

Re: NOTICE OF PUBLIC HEARING Wednesday, November 27, 2024, File # V 25-01

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From Chris K <rainiergeek@gmail.com>

Date Mon 11/25/2024 8:27 AM

To Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

 1 attachment (7 MB)

202305WillowCreekLand.pdf;

**CAUTION:** This email was NOT sent by the Columbia County email system. Do not click links or open attachments unless you are expecting this email and/or know the content is safe.  
Also, do NOT scan any 'QR' codes in this email.

Hello Jacyn, Thank you for the information.

I see that the documentation is now available online at

<https://www.columbiacountyor.gov/events/88904/>. Per instruction included in the notice, written comments on this issue can be submitted to you via email. As such, I am submitting the below comments and information regarding the case, specifically the Appeal and Narrative document dated as received 9/25/2024 (actual file named 1140.pdf).

Page 2 Paragraph 7 states:

*At the prior hearing on September 9, 2024, before the Columbia County Planning Commission, several interested neighbors attended and raised a myriad of concerns. As discussed below in detail, nearly all of those concerns do not in fact relate to Goble Pit or the proposed variance request. In general, they related to mining operations of the neighboring quarry- not at issue in this variance request. The asphalt plant will be placed in Goble Pit. Currently there is no active mining taking place at Goble Pit.*

Response:

Both of the subject "properties" (Goble Quarry and Goble Pit) neighbor each other, while also being owned and subsequently operated and managed by the same organizations noted in the application. I.e. Willow Creek Land LLC and their Registered Agent, Brent J. Kerr. The attempt at differentiating the locales in this case, only furthers the concern around lack of responsibility and accountability. Additionally, I believe that precedence within similar cases would define both identified areas to be within the same "Operating area" aka "Operation".

Page 3 Paragraph 1 states:

*Many other concerns were unfounded and raised without any legally sufficient evidence or support - for example, claims that Kerr is "being sued by DEQ". When consideration is given to the standards at issue relative to the requested variance, and the evidentiary support provided by any who oppose it, the clear and reasonable decision, as supported by the Staff Report, is to approve the variance.*

Response:

As an attendee of the initial public hearing held on 9/9/2024, my statement was that there had been two prior legal actions where the applicant/s were fined in 2022 and 2023, due to the "Goble Pit" **not** meeting the current state requirements, let alone those contained in section 1040 of the Columbia County Zoning Ordinance. Please see the attached document Re: Notice of Civil Penalty Assessment and Order Case No. WQ-SW-NWR-2022-562, file named 202305WillowCreekLand.pdf. In this document, The "Goble Pit" in question is

identified, and both Willow Creek Land LLC and Brent J. Kerr are named.

Furthermore, within both the original variance request and subsequent appeal, the fundamental requirements are called out as needing to be met before any variances could be considered. Also stated, is that "the applicant has the burden of presenting substantial evidence showing that the application meets all the applicable criteria". Most would define this as an onus on the applicant/s to provide proof that requirements are met, which thus far has not been fulfilled all things considered.

Thank you for your time,

Chris Kerns

[rainiergeek@gmail.com](mailto:rainiergeek@gmail.com)

971-225-2056



# 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

May 25, 2023

CERTIFIED MAIL: 7016 2710 0000 4223 9202

Willow Creek Land LLC  
c/o, Brent J. Kerr, Registered Agent  
395 Shenandoah Lane  
Woodburn, OR 97071

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ-SW-NWR-2022-562

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$42,392 for failing to keep current and implement your Stormwater Pollution Control Plan (SWPCP) in accordance with the National Pollutant Discharge Elimination System Industrial Stormwater General Permit No.1200-A (the Permit) issued for the Goble Pit located in Rainier, Oregon. In addition, DEQ has cited you for causing pollution to waters of the state resulting from turbid discharges observed on April 20, 2023.

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 from the site. The failure to implement the SWPCP, keep it current, and revise it as needed to reflect current operations and implement the requirements of the Permit poses a risk of harm to water quality. In addition, DEQ is concerned that you have failed to adequately update the SWPCP after DOGAMI rejected a revision in October, 2022.

Included in Section IV of the enclosed Notice is an order requiring you to immediately submit an engineer-stamped, revised SWPCP to DOGAMI for approval. Please submit the revised SWPCP to: the Department of Geology and Mineral Industries, Attn: Lisa Reinhart, 229 Broadalbin St. SW, Albany, OR 97321.

