



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 26, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6011 87

TERRAFIRMA Foundation Repair, Inc.
c/o Ryan Beckley
2270 NW Aviation Dr., Ste 4
Roseburg, OR 97470

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/NP-WR-2023-597

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$27,600 for water quality violations related to your work on the Winchester Dam Repair Project. Specifically, you caused pollution to waters of the state by discharging uncured concrete into the North Umpqua River and by placing mats made of heavy truck tires into the North Umpqua River.

DEQ issued this penalty because discharges of uncured concrete can cause rapid increases in the pH level of the surrounding water, which poses a significant risk of harm to aquatic species. Tires leach toxic chemicals, microplastics, and heavy metals that are known to be harmful to aquatic life, particularly coho salmon.

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.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.

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,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Chance Plunk, DEQ 401 Program
Accounting, DEQ

1 4. To access the work area below the dam, starting on or about August 8, 2023,
2 Respondent constructed temporary access roads to the work area and a temporary work platform using
3 mats constructed of heavy truck tire casings bound with reinforcing cables every 12”.

4 5. Tires leach toxic chemicals, microplastics, and heavy metals that are known to be
5 harmful to aquatic life, particularly coho salmon.

6 6. On August 15, 2023, DEQ notified Respondent via email that the tire mats “must be
7 removed from areas where they currently are or could enter waters.”

8 7. Respondent did not remove the tire mats from the water until September 3, 2023. During
9 removal of the mats, tire pieces broke from the mats and fell into the river.

10 8. During the repair work, Respondent failed to fully dewater what was meant to be an
11 isolation area between a cofferdam and the dam face. As a result, water continually seeped and flowed
12 under the dam and through the in-water work area.

13 9. On at least August 13, 2023, and August 22, 2023, water flowed under the base of the
14 dam over un-cured concrete that Respondent had poured onto the sill at the base of the dam. Water
15 within the in-water work area was visibly contaminated with concrete.

16 10. On August 21, 2023, Respondent pumped concrete contaminated water from the in-
17 water work area at the base of the dam into a makeshift settling pond constructed of super sacks and
18 plastic sheeting on the north bank of the river below the Ordinary High Water (OHW) line. Concrete
19 contaminated water flowed from the makeshift settling pond onto the exposed rocks below the OHW
20 line and into the flowing river. Respondent did not contain the flow of concrete contaminated water
21 from the settling pond into the river.

22 11. When water comes into contact with uncured concrete, the concrete can cause rapid
23 increases in the pH level of the surrounding water posing a significant risk of harm to aquatic species.

24 12. Pursuant to ORS 468B.025(1)(a), no person shall “place or cause to be placed any
25 wastes in a location where such wastes are likely to escape or be carried into the waters of the state by
26 any means.”

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1 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account
2 dashboard. Enter the reference number and Account ID included on the attached payment slip. Note: US
3 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional
4 charges.

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

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

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

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

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

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10 10/26/2023
11 Date

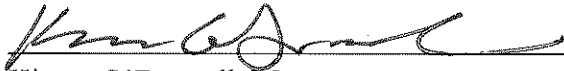

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Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION: Respondent violated ORS 468B.025(1)(a) by causing pollution to the North Umpqua River by placing tire mats in the river.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(D) because Respondent violated ORS 468B.025(1)(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 0 according to OAR 340-012-0145(2) because the Respondent has no PSAs.

"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. Each day the tire mats remained in the river is a separate day of violation. The tire mats were present in the river from at least August 8, 2023, through September 3, 2023—a total of 29 days.

"M" is the mental state of the Respondent and receives a value of 10 according to OAR 340-012-0145(5)(e) because Respondent's conduct was flagrant. DEQ informed Respondent via email on August 15, 2023, that tires must be removed from areas where they either were in or could enter waters of the state. By leaving the tire mats in place after being explicitly told use of the mats was not approved, Respondent had actual knowledge that the conduct was unlawful.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation even after being explicitly told to do so.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 4 + 10 + 2)] + \$0 \\ &= \$6,000 + (\$600 \times 16) + \$0 \\ &= \$6,000 + \$9,600 + \$0 \\ &= \$15,600 \end{aligned}$$

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(1)(a) by causing pollution to the North Umpqua by discharging concrete into river.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(D) because Respondent violated ORS 468B.025(1)(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 0 according to OAR 340-012-0145(2) because the Respondent has no PSAs.

"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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Concrete was discharged to the river on at least three days: August 13, 21, and 22, 2023.

"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 allowing concrete contaminated water to discharge from the makeshift settling ponds, Respondent consciously disregarded a substantial and unjustifiable risk that a violation would occur.

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

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 2 + 8 + 0)] + \$0 \\ &= \$6,000 + (\$600 \times 10) + \$0 \\ &= \$6,000 + \$6,000 + \$0 \\ &= \$12,000 \end{aligned}$$

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 26, 2023
RESPONSE DATE :	January 4, 2024
TOTAL PENALTY:	\$27,600.00

Account Name:	TERRAFIRMA FOUNDATIONS SOUTHERN OREGON HEADQUARTERS		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400017
SubSystem ID:	192524	FIMS Acct. ID:	14216

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 27,600.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 27,600.00

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.	CPGFD2400017		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	January 4, 2024
FIMS ACCT. ID:	14216	TOTAL PENALTY DUE:	\$27600.00

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 0095000142160(CPGFD)240001700027600008



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
10/25/2023	2023-597 WQ-NP-WR-2023-597	\$27,600.00

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 _____