters the physical, chemical, and biological properties of waters in a manner that tends to render waters
2 harmful to aquatic life. This is a class I violation according to OAR 340-012-0055(1)(a). DEQ hereby
3 assess a \$6,400 civil penalty for this violation.

4 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

7 1. Pay a total civil penalty of \$28,216. The determination of the civil penalties are attached as
8 Exhibits No.1 and No.2 and are incorporated as part of this Notice.

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

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

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

19 2. Within 30 days of this order becoming final, submit for approval a revised SWPCP that
20 complies with the Permit requirements, accurately reflects current activities at the Facility, and is
21 stamped by an engineer. Specifically, the SWPCP must include the rational for the selected control
22 measures, must identify all locations where stormwater from the Facility is discharged to waters of the
23 state, and must identify a timeline for implementation of the new control measures and installation prior
24 to the next wet season. Please submit an electronic draft of the revised SWPCP to: the Department of
25 Geology and Mineral Industries, Lisa Reinhart, lisa.reinhart@dogami.oregon.gov for review prior to
26 approval.

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

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

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

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8/15/2023
Date

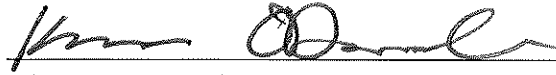

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT NO. 1

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

- VIOLATION 1: Respondent violated ORS 468B.025(2) and Schedule A, Condition 2.a, Condition 7 and Condition 8.b of the Permit by failing to keep current and substantially implement a SWPCP that complies with the Permit requirements.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-055(1)(r).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specific 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-A 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 0 according to OAR 340-012-0145(2)(d)(A)(i), because Respondent was cited for a class I violation in EEO WQ-SW-NWR-2019-191, but the value is reduced by -2 because all PSAs were issued more than three years before the date of the current violation.
- "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 Respondent has no history of correcting PSAs.
- "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. Specifically, the Facility's SWPCP has been out of compliance with no evidence of substantial implementation since at least April 19, 2023, and a revised SWPCP has not been received to date.
- "M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(c) because Respondent's conduct was reckless. According to OAR 340-012-0030(20), reckless means the Respondent consciously disregarded a substantial and unjustifiable risk that a result would occur or that a circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. As a permit registrant, Respondent is aware that the selected control measures and practices in the Facility's SWPCP must meet Permit requirements, that said measures and practices must be implemented and maintained, and that the SWPCP must be kept current to reflect the activities occurring at Facility. The Facility's SWPCP identifies various control measures purportedly implemented at the Facility, but many of the control measures have

either not been implemented or are inadequate to meet the Permit requirements as described in Section II of the attached Notice. Additionally, the Facility's SWPCP is missing required elements, the SWPCP differs significantly from the activities occurring at the Facility, the SWPCP has not been revised since March 13, 2013, and according to Respondent's records there has been no maintenance of the Facility's containment systems for over a year prior to the date of the violation. Thus, by disregarding the Permit requirements during the formulation and implementation of the Facility's SWPCP, Respondent grossly deviated from a standard of reasonable care

"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 Respondent's noncompliance, as provided in OAR 340-012-0150. 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 \$13,016. This is the approximate cost Respondent avoided by not maintaining a SWPCP that meets the Permit requirements and by not maintaining and implementing the control measures listed under the Facility's SWPCP. 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 + 8 + 0)] + \$13,016
= \$4,000 + (\$400 x 12) + \$13,016
= \$4,000 + \$4,800 + \$13,016
= \$21,816

EXHIBIT NO. 2

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

- VIOLATION 3: Respondent violated ORS 468B.025(1)(a) on April 19, 2023 by causing pollution to waters of the state by discharging turbid stormwater from the Facility into Anderson Creek and an unnamed intermittent stream.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-055(1)(a).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specific 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-A 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 0 according to OAR 340-012-0145(2)(d)(A)(i), because Respondent was cited for a class I violation in EEO WQ-SW-NWR-2019-191, but the value is reduced by -2 because all PSAs were issued more than three years before the date of the current violation.
- "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 Respondent has no prior history in correcting PSAs.
- "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 were more than one but less than seven occurrences of the violation. Specifically, on April 19, 2023, Respondent discharged turbid water from outfall 001 and outfall 002 into Anderson Creek and an unnamed intermittent stream as described in section II of the attached Notice.
- "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. 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. As a permit registrant, Respondent is aware of the requirements to implement erosion and sediment controls to prevent and mitigate the discharge of turbid stormwater from the Facility. Respondent relies on ditches with check dams and settling ponds as the only effective erosion and sediment controls despite the fact that there are more economically practicable and achievable control options available considering best industry practices. Additionally, Respondent has failed to implement various control measures identified in its SWPCP as described in section II the attached Notice.

practices. Additionally, Respondent has failed to implement various control measures identified in its SWPCP as described in section II the attached Notice.

"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 Respondent's noncompliance, as provided in OAR 340-012-0150. 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 the economic benefit the Respondent gained from the violation is speculative.

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

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

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 15, 2023
RESPONSE DATE :	October 24, 2023
TOTAL PENALTY:	\$28,216.00

Account Name:	NEHALEM BAY READY MIX MOHLER SAND & GRAVEL, LLC <NEHALEM BAY READY MIX - MOHLER SAND & GRAVEL> <105354>		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400004
SubSystem ID:	192334	FIMS Acct. ID:	2839

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 28,216.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 28,216.00

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.:	CPGFD2400004		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	050	RESPONSE DATE:	October 24, 2023
FIMS ACCT. ID:	2839	TOTAL PENALTY DUE:	\$28216.00

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 0095000028390(CPGFD)240000400028216004



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
8/14/2023	2023-542 WQ-SW-NWR-2023-542	\$28,216.00

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 _____