\$25,592 of the civil penalty represents the economic benefit you gained by failing to install a flocculent system to help control the excessive turbidity in your stormwater discharge. 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 and note the case number on your check.

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](mailto: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 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 or toll free in Oregon at 800-452-4011, extension 6839.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Lisa Reinhart, DOGAMI  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 WILLOW CREEK LAND LLC, an ) ASSESSMENT AND ORDER  
Oregon limited liability corporation, )  
5 Respondent. ) CASE NO. WQ/SW-NWR-2022-562

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7  
8 I. AUTHORITY

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

12 II. FINDINGS OF FACT

13 1. On December 3, 2021, Respondent was assigned coverage under the National Pollutant Discharge  
14 Elimination System Stormwater and Mine Dewatering Discharge General Permit No. 1200-A (the Permit) for  
15 stormwater discharges from the “Goble Pit” located at 70075 Nicolai Road, in Rainier, Oregon (DOGAMI  
16 Permit ID 05-0004, DEQ File No. 111067) (the Facility). The Permit was in effect at all material times

17 2. The Facility’s stormwater discharges to a roadside ditch along Nicolai Road that discharges to wetlands  
18 and the Columbia River, waters of the state.

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

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

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

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1           6. Schedule A, condition 8.b.ii of the Permit requires that the SWPCP contain a site map that includes: (1)  
2 drainage patterns, (2) drainage and discharge structures, (3) outline of the drainage area for each stormwater  
3 outfall, (4) paved areas and buildings within each drainage area, (5) areas used for outdoor manufacturing,  
4 treatment, storage, or disposal of significant materials, (6) operating equipment areas, including any area where a  
5 concrete or asphalt batch plant may be located, (7) existing structural control measures for minimizing pollutants  
6 in stormwater runoff; (8) structural features that reduce flow or minimize impervious areas, (9) material handling  
7 and access areas ... (11) location of wells including waste injection wells, seepage pits, drywells, etc., (12)  
8 location of wetlands and other surface waterbodies both on site and adjacent to the site, (13) location of  
9 groundwater wells ... (15) location of monitoring points; (16) location of spill prevent and cleanup materials,  
10 (17) location of wheel washing activities.

11           7. Schedule A, condition 8.b.viii of the Permit requires the identification of discharge outfall(s) and the  
12 point(s) where monitoring will occur.

13           8. On June 6, 2022, Respondent submitted a SWPCP dated March 31, 2022 (the “March SWPCP”).

14           9. The March SWPCP does not propose or describe control measures to meet the narrative technology  
15 based effluent limits in Schedule A.1 of the Permit.

16           10. On June 10, 2022, the March SWPCP did not reflect site conditions or activities occurring at the Facility.  
17 Specifically:

- 18           a. The March SWPCP does not depict the outfall at the exit on the west side of the Facility;
- 19           b. Respondent is importing fill material at the Facility, an activity that results in increased truck  
20 traffic and vehicle track out, but the March SWPCP does not identify this activity;
- 21           c. The March SWPCP states that asphalt concrete production is taking place but it is not;
- 22           d. The acreages of disturbance in the March SWPCP is not accurate;
- 23           e. The March SWPCP references “Figure 3” but no Figure 3 is included;
- 24           f. The March SWPCP references using ditches and swales with check dams but these are not  
25 identified on the site map included in the March SWPCP;
- 26           g. The March SWPCP states that “mining has not begun” in areas where mining occurred in the  
27 past;



1 h. The SWPCP site map does not contain:

- 2 i. All drainage and discharge structures (piping, ditches, etc.);
- 3 ii. An outline of the drainage area for each stormwater outfall;
- 4 iii. Paved areas and buildings within each drainage area;
- 5 iv. Areas used for outdoor manufacturing, treatment, storage, or disposal of significant
- 6 materials. Specifically, there is no identification of storage of material and equipment
- 7 near the wetland and importation of fill material occurring at the Facility;
- 8 v. Operating equipment areas, including any area where a concrete or asphalt batch plant
- 9 may be located. The SWPCP narrative says there is a batch plant, but it is not shown on
- 10 the site map;
- 11 vi. Existing structural control measures for minimizing pollutants in stormwater runoff. The
- 12 only control shown on the SWPCP map is an infiltration pond and a status wheel wash;
- 13 vii. Structural features that reduce flow or minimize impervious areas. No structural features
- 14 are selected or implemented;
- 15 viii. Material handling and access areas. The site map does not identify haul roads that exist
- 16 at the Facility;
- 17 ix. Location of wells including waste injection wells, seepage pits, drywells, etc. There are
- 18 wells on-site that are not shown in the site map;
- 19 x. Location of springs, wetlands and other surface waterbodies both on site and adjacent to
- 20 the site;
- 21 xi. Location of groundwater wells;
- 22 xii. Location of monitoring points. There is an outfall at the exit near the truck scale that is
- 23 not identified as a monitoring location;
- 24 xiii. Location of spill prevention and cleanup materials;
- 25 xiv. Location of wheel washing activities. The site map included one passive wheel wash but
- 26 there are two in use;

