

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 30, 2025

CERTIFIED MAIL: 9589 0710 5270 3236 6720 48

Hubert Willer
4233 SE 182nd Ave
Gresham, OR 97030

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-NP-ER-2025-528

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$6,300 for causing pollution to Willow Creek and for constructing a road that violated a water quality standard.

DEQ issued this penalty because the crossing you constructed in Willow Creek altered the characteristics of the creek, which is harmful to aquatic life. The erosion caused by the changes to the creek released sediment into the creek, which poses a risk of harm to beneficial uses of state waters, including the use of those waters as habitat for aquatic organisms. The discharge of sediment can degrade water quality and harm aquatic life by covering up food sources and smothering invertebrate organisms living in wetlands and creeks. By improperly constructing your crossing, you caused pollution to Willow Creek and impacted water quality.

Included in Section IV is an order requiring you to remove all remaining structure materials within 30 days of this Order becoming final.

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, or

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.

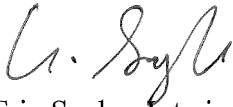
The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

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 <https://www.oregon.gov/deq/Regulations/Pages/Administrative-Rules.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.

Sincerely,



Erin Saylor, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Amber Clark, Bend
Smita Mehta, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
HUBERT WILLER,) ASSESSMENT AND ORDER
An individual,)
Respondent.) CASE NO. WQ-NP-ER-2025-528

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, 041 and 045.

II. FINDINGS OF FACT

1. Respondent owns the property located at 1N 23E 22 TL 4600, 66062 OR-74 in Ione, Oregon (the Property).
2. Willow Creek, a water of the state, runs along the southern border of the Property.
3. On December 6, 2024, the Department of State Lands (DSL) inspected the Property. At the time of the inspection:
 - a. A crossing with six culvert pipes had been installed in Willow Creek;
 - b. Portions of the crossing were installed below the high water line; and
 - c. The observed water line upstream of the crossing was significantly higher than the high water line due to perched culvert installation.
4. On January 22, 2025, DEQ inspected the Property. At the time of the inspection:
 - a. The crossing was dismantled;
 - b. There were large pieces of concrete and metal in Willow Creek; and
 - c. There was sloughing and erosion of the bank, which caused fine sediment deposition into Willow Creek both upstream and downstream of where the crossing had been located.
5. On June 17, 2025, DSL inspected the Property. At the time of the inspection:
 - a. There were large pieces of concrete in Willow Creek; and

b. There were structural materials such as rebar, metal chains, and pieces of concrete on the banks of the creek within the ordinary high water level.

6. As of the date of this Notice, Respondent has not removed all of the structural materials from Willow Creek and the creek bed.

7. At all relevant times, Respondent did not have a permit to conduct in-water work, construct a crossing, or discharge to waters of the state.

III. CONCLUSIONS

1. From at least December 6, 2024, through the date of this Notice, Respondent violated 468B.025(b) by discharging waste into a water of the state where the discharge violated a water quality standard, as described in Section II, Paragraphs 3-5, above. Specifically, on or before December 6, 2024, Respondent violated OAR 340-041-0007(7) by conducting road building activities in a manner that deposited waste into Willow Creek. The crossing that Respondent constructed included improperly installed perched culverts, which raised the water level upstream of the crossing. The crossing is “waste” pursuant to ORS 468B.005(9) because it altered the physical, chemical, or biological properties of a water of the state, which tends to render such waters detrimental to beneficial uses, including the use of those waters as aquatic habitat. Willow Creek is a “water of the state” pursuant to ORS 468B.005(10). This is a Class I violation, according to OAR 340-012-0055(1)(b). DEQ hereby assesses a \$3,600 civil penalty for this violation.

2. On at least January 22, 2025, Respondent violated ORS 468B.025(a) by causing pollution to Willow Creek, as described in Section II, Paragraph 4, above. Specifically, the crossing that Respondent constructed caused the water in Willow Creek upstream of the crossing to rise above the high water line. This caused erosion of the banks of Willow Creek that deposited turbid water into the creek downstream of the crossing. Turbidity is “pollution,” pursuant to ORS 468B.005(5), because it alters the physical, chemical, or biological properties of waters of the state, which tends to render such waters detrimental to beneficial uses, including the use of those waters as aquatic habitat. Willow Creek is a “water of the state” pursuant to ORS 468B.005(10). This is a Class I violation, according to OAR 340-012-0055(1)(a). DEQ hereby assesses a \$2,700 civil penalty for this violation.

1 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

4 1. Pay a total civil penalty of \$6,300. The determination of the civil penalties are attached as
5 Exhibits 1-2 and are incorporated as part of this Notice.

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

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

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

16 2. Remove all remaining crossing and non-native materials from Willow Creek and the creek
17 bed. Materials removed must include concrete, metal, and other construction debris. Within 30 days of
18 this order becoming final by operation of law or on appeal, written and photographic documentation
19 demonstrating Respondent's compliance must be sent to: Amber Clark, Amber.Clark@deq.oregon.gov.

