



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

October 5, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6011 25

Julie Worsley
Oregon Department of Transportation
3500 NW Stewart Parkway
Roseburg, OR 97470

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/401-WR-2023-567

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the Oregon Department of Transportation (ODOT) a civil penalty of \$3,450 for placing biologically harmful materials and construction debris into the South Umpqua River, a water of the state, in violation of ODOT's 401 Water Quality Certification (401 WQC). Specifically, ODOT's contractor allowed concrete dust to become airborne and settle on the surface of the South Umpqua River during completion of the Melrose Road: Conn-Ford Bridge Replacement Project. Pursuant to Condition 1 of ODOT's 401 WQC for the Project, ODOT is responsible for the work of its contractors and subcontractors.

DEQ issued this penalty because the discharge of concrete dust to waters of the state can result in a wide variety of negative impacts to aquatic organisms. The South Umpqua River is classified by the State of Oregon as Essential Salmonid Habitat and is listed as impaired for aesthetic quality and fish and aquatic life.

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 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: Grace Goldrich-Middaugh, DEQ WR
Joe Dewey, ODOT (via email to joseph.j.dewey@odot.oregon.gov)
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:

OREGON DEPARTMENT OF
TRANSPORTATION

Respondent.

NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER

CASE NO. WQ/401-WR-2023-567

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 Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 045.

II. FINDINGS OF FACT

1. On December 2, 2022, Respondent was issued a 401 Water Quality Certification (401 WQC) approval for the Melrose Road: Conn-Ford Bridge Replacement Project under Project #2020-00104-2 (the Project).

2. The Project is located off Garden Valley Blvd, approximately 3/4 mile west of Roseburg, Oregon.

3. The Project involved the removal of an existing bridge—including the removal of two concrete bents in the water—and the construction of a new bridge across the South Umpqua River.

4. The South Umpqua River is a water of the state, pursuant to ORS 468B.005(10).

5. Work on the Project was completed by a contractor hired by Respondent. Pursuant to Condition 1 of the 401 WQC, Respondent is responsible for the work of its contractors and sub-contractors, as well as any other entity that performs work related to the 401 WQC.

6. Pursuant to Condition 9 of its 401 WQC, Respondent “is prohibited from placing biologically harmful materials and construction debris where they could enter waters of the state, including wetlands This includes, but is not limited to: petroleum products; chemicals; cement

1 cured less than 24 hours; welding slag and grindings; concrete saw cutting by-products; sandblasted
2 materials; chipped paint; tires; wire; steel posts; asphalt; and waste concrete.”

3 7. On July 12, 2023, during the demolition of an existing in-water pier, concrete dust
4 became airborne and settled on the surface of the South Umpqua River approximately 200-300 feet
5 upstream of the Project. The impacted area of the river was approximately 200 feet long and 8-9 feet
6 wide.

7 8. Upon discovery of the concrete dust on the surface of the river, Respondent stopped
8 work, wetted the concrete in the work area and added misters to the hammers to prevent additional dust
9 from being released.

10 9. Pursuant to Condition 11 of the 401 WQC, within 24-hours of any discharge of
11 deleterious materials into state waters, Respondent must report the discharge to the Oregon Emergency
12 Response Service (OERS).

13 10. Respondent did not report the discharge described in Paragraph 8 above to OERS.

14 11. Pursuant to Condition 7 of the 401 WQC, “[f]ailure of any person or entity to comply
15 with [the] Order may result in the issuance of civil penalties or other actions, whether administrative or
16 judicial, to enforce its terms.”

17 III. CONCLUSIONS

18 1. Respondent violated Condition 9 of the 401 WQC by placing biologically harmful materials
19 and construction debris in a water of the state, as described in Section II, Paragraph 7 above. This is a
20 Class I violation pursuant to OAR 340-012-0053(1)(a). DEQ hereby assesses a \$3,450 civil penalty for
21 this violation.

22 2. Respondent violated Condition 11 of the WQC by failing to submit a report to OERS within
23 24-hours of the incident described in Section II, Paragraph 8 above. This is a Class I violation pursuant
24 to OAR 340-012-0053(1)(a). DEQ has chosen not to assess a civil penalty for this 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 Pay a civil penalty of \$3,450. The determination of the civil penalty is attached as Exhibit No. 1
2 and is incorporated as part of this Notice. If you do not file a request for hearing as set forth in Section V
3 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.

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

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

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15 10/4/2023
16 Date


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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 Condition 9 of its 401 WQC by placing biologically harmful materials and construction debris in the South Umpqua River, a water of the state.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).
- 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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(H) because the Project was authorized under a Nationwide Permit, which is considered a Tier I dredge and fill project under OAR 340-048-0055(3)(a).
- "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 10 according to OAR 340-012-0145(2) because in the prior ten years Respondent has had prior significant actions consisting of nine or more Class I equivalent violations stemming from Case Nos. WQ/MER-2016-144, WQ/401-NWR-2020-141, WQ/401-NWR-2021-504, and WQ/SW-NWR-2022-595.
- "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 on July 12, 2023.
- "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. The 401 Certification clearly prohibits Respondent from discharging deleterious materials into waters of the state. By failing to take steps to prevent concrete dust from becoming airborne and settling on the

surface of the river, Respondent failed to take reasonable care to avoid a foreseeable risk that a violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e) because the Respondent made reasonable efforts to ensure the violation would not be repeated by wetting the work area and installing misters on the hammers.

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

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (10 + 0 + 0 + 4 + -1)] + \$0 \\ &= \$1,500 + (\$150 \times 13) + \$0 \\ &= \$1,500 + \$1,950 + \$0 \\ &= \$3,450 \end{aligned}$$

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:	October 5, 2023
RESPONSE DATE :	December 14, 2023
TOTAL PENALTY:	\$3,450.00

Account Name:	NWP #6 - MELROSE ROAD: CONN FORD BRIDGE REPLACEMENT (GEOTECHNICAL DRILLING)		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400010
SubSystem ID:	185068	FIMS Acct. ID:	13965

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 3,450.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 3,450.00

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.	CPGFD2400010		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	December 14, 2023
FIMS ACCT. ID:	13965	TOTAL PENALTY DUE:	\$3450.00

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 0095000139653CPGFD240001000003450005



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
10/4/2023	2023-567 WQ-401-WR-2023-567	\$3,450.00

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 _____