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1 11. On October 5, 2022, in response to a corrective action request from DOGAMI, Respondent submitted a  
2 revised SWPCP to DOGAMI (the October SWPCP). The October SWPCP did not identify any best management  
3 practices implemented at the Facility. Section 10.1.1 of the October SWPCP included a list of erosion and  
4 sediment control methods that “may” be used at the Facility but did not identify control methods that were  
5 implemented. The October SWPCP was not accepted by DOGAMI.

6 12. On June 10, 2022, there was turbid water discharging down the access road at the entrance of the  
7 Facility, bypassing the outfall, to the roadside ditch.

8 13. On June 10, 2022, a processing area at an adjacent, unpermitted parcel where the Goble Quarry is  
9 located, was configured to drain into the Facility and discharge from Outfall 1.

10 14. On April 20, 2023, the Facility discharged turbid stormwater from Outfall 1 to the roadside ditch along  
11 Nicolai Road that drains into a wetland located southeast of the Facility. The wetland is listed on the National  
12 Wetland Inventory and discharges to the Columbia River.

13 15. Wetlands, springs, streams and other bodies of surface and underground water that combine or effect a  
14 junction with natural surface or underground waters are considered “waters of the state” according to ORS  
15 468B.005(10).

### 16 III. CONCLUSIONS

17 1. On or about June 10, 2022, through the present, Respondent has violated ORS 468B.025(2) and  
18 Schedule A, condition 2(a) of the Permit by failing to select, design, install, implement and maintain control  
19 measures to meet the narrative technology based effluent limits in Schedule A.1 of the Permit and describe those  
20 measures in the Stormwater Pollution Control Plan (SWPCP). Specifically, Respondent’s March SWPCP fails to  
21 identify any specific control measures that are implemented at the Facility. This is a Class II violation according  
22 to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this violation.

23 2. On or about June 10, 2022, through the present, Respondent has violated ORS 468B.025(2) and  
24 Schedule A, condition 7, and condition 8.b of the Permit by failing to keep current and implement a SWPCP.  
25 Specifically, Respondent failed to implement control structures described in its March SWPCP, failed to identify  
26 areas where industrial activities were taking place, failed to update the plan to reflect changes at the Facility and  
27 failed to provide a complete site map as described in Section II above. This is a Class I violation according to

1 OAR 340-012-0055(1)(r). DEQ hereby assesses a \$9,600 civil penalty for this violation.

2 3. On or about April 20, 2023, Respondent has violated ORS 468B.025(1)(a) by causing pollution to waters  
3 of the state. Specifically, Respondent violated numerous conditions of the Permit, as described in Section II,  
4 paragraphs 1-14, above, and discharged turbid stormwater from its Facility to a roadside ditch that drains to a  
5 wetland and to the Columbia River. The roadside ditch, the wetland, and the Columbia River are considered “waters  
6 of the state” according to ORS 468B.005(10) as they are bodies of surface waters which combine or effect a junction  
7 with natural surface waters. The turbid stormwater altered the turbidity and the physical and biological properties of  
8 the roadside ditch in a manner that will or tends to render such wastes detrimental to aquatic life and other beneficial  
9 uses. Such alterations are considered “pollution” according to ORS 468B.005(5). This is a class I violation  
10 according to OAR 340-012-0055(2)(1)(a). DEQ hereby assesses a \$32,792 civil penalty for this violation.

#### 11 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

14 1. Pay a total civil penalty of \$42,392. The determinations of the civil penalties are attached as  
15 Exhibits No.1 and No.2 and are incorporated as part of this Notice.

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

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

21 Pay by check or money order: Make checks payable to “Department of Environmental Quality” and mail to  
22 the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money  
23 order.