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

21 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
22 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
23 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
24 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
25 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
26 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
27 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax

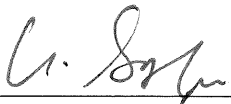
1 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
2 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
3 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
4 represented by an attorney at the hearing, however you are not required to be. If you request a hearing,
5 you will be notified of the time and place of the hearing and you will be given information on the
6 procedures, and other rights of parties relating to the conduct of the hearing before commencement of
7 the hearing. If you are an individual, you may represent yourself. If you are a corporation, partnership,
8 limited liability company, unincorporated association, trust or government body, you must be
9 represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

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

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

21
22
23
24 10/30/2025

25 Date

26 

27 Erin Saylor, Interim 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: Violating ORS 468B.025(1)(b) and OAR 340-041-0007(7) by constructing a crossing in a water of the state in a manner that deposited waste into Willow Creek.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(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 \$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)(O).
- "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 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "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 of violation is a separate occurrence. Respondent conducted road building activities in a manner that distributed waste on or before December 6, 2024. As of the date of this Notice, there are still materials from the dismantling of the crossing remaining in the creek, more than 28 days later.
- "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. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the 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. Constructing a road and culvert through Willow Creek without permitting or professional consultation

consciously disregarded a substantial risk that constructing the crossing would release waste into the creek and violate water quality. Disregarding that risk was a gross deviation from the standard of care a reasonable person would observe in that situation.

"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 as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, there is still concrete and other materials from the construction and dismantling of the crossing and culvert remaining in Willow Creek.

"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 the amount Respondent gained is de minimis.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 4 + 8 + 2)] + \$0 \\ &= \$1,500 + (\$150 \times 14) + \$0 \\ &= \$1,500 + \$2,100 + \$0 \\ &= \$3,600 \end{aligned}$$

EXHIBIT 2

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

VIOLATION NO. 2: Violating ORS 468B.025(1)(a) by causing pollution to Willow Creek.

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 \$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)(O).

"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 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"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 was only one occurrence of the violation. Respondent's activities caused pollution on at least one day, January 22, 2025.

"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. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the 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. Constructing a road through Willow Creek and blocking the passage of water to such a degree perching the culverts created a substantial risk that the water level would rise and erode the banks of the creek, depositing sediment into the water. Disregarding this risk was a gross deviation from the standard of care a reasonable person would observe in that situation.

"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 or the effects of the violation could not be corrected or minimized. After being eroded and washed into Willow Creek, the sediment could not be removed from the creek and returned to the creek banks.

"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 the amount Respondent gained is de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,500 + [(0.1 x \$1,500) x (0 + 0 + 0 + 8 + 0)] + \$0
= \$1,500 + (\$150 x 8) + \$0
= \$1,500 + \$1,200 + \$0
= \$2,700

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 30, 2025 |
| RESPONSE DATE*: | January 8, 2026 |
| TOTAL PENALTY: | \$6,300.00 |

| | | | |
|---------------|-----------------------------|-------------------|--------------|
| Account Name: | HUBERT WILLER | | |
| Account Type: | Vendor/Organization/Company | Reference Number: | CPGFD2600036 |
| SubSystem ID: | 302326 | FIMS Acct. ID: | 29079 |

Penalty Summary

| Penalty Amount | Interest | Adjustment | Amount Paid | Total Penalty |
|----------------|----------|------------|-------------|---------------|
| \$ 6,300.00 | \$ 0.00 | \$ 0.00 | \$ 0.00 | \$ 6,300.00 |

*This is the date the penalty is due if you do not exercise your right to appeal the attached order. 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. | CPGFD2600036 | | |
| PAYCODE: | 00401 7400 10040 74001 0500 000000 00 | | |
| FEE PROGRAM ID: | 950 | RESPONSE DATE: | January 8, 2026 |
| FIMS ACCT. ID: | 29079 | TOTAL PENALTY DUE: | \$6300.00 |

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 0095000290798CPGFD2600036000006300009



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 |
|------------------|----------------------------|------------|
| 10/29/2025 | 2025-528 WQ-NP-ER-2025-528 | \$6,300.00 |

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 _____

CERTIFICATE OF MAILING

I hereby certify that I served DEQ Case No. WQ-NP-ER-2025-528 upon:

9589 0710 5270 3236 6720 48

| | |
|---|----|
| U.S. Postal Service™ CERTIFIED MAIL® RECEIPT <i>Domestic Mail Only</i> | |
| For delivery information, visit our website at www.usps.com | |
| OFFICIAL USE | |
| Certified Mail Fee | |
| \$ | |
| Extra Services & Fees (check box, add fee as appropriate) | |
| <input type="checkbox"/> Return Receipt (hardcopy) | \$ |
| <input type="checkbox"/> Return Receipt (electronic) | \$ |
| <input type="checkbox"/> Certified Mail Restricted Delivery | \$ |
| <input type="checkbox"/> Adult Signature Required | \$ |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ |
| Postmark Here | |
| Hubert Willer 4233 SE 182nd Ave Gresham, OR 97030 | |
| PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions | |

By mailing a true copy of the above by placing it in a sealed envelope, with postage prepaid at the DEQ/DAS mail services in Portland, Oregon on October 30, 2025

Isaac Griffith

Isaac Griffith, Case Coordinator

Office of Compliance & Enforcement

Department of Environmental Quality