24 2. Immediately submit for approval a revised SWPCP that complies with the Permit requirements,  
25 accurately reflects current activities at the Facility, and is stamped by an engineer. Please submit the revised SWPCP  
26 to: the Department of Geology and Mineral Industries, Attn: Lisa Reinhart, 229 Broadalbin St. SW, Albany, OR  
27 97321.

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 must  
3 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 exhibits,  
5 you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure  
6 to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about  
7 requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE**  
8 **Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to  
9 [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov). An administrative law judge employed by the Office of Administrative  
10 Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR  
11 137-003-0501 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, you may  
13 represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association,  
14 trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth  
15 in OAR 137-003-0555.

16 Active duty Service members have a right to stay proceedings under the federal Service Members Civil  
17 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 Forces Legal  
19 Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll  
20 free telephone number.

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

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1 order by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
2 information submitted by you, as the record for purposes of proving a prima facie case.  
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6 5/25/2023

7 Date

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27 Kieran O'Donnell

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 No.2: Respondent has violated ORS 468B.025(2) and Schedule A, conditions 7 and 8.b of the Permit by failing to keep current and implement the SWPCP developed for the Facility.

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 an NPDES General Permit.

"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 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 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. The SWPCP was inaccurate and not implemented on June 10, 2022. As of the date of this Notice and Order, Respondent has not revised its SWPCP to meet permit requirements or submitted any documentation indicating the March SWPCP has been implemented.

"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 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. The Permit plainly

requires registrants to implement the SWPCP and keep it updated to reflect current activities at the Facility. Additionally, Respondent received a Pre-Enforcement Notice dated June 17, 2022 informing it that the SWPCP was in violation of Schedule A, condition 8 and required updating. Respondent submitted the October SWPCP but it too failed to meet Permit requirements. By failing to implement or revise substantial elements of its SWPCP to meet permit requirements, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate the Permit.

"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).

"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. The economic benefit Respondent gained is too speculative to estimate.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 8 + 2)] + \$0$   
 $= \$4,000 + (\$400 \times 14) + \$0$   
 $= \$4,000 + \$5,600 + \$0$   
 $= \$9,600$

## EXHIBIT 2

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

VIOLATION 3: Violating ORS 468B.025(1)(a) by discharging turbid stormwater from the Facility which caused pollution to waters of the state on April 20, 2023.

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 \$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 an NPDES General Permit.

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

"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 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. As a permittee Respondent is aware of the requirements to implement erosion and sediment controls to prevent or mitigate the discharge of turbid stormwater from the Facility off-site. Further, Respondent was made aware of its inadequate stormwater control practices, and the need to implement controls after DOGAMI's June 10, 2022 inspection. By failing to implement to



implement best management practices and erosion and sediment controls, Respondent consciously disregarded a substantial and unjustifiable risk that it would discharge turbid stormwater off-site to the nearest receiving body down gradient.

"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. 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 \$25,592. This is the amount Respondent gained by avoiding an estimated \$37,500 to install a flocculent system in its final settling pond to control sediment discharge.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 0 + 8 + 0)] + \$25,592 \\ &= \$4,000 + (\$400 \times 8) + \$25,592 \\ &= \$4,000 + \$3,200 + \$25,592 \\ &= \$32,792 \end{aligned}$$

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)**

WILLOW CREEK LAND LLC  
 70075 NICOLAI ROAD  
 GOBLE, OR 97048

<b>DATE:</b>	May 25, 2023
<b>RESPONSE DATE :</b>	August 3, 2023
<b>TOTAL PENALTY:</b>	\$42,392.00

<b>Account Name:</b>	WILLOW CREEK LAND LLC		
<b>Account Type:</b>	Vendor/Organization/Company	<b>Reference Number:</b>	CPGFD2300078
<b>SubSystem ID:</b>	367	<b>FIMS Acct. ID:</b>	12025

**Penalty Summary**

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 42,392.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 42,392.00

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



WILLOW CREEK LAND LLC  
 70075 NICOLAI ROAD  
 GOBLE, OR 97048

<b>REFERENCE NO.</b>	CPGFD2300078		
<b>PAYCODE:</b>	00401 7400 10040 74001 0500 000000 00		
<b>FEE PROGRAM ID:</b>	950	<b>RESPONSE DATE:</b>	August 3, 2023
<b>FIMS ACCT. ID:</b>	12025	<b>TOTAL PENALTY DUE:</b>	\$42392.00

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 0095000120256CPGFD230007800042392006



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
5/24/2023	2022-562 WQ-SW-NWR-2022-562	\$42,392.00

### 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 \_\_\_\_\_